



Ministry for Foreign Affairs  
Deputy Director-General

- Special Rapporteur on the situation of human rights in Belarus;
- Special Rapporteur on the promotion and protection of opinion and expression;
- Special Rapporteur on the human rights of migrants;
- Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Office of the High Commissioner  
for Human Rights  
United Nations  
CH-1211 GENEVA 10  
Switzerland

Communication from Special Procedures: Joint Urgent Appeal

Reference: UA SWE 1/2020

Madam and Sirs,

1. I have the honour of referring to your letter of 26 June 2020 in which the Swedish Government is invited to submit certain observations regarding the expulsion of an individual from Belarus who is currently staying in Sweden, where he has applied for asylum and a residence permit. In response to the invitation, I have the honour, on behalf of the Swedish Government, to submit the following.

2. In the abovementioned letter you express concern about the decision to expel a national from Belarus (X) currently staying in Sweden. You note in the appeal a possible pattern of human rights violations faced by X in Belarus, including threats to his life, the risk of a violation to his right to a fair trial and the risk of inhuman or degrading treatment in detention. It is furthermore noted in the appeal that the persecution of X in Belarus allegedly has been provoked by the exercise of his right to freedom of opinion and expression. In the appeal reference is made to articles 6 (the right to life), 7 (the prohibition on cruel, inhuman or degrading treatment or punishment), 10 (the right to humane detention conditions), 14 (the

right to a fair trial), and 19 (freedom of opinion and expression) of the International Covenant on Civil and Political Rights. A reminder is made in the appeal of the principle of non-refoulement as codified in article 3 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

3. Initially, the Government would like to make reference to its previous communication on 3 July 2020 regarding the confidentiality of the identity and the personal circumstances of X for privacy and protection concerns. Consequently, the Government would like to reiterate that in cases concerning asylum seekers, the personal circumstances are generally of a sensitive nature and for that reason, much of the information regarding an asylum seeker's case is confidential under domestic law. This case is no exception. For that reason, the Government refers to the asylum seeker in the instant appeal as X. The Government reiterates its suggestion that X not be mentioned by his full name in the official report to the Human Rights Council for its consideration of this Joint Urgent Appeal and that all the appendices (i.e., Appendices 1–7) to the present observations not be disclosed to the public since the information therein, in whole or in part, may be confidential under domestic law (e.g., Chapter 21, Section 5 and Chapter 37, Section 1 of the Public Access to Information and Secrecy Act [*offentlighets- och sekretesslagen, 2009:400*]).

4. The Government wishes to inform the Special Rapporteurs that under Swedish law, government agencies, such as the Swedish Migration Agency, and courts, such as the Migration courts, are independent. The Government may not intervene in an individual case.

5. Turning to the facts of X's application for asylum and residence permit in Sweden, the Government would like to draw your attention to the following developments in the case. After receiving the current Joint Urgent Appeal, the Swedish Migration Agency initiated an examination of whether the information in the appeal constituted impediments to the enforcement of the expulsion order and thus whether there was reason to suspend the enforcement of the expulsion order. In its assessment on 3 July 2020, the Agency found that the appeal contained no such new information or evidence in support of X's need for protection constituting impediments to the enforcement of the expulsion order under the Aliens Act and consequently decided not to suspend the enforcement of the expulsion order (see Appendix 7).

6. In the letter of 26 June 2020, the Special Rapporteurs have requested that the Government submit its observations on three matters: on the allegations of X, on the individual assessment of his case, including the protection needs and respect for international and human rights law, and, on the current legal status regarding X's application for asylum. On behalf of the Government I would like to submit the following observations concerning these three matters.

## 1. Additional information and comments on the allegations in the appeal

### 1.1 General background regarding the domestic proceedings

7. In his application for asylum and a residence permit, X has submitted an account which is largely in line with the summary provided. The Swedish Migration Agency rejected his application and decided on 3 September 2018 to expel him to Belarus. The decision was appealed to the Migration Court, which on 2 October 2019 rejected the appeal. Upon appeal the Migration Court of Appeal decided on 28 November 2019 to set aside the Migration Court's ruling and refer the case back to the Migration Court for new proceedings, as there were shortcomings in the court's previous proceedings. On 8 April 2020 the appeal was once again rejected by the Migration Court. The Migration Court held that X had not plausibly demonstrated that his cited political activities had been brought to the attention of the Belarusian authorities or that he, upon return to Belarus, would risk treatment constituting grounds for protection. Consequently, the Migration Court found that X, contrary to his claims, was not in need of protection in Sweden. On 5 June 2020, the Migration Court of Appeal refused leave to appeal and the decision to expel X became final and non-appealable. X then applied for a residence permit pursuant to Chapter 12, Section 18 of the Aliens Act or a new examination of the matter of a residence permit pursuant to Chapter 12, Section 19 of the Aliens Act, citing impediments to the enforcement of the expulsion order. The Swedish Migration Agency decided on 26 June 2020 not to grant X a residence permit.

