

Mandates of the Special Rapporteur on the situation of human rights in Belarus; the Working Group on Enforced or Involuntary Disappearances; and the Special Rapporteur on the situation of human rights defenders

REFERENCE:
AL BLR 3/2020

19 March 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights in Belarus; Working Group on Enforced or Involuntary Disappearances; and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 41/22, 36/6 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 intimidation and harassment of lawyer and human rights defender Mr. Oleg Volchek for the legitimate exercise of his professional activities.

According to the information received:

On 3 January 2020, the Investigative Committee of the Republic of Belarus conducted two searches in the flat of Mr. Volchek, a distinguished human rights defender who represents the interests of Yuriy Zakharenko's family, the former Minister of Internal Affairs of the Republic of Belarus, who went missing in 1999. Law enforcement bodies allegedly initiated both searches as part of a criminal investigation into the murder of a woman in Minsk.

The first search was conducted on the night of 3 January 2020, without presenting warrant obtained from the prosecutor. The search did not comply with procedures prescribed by the criminal procedural legislation of Belarus. In particular, the investigation group did not identify themselves, no witnesses were present during the search, certain personal items were seized without giving justification for their confiscation, Mr. Volchek's rights were not explained to him and the grounds for the search were not communicated to him.

The second search happened on the afternoon of the same day, on 3 January 2020. Similarly, as in the previous search, the rules and procedures for the search prescribed by law were allegedly not respected. No one explained to Mr. Volchek his rights nor explained the grounds for the search. Additional personal items were seized. The investigation group read to Mr. Volchek the prosecutor's order, informing him that in his flat there were traces of a crime, related to the murder of a woman. The copy of the order was not shared with Mr. Volchek and he was allegedly informed that he could not appeal it. Moreover, there was no precise information provided about what Mr. Volchek's role may have been in the case.

The situation was widely broadcasted in the media, damaging Mr. Volchek reputation as a lawyer and human rights defender. On 5 January 2020, the alleged perpetrator of the woman's murder was arrested by law enforcement authorities in Vitebsk, Belarus.

We express our concerns that the searches may be used as a tool to intimidate and harass Mr. Volchek for his professional work defending the rights of families to the truth, justice and reparation. We find the prescribed events particularly concerning given that the searches came two weeks after Mr. Volchek gave interview to Deutsche Welle on the topic of enforced disappearances in Belarus. We are further concerned that the situation may have a negative effect on Mr. Volchek's physical and psychological health as well as on the legitimacy of his human rights activities. We are perturbed that Mr. Volchek and his family members cannot exercise their right to respect for private and family life.

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 searches conducted at the apartment of Mr. Volchek on 3 January 2020.
3. Please outline the steps taken to uphold and protect the rights of Mr. Volchek and his family to respect for private and family life. Should the unlawfulness of the searches be confirmed, please outline the concrete steps to be taken in restoring Mr. Volchek's reputation and in compensating the damages caused by the searches.
4. Please, provide information on the reasons why the law enforcement authorities did not grant Mr. Volchek access to any documents related to the searches and why authorities refused to give any precise information regarding Mr. Volchek's suspected implication in the murder investigation.
5. 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 intimidation, harassment and prosecution of any sort.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. 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 may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

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

Luciano Hazan
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Michel Forst
Special Rapporteur on the situation of human rights defenders

Annex

Reference to international human rights law

The Working Group recalls the obligation of States to ensure that all involved in the investigation of enforced disappearance, including complainant, their relatives, lawyers and witnesses, are protected against ill-treatment, intimidation or reprisal, as stipulated by article 13 of the Declaration on the Protection of All Persons from Enforced Disappearance.

While we do not wish to prejudge the accuracy of these allegations, the above allegations appear to be in contravention with articles 2(3) and 19 of the ICCPR, ratified by Belarus on 12 November 1973, which guarantee the right to effective remedy for those who have their rights violated and guarantees the right to freedom of expression respectively.

In connection with above alleged facts and concerns, We would also 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 Declaration:

- Article 9, para 3(a) and (c) which provide that everyone has the right, individually and in association with others, to “complain about the policies and actions of individual officials and governmental bodies with regard to violations of human rights and fundamental freedoms, by petition or other appropriate means, to competent domestic judicial, administrative or legislative authorities or any other competent authority provided for by the legal system of the State, which should render their decision on the complaint without undue delay”, as well as that everyone has the right to offer relevant advice and assistance in defending human rights and fundamental freedoms;
- Article 11 provides that everyone has the right, individually and in association with others, to the lawful exercise of his or her occupation or profession. Everyone who, as a result of his or her profession, can affect the human dignity, human rights and fundamental freedoms of others should respect those rights and freedoms and comply with relevant

national and international standards of occupational and professional conduct or ethics;

- Article 12, paras 2 and 3 which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence.