

Mandates 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 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 2/2017

12 September 2017

Excellency,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention; 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 33/30, 34/18, 32/32, 34/5 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 judicial harassment faced by several labour rights defenders, members and leaders of the Belarusian Independent Trade Union of Radio and Electronic Industry Workers (REP) and the Belarusian Independent Trade Union (BITU), in particular the arrest of Mr. Ihar Komlik and Mr. Henadz Fiadynich.

According to the information received:

From February 2017, peaceful protests sparked in several cities of Belarus. The protests contested the Presidential Decree No. 3 ("On the Prevention of Social Parasitism"), imposing the implementation of an "unemployment tax" designed to tax people in the shadow economy and estimate its size. The Decree is considered by its detractors as negatively impacting the economic and social rights of individuals. In this context, REP also criticized the Decree, actively took part in the peaceful marches, provided legal aid to individuals concerned by the tax and gathered over 45.000 signatures against it.

On 4 August 2017, REP's headquarters and BITU's central office as well as the homes of BITU Chairman Mr. Mikalai Zimin, BITU Secretary-Treasurer Ms. Sniazhana Hrynevich, the former editor of REP's website Ms. Natallia Pichuzhkina, REP's Chief Accountant Mr. Ihar Komlik and REP's Chairman Mr. Henadz Fiadynich, were raided by officers of the Financial Investigation Department of the State Control Committee of Belarus. During the raid, and under warrant, computers and financial documents were confiscated.

Mr. Ihar Komlik and Mr. Henadz Fiadynich were arrested as suspects of tax evasion. After an interrogation, Mr. Fiadynich was released on the same day and an investigation against him was opened. Mr. Komlik currently remains in

detention, he is charged under Article 243, Part 2, of the Criminal Code of Belarus for “Tax evasion on a large scale”. The State Control Committee of Belarus informs that a criminal case was opened against them on the ground that “the chairman and the chief accountant of the trade union opened accounts in foreign banks on behalf of the trade union with the purpose of personal enrichment and constantly received big transfers of funds”. Both individuals could face up to seven years in prison and the confiscation of their property if the charges against them are upheld in court.

We express our concern at the arrest and detention of Mr. Ihar Komlik and Mr. Henadz Fiadynich, the raid of the offices of RED and BITU by the Financial Investigation Department of the State Control Committee of Belarus as well as the raids conducted at the homes of Mr. Ihar Komlik, Mr. Henadz Fiadynich, Mr. Mikalai Zimin, Ms. Sniazhana Hrynevich and Ms. Natallia Pichuzhkina. Concern is also expressed at the fact that the raids as well as the arrests of Mr. Ihar Komlik and Mr. Henadz Fiadynich may be linked to their opposition to Presidential Decree No.3 and their legitimate activities directed at the protection of labour rights as members and leaders of trade unions.

Further concern is expressed that this decision may form part of a more widespread and continued campaign of harassment of members of trade unions striving for the promotion and protection of labour rights in Belarus, through the exercise of their right to freedom of association and freedom of peaceful assembly.

In connection with the above alleged facts and concerns, 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, to seek to clarify all cases brought to our attention, we would therefore be grateful for your observations on the following matters:

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 and the charges brought against Mr. Ihar Komlik and Mr. Henadz Fiadynich.
3. Please provide further explanation as to the reasons and legal grounds for the raids conducted at the premises of RED and BITU organisations as well as at the homes of several of the members and leaders of these organisations. Please explain how these measures are in accordance with the commitments under international human rights law which Belarus has undertaken.

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

While awaiting a reply, we urge that all necessary interim 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.

We would like to inform your Excellency's Government that after having transmitted an allegation letter to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion as to whether the deprivation of liberty was arbitrary or not. Such letters in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the allegation letter and the regular procedure.

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

Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Annalisa Ciampi
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).

Human Rights Council Resolution 12/16, is also relevant in that it 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.