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June 13, 2014

Dear Mr. Shell,

I am writing to express our concerns and ask that you bring an end to discriminatory employment policies at Radio Free Europe/Radio Liberty (RFE/RL), which has resulted in significant professional and economic harm to many former and current employees of RFE/RL.

Utilizing a legal vacuum created by a Soviet-era law of the former Czechoslovakia aimed to granting special legal status to Soviet enterprises, including immunity from Czech labor laws, RFE/RL management has implemented discriminatory employment policies creating two classes of employees: citizens of the United States and the Czech Republic, who have legal rights enforceable in respective national courts of law, and one for foreign nationals working for RFE/RL in the Czech Republic who are neither citizens of the Czech Republic or the United States.¹

In a remarkable legal decision, the Czech Supreme Court ruled that non-U.S./non-Czech employees of RFE/RL were not protected by Czech labor laws. In its decision, the Supreme Court ruled that RFE/RL, which is recognized as a State Owned Enterprise of the United States Government, was regulated by Public Law #87/1963 and therefore has special legal status. Among the special privileges granted by the law, RFE/RL was exempted from having to comply with Czech labor laws and regulations and free to treat all non-American/non-Czech employees different from American and Czech employees.

Ray Marshall

President Emeritus

Bishop Jesse DeWitt

President Emeritus

Bill Fletcher, Jr.

President Emeritus

¹ Czech citizens employed by RFE/RL have employment agreements that are governed by Czech labor laws. Their contracts prohibit "at-will" employment and require management demonstrate good cause to justify any terminations. Americans are protected by U.S. statutory laws, U.S. EEOC and court jurisdiction.

As a result, RFE/RL management has been able to exploit the legal vacuum by entering into misleading standardized contracts with its non-US/ non-Czech employees stipulating, “Conditions of employment are governed by the applicable laws of the United States, the laws of the District of Columbia or the policies of the Company.”- When doing so, RFE/RL management does not disclose to their foreign national staff that for non-Americans working for American employers abroad there are no American “applicable laws” at all.

This was confirmed in a letter from the U.S. Equal Opportunity Employment Commission (EEOC) in response to a complaint filed by Croatian Snjezana Pelivan against RFE/RL management for discrimination. In the letter, the EEOC explained that non-U.S. citizens were not protected by U.S. laws prohibiting discrimination and that the Commission “lacked jurisdiction to investigate a charge of discrimination on behalf of non-U.S. citizen working for a U.S. company abroad.” Also, non-U.S./non-Czech employees of RFE/RL are barred from seeking legal remedy in US Courts. See e.g. *Shekoyan v. Sibley International Corp.*, (217 E. Supp. 2d 59, 68 D.C. Cir. 2002) holding that to “non-U.S. citizens, even if they are recruited, hired, and trained in the U.S., when their workstation is outside the U.S., U.S. discrimination laws do not apply.”

Lacking all legal protections, non-Czech/non-American employees at RFE/RL are left with only the “*policies of the Company* “ to offer any basic protections usually afforded under the labor laws of either the Czech Republic or the United States. As a result, all foreign nationals working for RFE/RL in Prague are placed in a precarious position relative to their Czech and American colleagues: being dependent on RFE/RL for their work visa while at the same time denied basic legal protections provided for by the laws of the Czech Republic, where the business operates, or the U.S., where the company’s board of directors is located.

These discriminatory employment policies have had, and continue to have, a serious detrimental impact on the professional and personal lives of hundreds of current and former RFE/RL’s employees. For two employees in particular, RFE/RL management exploited the legal vacuum when they fired Snjezana Pelivan and Anna Karapetian. Despite their impeccable work records supported by outstanding performance reviews by their managers, Mrs. Pelivan and Mrs. Karapetian were fired by RFE/RL management without cause and without advance notice. In the process, they were denied the same rights and privileges granted to their Czech colleagues employed on contracts governed by Czech law. In addition, the RFE/RL management had in writing requested them to sign the obligations not to question their terminations in courts of law. After they refused to give up their inalienable rights to seek court protection against arbitrary terminations, management retaliated by stripping them of severance compensation owed to them for their years of service at RFE/RL.

