

Date: April 2, 2013

**Communication to: The Human Rights Committee**

c/o Office of the High Commissioner for  
Human Rights  
United Nations Office at Geneva  
1211 Geneva 10  
Switzerland

submitted for consideration under the Optional Protocol to the International Covenant on Civil and Political Rights.

**I. Information concerning the author of the communication**

Name: SARANG

First name(s): ANNA

Nationality: RUSSIAN

Profession: HEAD OF THE Non –Governmental Organization  
The Andrey Rylkov Foundation for health and social justice

Date and place of birth: 6 NOVEMBER 1972, MOSCOW, RUSSIA

Present address: 4-1 Ilymskaya street, apartment 38, Moscow, Russia

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Submitting the communication as:

(a) Victim of the violation or violations set forth below: ANNA SARANG

**II. Information concerning the alleged victim(s)**

N/A

**III. State concerned/articles violated/domestic remedies**

Name of the State party (country) to the International Covenant and the Optional Protocol against which the communication is directed:

RUSSIAN FEDERATION

Articles of the International Covenant on Civil and Political Rights allegedly violated:

ARTICLE 19

Steps taken by or on behalf of the alleged victim(s) to exhaust domestic remedies-recourse to the courts or other public authorities, when and with what results (if possible, enclose copies of all relevant judicial or administrative decisions):

The applicant completely exhausted the domestic remedies by bringing her applications to the district court and the court of appeal.

On May 22, 2012 the district court issued a decision considering the application inadmissible.

On October 2, 2012 the court of appeal upheld the decision of the district court.

#### IV. Other international procedures

The applicant did not use any other international procedures

**Has the same matter been submitted for examination under another procedure of international investigation or settlement (e.g. the Inter-American Commission on Human Rights, the European Commission on Human Rights)? If so, when and with what results?**

This matter has not been submitted for examination under any other procedure of international investigation or settlement

#### V. Facts of the claim

**Detailed description of the facts of the alleged violation or violations (including relevant dates)\***

##### Statement of the facts

5.1 On September 1, 2011 the applicant submitted the petition (Annex I) to the President of the Russian Federation requesting him to fulfill his constitutional obligations and bring the domestic laws in line with the Covenant on Economic, Social and Cultural Rights as construed in the following recommendations of the Committee on Economic, Social and Cultural Rights (CESCR) given to the Russian Federation on May 20, 2011:

*The Committee urges the State party to apply a human rights-based approach to drug users so that they do not forfeit their basic right to health. The Committee strongly recommends the State party to provide clear legal grounds and other support for the internationally recognized measures for HIV prevention among injecting drug users, in particular the opioid substitution therapy (OST) with use of methadone and buprenorphine ...*

5.2 The applicant based her request on three key arguments:

- According to Article 15(4) of the Russian Constitution, the international treaties shall prevail in case of conflict with the national laws;
- According to Article 80(2) of the Russian Constitution, the President of the Russian Federation is a guarantor of the Constitution of the Russian Federation, human rights and freedoms;
- According to the case law of the Supreme Court of the Russian Federation, in interpreting the international treaties courts shall take into account the documents of the United Nations.

5.3 On September 15, 2011 the Administration of the President informed the applicant that her petition was forwarded to the Ministry of Health of the Russian Federation (Annex II).

5.4 On December 5, 2011 the Ministry of Health replied to the applicant with the statement with the attached opinion of the Chief Drug Treatment Doctor of the Russian Federation (Annex III) concerning two points:

- OST is prohibited by the Federal Law #3-FZ dated 8 January 1998 'On narcotic drugs and psychotropic substances';
- OST is not effective, based on the opinion of the Chief Drug Treatment Doctor of the Russian Federation.