8. Further facts regarding the domestic proceedings of relevance to the appeal will be presented below (section 2).



## 1.2 The International Covenant on Civil and Political Rights

9. In the appeal reference is made to Sweden's commitments under the International Covenant on Civil and Political Rights. In this regard the Government would initially like to make a reference to the following general principles of the Human Rights Committee.

10. According to General Comment No. 31 (2004), "the article 2 obligation requiring that States Parties respect and ensure the Covenant rights for all persons in their territory and all persons under their control entails an obligation not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant, either in the country to which removal is to be effected or in any country to which the person may subsequently be removed" (para. 12).

11. That the risk must be real means that it must be the *necessary* and *foreseeable* consequence of the forced return (see e.g. Communication No. 692/1996, *A.R.J. v. Australia*, Views adopted on 11 August 1997, paras. 6.8 and 6.14). Moreover, the Committee has stated that the risk must be *personal* (*ibid.*, para. 6.6 and Communication No. 1792/2008, *Dauphin v. Canada*, Views adopted on 28 July 2009, para. 7.4 and General Comment No. 36 [2018], para. 30).

12. The Committee's views indicate a high threshold for substantial grounds for establishing that a real risk of irreparable harm exists. Thus, all relevant facts and circumstances must be considered, including the general human rights situation in the complainant's country of origin (communication No. 2474/2014, *X v. Norway*, Views adopted on 15 November 2015, para. 7.3 with further references). The burden of proof rests with the complainant, who is required to establish that there is a real risk of treatment contrary to article 7 as a necessary and foreseeable consequence of their expulsion (cf. communication No. 1544/2007, *Hamida v. Canada*, Views adopted 18 March 2010, para. 8.7).

13. The Committee has also held that considerable weight should be given to the assessment conducted by the State Party, and that it is generally for the organs of the States Parties to the Covenant to review or evaluate facts and evidence in order to determine whether a real risk of irreparable harm exists, unless it is found that the evaluation was clearly arbitrary or amounted to a manifest error or denial of justice (see e.g. communication No. 2473/2014, *A.H.S. v. Denmark*, inadmissibility

decision adopted on 28 March 2017, para. 7.5). That approach is based on the acceptance by the Committee of the comparative advantage that domestic authorities have in making factual findings due to their direct access to oral testimonies and other materials presented in legal proceedings at the national level (cf. dissenting opinions in communication No. 1881/2009, *Shakeel v. Canada*, Views adopted on 24 July 2013). Accordingly, in several individual cases the Committee has verified the thorough examination conducted by the national authorities and stated that the complainant had not shown sufficiently why the decision to expel him or her was contrary to the prohibition of *refoulement* under the Covenant (see, in addition to *A.H.S. v. Denmark*, e.g. communications No. 1302/2004, *Khan v. Canada*, inadmissibility decision adopted on 25 July 2006, para. 5.4. and No. 1429/2005, *Soto and Others v. Australia*, inadmissibility decision adopted on 1 April 2008, para. 6.3).

### **1.3 The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

14. In the appeal a reminder is made of the principle of non-refoulement as codified in article 3 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). In this regard the Government would like to make a reference to the following general principles of the Committee Against Torture.

15. When determining whether there are substantial grounds for believing that the forced return of a person to another State would expose the person to such a danger of torture as to constitute a violation of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, account must be taken to all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights in that country (see article 3, paragraph 2 of the Convention). However, as the Committee has repeatedly emphasised, the aim of such a determination is to establish whether the individual concerned would *personally* be at a *foreseeable and real risk* of being subjected to torture in the country to which he or she would be returned. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient grounds for determining that a particular person would be at risk of being subjected to torture upon his or her return to that country. For a violation of article 3 of the Convention to be established, additional grounds must exist showing that the individual concerned would be personally at risk (see, inter alia, *E.J.V.M. v. Sweden*, Communication No. 213/2002, Views adopted on 14 November 2003, para. 8.3,