

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

REFERENCE:
AL LVA 2/2018

1 February 2018

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolution 34/18.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning the expulsion from Latvia of Mr. Anatoly Kurlayev and Ms. Olga Kurlayeva, television journalists for "TV Centre" and "All Russia State Television and Broadcasting Company, respectively.

According to the information received:

On 1 January 2018, Mr. Anatoly Kurlayev, and Ms. Olga Kurlayeva arrived in Riga from Moscow by plane for holidays. Both had valid multi-entry Schengen visas which allowed them to enter Latvia.

On 2 January, at around 11.00 a.m. in a shopping centre, not far from hotel Avalon where they were staying, two policemen asked Mr. Kurlayev to follow them to the police station, where he was informed that he has been on the list of *persona-non grata* since 2015, although he visited Riga several times since 2015 and never faced any problems.

He was subsequently escorted back to the hotel to collect his belongings and transported to the airport, where he was informed that his deportation was due to the threat he represents to national security. Mr. Kurlayev believes that he has been blacklisted in connection with a derogatory film he made about Latvia and the NATO in 2015.

On 3 January, the Minister for Interior of Latvia, Mr. Rihards Kozlovskis publicly stated that Latvia had blacklisted 100 people for various reasons, including an "unfriendly attitude" toward Latvia and its people. The government has not made the list public, citing confidentiality issues.

On 4 January, at around 10.30 a.m. in the morning, Ms. Olga Kurlayeva was approached by the same two police officers at the lobby of the hotel. She was taken to the same police station where she was held until around 12.00 p.m., and was later handed over to immigration officials. She was afterwards transported to the hotel to collect her belongings.

She signed a paper that she would not object to leave the country by plane and would buy a return ticket at her own expense. Later that day, she was transported to the Mucenieki Reception Centre for asylum seekers at Ropaži Municipality, 17 km from Riga. A representative from the Russian consulate was able to visit her there.

In the evening, she was reportedly transported to the Latvian-Russian border at the Terehova/Burachki border crossing, approximately 300 km from Riga, where she was informed that her Schengen visa was annulled. She was then put on a bus which took her across the Latvian-Russian border. Ms. Kurlayeva may have been blacklisted by Latvian authorities due to her recent documentary in which she criticized the policies of the President of Lithuania Dalia Grybauskaitė.

Concerns are expressed regarding the detention and expulsion from Latvia of Mr. Anatoly Kurlayev and Ms. Olga Kurlayeva, which appear to be related to their work in television journalism in the Russian Federation. Further concerns are expressed regarding the legal basis of the decision which appears to lack transparency and its consequences on the right to access to information and the freedom of the media.

While I do not wish to prejudge the accuracy of these allegations, I would like to draw the attention of your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with article 19 of the International Covenant on Civil and Political Rights (ICCPR), acceded by Latvia on 14 April 1992. This right implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion. Any restriction to this right must meet the high threshold established under article 19(3), that is, be provided by law and necessary and proportionate for the protection of the rights or reputation of others, for national security or public order (*ordre public*), or for the protection of public health or morals. As emphasized by the Human Rights Committee and by the Human Rights Council, limitations to freedom of expression must be applied strictly so that they do "not put in jeopardy the right itself (CCPR/C/GC/34) (Council resolution 12/16). Any restriction that a government seeks to justify on grounds of national security must have the genuine purpose and demonstrable effect of protecting a legitimate national security interest. To establish that a restriction is necessary to protect a legitimate national security interest, a government must demonstrate that the expression at issue poses a serious threat to a legitimate national security interest; that the restriction imposed is the least restrictive means possible for protecting that interest; and that the restriction is compatible with democratic principles (CCPR/C/GC34). In this regard, the legality of restricting the freedom of expression of Mr. Kurlayev and Ms. Kurlayeva through their expulsion, raises concern since their expulsion is based on a confidential blacklist. The law must clearly define what may be withheld from disclosure, and States bear the burden of proving that the harm to a legitimate national security interest outweighs the public interest in disclosure (A/70/361).

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or any comment(s) you may have on the above-mentioned allegations.
2. Please provide information about the legal basis for the confidential blacklist, and explain how this is compatible with Latvia's obligations under international human rights law.
3. Please provide the legal basis for the detention and expulsion from Latvia of Mr. Kurlayev and Ms. Kurlayeva, and how these are compatible with the obligations of the Government of Latvia under international human rights law, in particular article 19 (1) and (2).

I 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.

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

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