5.5 On January 10, 2012 the applicant sent a new petition to the President to the Russian Federation, asking him to fulfill his constitutional obligation and bring the Russian laws on drugs in line with the Covenant on Economic, Social and Cultural Rights. Regarding the statement of the Ministry of Health of December 5, 2011 the applicant pointed to the following failures to address the issues referred to in the petition of September 1, 2011 (Annex IV):

- The petition of September 1, 2011 was concerning the responsibility of the President of the Russian Federation to be the guarantor of the Constitution, human rights and fundamental freedoms. In this capacity the President was asked to bring the national laws in line with the Covenant on Economic, Social and Cultural Rights as construed by the CESCR. In other words the President was asked to implement the recommendation of the CESCR and lift the ban on OST by amending the Federal Law #3-FZ dated 8 January 1998 'On narcotic drugs and psychotropic substances'. In her petition the applicant did not ask the President whether or not OST was prohibited in Russia. She knew it was. And that was exactly what she asked the President to address.
- The petition of September 1, 2012 was not concerning the issue of whether OST was effective or not. The petition was purely related to legal issues around the implementation of the recommendations of the CESCR.

5.6 In addition the applicant argued that the opinion of the Chief Drug Treatment Doctor which informed the position of the Ministry of Health consisted of a number of false statements of facts regarding the OST (Annex IV).

- Mr. Bruin stated that "the so-called 'substitution therapy' has nothing to do with therapy, that is, with treatment". However the fact is that according to the World Health Organization (WHO) the OST is the most effective method of treatment of opioid dependence<sup>1</sup>;
- Mr. Bruin stated that the OST "is limited to simple distribution of methadone, which doesn't even imply the involvement of medical staff". However the fact is that WHO defines this method of drug dependence treatment as "the administration of thoroughly evaluated opioid agonists, by accredited professionals, in the framework of recognized medical practice, to people with opioid dependence, for achieving defined treatment aims"<sup>2</sup>;
- Mr. Bruin states that the OST "only bolsters up the disease and leads drug users to imminent mental degradation and death". However the fact is that the review of the scientific researches, conducted by the group of Russian scientists in 2006 proved that "there are no data to testify that the effects of methadone maintenance on brain functions exceed the adverse neurological effects of chronic heroin use"<sup>3</sup>. WHO documents demonstrate that OST significantly decrease the death rate of overdose among opioid users<sup>4</sup>.
- Mr. Bruin states that the "social and any other activities of drug users who take methadone is nothing but a myth". However according to WHO the OST is an important component for outpatient treatment which provides for the better rate of the patients retaining in treatment, better employment rate among the OST clients, less criminal behavior associated with illicit drug use, as well as improved family

<sup>1</sup> "Guidelines for the Psychosocially Assisted Pharmacological Treatment of Opioid Dependence". WHO, 2009. P. xi.

<sup>2</sup> Ibid, P. x.

<sup>3</sup> Anna G. Polunina, Dmitry M. Davidov, and Alexander A. Kozlov "Brain Disintegration in Heroin Addicts: The Natural Course of the Disease and the Effects of Methadone Treatment". Heroin Addict Relat Clin Probl 2007; 9(2): 17-26

<sup>4</sup> WHO Guidelines. Supra note 5. P. xii

situation<sup>5</sup>. The WHO position is in concord with the research conducted in 1930-1936 by the soviet psychiatrist Kantorovich.<sup>6</sup>

•Mr. Bruin states that the petition of the applicant “ didn’t provide any strong and legally supported arguments in favour of introducing ‘substitution therapy’”. However the fact is that the petition of the applicant consisted of references to the Russian Constitution, the case law of the Russian Supreme Court, and the CESCRC recommendations. The applicant believes that it is factually inaccurate to state that there were no arguments in favour of OST. Especially when there was no counterarguments provided to support this statement.

5.7 On January 18, 2012 the Administration of the President informed the applicant that her petition was again forwarded to the Ministry of Health (Annex V).

5.8 On February 2, 2012 the Ministry of Health responded that all issues of concern were addressed in the statement of December 5, 2013 (Annex VI).

5.9 On April 21, 2012 the applicant applied to the district court claiming the violation of her right to receive from the state authorities of a written replies on the matter of the citizen petition based on the objective consideration of the petition (Annex VII).

