

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 1/2018

16 May 2018

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 35/27.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the allegations of arbitrary arrest of seven human rights defenders, Mr. **Maksim Kavaliou**, Ms. **Tatsiana Mastykina**, Mr. **Andrus Krechka**, Mr. **Igor Bogachek**, Ms. **Nasta Loika**, Ms. **Hanna Sakhankova** and Ms. **Anastasia Vasilchuk**.

All seven of the above mentioned human rights defenders are observers of the Human Rights Centre Viasna and members of the Belarusian Helsinki Committee (BHC). Ms. Nasta Loika has been mentioned in one previous joint urgent appeal from Special Procedures mandate holders on 25 February 2011, case no. BLR 2/2018. We regret that no response was received concerning the allegations raised in the communication.

According to the new information received:

On 25 March 2018, at 11:47 a.m., Mr. Maksim Kavaliou, Ms. Tatsiana Mastykina, Mr. Andrus Krechka, Mr. Igor Bogachek, Ms. Nasta Loika, Ms. Hanna Sakhankova and Ms. Anastasia Vasilchuk arrived at no. 49 Nezavisimosti street, opposite Yakub Kolas Square, in order to act as observers of an unauthorised opposition demonstration, organised to commemorate the 100th anniversary of Belarus' proclamation of independence, which was due to take place at midday. The seven human rights defenders were mandated as observers by the Human Rights Centre Viasna and the BHC, they were wearing armbands identifying them as such.

Upon their arrival, a law enforcement officer in plainclothes demanded that they go to an unmarked minibus in order to have their documents checked. The defenders presented their passports and public observer certificates but were arrested. Ms. Anastasia Vasilchuk was detained at the Pervomaiskyi police station in Minsk, while the other six observers were detained at Sovetskyi police station.

While at Sovetskyi police station, the six observers were ordered to face the wall outside, with their hands up. Their bags were searched and their photos and fingerprints taken. Ms. Tatsiana Mastykina refused to voluntarily have her fingerprints and photo taken. She was then forcibly fingerprinted and held by the hair while her photograph was taken.

Ms. Anastasia Vasilchuk was released the same day from Pervomaiskyi police station without a detention protocol being followed, as she was not provided with a document stating the purpose and duration of her detention, along with the results of the searches. The other six observers were also released on the same day, from Sovetskyi police station, following the detention protocols applicable to their case. All of the observers were charged with “participation in unauthorised mass gatherings” under article 23.34 of the Code of Administrative Offences, apart from Ms. Vasilchuk. Ms. Tatsiana Mastykina was accused with an additional charge of “disobedience to demands of a public official” under article 23.4 of the same Code. Their trial was announced for 26 March 2018 at the Soviet District Court, but was subsequently cancelled with no alternative date for the hearing being set.

Concern is expressed over the allegations of arrest and detention of the above-mentioned seven human rights defenders, as such deprivation of liberty seems to be directly linked to their role as observers monitoring the enjoyment of the rights to freedom of assembly and expression. It should be noted that observers occupy an important position in guaranteeing these rights. The arrest and prosecution of observers for the discharge of their duty heightens the risk of and excessive force being used in the dispersal of gatherings, as well as the risk of other human rights violations. We further express concern over the allegations that such arrests appear to be part of a larger campaign undertaken by the authorities to impede public demonstrations and silence political opposition.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency’s Government to articles 9, 14, 19, 21 and 22 of the of the International Covenant on Civil and Political Rights (ICCPR), ratified by Belarus on 12 November 1973, which guarantee the rights not to be arbitrarily deprived of liberty, to a fair and impartial judicial procedure, to freedom of opinion and expression, to freedom of peaceful assembly, and to freedom of association.

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 legal and factual bases for the arrests of the seven above-mentioned human rights defenders, along with the charges against six of them. Please also provide information on how their arrest, detention and prosecution is compatible with international human rights law.
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 the International Covenant on Civil and Political Rights 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 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 this letter of allegations to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such urgent appeals in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure 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

Clement Nyaletsossi Voule
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 your Excellency's Government's attention to articles 9, 14, 19, 21 and 22 of the of the International Covenant on Civil and Political Rights (ICCPR), ratified by Belarus on 12 November 1973, which guarantee the rights not to be arbitrarily deprived of liberty, to a fair and impartial judicial procedure, to freedom of opinion and expression, to freedom of peaceful assembly, and to freedom of association.

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).

We would also like to highlight that Human Rights Council Resolution 22/6 calls upon States to ensure that defenders can perform their important role in the context of peaceful assemblies, in accordance with national legislation consistent with the Charter of the United Nations and international human rights law. States should ensure that no one is subject to excessive or indiscriminate use of force, arbitrary arrest or detention, torture or other cruel, inhuman or degrading treatment or punishment, enforced disappearance, abuse of criminal and civil proceedings or threats of such acts.

We would further like to refer to the report of the former Special Representative of the Secretary-General on the situation of human rights defenders to the General Assembly in 2007 (A/62/225, paras. 91 and 93), which underlines the importance of human rights monitors during demonstrations in providing an impartial and objective account of what takes place and in deterring human rights violations.

We wish 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.

In connection with the above alleged facts and concerns 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, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to 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.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- Article 5(a), which establishes the right to meet or assemble peacefully for the purpose of promoting and protecting human rights;
- Article 12 (1 and 3), which 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.

Finally, we would like to respectfully remind your Excellency's Government that a deprivation of liberty may constitute an arbitrary detention if it results from the exercise of the rights to freedom of opinion and expression, assembly and association, as well as the right to participate in public affairs (A/HRC/36/38, par. 8). This criteria has not only been consistently applied by the Working Group on Arbitrary Detention through its jurisprudence, it has also been incorporated in the Human Rights Committee interpretation of article 9 of the ICCPR: "detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant is arbitrary, including freedom of opinion and expression, freedom of assembly, freedom of association, freedom of religion and the right to privacy" (CCPR/C/GC/35, par. 17).