

Mandates of the Working Group on Arbitrary Detention; 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 rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
UA BLR 6/2021

2 June 2021

Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; 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 rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 42/22, 44/19, 43/4, 41/12, 43/16 and 43/20.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the arrest and detention of Roman Protasevich, as well as severe restrictions to media freedom in the country.

Roman Protasevich (Raman Pratasevich) is a human rights defender, and the co-founder of NEXTA and chief editor of Belarus of the Brain, two Telegram channels which have covered protests that followed the contested official presidential election results of August 2020. Out of fear for his safety, Mr. Protasevich sought asylum in another country in 2020.

Tut.by is one of the most popular media outlets in Belarus. It also covered the post elections protests.

According to the information received:

On 23 May 2021, Mr. Roman Protasevich was on a flight from Greece to Lithuania. While the aircraft was in Belarusian airspace, Belarusian authorities claimed that they had been informed that there was a bomb aboard the plane, Belarusian traffic controllers diverted the commercial plane, "accompanied" the plane by a fighter jet and forced it to land at Minsk International Airport. While no bomb was ultimately found in the aircraft, Mr. Protasevich was forcibly removed from the airplane and arrested by the Belarusian authorities. It has been reported that prior to his departure, Mr. Protasevich had claimed that he was being followed by a man in the departure lounge in Athens, who he suspected was a Belarusian KGB agent.

The following day, a short video broadcast on state-run Belarusian media showed Mr. Protasevich with his hands clasped tightly in front of him and

apparent bruises on his forehead, in which he confessed to have organized mass riots in Minsk. This crime carries possible penalties of up to 15 years in prison or more. He is said to be currently held in the No. 1 Detention Center in Minsk. Reportedly, he was denied access to his lawyer for two days. In November 2020, Mr. Protasevich had been placed on the list of “individuals involved in terrorist activities” by the Belarusian authorities, becoming the first Belarusian citizen included on the list.

The arrest and detention of Mr. Protasevich allegedly took place in the context of broader restrictions to media freedom, criminal charges and ill-treatment against journalists and media personnel, which have been the subject of several communications since the August 2020 elections (e.g. BLR 6/2020).

On 18 May 2021, the financial police searched the editorial offices of the online news site Tut.by in Minsk and five other cities. The homes of at least five staff were also raided by the authorities which reportedly seized a number of documents. Authorities also raided the offices of several other online platforms affiliated with the news site. On the same day, at least 13 Tut.by staff, including journalists, were reportedly detained and questioned. It is reported that some of them were detained without access to their lawyers. At least eight Tut.by staff are still in detention at the time of the transmission of the present communication. The State Control Committee, to which the financial investigation department reports, stated that a criminal case had been opened against unnamed staff in response to suspected tax evasion. According to an official statement made by the Ministry of Information, Tut.by had allegedly published materials of an unregistered organisation that provides support to those who had faced retaliation for their alleged participation in post elections protests. In December 2020, Tut.by had been stripped of its media license for supposedly spreading “false information.”

In April 2021, the Parliament adopted amendments to the Mass Media Law and to the Law on Mass Gatherings, which are likely to further undermine the enjoyment of the right to freedom of expression in the country. According to the revised version of the Mass Media Law, the Ministry of Information is now entitled to block any media outlet’s work or block access to an internet resource without a court order, if the outlet published content that “threatens national security.” Amendments further allow the national prosecutor general and regional prosecutors to block access to any websites that disseminate information which is “aimed at promoting extremist activity” or which is “capable of harming the national interest”. Amendments to the Law on Mass Gatherings include a ban on live streaming or covering unsanctioned protests in the country.

While we do not wish to prejudge the accuracy of these allegations, we express our utmost concern at the circumstances of the alleged unlawful arrest and arbitrary detention of Mr. Protasevich which may be tantamount to an extraordinary rendition. We are deeply concerned that he may have been tortured in order to extract a false confession and that his life is now in danger. We recall the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or

punishment, as set forth in articles 2, 15 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, which was ratified by Belarus on 13 March 1987. We are also deeply concerned that the detention of Mr. Protasevich, if found to be connected with the exercise of his rights to freedom of expression and of peaceful assembly, may violate articles 9, 14, 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR), which Belarus ratified on 12 November 1973. As stated by the Human Rights Committee, the deprivation of liberty of an individual for exercising their freedom of expression constitutes an arbitrary deprivation of liberty contrary to article 9 of the ICCPR (CCPR/C/GC/35 para. 17). This has also been confirmed by the jurisprudence of the Working Group on Arbitrary Detention. Under these circumstances, we respectfully call on Your Excellency's Government to unconditionally release him.

We are furthermore seriously concerned by the allegations we continue to receive regarding the arbitrary detention of journalists, activists and human rights defenders, as well as undue restrictions to freedom of expression and peaceful assembly, protected by articles 19 and 21 of the ICCPR. We underscore, once again, that article 19 of the ICCPR protects expressions related to political discourse, commentary on one's own and on public affairs, discussion of human rights and journalism, among others (CCPR/C/GC/34, para. 11). We further underscore that human rights protections apply both offline and offline (Human Rights Council's resolution 20/8). The right to publish, impart or disseminate views, information and knowledge on human rights and the observance of those rights in law and practice, is also provided for under article 5 of 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 (A/RES/53/144).

In this context, we are also seriously concerned that searches against some independent media offices, prosecution of journalists, as well as broad and vaguely worded legislative reforms, may result in the criminalization or restriction of fundamental freedoms protected by the ICCPR, and in particular, the rights to freedom of expression, of peaceful assembly and of association. We reiterate our most serious concerns that the independent press appears to continue to be subjected to alleged arbitrary arrests, raids on homes and offices and politically-motivated prosecution. We underscore that the Human Rights Council previously stressed "the need to ensure that invocation of national security, including counter-terrorism, is not used unjustifiably or arbitrarily to restrict the right to freedom of opinion and expression" (Council resolution 7/36). Recalling that the Human Rights Council had "condemn[ed] the ongoing grave violations of human rights in Belarus in connection with the 2020 presidential election, including the systematic denial of human rights and fundamental freedoms, the arbitrary arrests and detention of opposition members, journalists and media workers, human rights defenders and citizens in general for exercising their human rights and fundamental freedoms, and the prison sentences handed down to media workers for performing their professional duties", we call on Your Excellency's Government to take immediate steps to ensure the safety of journalists, activists and human rights defenders, and to guarantee that they can pursue their work free from threats and attacks.

We are issuing this appeal in order to safeguard the rights of Mr. Protasevich from irreparable harm and without prejudicing any eventual legal determination. It is relief *pendente lite*.¹

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(s) 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 your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please clarify what the legal grounds for the arrest and detention of Mr. Protasevich are, including how his detention are compatible with the legality, necessity and proportionality standards provided by article 19 (3) of the ICCPR.
3. Please provide detailed information on the conditions of detention of Mr. Protasevich. Please explain whether any investigation is being conducted on the allegations that Mr. Protasevich may have been compelled to make a confession under torture, as required under the Convention against Torture (CAT). If no investigation was carried out, please explain why, and how this is consistent with international human rights obligations under CAT.
4. Has a complaint been lodged by or on behalf of Mr. Protasevich? If so, please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
5. Please provide information about the search of Tut.by premises, the detention of the media outlet staff and the search of the staff's homes. Has a complaint been lodged by or on behalf of Tut.by and/or its staff? If so, please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.

¹ Article 41 ICJ Statute 'Interim Protection': Part III, Section D (Incidental Proceedings), Subsection 1.

6. Please explain whether amendments to the Mass Media Law and to the Law on Mass Gatherings will be used in relation to the post-election protests retroactively. If it will be used in this context, please explain why, and how this is consistent with your Excellency's Government's international human rights obligations.

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 responsible of 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.

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 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. Such appeals in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

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

Miriam Estrada-Castillo
Vice-Chair of the Working Group on Arbitrary Detention

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

Irene Khan
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Nils Melzer
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