5.10 In particular the applicant pointed that in her petition she did not ask the President whether or not OST was prohibited and whether or not OST was effective. Her petition was regarding the implementation of the international treaty following the very precise recommendation of the treaty monitoring body. And according to the national laws she was entitled to receive the reply (information) on the matter.

5.11 In addition the applicant pointed that according to the national laws her petition should have been considered objectively. But instead the reply of the Ministry of Health was based on the opinion of a single person which consisted false statements of facts.

5.12 On May 22, 2012 the district court issued a decision considering the application inadmissible claiming that the application fell outside the court’s competence due to the principle of the separation of powers (Annex VIII).

5.13 On July 16, 2012 the applicant filed an appeal claiming that the district court did not consider the facts of the application properly (IX). The application was concerning the right of the applicant to receive the reply on the matter of the petition based on the objective consideration of the petition. But the court considered the application like if the applicant had requested the court to order the President to propose the Bill to the Parliament.

5.14 On October 2, 2012 the court of appeal upheld the decision of the district court. Thus the applicant exhausted all the domestic remedies (X).

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**Statement of the law**

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<sup>5</sup> WHO/UNODC/UNAIDS position paper Substitution maintenance therapy in the management of opioid dependence and HIV/AIDS prevention, 2004

<sup>6</sup> Н.В.Канторович. «Диспансерные наблюдения над морфинистами». Советская психоневрология. № 3, 1936 год

5.15 The applicant maintains that her right to receive information was violated by the Administration of the President which failed to provide her with the reply (the information) on the matter of her petition and based on the objective consideration of the petition (based on the false statement of the facts).

**As to the law.**

5.16 Constitution of the Russian Federation, 1993

Article 15(4)

*The universally-recognized norms of international law and international treaties and agreements of the Russian Federation shall be a component part of its legal system. If an international treaty or agreement of the Russian Federation fixes other rules than those envisaged by law, the rules of the international agreement shall be applied.*

Article 29(4)

*Everyone shall have the right to freely look for, receive, transmit, produce and distribute information by any legal way.*

Article 33

*Citizens of the Russian Federation shall have the right to address personally, as well as to submit individual and collective appeals to state organs and local self-government bodies.*

Article 80(2)

*The President of the Russian Federation shall be the guarantor of the Constitution of the Russian Federation, of the rights and freedoms of man and citizen.*

Article 85(2)

*The President of the Russian Federation shall have the right to suspend acts of the Bodies of executive power of the subjects of the Russian Federation in case these acts contradict the Constitution of the Russian Federation and the federal laws, international commitments of the Russian Federation or violate the rights and freedoms of man and citizen until the issue is solved by a corresponding court.*

5.17 Federal Law No 59-FZ of May 2, 2006 «On the process of consideration of the petitions of the citizens of the Russian Federation».

Article 5(3)

*When the state body considers the petition the citizen is entitled to receive a written response on the matter of the petition.*

Article 10(1)

*The state body or the state official shall ensure the objective consideration of the citizen's petition*

5.18 Federal Law No 8-FZ of 9 February 2009 "On access to information about activities of the state and the municipal authorities", stipulates that the information on the activities of the state authorities shall

include the information created by the state bodies within their mandate (Article 1(1)). This law stipulates among the main principles of the access to information the principle of reliability of the information about the activities of the state authorities (Article 4(2)); one of the main legal requirement to the information posted by the state bodies is that the information shall be reliable (Article 11); it is also specifically stipulated that those who seek information (users of information) shall have right to receive reliable information. Among the methods to ensure access the information the Law lists "placing the information on the activities of the state bodies in Internet" (Article 6(2)). In order to place information on their activities in Internet the state bodies shall create official websites (Article 10). The information about the activities of the state bodies posted in Internet shall include "texts of official speeches and statements of the state bodies' heads and of their deputies" (Article 13(6)).

**5.19 Federal Law No 3-FZ of 8 January 1998 "On narcotic drugs and psychotropic substances"**

According to Article 14 and 31(6) of the use of narcotic drugs and psychotropic substances from the List I and II is prohibited in treatment of drug dependence. Methadone and buprenorphine are in the List I and II of the Government Schedule of Narcotic Drugs, Psychotropic Substances and Precursors of Thereof Under Control (Approved by the Government Decree No 681 of 30 June 1998).

