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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 situation of human rights in Belarus; 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; and the Special Rapporteur on the situation of human rights defenders.

REFERENCE: AL Belarus (2012) G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9)
BLR 1/2013

18 February 2013

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights in Belarus; 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; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolution 20/13, 16/4, 15/21, and 16/5.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning the **arrest of, and subsequent imposition of fines on, Mr. Raman Yurhel, member of the "Belarusian Helsinki Committee" (BHC), and Mr. Viktor Sazonau and Mr. Uladzimir Khilmanovich, members of the Human Rights Center "Viasna"**. Both organizations, BHC and "Viasna" work for the protection and promotion of human rights and fundamental freedoms in Belarus.

According to information received:

On 5 January 2013, Mr. Raman Yurhel, Mr. Viktor Sazonau and Mr. Uladzimir Khilmanovich were each fined 1.5 million Belarusian roubles (about 170 USD) by the Leninski District Court of Hrodna after having been charged under Article 23.34 of the Belarusian Administrative Code, which provides punishment for the violation of the procedure of "organizing or conducting a mass event or demonstration". All accusations and the verdict were solely based on later internet postings of the accused.

The three individuals were charged under article 23.34 of the Administrative Code after photographs of themselves appeared on Viasna's internet website showing them in the town of Hrodna, on 10 December 2012, with a portrait of Mr. Ales

Bialiatski, an imprisoned Belarusian human rights defender, and booklets of the Universal Declaration of Human Rights. In its Opinion No. 39/2012, adopted on 31 August 2012, the UN Working Group on Arbitrary Detention held that the deprivation of liberty of Mr. Bialiatski is arbitrary, being in contravention of article 20(1) of the Universal Declaration of Human Rights and article 22 of the International Covenant on Civil and Political Rights.

The actual arrest of Mr. Yurhel, Mr. Sazonau and Mr. Khilmanovich took place some days after 10 December (Human Rights Day). The police issued charge sheets on 18 December 2012, after their alleged activity on 10 December, depicted in the posted pictures, was qualified as an “unauthorized mass event”. The charge sheets, which contain a description of the administrative violations supposedly committed, were brought to the knowledge of the three individuals on 19 December 2012.

The three cases were then merged into a single case, and were heard by the Leninski District Court of Hrodna on 5 January 2013. The court hearing lasted two and a half hours during which neither witnesses nor any evidence were presented; all the accusations were based solely on police reports, which treated the internet-posted photographs as evidence of mass disturbance. No evidence was presented as to the disturbance itself. The presiding Judge, reportedly made no interventions during the hearing, only issuing the court ruling at the end of the court hearing.

Mr. Yurhel, Mr. Sazonau and Mr. Khilmanovich appealed the decision. On 29 January, 2013 Hrodna Regional Court considered the appeal. After hearing arguments provided both in writing, and then during the hearing, from the three human rights defenders, the presiding Judge upheld the decision of the first instance court.

From reports received, it would appear that in the past months a worrying pattern appears to be developing in Belarus where activists and human rights defenders, on posting pictures online of themselves standing with photographs of Mr. Ales Bialiatski in public places, have then been charged, sentenced and fined for participating in an unsanctioned rally.

Serious concern is expressed that the situation of Mr. Raman Yurhel, Mr. Viktor Sazonau and Mr. Uladzimir Khilmanovich is directly linked to their activities in defence and promotion of human rights through the exercise of their right to freely express their opinion and assemble peacefully. In addition, concern is expressed at information received indicating the emergence of a pattern of legal harassment and stigmatization of defenders and activists who choose to express their opinions on-line and as a result are targeted.

Moreover, concern raised is the arbitrary extension of the notion of "mass disturbance" to publication of documentations about events during which the accused had

not been apprehended or even noticed by law enforcement. By the same token, this extension of the notion of "mass disturbance" also penalizes the mere act of posting documentaries on the internet, restricting freedom of expression online. Further concern is expressed at allegations received indicating a lack of procedural guarantees during the court hearing.

While we do not wish to prejudge the accuracy of these allegations, we wish to refer your Excellency's Government to 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."

Similarly, we would like to remind your Excellency's Government of article 21 of the ICCPR, which provides that "The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interest of national security of public safety, public order (ordre public), the protection of public health or morals of the protection of the rights and freedoms of others.

In this connection, we would like to further refer your Excellency's Government to Human Rights Council resolution 21/16, and in particular operative paragraph 1 that "reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, 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 peaceful assembly and of association are in accordance with their obligations under international human rights law."

In this connection, regarding the allegations received indicating that the situation of Mr. Raman Yurhel, Mr. Viktor Sazonau and Mr. Uladzimir Khilmanovich is directly linked to their activities in defence and promotion of human rights, 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 5 point a) which establishes that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels, to meet or assemble peacefully; and

- 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.

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 summary of the case accurate?
2. Please confirm the legal basis of the arrest of, and subsequent imposition of fines on, Mr. Raman Yurhel, Mr. Viktor Sazonau and Mr. Uladzimir Khilmanovich. Please indicate how these measures are compatible with the aforementioned international human rights norms and standards.
3. Please kindly indicate what measures have been taken to ensure that human rights defenders are able to carry out their legitimate work without fear of threats or acts of intimidation or harassment of any sort.

We would appreciate a response within sixty days. Your Excellency's Government's response will be made available in a report to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Mr. Raman Yurhel, Mr. Viktor Sazonau and Mr. Uladzimir Khilmanovich are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

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

Miklós Haraszi
Special Rapporteur on the situation of human rights in Belarus

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

Maina Kiai
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