

**Mandates of the Special Rapporteur on the situation of human rights in the Russian Federation;
the Special Rapporteur on the situation of human rights in Belarus and the Special Rapporteur
on the rights to freedom of peaceful assembly and of association**

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(Please use this reference in your reply)

26 July 2023

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the situation of human rights in the Russian Federation; Special Rapporteur on the situation of human rights in Belarus and Special Rapporteur on the rights to freedom of peaceful assembly and of association, pursuant to Human Rights Council resolutions 51/25, 50/20 and 50/17.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning the purported imminent expulsion of Mr. **Dzianis Khakhlou (Денис Хохлов)**, from Russia to Belarus on grounds of a violation of administrative rules on migration.

Mr. Khakhlou, was initially stopped by police on 11 June 2023 at the Federal checkpoint "Malka", in the Kabardino-Balkarian Republic, in the North Caucasus region in the south of Russia, while he was on a commercial bus heading to Georgia. He was arrested and detained at the temporary detention centre (IVS) of the Ministry of Internal Affairs in the city of Nalchik on the basis of an interstate warrant by the Belarusian authorities, accusing him of participation in peaceful assemblies, an act which is criminalised by article 342 of the Criminal Code of Belarus. On 13 June 2023, Mr. Khakhlou was informed that he cannot be extradited because the act for which he is being wanted by Belarus was not considered a crime under the Criminal Code of Russia. However, instead of being released, he was taken to the Zolsky District Court of the Kabardino-Balkarian Republic, where, without being provided with the right to access defence counsel of his choice, he was sentenced to forced administrative expulsion for violating Article 18.8 of the Russian Code on Administrative Offences, which limits the legal stay on the territory of the Russian Federation to 90 days.

According to the information received:

Mr. Dzianis Khakhlou was born on 30 September 1977 in the Russian Soviet Federative Socialist Republic, part of the USSR. In 1991, when he was 13, his family moved to Belarus and became Belarusian citizens. He resided in Belarus ever since. He has a wife and an adopted son.

Reportedly, Mr. Dzianis Khakhlou and his adopted son Vladyslav Lagutenko participated in peaceful protests in the city of Minsk in August 2020. The peaceful protests were met with widespread unnecessary and disproportionate use of force (see A/HRC/46/4, paras. 53-57), as a result of which tens of thousands of people were arbitrarily detained in response to the legitimate

exercise of the rights to freedom of expression, peaceful assembly and association (see A/HRC/52/68, para. 22), more than one thousand criminal cases were opened (see A/HRC/46/4, para. 43), thousands of people were injured (see A/HRC/49/71, para. 33), the majority of those detained following the peaceful assemblies in 2020 were subjected to torture and ill-treatment in custody, including in some cases, rape and sexual violence (see A/HRC/52/68 paras.15-21 and paras. 39-47) and at least five cases of unlawful deprivation of life were documented (see A/HRC/52/68, para. 12).

After the crackdown, the government initiated a policy of mass persecution of people suspected of participation in protest activities or support of the opposition. There are more than 1,500 individuals detained on politically motivated charges, with an average of 17 arbitrary arrests occurring daily since 2020 (see Statement of Anaïs Marin, Special Rapporteur on the situation of human rights in Belarus at the Human Rights Council, 53rd session, on 4 July 2023). As a result, since May 2020 and continuing today, there is a large-scale forced migration of Belarusians seeking safety from persecution in other countries, including the Russian Federation and Georgia (see A/77/195).

In 2023 it became known that Mr. Dzianis Khakhlou and his son were under criminal investigation in Belarus for supposed participation in a rally on 23 August 2020. The case was investigated under article 342 of the Criminal Code of Belarus on “organisation and preparation of actions grossly violating public order, or active participation in them”. According to the available materials of the case, namely, the search warrant dated 29 April 2023, the act of the crime consisted of the following: “Khakhlou D.Y.. at the indicated time and place and in agreement with a group of persons ... took an active part in the indicated group actions, grossly violating public order, causing disruption of transport and enterprises, namely, was and moved as part of a column through the territory of the city of Minsk, including, on the carriageway of the road of Independence Avenue ... and other carriageways of the roads, blocked the path of vehicles, as a result of which these actions led to a disruption in the operation of transport, expressed in a stoppage of transport in the city of Minsk, Municipal transport unitary enterprise (KTUP) “Minsktrans”, which prevented normal operation of KTUP “Minsktrans” on 23 August 2020”.