Having been denied legal rights, protections, and compensation by the RFE/RL management that are afforded by Czech law to others in the same employment positions, both Mrs. Pelivan and Mrs. Karapetian have suffered injury to their careers. Neither Snjezana Pelivan nor Anna Karapetian, mother of three minors, received any severance for their many years of service to RFE/RL. Nor were they eligible for unemployment benefits

available to everyone else in the U.S. or the Czech Republic. Nor were they able to find other employment forcing them to uproot their families from the lives they had built living and working in Prague.

RFE/RL discriminatory hiring and firing policies, and RFE/RL management's use of those discriminatory policies, violate the basic right of all foreign employees at RFE/RL to work in an environment free from discrimination, as required by both U.S. and international legal principles, including the International Labor Organization's Fundamental Principles of Rights at Work.²

RFE/RL's discriminatory employment policies also violate the U.S. Government's and RFE/RL management's obligations to respect the basic principles of equality of opportunity and treatment for all non-US, non-Czech nationals to work in an environment free of discrimination. The Organization for Economic Cooperation and Development's (OECD) Guidelines for Multi-national Enterprises provides:

Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices and applicable international labour standards . . . Be guided throughout their operations by the principle of equality of opportunity and treatment in employment and **not discriminate** against their workers with respect to employment or occupation on such grounds as race, colour, sex, religion, political opinion, **national extraction or social origin**, or other status . . ."³ (emphasis added)

Furthermore, we believe that the BBG, which is a Federal agency comprised exclusively of members assigned by the President of the United States and confirmed by the Senate, including ex officio the Secretary of State, has a heightened duty to protect the fundamental legal rights of workers at RFE/RL for two reasons.⁴

First, the United States Government is the "parent company" of RFE/RL. RFE/RL is incorporated, funded, and directed by the United States Government. As a result, RFE/RL is a U.S. Government State Owned Enterprise. The U.S. Government-endorsed United Nations Guiding Principles on Business and Human Rights provides, "States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies. . ."⁵

² As a condition of membership to the International Labor Organization, all member country governments, including the United States Government, has agreed to respect and protect four core labor rights, including the rights of every worker to be free from discrimination.

³ OECD Guidelines for Multi-national Enterprises, Sec. V(1)(e).

⁴ See United Nations *Guiding Principles for Business and Human Rights*, A/HRC/17/31, Sec.I ("State Duty to Protect"). OECD Guidelines for MNE's, Sec. IV. ("States have the duty to protect human rights.").

⁵ UN *Guiding Principles for Business and Human Rights*, A/HRC/17/31, Sec.I(B), 4. ("Where a business enterprise is controlled by the State or where its acts can be attributed otherwise to the State, an abuse of

Second, as a “parent company” with extraordinary powers, the U.S. Government helped create and perpetuate the legal vacuum for non-U.S./non-Czech employees of RFE/RL by failing to provide basic legal protections to them as provided for others under U.S. and Czech laws. According to the UN Guiding Principles,

As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within . . . their jurisdiction those affected have access to a remedy.⁶

Now that it is clear that Czech law has delegated legal authority to the United States Government to protect the basic legal rights of RFE/RL employees, the U.S. Government has an obligation to act on its duty to protect the rights of RFE/RL employees. As an agency of the U.S. Government, BBG must strive to exercise this duty as well.

Therefore, we ask that you use your authority as directors of RFE/RL to bring an end to the on-going discriminatory employment practices at RFE/RL. We also call on you to fulfill the U.S. Government’s duty to provide access to remedies by providing fair compensation to Mrs. Pelivan, Mrs. Karapetian, and others foreign national employees injured as a result of management’s discriminatory hiring and firing policies.

We look forward to your response.

Sincerely,



Brian Campbell
Director, Policy and Legal Programs

Cc Richard Stengel, Under Sec’y of State for Public Diplomacy and Public Affairs
Tom Malinowski, Assistant Sec’y for Democracy, Human Rights and Labor

human rights by the business enterprise may entail a violation of the State’s own international law obligations.”). See also OECD Guidelines for MNEs, Sec. II, Commentary, para. 11 (“State-owned multinational enterprises are subject to the same recommendations as privately-owned enterprises, but public scrutiny is often magnified when a State is the final owner.”).

⁶ Id. Sec.III(A), 25.