

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 situation of human rights in Belarus

REFERENCE:
AL BLR 1/2017

13 April 2017

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 situation of human rights in Belarus, pursuant to Human Rights Council resolutions 34/27/2, 32/32, 25/18 and 26/25.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the arrest and detention under administrative charges of Mr. Anatoly Poplavnyi, Mr. Aleh Volchek, Mr. Pavel Levinov, Mr. Eduard Balanchuk, another 58 human rights observers, as well as the warning issued under similar charges to Mr. Leonid Sudalenko, for their monitoring of and participation in peaceful protests in different cities of Belarus in the period of February – March 2017.

Mr. **Anatoly Poplavnyi** is a human rights lawyer and a member of the Gomel branch of The Human Rights Centre 'Viasna', a non-governmental organisation promoting human rights and providing legal assistance to civic initiatives.

Mr. **Leonid Sudalenko** is a human rights lawyer and the head of the Gomel branch of the civil society association 'Justice Initiative', where he monitors and documents human rights violations in the region. Mr. Sudalenko has frequently cooperated with the United Nations human rights mechanisms over the past years.

Mr. **Aleh Volchek** is a human rights defender and the head of the human rights centre 'Legal Assistance to the Population', which provides free legal assistance to citizens on matters related to labour and housing, as well as advocating for civil and political rights.

Mr. **Pavel Levinov** is a human rights lawyer and a member of the Board of Belarusian Helsinki Committee. He provides free legal assistance to citizens in the Vitebsk region, and has on a number of occasions collaborated with the United Nations human rights mechanisms.

Mr. **Eduard Balanchuk** is a human rights defender and the representative of the Belarusian Helsinki Committee in the city of Molodechno since 2002. He documents cases of human rights violations and is a mandated observer of peaceful assemblies and elections in the Molodechno region.

Mr. Volchek has been the subject of a previous communication sent by Special Procedures mandate holders on 21 May 2012 (BLR 2/2012), concerning allegations of administrative arrest related to his activities as a human rights defender.

Mr. Levinov has been the subject of two previous communications sent on 8 April 2008 (BLR 3/2008) and 22 July 2008 (BLR 6/2008), both concerning allegations of arrest under administrative charges and judicial harassment in relation to his work as a human rights defender.

We acknowledge the replies sent by your Excellency's Government to the above-mentioned communications, but we remain concerned by the new information received concerning Mr. Volchek and Mr Levinov, as well as the repetitive pattern of intimidation and judicial harassment faced by human rights defenders in Belarus.

According to the information received:

Since February 2017, a number of peaceful protests attended by thousands of demonstrators have taken place in a number of cities in Belarus against the controversial Presidential Decree No. 3 "On prevention of social dependency", which taxes Belarusian citizens who are not working more than 183 days annually and have not been officially declared unemployed. The demonstrations were not authorized by the authorities.

On 17 March 2017, Mr. Poplavnyi and Mr. Sudalenko were tried and found guilty of non-compliance with the legal requirements for organizing and conducting mass events, in relation to one of these peaceful demonstrations. Mr. Poplavnyi was sentenced to ten days in administrative detention. Mr. Sudalenko was given a warning.

On 21 March 2017, Mr. Volchek was tried and found guilty of having participated in an unauthorised peaceful assembly. He was sentenced to thirteen days imprisonment by the Frunzensky District Court of Minsk.

On 25 March 2017, at least 58 human rights observers were detained at the offices of the Human Rights Centre Viasna, in relation to their planned participation in a peaceful demonstration scheduled to take place on the same day.

On 26 March 2017, Mr. Levinov was detained by police officers from the Oktyabrsky District in Vitebsk while monitoring a peaceful assembly in his capacity as an official observer of the Belarusian Helsinki Committee. He was accused of violation of Article 23.34 Part 1 of the Code of Administrative Offences (participating in unauthorized peaceful assembly) and placed in a temporary detention centre. Later that day, he was hospitalised after suffering a hypertension crisis. He is currently being treated in hospital, under security control.

On 27 March 2017, Mr. Levinov was scheduled to appear before a judge, but the hearing was postponed until his release from hospital. If found guilty as charged, he could face an administrative fine or administrative detention. In the case of aggregated sentences, he could be detained for up to 25 days.

On 28 March 2017, Mr. Balanchuk was accused of violating Article 23.34 Part 1 of the Code of Administrative Offences (non-compliance with the legal requirements on the organisation and conducting of mass events) in relation to his monitoring activities during a peaceful assembly on 10 March 2017 in Molodechno. He was monitoring the assembly in his capacity as the official representative of the Belarusian Helsinki Committee. Mr. Balanchuk was sentenced to fifteen days' imprisonment.

We express our concern about the arrest and detention of Mr. Anatoly Poplavnyi, Mr. Oleg Volchek, Mr. Pavel Levinov, Mr. Eduard Balanchuk, and 58 other human rights observers, as well as about the warning issued against Mr. Leonid Sudalenko, in relation to their work as monitors and participants in peaceful protests during the month of March. Moreover, we express our concern at the fact that these acts appear to be part of a larger policy undertaken by the authorities of Belarus to impede public demonstrations and silence political opposition.

We are respectfully referring to Articles 9, 19, 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Belarus on 12 November 1973, which established the rights not to be arbitrarily deprived of liberty, to freedom of opinion and expression, to freedom of peaceful assembly, and to freedom of association, respectively.

In connection with the above allegations please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, we are respectfully seeking the following clarification:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information on the grounds for the arrest and detention of Mr. Poplavnyi, Mr. Volchek, Mr. Levinov, and Mr. Balanchuk. Similarly, please confirm the detention of 58 other human rights observers on 25 March 2017, and the grounds for such measure.
3. Please provide information on the use of the provisions of the Code of Administrative Offences for restricting public demonstrations and explain their compatibility with the international human rights obligations of

Belarus under ICCPR regarding freedom of expression and assembly, as well as with the international standards applicable to this subject.

4. Please indicate what measures have been taken to ensure that human rights defenders in Belarus are able to carry out their peaceful and legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.

We would appreciate receiving a response within 60 days.

While awaiting a reply, we respectfully urge that all necessary measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

David Kaye
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

Michel Forst
Special Rapporteur on the situation of human rights defenders

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

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention to the following human rights standards:

We would like to refer to Articles 9, 19, 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Belarus on 12 November 1973, which established the rights not to be arbitrarily deprived of liberty, to freedom of opinion and expression, to freedom of peaceful assembly, and to freedom of association, respectively.

We would also like to refer to Human Rights Council resolution 24/5, in which the Council “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 of 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” (OP2).

The Special Rapporteur wishes to reiterate the principle enunciated in Human Rights Council Resolution 12/16, which calls on States to refrain from imposing restrictions which are not consistent with article 19(3) including on 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

Reference should be made as well 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, also known as the UN Declaration on Human Rights Defenders. Of particular relevance are articles 1 and 2 of the Declaration which state that everyone has the right 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. Article 5 (a), 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; article 12, (1) and (3), provides for the right to participate in peaceful activities against violations of human rights and fundamental freedoms, as well as for the right to be protected effectively under national law in reacting against, or opposing, through peaceful means, activities and acts that result in violations of human rights and fundamental freedoms.