On 5 February 2023, fearing for his safety, Mr. Dzianis Khakhlou fled from Belarus to Russia. On 27 March 2023 Belarusian law-enforcement officers searched the house of his son, Vladyslav Lagutenko. On 29 April 2023 they also searched Mr. Khakhlou’s former place of residence in Krugloye, where his wife continued to reside and on 24 May 2023 investigators conducted a secondary search, while also issuing an arrest on all his property.

On 30 May 2023, Mr. Dzianis Khakhlou’s son was found guilty by the Kruglyansky District Court of Mogilev region and sentenced to 2 years and 6 months of restriction of liberty without placement in a correctional facility. The prosecution appealed the sentence requesting the court to sentence him to real imprisonment in a correctional colony.

Assessing both his risks of returning to Belarus or the risks of continuing to stay in Russia as very high, Mr. Dzianis Khakhlou decided to move from Russia to Georgia. On 11 June 2023, while travelling on a commercial bus through the Kabardino-Balkarian Republic (in the North Caucasus region in the south of Russia), at the Federal checkpoint “Malka”, he was stopped by police. It was revealed that the Belarusian authorities have included him in the interstate wanted list, which was transmitted to Russia.

He was first taken to a police station for initial proceedings and then placed in detention in the temporary detention centre (IVS) of the Ministry of Internal Affairs in the city of Nalchik. He was not provided with any documents certifying legality of his detention and was not provided with access to a lawyer.

Only on 12 June 2023, he was officially registered and admitted to the IVS. On the same day he was taken to the Prosecutor’s Office of Zolsky District, where he was questioned by the deputy prosecutor of the district for the purpose of the extradition procedure, provided for by the chapter 54 of the Criminal Procedure Code of the Russian Federation. Afterwards, he was taken back to the IVS.

On the next day, 13 June 2023, he was informed that the extradition procedure is over and that he cannot be extradited because the act for which he is being wanted by Belarus is not considered a crime under Russian legislation. Article 464 of the Criminal Procedure Code, section 1, subsection 6 prohibits extradition for acts that are not considered a crime under the Criminal Code of Russia. But he was not released. Instead he was informed that he would be administratively prosecuted for violation of migration rules, namely, section 1.1 of article 18.8 of the Code on Administrative Offences, for overstaying the allowed limit of 90 days without registration.

On the same day, from the IVS he was taken to the Zolsky District Court of the Kabardino-Balkarian Republic. Already at the courtroom he was issued with protocols of the administrative case and was requested to sign some empty forms, which he did, not knowing that it was a violation of the procedure prescribed by the Code on Administrative Offences. Right after, a court hearing took place, which reportedly lasted five minutes. As a result, the court issued a decision, declaring him guilty of violating migration rules by overstaying his legal stay period by 1 month and 8 days and sentenced him to forced administrative expulsion.

The court also decided to place Mr. Dzianis Khakhlou into custody in a migration detention centre on grounds that he was on an interstate arrest warrant list, issued by the Belarusian authorities.

On 23 June 2023 the decision of the court was appealed to the Supreme Court of the Kabardino-Balkarian Republic. On 5 July 2023, Mr. Dzianis Khakhlou was informed that the hearing was scheduled for 6 July 2023 at 10 a.m. On the same day he filed an application for asylum in Russia through the

administration of the migration detention centre, claiming that he is wanted in Belarus under politically-motivated charges, that the administrative sentence serves the purpose of circumventing the official extradition procedure and that he fears that if returned to Belarus he would face a serious risk of persecution, including being arbitrarily detained on charges of participation in peaceful assemblies in 2020 as well as being subjected to torture or ill-treatment in detention. The application was apparently sent to the Ministry of Internal Affairs by the administration only the next day.

Also, on 5 July 2023, his defence counsel filed an individual communication to the UN Human Rights Committee, requesting it to indicate to the Russia Federation interim measures in the form of refraining from Mr. Dzianis Khakhlou's expulsion.

On 6 July 2023, the hearing on the applicant's appeal took place in the Supreme Court of the Kabardino-Balkarian Republic. The defence requested the postponement of the hearing until the consideration of the application for asylum by the Ministry of Internal Affairs and the outcome of the petition to the UN Human Rights Committee. In addition, the defence requested the court, in case it will not find sufficient grounds to quash the judgement of the Zolsky District Court, at least to substitute the punishment with a controlled independent departure or forced removal of the applicant to a third country at his own expense.

However, the Court refused to postpone the hearing and rendered the judgement the same day. It refused to satisfy all requests of the defence and left the judgement as is, bringing it into effect. The court overstepped its prerogative with regard to the asylum application. It stated the fact that the applicant was on an interstate wanted list and, therefore, his application for asylum should be refused on the grounds of subparagraph 2 paragraph 1 article 5 of the Federal Law "On Refugees" (No. 4528-1) of 19 February 1993.

On 13 July 2023 the defence filed a cassation appeal to the 5th Court of Cassation. On 22 July 2023, Mr. Dzianis Khakhlou was still in the migration detention centre awaiting expulsion. His cell phone was taken away by the guards and, hence, his ability to communicate with his family and attorney is contingent on the discretionary permission of the guards. At the time of writing, no representatives of the migration branch of the Ministry of Internal Affairs of the Russian Federation have visited the applicant for the purpose of questioning, as required by the asylum procedure in the Russian Federation.

While we do not wish to prejudge the accuracy of these allegations, we wish to express our concern about Mr. Dzianis Khakhlou's imminent risk of administrative expulsion and potential transfer to the Republic of Belarus. In this regard, we are concerned that instead of sanctioning Mr. Khakhlou to independent departure from the Russian Federation to a third country of his choice, he was arbitrarily deprived of his liberty and placed in a migration detention centre pending expulsion. Such a decision appears to circumvent the absence of legal grounds for Mr. Khakhlou's extradition by substituting the extradition procedure with forced administrative

expulsion to effectively return him to Belarus. We also note that Mr. Khakhlou's persecution in Belarus was allegedly triggered by the legitimate and peaceful exercise of his right to freedom of peaceful assembly, which is protected by article 21 of the International Covenant on Civil and Political Rights.

We are appalled by the continuing restriction of his liberty in allegedly very harsh, prison-like conditions at the migration detention facility for the purposes of his expulsion, in spite of his full cooperation with the Russian authorities and his pending asylum request. Under international standards, the restriction of movement of migrants and asylum seekers or their detention should be a measure of last resort, must be necessary, reasonable, proportionate and based on individual assessment. Furthermore, applying mandatory or automatic detention is arbitrary as it is not based on an examination of the necessity of the detention in the individual case. For further information, please see the United Nations High Commissioner for Refugees' "Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention", UNHCR 2012.

With reference to Mr. Khakhlou's right to leave Russia for a destination where he ascertains that his safety and human rights would be protected, we wish to underscore the guarantees provided for in article 12 of the International Covenant on Civil and Political Rights concerning the right of the individual to leave any country, including one's own and freely determine the State of destination. As the scope of article 12, paragraph 2, is not restricted to persons lawfully within the territory of a State, a foreigner being legally expelled from the country is likewise entitled to elect the State of destination, subject to the agreement of that State (see Human Rights Committee General Comment No. 27: article 12 (Freedom of movement), para. 8, CCPR/C/21/Rev.1/Add.9).

Moreover, we are concerned about the lack of measures to undertake a thorough individual assessment of his asylum claim, to protect Mr. Dzianis Khakhlou's inalienable human rights and prevent the risks he could face upon his return to Belarus, including risk of torture or ill-treatment, arbitrary arrest and detention and lack of access to due process of law.

In this regard, we wish to draw the attention of your Excellency's Government to article 3 of the Convention Against Torture (CAT), which provides that, "[n]o State Party shall expel, return ("*refouler*") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture"; and that, "[f]or the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights".

Furthermore, we would like to refer to the Committee against Torture General Comment N. 4 on the implementation of article 3, which states in paragraph 13 that "Each case should be examined individually, impartially and independently by the State party through competent administrative and/or judicial authorities, in conformity with essential procedural safeguards, notably the guarantee of a prompt and transparent process, a review of the deportation decision and a suspensive effect of the

appeal. In each case, the person concerned should be informed of the intended deportation in a timely manner...". This individual risk should be conducted in due consideration of the situations indicated as representing a risk of torture, in paragraph 29 of the General Comment, including "(d) Whether the person has been judged in the State of origin or would be judged in the State to which the person is being deported in a judicial system that does not guarantee the right to a fair trial."

In addition, we are concerned by the lack of full harmonisation of the guarantees of *non-refoulement* provided for by Russian law with the international human rights standards, the lack of an effective and thorough examination of the risk in cases of expulsion, and the lack of reliable statistical data concerning the practice of forced expulsion with no access to asylum or individualized risk assessment procedures. We recall the observations and the recommendations by the Committee Against Torture (CAT/C/RUS/CO/6, para. 43) to Russia, which raise concern at concerned at reports of extraditions and expulsions of foreign persons carried out by the State party to countries where they may be at risk of torture and other ill-treatment. The Committee is especially concerned about information that persons who may be in need of international protection, particularly those held in pre-removal detention centres, including torture victims, do not have adequate access to asylum procedures and that immigration authorities often fail to register and interview asylum seekers, thereby increasing their risk of *refoulement*. It regrets the absence of statistical information on extradition requests granted, appeals against such decisions and outcomes thereof (art. 3).

We respectfully request Your Excellency's Government to proceed without delay with an independent and thorough individual risk assessment by the competent authorities, or if one has already been carried out, to inform us of the results of that risk assessment, with a view to ascertain that Mr. Dzianis Khakhlou would not be at risk of serious human rights violations if returned to Belarus, and take the results of such an assessment into account in any decision pertaining to his expulsion from Russia.

We would further like to draw the attention of your Excellency's Government to paragraph 16 of the resolution A/RES/65/205 of the UN General Assembly, which "...recognizes that diplomatic assurances, where used, do not release States from their obligations under international human rights, humanitarian and refugee law, in particular the principle of *non-refoulement*."

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, I 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 my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I 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 explain the legal grounds for Mr. Dzianis Khakhlou's detention pending expulsion and denial of his right to determine the State of destination. Furthermore, please explain how the legal framework in the Russian Federation complies with the legal guarantee provided in Article 12, paragraph 2, of the International Covenant on Civil and Political Rights.
3. Please provide detailed information, where available, on any risk assessment carried out by the Russian authorities to ascertain the possible risk Mr. Dzianis Khakhlou may face, including being subjected to torture or cruel, inhuman or degrading treatment or punishment as well as arbitrary detention and lack of access to due process of law, if he is expelled from Russia and transferred to Belarus, and how this assessment is compatible with international standards.
4. Please provide updated information concerning the implementation of the recommendations by the Committee Against Torture to ensure that the procedures on extradition, expulsion and asylum provide protection against *refoulement*, ensure that individuals can access asylum procedures and receive individual assessment by the competent authorities and are guaranteed fair treatment at all stages of proceedings, including an opportunity for effective and impartial review by an independent decision mechanism on expulsion, return or extradition, with suspensive effect.

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.

We would appreciate receiving a response within 60 days. Past 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.

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

Mariana Katzarova
Special Rapporteur on the situation of human rights in the Russian Federation

Anaïs Marin
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