**5.20 International Covenant on Civil and Political Rights, 1966**

**Article 19**

1. *Everyone shall have the right to hold opinions without interference.*
2. *Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*
3. *The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:*
  - (a) *For respect of the rights or reputations of others;*
  - (b) *For the protection of national security or of public order (ordre public), or of public health or morals.*

**5.21 Ruling of the Plenum of the Supreme Court of the Russian Federation No 5 of October 10, 2003 «On the implementation by the general jurisdiction courts of the Russian Federation of the norms and principles of international law and international treaties of the Russian Federation».**

*Paragraph 1. Generally accepted principles of the international law, in particular, shall include the principle of the overall respect to human rights and the principle that the international treaties shall be implemented in good faith [...]The meaning of the norms and principles of the international law can be revealed in particular with help of the documents of the United Nations and its specialized agencies.*

**5.22 Committee on Economic, Social and Cultural Rights. General Comment No. 9: The domestic application of the Covenant. E/C.12/1998/24. 3 December 1984.**

*Paragraph 15. It is generally accepted that domestic law should be interpreted as far as possible in a way which conforms to the State's international legal obligations. Thus, when a domestic decision maker is faced with a choice between an interpretation of domestic law that would place the state in breach of the Covenant and one that would enable the State to comply with the Covenant, international law requires the choice of the latter. Guarantees of equality and non-discrimination should be interpreted, to the greatest extent possible, in ways which facilitate the full protection of economic, social and cultural rights.*

**Violation of the applicant's right to receive information by not responding on the matter of the petition.**

5.23 According to the Federal Law No 59-FZ of May 2, 2006 citizens are entitled to receive from the authorities the response on the matter of their petition. The applicant believes that this right is a composite part of the right to receive information which is guaranteed by Article 29 of the Constitution of the Russian Federation and Article 19 of the Covenant on Civil and Political Rights.

5.24 The petition to the President of September 1, 2011 was regarding the implementation of the CESCR recommendation by the Russian Federation. The President is the guarantor of the Constitution and the

human rights (Art 80 of the Constitution). The international treaties shall prevail over the national laws in case of conflict (Art 15 of the Constitution). The meaning of international treaties shall be revealed in particular with help of the documents of the UN Bodies (Supreme Court's Ruling No 5 of October 10, 2003). The meaning of Art 12 of the Covenant on Economic, Social and Cultural Rights shall be revealed with help of the CESCR recommendations.

5.25 Based on Art 5(3) of the Federal Law No 59-FZ of May 2, 2006 the applicant was entitled to receive from the President or any state agency mandated by the President the information regarding the President's action to bring the national laws in concord with the Covenant on Economic, Social and Cultural Rights. The applicant would have been satisfied if the President had replied her with the information about any plans or no plans regarding the implementation of the CESCR recommendations.

5.26 The applicant believes that the reply should have been in line with the matter of the petition. So, if the President replied about no plans to implement the recommendations, the applicant would have expected the reasons why the President had decided not to follow Articles 15 and 80 of the Constitution of the Russian Federation. The applicant never asked the President whether or not the OST was effective, especially taking into account that this issue has been already resolved with help of many scientific researches<sup>7</sup>. It was not the matter of the petition. The petition was concerning a clear legal matter – the implementation of the Covenant by the Russian Federation in light of the CESCR recommendations.

5.27 If the President for some reasons does not trust the competence of the Committee there should have been some justification for this provided in the response to the applicant's petition.

5.28 The applicant believes that the receiving information not on the matter of the petition is equal to not receiving information at all. Indeed there is no point to resort to the petition to the authorities if the authorities can avoid responding on the matter of the petition, thus nullifying the sentinel role of the right to receive information in the democratic society in violation of Article 19 of the Covenant on Civil and Political Rights.

5.29 According to the Human Right Committee, "pursuant to the provisions of article 2, persons should be in receipt of information regarding their Covenant rights in general"<sup>8</sup>. The applicant believes that following from this premise, persons shall have the right to receive information regarding the reasons behind the decisions taken by the states concerning the implementation of the international human rights treaties.

