

NATIONS UNIES
HAUT COMMISSARIAT DES NATIONS UNIES
AUX DROITS DE L'HOMME

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on the independence of judges and lawyers.

REFERENCE: AL G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) G/SO 214 (3-3-16)
BLR 2/2012

21 May 2012

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on the independence of judges and lawyers pursuant to General Assembly resolution 60/251 and to Human Rights Council resolution 16/4, 15/21, 16/5, and 17/2.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning the **alleged due process violations against, and sentencing of human rights defenders, as well as information concerning an alleged travel ban imposed on various human rights defenders.**

Mr. **Valiantsin Stefanovich** is Vice-Chairman of the Human Rights Centre "Viasna" (HRC "Viasna"), a human rights organisation which focuses on the defence, protection and promotion of political and social rights. Mr. **Ales Bialiatski** is Chairman of HRC "Viasna" and FIDH Vice-President.

Mr. **Aleh Volchek** is Head of Legal Aid to the Population. Legal Aid to the Population, which was closed down by the authorities in 2003 but subsequently registered in Ukraine, published a report on the trial of Mr. Bialiatski earlier this year.

Mr. **Aleh Hulak** is a member of the Belarusian Helsinki Committee (BHC). Mr. **Harry Pahanyayla** is chairman of the Legal Commission of the BHC.

Mr. **Andrey Dynko** is editor-in-chief of the independent newspaper "Nasha Niva", which regularly reports on alleged human rights violations. Ms. **Zhanna Litvina** is chairperson of the Belarusian Association of Journalists (BAJ).

HRC “Viasna” and its members have been the subject of several communications sent to your Excellency’s Government. Notably, on 15 August 2011, the Chair-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur the rights to freedom of peaceful assembly and of association, and the Special Rapporteur on the situation of human rights defenders sent a communication expressing their concern regarding the arrest and detention of Mr. Ales Bialiatski. We acknowledge the response to this communication which was transmitted by your Excellency’s Government on 31 October 2011.

Several communications have been sent to your Excellency’s Government concerning the BHC, the BAJ and the members of both organizations, as well as “Nasha Niva”. All three of the above organizations or members thereof were among the subjects of a communication sent to your Excellency’s Government on 1 June 2011, by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur the rights to freedom of peaceful assembly and of association, and the Special Rapporteur on the situation of human rights defenders outlining their concern in relation to the alleged restrictions placed on several human rights defenders and the alleged limitations imposed on the right to freedom of opinion and expression. We acknowledge the response of your Excellency’s Government transmitted on 10 June 2011.

In the meantime, we have received additional information which is reflected below:

Case of Mr. Valiantsin Stefanovich

On 19 October 2011, Mr. Valiantsin Stefanovich was ordered to pay a fine of 4.75 million rubles for “non-payment or incomplete payment of taxes”, on the basis of Article 13.6 of the Code of Administrative Offences. Reportedly, on 16 December 2011, the Partyzanski District Court of Minsk increased the fine to 53 million rubles. On 13 February 2012, the Minsk City Court allegedly dismissed the appeal lodged by Mr. Valiantsin Stefanovich, and upheld the verdict of the Partyzanski District Court of Minsk, ordering him to pay a fine of 53 million rubles.

It is reported that the charge was based on allegations made by the Partyzanski district tax inspection authority that Mr. Stefanovich had failed to declare sums of money which it considered “personal income”. Allegedly, these sums had been transferred to Lithuanian bank accounts by international organisations such as Amnesty International and the Danish Centre for Human Rights in order to fund the activities of HRC “Viasna”. Furthermore, information transmitted by the Lithuanian Ministry of Justice was reportedly used as evidence in spite of the fact that an official letter had been sent by the Ministry stating that the information provided was incorrect and should not be used as evidence.

Case of Mr. Ales Bialiatski

According to the information received, on 24 November 2011, Mr. Ales Bialiatski was found guilty of 'tax evasion on a large scale' by the Pervomayski District Court of Minsk. He was allegedly sentenced to four and a half years' imprisonment and confiscation of all property, as well as being fined a total of 757 million roubles. It is reported that the sentence was upheld by the Minsk City Court on 24 January 2012.

