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Международная Федерация
за права человека

الفدرالية الدولية لحقوق الإنسان

Mr. Vladimir Makei
Minister of Foreign Affairs of the Republic of Belarus

Copy to Mr. Andrei Popkov
Head of Legal Affairs and Treaty Directorate
Ministry of Foreign Affairs of Belarus

Paris, December 28, 2015

Dear Minister,

We hereby would like to draw your attention that Belarus has failed to give effect to the Views adopted by the UN Human Rights Committee (hereinafter - the Committee) in the case of Aliaksandr Bialiatski. We would thus like to urge Belarus to implement its international obligations under the UN mechanisms of human rights protection.

The state of Belarus has adhered to the Optional protocol of the International Covenant on Civil and Political Rights in 1992. In accordance with its preamble and Article 1, Belarus has recognized the competence of the Committee to “receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation of any of the rights set forth in the Covenant”. The adherence of a state to the Optional Protocol implies the obligation to cooperate in good faith with the Committee, and to carry out its recommendations.

According to the Committee's Views, the refusal of the Belarusian authorities to register the Viasna Association unreasonably restricted the association's members right to freedom of association. Sentencing of Aliaksandr Bialiatski to four and a half years of imprisonment for conducting activities on behalf of an unregistered association was a direct consequence of the violation of the right to free association. In his trial the court did not take into account evidence that the funds were received and spent for the legitimate purposes of the association; that the funds did not constitute A. Bialiatski's personal income and the court did not consider the case in the right to freedom of association. Consequently, the Committee found that prosecution of Aliaksandr Bialiatski constituted a violation of his right to freedom of association.

The Committee also established that the pretrial detention of Aliaksandr Bialiatski was arbitrary since the decision regarding his remand in custody was taken by a prosecutor rather

than by a judge. Moreover, the decision was based solely on the grounds of the seriousness of the offence and did not contain any reasoning as to the necessity, reasonableness and proportionality of the custodial measure.

The Committee confirmed that throughout the court proceedings, the presumption of innocence was violated with regards to Aliaksandr Bialiatiski, because the State-owned media proclaimed his guilt before the verdict was handed down and because the President of Belarus made a public statement, clearly indicating his position regarding the guilt of Aliaksandr Bialiatiski. Moreover, the Committee agreed that bringing Aliaksandr Bialiatiski to court and back to the detention facility in handcuffs violated his rights.

Consequently, in its Views adopted on 24 October 2014 in a Communication No. 2165/2012, the Committee concluded that violations of the Art. 9 (arbitrary detention), 14(2) (presumption of innocence), 22(1) (freedom of association) of the Covenant have been established in the case of Aliaksandr Bialiatiski, represented during his detention by his legal representatives Natalya Pinchuk and Antoine Bernard.

The Committee requested that the State Party, within 180 days from the date of the adoption of its views, undertake steps that would result in an effective and enforceable remedy to Aliaksandr Bialiatiski, including (a) the reconsideration of the application for registration of the Viasna Association, based on criteria compliant with the requirements of Article 22 of the Covenant; (b) annulment of the criminal conviction from his criminal record; and (c) adequate compensation, including reimbursement of the legal costs incurred. The State of Belarus is also under the obligation to take steps to prevent similar violations in the future. In this connection, the State should review its internal legislation to ensure its compliance with the requirements of Article 22 of the Covenant.

Reconsideration of the application for registration of the Viasna Association, based on criteria compliant with the requirements of Article 22 of the Covenant

None of the requests for registration submitted by the Viasna Association in 2007 and 2009 have been reconsidered by the Ministry of Justice.

The Committee nonetheless established that the refusal by the State-party to register the Viasna Association has directly led to the unlawfulness of the association's activity that subsequently formed the basis of the verdict against Aliaksandr Bialiatiski. In his trial the court did not take into account evidence that the funds were received and spent for the legitimate purposes of the association. Moreover, Aliaksandr Bialiatiski would have not been compelled to use a foreign bank account and consequently would have not been convicted and sentenced, had the Belarusian authorities registered his Association back in 2007 or 2009 and ensured the possibility for non-profit organisations to obtain funding legally, in line with their obligations under the Covenant.

