

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the situation of human rights in Belarus; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; 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 BLR 2/2019

22 March 2019

Excellency,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention; Special Rapporteur on the situation of human rights in Belarus; Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; 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 resolutions 33/30, 38/14, 37/8, 32/32 and 34/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged judicial harassment against Mr. **Uladzimir Vialičkin**, a human rights defender and member of the non-governmental organisation "Viasna" and Mr. **Vital Kazak**, environmental rights defender, as well as the alleged arbitrary detention of Mr. **Aliaksandr Kabanaŭ**, environmental rights defender and blogger, for their participation in peaceful protests against the construction of a battery plant in Brest.

According to the information received:

Since 25 February 2018, people gather peacefully every Sunday on the Lenin Square in Brest to protest against the construction of a battery plant. Authorisations to hold the protests have been sought by the organisers 89 times but were constantly denied by the authorities except for once on 29 April 2018. Because of this, protests have usually taken the form of people meeting to carry balloons or feed pigeons.

On 16 February 2019, the day before a planned Sunday protest, Mr. Uladzimir Vialičkin was summoned to present himself at the Leninski police department in Brest and was subsequently administratively detained. He spent two days in a temporary detention facility and was brought before the Leninski District Court in Brest on 18 February 2019, where he was found guilty, without the presence of a lawyer, on the basis of Article 23.34-1 of the Code of Administrative Offenses of the Republic of Belarus for participating in an unauthorised mass event on 30 December 2018 and sentenced to a fine of 382.5 Belarusian roubles.

On the same day as Mr. Vialičkin's arrest, Mr. Vital Kazak, also regularly taking part in the Sunday protests, was summoned to present himself at the Leninski police department in Brest, and he was subsequently administratively detained and placed in the same temporary detention facility. He was charged under Article 23.34-3 of the Code of Administrative Offenses of the Republic of Belarus for participating in an unauthorised mass event on 10 February 2019. He was detained in the temporary detention facility until he was brought before the Leninski District Court in Brest on 18 February 2019 and sentenced, without the presence of a lawyer, to a fine of 1,020 Belarussian roubles. Mr. Kazak had already been fined under the same article in the past year, which exposed him to a harsher fine.

On 17 February 2019, Mr. Aliaksandr Kabanaŭ was arrested at the Biaroza railway station while on his way to the Sunday protest. Mr. Kabanaŭ was brought to the Biaroza police department and released after questioning on his participation in the rally in Brest the previous week on Sunday, 10 February 2019. His arrest prevented him from taking part in and reporting on the protest that day.

According to information received, so far 27 individuals were sentenced for taking part in the protests or calling for people to join. Many of them would have spent a day or two in pre-trial detention. The total amount of fines handed out so far reaches 16,794 Belarussian roubles.

We express our concern at the allegations of the judicial harassment of Mr. Vialičkin and Mr. Kazak and the alleged arbitrary detention of Mr. Kabanaŭ which appear to be directly related to their participation in peaceful protests and promotion of environmental rights. We express concern that the actions by the authorities may discourage environmental defenders and their supporters from participating in peaceful protest and prevent bloggers from monitoring, documenting and reporting on these protests.

We also express our concern regarding the use of articles of the Code of Administrative Offenses to pressure human rights defenders and prevent them from exercising their right to peaceful assembly. Moreover, it seems that administrative detention is used as a means to prevent human rights defenders from joining events. These actions are not in compliance with international standards pertaining to freedom of expression and freedom of 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 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 information on the legal grounds for the arrest and detention of the above individuals and how these measures are compatible with international norms and standards as stated, inter alia, in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR). Please clarify if individuals held in administrative detention have the possibility of challenging the legality of such detention.
3. Please indicate what measures have been taken to ensure individuals their right to peaceful assembly, including in the specific example of the protests against the construction of the battery plant in Brest.
4. Kindly indicate what measures have been taken to ensure that human rights defenders in Belarus, including those defending environmental rights, 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. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting website. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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 on 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 to 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

Anaïs Marin
Special Rapporteur on the situation of human rights in Belarus

David R. Boyd
Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a
safe, clean, healthy and sustainable environment

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

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to Articles 9, 19, 21 and 22 of the 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 refer to the Human Rights Council resolution 32/32, in which the Council recognizes that the effective exercise of the right to freedom of peaceful assembly "is essential for the enjoyment of other human rights and freedoms and constitutes a fundamental pillar for building a democratic society and strengthening democracy" (PP4).

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 further wish 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, which state that everyone has the right, individually and in association with others to promote and to strive for the protection and realization of human rights and that the State has a prime responsibility and duty to protect, promote and implement all human rights. We would also like to draw attention to Articles 5, 6 and 12. Articles 5 and 6 state that everyone has the right to meet or assemble peacefully and to know, seek, receive, and impart information about all human rights. While according to Article 12, the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, against any arbitrary action as a consequence of the legitimate exercise of their human rights.