

Mandates of the Special Rapporteur on the situation of human rights in Belarus; the Working Group on Arbitrary Detention; the Special Rapporteur on the human rights of migrants; and the Special Rapporteur on freedom of religion or belief

REFERENCE:
UA BLR 2/2020

12 March 2020

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the situation of human rights in Belarus; Working Group on Arbitrary Detention; Special Rapporteur on the human rights of migrants; and Special Rapporteur on freedom of religion or belief, pursuant to Human Rights Council resolutions 41/22, 42/22, 34/21 and 40/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the case of imminent extradition of Mr. **Nikolai Makhalichev**, Jehovah's Witness from the Russian Federation, in violation of the *non-refoulement* principle.

According to the information received:

Mr. Nikolai Makhalichev (born 1 July 1984), citizen of the Russian Federation, is a member of the religious community of Jehovah's Witnesses. Since 2017, Russia has banned the movement of Jehovah's Witnesses based on the law against extremism. On 31 January 2019, Mr. Makhalichev was charged under article 282.2 (1) of the Criminal Code of the Russian Federation ("organisation of the activity of a social or religious association or other organisation in relation to which a court has adopted a decision legally in force on liquidation or ban on the activity in connection with the carrying out of extremist activity"). On 21 August 2019, the Uraiskiy City Court of the Russian Federation ordered Mr. Makhalichev's arrest and he was included on the wanted list.

On 21 February 2020, Mr. Makhalichev had travelled to Belarus by car. Upon crossing the border, he was stopped by traffic police for a documents check. He was informed that he would be detained since he is on the wanted list in the Russian Federation. Police put him in a patrol car and took him to Gorodokskiy District Department of Internal Affairs. The prosecutor was notified that Mr. Makhalichev had been detained.

On 21 February 2020, the investigator in charge of the case against Mr. Makhalichev in the Russian Federation had been notified that Mr. Makhalichev had been detained. Reportedly, Mr. Makhalichev would be held in custody while Belarusian authorities determine whether to return him to the Russian Federation.

Mr. Makhalichev informed Belarusian authorities that he is being persecuted in the Russian Federation for his religious beliefs as one of Jehovah's Witnesses. On 22 February 2020, Mr. Makhalichev with the assistance of his lawyer filed an application for asylum in Belarus based on his persecution on religious grounds in the Russian Federation.

On 24 February 2020, an order was issued for pre-trial preventive detention of Mr. Makhalichev until the decision about his extradition to the Russian Federation is made.

On 27 February 2020, the Gorodokskiy District Court in Belarus rejected the appeal against the detention of Mr. Makhalichev and ruled to keep him in detention. An appeal has been filed to a higher court.

On 6 March 2020, the Vitebsk Regional Court upheld the decision of the Gorodokskiy District Court to keep Mr. Makhalichev in detention. This decision is final and cannot be appealed within the Belarus jurisdiction.

While we do not wish to prejudge the accuracy of these allegations, should they be confirmed, they would contravene articles 9 (right to liberty and security of person) and 18 (right to freedom of religion or belief) of the ICCPR, ratified by Belarus in 1973. We would like to highlight that according to General comment No. 35 to article 9 of the ICCPR arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant, including freedom of religion (article 18), is arbitrary.

We would also like to recall that article 33.1 of the Convention relating to the Status of Refugees stresses that "No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion".

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned person in compliance with international instruments.

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 the observations of your Excellency's Government on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. In particular, please provide factual and legal grounds for the arrest and detention of Mr. Makhlichev.
3. Please provide information regarding how the proper identification of all potential protection needs and respect for international and human rights law – particularly with regard to the principle of non-refoulement – are taken into account when carrying out the repatriation of foreign nationals.
4. Please provide information on the current legal status of Mr. Mikhlichev regarding his application for asylum.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their recurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person 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.

Finally, we would like to inform your Excellency's Government that after having transmitted an urgent appeal 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. The present appeal in no way prejudices any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

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.

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

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

Leigh Toomey
Vice-Chair of the Working Group on Arbitrary Detention

Felipe González Morales
Special Rapporteur on the human rights of migrants

Ahmed Shaheed
Special Rapporteur on freedom of religion or belief