

(Translated from Russian)

Information in response to enquiry of the thematic special procedures mandate holders of the Human Rights Council concerning Marina Dubina, Irina Sukhiy and Maria Rabkova

Reference: AL BLR 8/2020 of 23 October 2020

Irina Georgievna Sukhiy was detained by internal affairs officers for participation in unauthorized mass events on the day the offence was committed.

By decision of the Soviet District Court of Minsk of 8 September 2020, Ms. Sukhiy was found guilty of a breach of the rules on holding rallies committed by a participant in such an event and, on the basis of article 23.34 (1) of the Code of Administrative Offences, was sentenced to 5 days' administrative detention.

The procedure for appealing against a ruling on a case involving an administrative offence that has not entered into force is set out in articles 12.1 to 12.3 of the Code of Administrative Procedure and Enforcement of the Republic of Belarus.

Article 12.4 (1) of the Code provides that administrative penalties in the form of administrative arrest may be the subject of an appeal or protest within five days of the ruling issued.

The Minsk City Court reviewed the lawfulness and validity of the decision of the Soviet District Court of Minsk of 8 September 2020 on the basis of a complaint filed by Ms. Sukhiy's lawyer, [REDACTED]. On 29 September 2020, the Minsk City Court upheld the decision of the Soviet District Court of 8 September 2020 and dismissed the complaint.

The decision of the Soviet District Court of 8 September 2020 against Ms. Sukhiy became final on 29 September 2020.

The Court found that, on 29 August 2020, Ms. Sukhiy took an active part in a rally in Minsk, held in breach of the rules laid down in article 10 of Act No. 114-Z of 30 December 1997 on Mass Events in the Republic of Belarus, without the appropriate authorization from the Minsk City Executive Committee.

Marina Alekseevna Dubina was detained by internal affairs officers for participation in unauthorized mass events.

By decision of the Central District Court of Minsk of 8 October 2020, Ms. Dubina was found guilty of a breach of the rules on holding mass events and, on the basis of article 23.34 (1) of the Code of Administrative Offences, was sentenced to 13 days' administrative detention.

The Minsk City Court reviewed the lawfulness and validity of the decision of the Central District Court of Minsk of 8 October 2020 on the basis of a complaint filed by Ms. Dubina's lawyer, [REDACTED]. On 27 October 2020, the Minsk City Court upheld the decision of the Central District Court of 8 October 2020 and dismissed the complaint.

The decision of the Central District Court of 8 October 2020 against Ms. Dubina became final on 27 October 2020.

The Court found that, on 23 August 2020, Ms. Dubina took an active part in a march, an organized mass movement of citizens along the roadway on Pobeditely Avenue in Minsk, which was not authorized by the Minsk City Executive Committee.

Under article 12.11 (1–2) of the Code of Administrative Procedure and Enforcement, persons against whom a court decision in cases involving an administrative offence has become final may file an appeal against the decision with the President of a higher court.

In addition, in accordance with article 12.11 (1) of the Code, a decision that has become final in a case involving an administrative offence may be reconsidered pursuant to a protest lodged by a procurator.



In cases involving administrative offences, article 12.11 (3) of the Code establishes a six-month time limit from the date of the entry into force of a decision for filing an appeal (lodging of a protest) against that decision.

Thus, Ms. Sukhiy and Ms. Dubina have the right to file an appeal with the President of the Minsk City Court and also with the President of the Supreme Court against the above-mentioned decisions within the time limit set by article 12.11 (3) of the Code of Administrative Procedure and Enforcement.

Ms. Sukhiy and Ms. Dubina did not apply to the bodies of the procuratorial system or directly to the Office of the Procurator General concerning the administrative penalties imposed or the conduct of the administrative proceedings.

In cases in which the procurator's office receives requests for a supervisory review submitted in the manner and within the time limit prescribed under the Code of Administrative Procedure and Enforcement, the necessary checks will be carried out and acted upon where appropriate.

Ms. Sukhiy and Ms. Dubina were released from the special militia facilities on 11 September 2020 and 19 October 2020, respectively, following the execution of the judicial decisions.

Notwithstanding the fact that Ms. Sukhiy and Ms. Dubina are members of environmental voluntary associations, the institution of administrative proceedings against them had nothing to do with the community and human rights work they do for the different organizations.

The allegations made in the communication that these persons were persecuted for their legitimate work as human rights defenders are baseless.

Article 3 (8) of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, done at Aarhus, Denmark, on 25 June 1998, provides that each party is to ensure that persons exercising their rights in conformity with the provisions of this Convention will not be penalized, persecuted or harassed in any way for their involvement.

Article 34 of the Constitution of the Republic of Belarus contains provisions that guarantee observance of these rights.

In this regard, we note that administrative measures under article 23.34 (1) of the Code of Administrative Offences were taken against Ms. Sukhiy and Ms. Dubina in connection with their participation in unauthorized mass events.

Under article 35 the Constitution, the freedom to hold assemblies, rallies, marches and demonstrations and to engage in picketing is guaranteed by the State provided that this does not disturb law and order or violate the rights of others.

The organization and conduct of mass events is regulated by law to enable citizens to enjoy their constitutional rights and freedoms and to ensure public safety and order when such events are held in streets, squares and other public places.

In accordance with article 10 (1) of the Act on Mass Events in the Republic of Belarus, mass events, along with the statements made by the participants in such events, are to take place at a particular time and place in accordance with the purposes specified in the application or notification of the holding of a mass event.

However, the Minsk City Executive Committee did not take decisions to authorize the holding of marches and rallies on 23 and 29 August 2020.

Article 15 (1) of the Act provides that persons who have violated the procedures established by the Act for organizing and/or holding mass events will be held liable in accordance with the legislative acts of the Republic of Belarus.