Allegedly, the trial of Mr. Bialiatski contained several irregularities. It is reported that anonymous letters, photocopies, and improperly presented documents were admitted as evidence, allegedly in contravention of the Belarusian Code of Proceedings. Moreover, as in the case of Mr. Stefanovich, information transmitted by the Lithuanian Ministry of Justice was allegedly admitted as evidence in spite of the aforementioned official letter that the Ministry had sent stating that said information was incorrect.

Furthermore, it is alleged that on 29 March 2012, the Pervomaiski District Court fined Mr. Bialiatski over 140 million rubles for the alleged late payment of arrears. It is reported that the authorities failed to notify Mr. Bialiatski, his lawyer, colleagues and family of the trial, and that the trial was consequently held in the absence of both the defendant and his legal representation.

Sources indicate that the fines levied against Messrs. Stefanovich and Bialiatski, as well as the imprisonment of the latter, may be linked to a letter sent by the Head of the State Security Agency (KGB) to the Deputy Prosecutor General of Belarus, dated 3 November 2010, in which he allegedly claimed "radical opposition" was linked to HRC "Viasna", and ordered an investigation into the organisation's activities, specifically naming Messrs. Ales Bialiatski and Valiantsin Stefanovich. In this connection, it has been alleged that these criminal cases, ostensibly founded on alleged offences of an economic nature, are politically motivated.

Case of Mr. Aleh Volchek

It is reported that on 27 January 2012, at approximately 3:35 p.m., Mr. Aleh Volchek was arrested in the vicinity of Shevchenko Boulevard in Minsk after having his identification documents checked by police officers. It is reported that he was then taken to Maskouski District Police Station, where he was informed that he was being charged with "petty hooliganism" under Article 17.1 of the Code of Administrative Offences.

Mr. Volchek was reportedly held in a pre-trial detention facility on Akrestina Street, Minsk, until the trial. According to the information received, on 30 January 2012, Mr. Volchek was found guilty and sentenced to four days of administrative detention. It is reported that the prosecution relied on the testimony of the deputy

head of the police of the Tsantrayny district, who stated that Mr. Volchek had used insulting language in a public place. Mr. Volchek has reportedly denied having used such language.

Reports indicate that Mr. Volchek was returned to the same detention facility after being sentenced. It is alleged that the conditions in the aforementioned detention centre were very poor, with detainees having to sleep on wooden floors in cold cells as no beds were provided to detainees, nor did they have access to tap water.

Imposition of Travel Bans

According to the information received, on 29 February 2012 the Government has created a list of 108 Belarusian citizens who would be subjected to travel bans, reportedly for their alleged involvement in lobbying for the broadening of EU sanctions against Belarus.

Subsequently, on 11 March 2012, Mr. Valiantsin Stefanovich was reportedly prevented from leaving Belarus at the “Kamenny Loh” border crossing on the Belarusian-Lithuanian border. It is indicated that no explanation was provided by the authorities.

According to reports, on 13 March 2012, Mr. Aleh Hulak was notified of a travel ban which had allegedly been issued against him by the Migration and Citizenship Department of the Frunzenski District of Minsk on 5 March, purportedly in accordance with a request made by the Ministry of Justice in connection with a civil suit that had supposedly been filed against him. However, sources indicate that when Mr. Hulak asked the Ministry of Justice for information, officials informed him that no judicial case had been opened against him.

Reportedly, on 14 March 2012, Mr. Andrey Dynko was informed that he was banned from leaving Belarus and he was forced to disembark from the Minsk-Vilnius train. It is alleged that the border guards did not provide Mr. Dynko with any reasons for this ban, instead telling him to contact the Department of Citizenship and Migration of the Ministry of Internal Affairs in his place of residence.

Furthermore, on 15 March 2012, Ms. Zhanna Litvina was reportedly prevented from passing through passport control at a Minsk airport on her way to Warsaw. It is alleged that her passport was stamped “exit temporarily limited”.

Moreover, sources indicate that on 15 March 2012, Mr. Harry Pahanyayla was informed by the Department of Citizenship and Migration that a travel ban had been imposed on him on 5 March, supposedly at the request of the Ministry of Justice in relation to a case which had been opened against him in connection with debts. Reportedly, when queried by Mr. Pahanyayla, the Ministry of Justice denied

that Mr. Pahanyayla was on the list of those who could not travel abroad, and no information was provided regarding the aforementioned case.

It is alleged that these measures contravene article 30 of the Constitution of the Republic of Belarus, which reportedly guarantees the right to freedom of movement to all Belarusian citizens.