5.30 The applicant would like to emphasize that she sent her petition not only as a citizen of the Russian Federation but also as a Head of the Andrey Rylkov Foundation – a non-governmental organization whose mission is to promote and protect human rights of people who use drugs. In other words the petition was sent to the President of the Russian Federation on behalf of the organization with a function of a social watchdog.

5.31 According to the European Court of Human Rights, there is a special obligation of the government to provide an access to official information, including the official documents, in cases when the

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<sup>7</sup> Many of such researches are listed in the "Guidelines for the Psychosocially Assisted Pharmacological Treatment of Opioid Dependence". WHO, 2009

<sup>8</sup> Human Rights Committee: General Comment No 34. CCPR/C/GC/34. 12 September 2011. § 18.

information of a general public interest was requested from the government by the press or another social watchdog (for example human rights NGO)<sup>9</sup>.

5.32 The applicant believes that the information regarding the implementation of the human rights treaty by the government is an information of a general public interest, especially when such an implementation is concerning the matter of public health and a matter which may affect the way of life of the vulnerable group of population.

5.33 The matter of the applicant's petition was the implementation of the international treaty body's recommendation regarding the effective method of treatment of drug addiction and HIV prevention among people who inject drugs. Because of their chronic health condition people who inject drugs shall be categorized as a vulnerable minority group, whose rights can be affected by the decision of the government regarding the implementation of the CESCR recommendation concerning OST. For this reason the applicant believes that by not responding on the matter the government violated her right to receive an information concerning the implementation of the international treaty on the issues of the general public interest and the right of the minority group of people. Moreover by not responding on the matter and thus not providing information the government effectively obstruct the functioning of the social watchdog.

5.34 According to the Human Rights Committee the state party's decision-making that may substantively compromise the way of life and culture of a minority group should be undertaken in a process of information-sharing and consultation with affected communities<sup>10</sup>.

5.35 The applicant believes that the process of information-sharing shall stipulate the appropriate response to the citizens' petitions on the matter. By not responding on the matter the government does not provide the social watchdogs with information about the reasons for decisions which may affect the minority group.

5.36 Taking into account the aforementioned arguments the applicant believes that the government violated her right to receive information as stipulated by Article 19 of the Covenant on Civil and Political Rights.

**Violation of the right to receive information by way of providing the false statements of facts and my way of making the response being based on false statements of facts.**

5.37 The applicant believes that her right to receive information was violated by the state providing the false information on the facts regarding the OST. The applicant believes that when the state provides public with the information on the matters of a general public interest, the state authorities has an obligation to verify the reliability of the statements of the facts.

5.38 Both, the Federal Law No 59-FZ of May 2, 2006 «On the process of consideration of the petitions of the citizens of the Russian Federation» and the Federal Law No 8-FZ of 9 February 2009 "On access to information about activities of the state and municipal authorities" stipulate that the information provided by the state authorities shall be reliable.

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<sup>9</sup> *Társaság a Szabadságjogokért v. Hungary*, judgment of 14 April 2009.

<sup>10</sup> *Ibid*



5.39 The Federal Law No 8-FZ of 9 February 2009 stipulates this requirement explicitly. The Federal Law No 59-FZ of May 2, 2006 requires that the consideration of the citizens' petitions by the state authorities shall be objective. The applicant believes that this requirement implies that the considerations shall be based on reliable information and such a reliable information shall be provided to the public in response to the petition.

5.40 On this point the Federal Law No 59-FZ intersects with the Federal Law No 8-FZ, when the former regulates the process of consideration of the citizens petitions, and the later regulates the quality of the response to the petitions.

5.41 The applicant believes that the "opinion" of the Chief Drug Treatment Doctor, Mr. Bruin regarding OST which was the part of the reply of the state authorities to her petition shall fall under the Law No 8-FZ of 9 February 2009 and thus shall be reliable.