The Code of Administrative Offences, which covers, *inter alia*, liability for violations of the procedures for organizing and holding mass events, is the only law on administrative offences in force in the Republic of Belarus and is based on the Constitution of the Republic of Belarus and the generally recognized principles of international law (Code, art. 1.1 (2–3)).

The courts thus found Ms. Sukhiy and Ms. Dubina, who had participated in unauthorized mass events, guilty on reasonable grounds of committing administrative offences covered by article 23.34 of the Code.

Maria Aleksandrovna Rabkova was arrested on 17 September 2020 by officers of the internal affairs department of the Central Department for Combating Organized Crime and Corruption of the Ministry of Internal Affairs under article 108 (1) (4) of the Code of Criminal Procedure on suspicion of having committed an offence under article 293 (3) (Mass disorder) of the Criminal Code.

Ms. Rabkova appealed against the decision to detain her with the Partizan District Court in Minsk.

The Partizan District Court judge dismissed the appeal on 22 September 2020.

Under article 145 (2) of the Code of Criminal Procedure, a complaint against a judge's decision to dismiss an appeal for release may be lodged with a higher court within 24 hours of the decision.

However, Ms. Rabkova did not exercise her right of appeal against the decision of the Partizan District Court of 22 September 2020 with a higher court in the manner prescribed by article 145 (2) of the Code.

The decision to dismiss the complaint was made by the court after reviewing the case file and examining and evaluating all the arguments and evidence presented by the parties.

The Court found that there had been no violations of Ms. Rabkova's right of defence or the requirements under articles 107, 108 and 110 of the Code of Criminal Procedure while she was in detention.

Ms. Rabkova was charged under article 293 (3) of the Criminal Code for the following acts: training and other preparation of persons for participation during the period from 9 August 2020 to 12 August 2020 in mass rioting involving physical assault, pogroms, arson, destruction of property and armed resistance to public officers and material support of persons who participated in the above-mentioned acts.

As part of the investigation into the criminal case, Ms. Rabkova was read and provided with her procedural rights, including the right of defence and the right to appeal against decisions on detention and the use of preventive measures.

The search of her residence and seizure of items, documents and other property were carried out in accordance with the requirements of criminal procedural law.

The final legal assessment of Ms. Rabkova's actions will be given based on the results of the investigation.

With respect to the decision of the Department of the Investigative Committee for Minsk to take preventive measures against Ms. Rabkova in the form of pretrial detention, on 19 September 2020, she was placed in Remand Centre No. 1, a facility of the penalties enforcement department of the Ministry of Internal Affairs for Minsk and Minsk Province.

On the instructions of the Minsk procurator's office, a check was carried out to ensure that the proper procedures and conditions of pretrial detention for Ms. Rabkova were observed in this facility.

Ms. Rabkova was placed in a four-person cell fitted out in accordance with the internal regulations of remand centres in the penal system of the Ministry of Internal Affairs, which were approved by order No. 3 of the Ministry on 13 January 2004.

Ms. Rabkova is provided with a bed, bedding, linen, tableware and cutlery. She is afforded at least two hours of daily walks, eight hours of sleep at night, three meals a day sufficient to maintain her health and strength, in accordance with the standards set by the Government of the Republic of Belarus, and the opportunity to take a shower at least once a week for at least 15 minutes. Bed linen is changed once a week.

In accordance with paragraph 52.7 of the internal regulations, inmates are provided with personal hygiene products upon written request if they do not have the necessary funds

in their personal accounts. Ms. Rabkova has not made any requests for personal hygiene products.

Ms. Rabkova was examined by personnel in the facility's medical unit on 21 September 2020. The examination did not reveal any bodily injuries and she had no health complaints. During her detention in the facility, Ms. Rabkova did not seek medical care. At the time of her check-up, her health condition was satisfactory, and she did not need emergency or specialized medical care in health facilities.

According to the register of proposals, statements and complaints of persons in custody, in October 2020, Ms. Rabkova submitted written applications to Minsk procurator's office and the Department of the Investigative Committee for Minsk, which were sent to the recipients within the period specified under article 12 of the Detention Procedures and Conditions Act.

The administration of the facility is required to deliver letters addressed to Ms. Rabkova within three days of the date of their receipt, in accordance with article 18 of the Act.

During the period of her detention in the facility, Ms. Rabkova was visited by lawyers from the Minsk City Bar Association of the Central District of Minsk and Specialized Legal Aid Office No. 2 of the Association.

No physical force or means of restraint were used against Ms. Rabkova in the facility.

No complaints or applications were received from Ms. Rabkova about the procedures and conditions of detention, including with respect to the matters involving the failure to provide proper medical care or the refusal grant the right to consult a lawyer or send and receive correspondence.

A supervisory review found no violations of procedures that would warrant action on the part of the procurator's office.

With regard to information on measures to prevent harassment and possible intimidation of women human rights defenders, and to ensure a favourable and safe environment for them to carry out their activities, we believe that the following should be noted.

The Constitution provides for the life of the individual to be protected from any unlawful interference and for freedom, inviolability and dignity of the person. Every person is guaranteed freedom of opinion, belief and expression.

The protection of the rights and freedoms of citizens in the Republic of Belarus is steadfastly carried out by a number of State bodies (the courts, procurator's office, internal affairs authorities, the Bar, etc.), whose activities are strictly regulated by the law.

Persons who identify themselves as human rights defenders have the same rights to the protection and support of the State and are subject to the same liability in cases of violations of the law as other citizens of the Republic of Belarus.

Additional legal or institutional measures to establish a special legal status or immunity for citizens engaged in human rights activities are not provided for in the legislation.