Concern is expressed that the acts alleged above could be directly related to the legitimate human rights work of the aforementioned individuals and the legitimate exercise of their right to freedom of expression. Without prejudging the accuracy of these allegations, grave concern is reiterated that the alleged acts could form part of a systematic policy to arbitrarily prevent human rights defenders from carrying out their legitimate work in the defence of human rights.

While we do not wish to prejudge the accuracy of these allegations, we wish to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the International Covenant on Civil and Political Rights (ICCPR), which provides that "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." In this connection, we wish also to reiterate the principle enunciated in Human Rights Council Resolution 12/16, which calls on States, while noting that the exercise of the right to freedom of opinion and expression carries with it special duties and responsibilities, to refrain from imposing restrictions which are not consistent with article 19, paragraph 3 of the ICCPR, including on (i) discussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

With regard to the accusations of tax fraud and evasion against Mr. Valiantsin Stefanovich and Mr. Ales Bialiatski, grave concern is further expressed that these are aimed at impeding their legitimate human rights activities. Urgent attention is drawn to the fact that the genuine exercise of the right to freedom of association also involves the ability of an association to conduct its activities without undue restrictions, including the ability to seek and receive foreign funding and resources. We appeal to your Excellency's Government to take all necessary steps to ensure the right to freedom of association, as recognized in article 22 of the ICCPR. In addition, as laid out in operative paragraph 1 of resolution 15/21 of the Human Rights Council, we urge your Excellency's Government "to respect and fully protect the rights of all individuals to (...) associate freely, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom (...) of association are in accordance with their obligations under international human rights law". In this

connection, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that “everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels” and that “each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.”

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

- article 6, points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters;

- article 12, paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms; and

- article 13, (b) and (c) which stipulate that everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedom, through peaceful means.

With regard to the concerns expressed about the alleged due process violations against and irregularities of the trials of Mr. Valiantsin Stefanovich, Mr. Ales Bialiatski and Mr. Aleh Volchek, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee the rights of the affected persons to fair proceedings before an independent and impartial tribunal as provided in article 14 (1) of the

International Covenant on Civil and Political Rights, which states that “everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law”. In this connection, we would also like to refer your Excellency’s Government to the Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, and in particular to the Principle 6, which states that “the principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.”

Furthermore, with regard to the concerns expressed about the trial of Mr. Ales Baliatski, which was reportedly held in the absence of the defendant and his legal representation, we would like to draw the attention of your Excellency’s Government to article 14 (3) of the International Covenant on Civil and Political Rights, which states that “in the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: [...] (d) to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it”. In this connection, we would also like to refer your Excellency’s Government to article 14 (3) (b) of the International Covenant on Civil and Political Rights, which establishes that in the determination of any criminal charge against him, everyone shall be entitled to have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing. The Human Rights Committee in its General Comment 32 has interpreted the words “adequate facilities”, indicating that they must include access to documents and other evidence. According to the Committee, “this access must include all materials that the prosecution plans to offer in court against the accused or that are exculpatory” (CCPR/C/GC/32, para. 33).

We urge your Excellency’s Government to take all necessary measures to guarantee that the rights and freedoms of the aforementioned person(s) are respected and that accountability of any person guilty of the alleged violations is ensured. We also request that your Excellency’s Government adopts effective measures to prevent the recurrence of these acts.

Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary of the case accurate?
2. Has a complaint been lodged by or on behalf of the alleged victims?

3. Please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please provide the full details of the legal basis for the charges that have been brought against Messrs. Stefanovich, Bialiatski and Volchek and the subsequent sentences handed down.
5. Please provide the full details of the legal basis of the travel bans imposed on Ms. Litvina and Messrs. Stefanovich, Hulak, Dynko, and Pahanyayla, and how these measures are compatible with both domestic law and international human rights law, in particular article 12(2) of the International Covenant on Civil and Political Rights and article 30 of the Constitution of the Republic of Belarus.
6. Please indicate what measures have been taken to ensure that human rights defenders, including civil society and activists, can operate in an enabling environment and can carry out their legitimate activities without fear of harassment, stigmatization or criminalization of any kind.

We would appreciate a response within sixty days. We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the reports we will submit to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Frank La Rue
Special Rapporteur on the promotion and protection of the right to
freedom of opinion and expression

Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and
of association

Margaret Sekaggya
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Gabriela Knaul
Special Rapporteur on the independence of judges and lawyers