

Mandates of the Special Rapporteur on the situation of human rights in Belarus; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the human rights of migrants; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the situation of human rights in Belarus; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the human rights of migrants; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 41/22, 34/18, 34/21 and 43/30.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the impending forced removal of Mr. Viktor Bugaev from Sweden to Belarus, in alleged violation of *non-refoulement principle*.

According to the information received:

Mr. Viktor Bugaev is a blogger from Dubrovno, Belarus. He has been a member of the United Civic Party, and then of the opposition party Narodnaya Hramada since 2015. For over 20 years Mr. Bugaev has raised concerns over corruption at the regional level in Belarus. In 2017, he launched his blog "Everything about Dubrovno", where he has published on corruption.

Mr. Bugaev was held administratively and criminally liable for expressing his views, critical of the Government. He has suffered physical violence, threats to his life, criminal prosecution and administrative sanction. Pressure from local authorities reportedly led to the closedown of his business.

In 2017, Mr. Bugaev reported on alleged corruption by local authorities, which led to a criminal complaint being raised against him. He was threatened by unknown persons affiliated with law enforcement that he would be sentenced to imprisonment and would not leave the colony alive. For these reasons he fled to Sweden, seeking asylum. Since his arrival in Sweden, Mr. Bugaev has continued to publish stories critical of the government in Belarus. As a consequence, he has continued receiving threats. The summer of 2019, Belarus issued a warrant for his arrest.

On 1 May 2017, Mr. Bugaev applied for asylum in Sweden. On 3 September 2018, the administrative migration court of Gothenburg decided to refuse the application of Mr. Bugaev to receive a permanent residence permit in Sweden. On 2 October 2019, the Administrative court of Gothenburg declined the appeal of Mr. Bugaev allegedly because authorities did not think that there is any risk to his integrity in Belarus. On 28 November 2019, the High Court of Stockholm annulled the decision of the administrative migration court of Gothenburg and referred the case for a new consideration. Whereas most of the documentation provided by Mr. Bugaev was translated, the administrative migration court of Gothenburg decided on 27 January 2020 to reject the request to translate documents and sound files, which reportedly confirmed risks to which Mr. Bugaev is exposed in Belarus. The reasoning given for the rejection by the court was that the documents are of varying quality, that Mr. Bugaev had been given the opportunity to explain the content of the evidence, that the documents would not strengthen arguments already made by Mr. Bugaev, and that the question of what certain of the documents would prove was not adequately satisfied in advance.

On 8 April 2020, the administrative migration court of Gothenburg decided that Mr. Bugaev is not exposed to risks to his life in Belarus. On 5 June 2020, the higher administrative migration court of Stockholm rejected the appeal of the decision, deciding not to admit the case for consideration. Mr. Bugaev is thus facing deportation to Belarus.

Without prejudice to the accuracy of the abovementioned allegations, we express concern at the decision to expel Mr. Bugaev from Sweden to Belarus, noting, in particular, a possible pattern of human rights violations faced by Mr. Bugaev in the country, including threats to his life, the risk of a violation to his right to a fair trial, the risk of inhuman or degrading treatment in detention. We note that the persecution of Mr. Bugaev in Belarus has allegedly been provoked by the exercise of his right to freedom of opinion and expression.

In this regard, we remind Your Excellency's government of Sweden's obligations under the International Covenant on Civil and Political rights, ratified by Sweden on 6 December 1971. In particular, we refer to articles 6 (the right to life), 7 (the prohibition on cruel, inhuman or degrading treatment or punishment), 10 (the right to humane detention conditions), 14 (the right to a fair trial), and 19 (freedom of opinion and expression). In this respect, we note the general duty under Article 2(1) of the Covenant to exercise due diligence to prevent violations by non-State actors or third-States against individuals within its jurisdiction, as well as the prohibition on facilitating (aiding and assisting) the commission of human rights violations by third-States (see, for example, general comment no. 36 para. 63).

In addition, we would like to remind your Excellency's Government of the principle of non-refoulement as codified in article 3 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Sweden ratified on 08 January 1986. Article 3 provides that no State shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds to believe that he would be in danger of being subjected to torture. This absolute prohibition against *refoulement* is broader than under refugee law, meaning that persons may not be returned even when they may not otherwise qualify for refugee status under article 33 of the 1951 Refugee Convention or domestic law. Accordingly, non-refoulement under the CAT must be assessed independently of refugee status determinations.

Based on the preceding legal standards, the seriousness of the alleged threats faced by Mr. Bugaev upon his expulsion to Belarus, and while taking note at the justification given by the administrative migration court, we note with concern the decision to refuse the admission of evidence for consideration by the administrative court of migration.

We would also like to refer Your Excellency's Government to the Joint Guidance Note on the Impacts of the COVID-19 Pandemic on the Human Rights of Migrants,¹ issued on 26 May 2020 by the Special Rapporteur on the human rights of migrants, and the UN Committee on Migrant Workers. In its recommendation 14, the experts call on States to "consider the temporary suspension of deportations or enforced returns during the pandemic".

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 regarding the individual assessment of Mr. Bugaev's case, including the protection needs and respect for international and human rights law – particularly with regard to the principle of non-refoulement.
3. Please provide information on the current legal status of Mr. Bugaev regarding his application for asylum.

¹ <https://www.ohchr.org/Documents/Issues/Migration/CMWSPMJointGuidanceNoteCOVID-19Migrants.pdf>

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence.

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.

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

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
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