5.42 In the essence the letter from the Ministry of Health and the attached opinion of Mr. Bruin formed the reply of the applicant's petition to the President. The applicant's petition was addressed to the President and was concerning the President's mandate to be the guarantor of the Russian Constitution and the Human Rights. The fact that the President chooses the Ministry of Health to deal with the petition does not mean that the President has lost the responsibility to make sure that the reply on the petition to him consisted of the reliable information.

5.43 Despite the fact that the document attached to the letter of the Ministry of Health was called the "the opinion", this document consisted of the false statements of facts rather than the statement of the opinion (paragraph 5.6 of the present application).

5.44 The applicant believes that when the state provides public with information on the matters of a general public interest, the state authorities has an obligation to verify the reliability of the statements of the facts. By providing the applicant with the false statements of the facts the Ministry of Health justifies its position against the OST.

5.45 The right to receive information is an essential component for realization of other human rights, including the right to health<sup>11,12</sup>.

5.46 According to the CESCR the deliberate misrepresentation of information vital to health protection or treatment is the violation of the state's obligation to respect the right to health<sup>13</sup>.

5.47 The applicant believes that when it comes to the information on the matters of a general public interest such as the matters of public health, the state has an obligation to verify the reliability of the information which the state procures to the public, especially when this information serves as a justification of the government's position regarding an important matter of a general public interest.

5.48 This obligation stems from the role which the freedom of expression plays in the democracy as a necessary condition for the realization of the principles of transparency and accountability<sup>14</sup>. The right to

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<sup>11</sup> Committee on Economic, Social and Cultural Rights (CESCR). General Comment No 3. 14 December 1990. § 8

<sup>12</sup> CESCR. General Comment No 14 (2000). E/C.12/2000/4. § 3, 11, 37 (iv), 44 (d).

<sup>13</sup> CESCR. General Comment No 14, § 50.

receive the reliable information shall correspond not only to the state's obligation to publish laws and policies, but also to the reasoning of the decisions taken by the state.

5.49 The applicant believes that the false information is harmful for the public because it prevents the true transparency and accountability of the governance. It adds the false legitimacy to the arbitrary made decisions which may or do affect communities and human rights. By providing the false information the government makes public believe that it exercises due diligence in fulfilling the international human rights obligation, when in fact it rejects the treaty body's recommendations simply based on the 'opinion' of an expert whose statements of the facts are manifestly unreliable.

5.50 In the present case, the false information from the Chief Drug Treatment Doctor is harmful for two particular reasons:

- It serves to mislead the public and the social watchdog about the true reasons why the government rejects the recommendations of the international treaty body regarding the implementation of the evidence based drug dependent treatment;
- It forms misrepresentation of the information regarding the health protection and treatment of the group of people whose vulnerability put them in need for the state's support, including by providing the access to evidence based and internationally recognized methods of treatment.

5.51 Being misled the public in general and the social watchdogs in particular become dormant about the effective health intervention such as OST and would not be willing to question the ineffectiveness and inefficiency of the current system of drug dependence treatment and HIV prevention.

5.52 For these reasons the applicant believes that in the given circumstances the misleading and unreliable information from the state authorities is equal or even more harmful than no information at all.

5.53 With this in mind the applicant believes that by providing the false statement of facts about OST the Russian authorities infringed her right to receive information in violation of Article 19 of the Covenant on Civil and Political Rights.

Author's signature:  .....

#### Annexes

- Annex I – petition to the President of the Russian Federation
- Annex II – response of the Administration of the President of September 15, 2011
- Annex III – reply of the Ministry of Health of December 5, 2011
- Annex IV - new petition to the President to the Russian Federation of January 10, 2012
- Annex V – reply of the Administration of the President of January 18, 2012
- Annex VI – response of the Ministry of Health of February 2, 2012
- Annex VII – application to the district court of April 21, 2012
- Annex VIII - decision of the district court of May 22, 2012
- Annex IX – application to the Court of Appeal of July 16, 2012
- Annex X – decision of the Court of Appeal of October 2, 2012

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<sup>14</sup> Human Rights Committee. General Comment No 34. CCPR/C/GC/34. 12 September 2011. § 3.