

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur in the field of cultural rights; the Special Rapporteur on the right to education and the Special Rapporteur on the situation of human rights defenders

Ref.: AL MNE 1/2024
(Please use this reference in your reply)

8 March 2024

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur in the field of cultural rights; Special Rapporteur on the right to education and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 52/9, 46/9, 53/7 and 52/4.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the judicial proceedings against civil society activist, academic and columnist Mr. Boban Batrićević**.

Mr. Batrićević is an academic, writer and Vice President of the Montenegrin PEN Centre. Mr. Batrićević is a professor at the Faculty of Montenegrin Language and Literature in Cetinje, Montenegro, where he specialises in the history of propaganda and totalitarian movements, as well as cultural identity theory.

According to the information received:

On 11 August 2023, an article written by Mr. Batrićević was published on the portal of the news outlet Antena M. In the article, Mr. Batrićević strongly criticises the Serbian Orthodox Church, and includes six quotes from leaders of the Serbian Orthodox Church in Montenegro, which in Mr. Batrićević's view spread hatred, and also glorify war criminals, among other things.

In response to the article, a lawyer affiliated with the Church filed a criminal complaint against Mr. Batrićević, accusing him of inciting religious hatred. After finding that the article did not contain elements to give rise to criminal proceedings, on 27 October 2023, the Higher State Prosecution charged the academic with a misdemeanour under article 19 of Montenegro's National Law on Public order and Peace, which prohibits national, racial, or religious insults and carries a fine ranging from €250 to €1,500, or imprisonment for up to 60 days.

On 22 January 2024, Mr. Batrićević's first hearing took place in Podgorica Court. Despite calls from civil society to hold the hearing in public, it was held in the judge's office, reportedly due to a lack of available court rooms. As a result, only a very limited number of observers were reportedly permitted to attend, including one member from civil society, one journalist and two members of the international community.

The hearing was postponed until 26 March 2024 to allow sufficient time for all parties to study the 30-page defence submitted by Mr. Batrićević.

Reportedly, hundreds of people gathered in solidarity with Mr. Batrićević outside the Court while the hearing took place.

Without wishing to prejudge the accuracy of the above-mentioned allegations, we are concerned that the judicial proceedings against Mr. Batrićević appear to be directly related to publicly expressing his critical opinion of the Serbian Orthodox Church and the alleged controversial views of its leaders in Montenegro. We fear that the prosecution of Mr. Batrićević would have a chilling effect on freedom of opinion and expression in the country, especially on voices or opinions seen as critical.

We are also concerned that despite requests from civil society, Mr. Batrićević's hearing was held with a limited number of observers permitted to attend, monitor and report on the legal proceedings. In this regard, we remind your Excellency's Government of its obligations to guarantee the right of every person to a fair and public hearing, under article 14(1) of the International Covenant on Civil and Political Rights (ICCPR).

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 an assessment of the legal and factual basis for the misdemeanor charges against Mr. Batrićević and how his prosecution is compatible with international human rights law, specifically article 19 of the ICCPR, which guarantees the right to freedom of opinion and expression, as well as articles 13 and 15 of the ICESCR, which serve as a basis for protecting the right to academic freedom.
3. Please explain the reasons for holding Mr. Batrićević's first hearing behind closed doors with a limited number of observers.
4. Please provide detailed information on the measures your Excellency's Government is taking to ensure that everyone, including civil society activists and academics, can exercise and defend their right to freedom of expression without fear of harassment or reprisal.

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.

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.

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

Irene Khan

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

Alexandra Xanthaki

Special Rapporteur in the field of cultural rights

Farida Shaheed

Special Rapporteur on the right to education

Mary Lawlor

Special Rapporteur on the situation of human rights defenders

Annex

Reference to international human rights law

In connection with above-mentioned allegations, we refer to the Universal Declaration of Human Rights, to the obligations of your Excellency's Government under the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), both succeeded to by Montenegro on 23 October 2006, as well as the European Convention on Human Rights (ECHR), ratified by Montenegro on 3 March 2004.

In this regard, we draw the attention of your Excellency's Government to article 19 of the ICCPR, which provides for the right to freedom of expression, as well as to the Human Rights Council resolution 12/16, which calls on States to recognise the exercise of the right to freedom of opinion and expression as one of the essential foundations of a democratic society. Specifically, article 19 provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice". This right applies online as well as offline. Any limitation to the right to freedom of expression must meet the criteria established by international human rights standards. Restrictions on the right to freedom of expression must be compatible with the requirements set out in article 19(3), that is, they must be provided by law, pursue a legitimate aim, and be necessary and proportionate (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals. The State has the burden of proof to demonstrate that any such restrictions are compatible with the Covenant.

In its general comment no. 34 (CCPR/C/GC/34), the Human Rights Committee states that States parties to the ICCPR are required to guarantee the right to freedom of expression, including inter alia 'political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism'. (...) "Concerning the content of political discourse, the Committee has observed that in circumstances of public debate concerning public figures in the political domain and public institutions, the value placed by the Covenant upon uninhibited expression is particularly high. Thus, the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties, albeit public figures may also benefit from the provisions of the Covenant. Moreover, all public figures, including those exercising the highest political authority such as heads of state and government, are legitimately subject to criticism and political opposition" (paragraph 38).

We bring your attention to article 10 of the ECHR which guarantees that 'everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.'

We also wish to bring to the attention of your Excellency's Government article 14 of the ICCPR, which enshrines the right to a fair trial and due process. In particular, article 14(1) of the ICCPR sets out a general guarantee of equality before courts and tribunals and the right of every person to a fair and public hearing by a

competent, independent, and impartial tribunal established by law. As emphasised by the Human Rights Committee in general comment no. 32 (CCPR/C/GC/32), all trials in criminal matters must in principle be conducted orally and publicly (paragraph 28).

We would also like to stress that article 13 of the ICESCR protects the right of everyone to education. In its General Comment 13 on the right to education, the Committee on Economic, Social and Cultural Rights underlined that the right to education can only be enjoyed if accompanied by the academic freedom of staff and students (para. 38). This means in particular that members of the academic community, individually or collectively, are free to pursue, develop and transmit knowledge and ideas, through research, teaching, study, discussion, documentation, production, creation or writing. Academic freedom includes the liberty of individuals to express freely opinions about the institution or system in which they work, to fulfil their functions without discrimination or fear of repression by the State or any other actor, to participate in professional or representative academic bodies, and to enjoy all the internationally recognized human rights applicable to other individuals in the same jurisdiction. The enjoyment of academic freedom carries with it obligations, such as the duty to respect the academic freedom of others, to ensure the fair discussion of contrary views, and to treat all without discrimination on any of the prohibited grounds (para. 39). Furthermore, States Parties to the ICESCR have undertaken, under article 15 (3) to respect the freedom indispensable for scientific research and creative activity.

Finally, we would 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.