

Mandates of the Special Rapporteur on the situation of human rights in Belarus and the Special Rapporteur on the human rights of migrants

REFERENCE:
AL BLR 5/2019

31 July 2019

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights in Belarus and Special Rapporteur on the human rights of migrants, pursuant to Human Rights Council resolutions 38/14 and 34/21.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the expulsion orders against Mr. **Vladimir Trauter**, a citizen of the Russian Federation residing in Belarus since 1994, and Mr. **Sergey Rezchik**, a citizen of the Russian Federation residing in Belarus since 1996, in response to minor administrative offenses.

According to the information received:

According to article 65 of the law “on the legal status of foreign nationals and stateless persons”, foreign nationals may be expelled from the Republic of Belarus in the interest of national security, public order, the protection of morals, public health, the rights and freedoms of citizens of Belarus and other persons, and after their release from a place of detention or a correctional facility. The detailed procedure for the expulsion of foreign nationals is determined by decision No. 146 of 3 February 2006 of the Council of Ministers which approved the “regulation on the procedure for the expulsion of foreign nationals and stateless persons from the Republic of Belarus”, according to which a foreign national may be expelled from Belarus after having committed five or more offences within a year or for a single offence of a socially dangerous nature.

Mr. Vladimir Trauter, citizen of the Russian Federation, resides in Belarus since 1994, has a steady employment, a wife and minor son with Belarusian nationality. On 06 March 2019, Mr. Trauter was found liable under Article 18.16-1 of the Code of Administrative Offences of the Republic of Belarus for driving under the influence of alcohol. The administrative sanctions included a fine and deprivation of the right to drive for a period of three years. Following his conviction, on 20 April 2019, the Buda-Kašaliova Police Department of Citizenship and Migration decided to expel him from the territory of Belarus for five years, based on the above-mentioned law and decision. Mr. Trauter appealed this decision but on 21 June 2019 the Buda-Kašaliova district court upheld the decision. On 1 July 2019, the decision was submitted for appeal to the Homiel regional court.

Mr. Sergey Rezchik, a citizen of the Russian Federation, has a stable employment and lives in Belarus since 1996 with his family including two minor children with

Belarusian nationality. In 2018, Mr. Sergey Rezhik was found liable for administrative offenses on three occasions, among which under article 18.16-1 of the Code of Administrative Offenses for driving under the influence of alcohol. On 26 April 2019, on the basis of these offenses the Chojniki Police Department of Citizenship and Migration decided to expel him from the Republic of Belarus for a period of ten years. On 25 June 2019, the Chojniki district court upheld the decision by the authorities. On 2 July 2019, he filed an appeal with the Homiel regional court.

We express our concern at the seemingly disproportionate decisions to expel Mr. Vladimir Trauter and Mr. Sergey Rezhik in comparison to the acts committed. It seems that these decisions did not take the persons' family and private life protected under international law into account. Moreover, based on their migratory status, these sentences seem to have a discriminatory effect on the two victims.

We also express our concern about the impact of these measures on the children involved. It seems that the best interest of the child has not been given due consideration upon ordering the expulsion of one of their parents. Finally, we are concerned about the apparent multiplication of such cases, and, as mentioned in the latest report of the Special Rapporteur on the situation of human rights in Belarus, the fact that some expulsion decisions have led to dramatic consequences, including cases of suicide.

In connection with the above alleged facts and concerns, please refer to observations laid out in the report of the Special Rapporteur on the situation of human rights in Belarus (A/HRC/41/52, para. 57-59 and para.95) and 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 expulsion of the individuals above and how these measures are compatible with international standards on the right to family and private life as stated, inter alia, in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Please clarify what specific measures have been taken to ensure that the expulsion of foreign nationals does not constitute arbitrary interference in their family and private life.

3. Kindly indicate what measures have been taken to ensure that the best interest of the child has been taken into consideration in cases of expulsion of their parent, in line with the Convention on the Rights of the Child.

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.

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

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

Felipe González Morales
Special Rapporteur on the human rights of migrants

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to bring the following international instruments to the attention of your Excellency's Government. Articles 12 and 16 of the Universal Declaration of Human Rights foresees the essential nature of the family and affords it protection by the State and society as well as prevents any arbitrary interference with privacy and family life. Additionally, article 10 of the International Covenant on Economic, Social and Cultural Rights, (ICESCR) ratified by Belarus on 12 November 1973, assures the widest possible protection to the family, particularly where it is responsible for the care and education of dependent children. In addition, articles 17, 23 and 24 of the International Covenant on Civil and Political Rights (ICCPR), which Belarus ratified on 12 November 1973, codify the right to freedom from arbitrary interference with family, the right to protection of the family unit and the child's right to protection.

We would like to recall the General Comment No. 15 of the Human Rights Committee which emphasizes that, although in principle a State has the sovereign right to decide on issues of residence, in circumstances where respect for family life arise, the protection of the Covenant would apply even in relation to issues of residence.

We would further like to recall that, since 2001, jurisprudence of the Human Rights Committee found in numerous cases that the protections afforded under article 17, 23 and 24 of the ICCPR can be violated by deporting a foreign national with a family in the deporting State. They have found that in order not to constitute arbitrary interference with family life there must be thorough consideration by the State of the impact on the family and the possible interference with human rights, as weighed against the significance of the State party's reasons for removal. Where the impact on the family is not considered, this would constitute arbitrary interference under articles 17, 23 and 24 of the ICCPR.

We would lastly like to draw your Excellency's Government attention to the fundamental principles contained in the Convention on the Rights of the Child (CRC), ratified by Belarus on 1 October 1990. In particular, Article 3 of that Convention requests State parties to always give primary consideration to the best interest of the child in decisions that affect them and spells out the protection children are entitled to.