Annulment of A. Bialiatiski's criminal conviction

A. Bialiatiski's criminal conviction has not been annulled. We emphasize that pursuant to the Committee's Views, A. Bialiatiski's conviction must be expunged and thus his criminal record annulled rather than simply removed.

The persistence of a criminal record means that for a period of seven years, A. Bialiatiski bears a legal status of a person convicted for a crime. A number of legal restrictions apply during this period to persons with a criminal record. Moreover, Aliaksandr Bialiatiski was placed

under a so called “preventive register”, or “watch list” obliging him to register once a month with the law enforcement bodies, notify the law enforcement authorities of long-term foreign travels (lasting more than a month) or change of permanent place of residence, etc. If A. Bialiatski commits three administrative offenses (punishable by an administrative arrest) within a period of one year, he would face a so-called “preventive supervision”, which carries more serious restrictions. Consequently, a violation of such a “preventive supervision” regime entails punishment by a fine or administrative arrest. A third violation within a year may lead to deprivation of liberty for up to one year.

In July 2015, Aliaksandr Bialiatski appealed to the prosecutor of the Pervomaiski district (Minsk city) to re-examine his case under new circumstances, notably the adoption of Views by the Committee. On August 7, 2015, he received a response from the Pervomaiski district prosecutor's office in Minsk stating that “there are no grounds for examining the appeal to re-open the judicial proceedings on new circumstances”.

We would like to emphasize that Belarus has made a commitment to cooperate with the Committee and to implement its recommendations, under the Optional Protocol to the Covenant. Thus, the Committee's requirement to undertake measures leading to the annulment of A. Bialiatski's verdict and to provide him with other legal remedies do constitute new circumstances in his case which must be re-examined.

Adequate compensation, including reimbursement of the legal costs incurred

To date, no adequate compensation has been provided to A. Bialiatski and legal costs incurred by A. Bialiatski have not been reimbursed.

Adequate compensation, including reimbursement of the costs incurred, as put forth in the Committee's Views, can only be provided once the conviction is nullified. We urge you to take all the necessary measures to insure that M. Bialiatski's case be re-examined in court and his sentence annulled, in accordance with the recommendations of the Committee.

Violations of Articles 14 and 9 of the Covenant, concerning A. Bialiatski arbitrary detention, and presumption of innocence were also confirmed by the Committee, yet no intention of rehabilitation has been demonstrated by the State Party. Nor has A. Bialiatski received any financial compensation for the strain that these proceedings and his detention have caused him as well as for the high costs of his legal defense.

Obligation to prevent similar violations in the future: review internal legislation to ensure its compliance with the requirements of Article 22 of the Covenant

Belarus did not undertake any steps in reforming its restrictive legislation regulating NGO activities. Article 193-1 of the Belarus Criminal Code criminalizing activities on behalf of an unregistered organisation has not been repealed. Although the provisions of the above mentioned article have not been applied since 2008, activists still face fines, detention for up to six months, or imprisonment for up to two years as a result of their work for an unregistered organisation.

The legislative obstacles preventing foreign funding of civil society organizations continue to be in force: receipt of foreign aid must be registered with the Department of Humanitarian Affairs of the Presidential Administration. The procedure is thus conducted at the discretion of the presidential apparatus, which might in turn lead to arbitrary refusals. The said legislation continues to violate Article 22 of the Covenant prohibiting any restriction to the right to freedom of association, if it is not for the purposes of national security and public safety.

The use of foreign aid without registration, or other violations of the legislation on foreign donations, are subject to criminal liability under Article 369 of the Criminal Code, which provides for penalties of up to two years imprisonment.

We would like to bring to your attention that numerous associations in Belarus have seen their application for registration rejected since the adoption of Committee's Views concerning the case of A. Bialiatski on 24 October 2014. The State Party has refused to register associations on the basis of a number of highly technical reasons and some of which appear to be inconsistent with the Covenant.

The continual refusals to register associations are based on the existing Belarusian legislation. The law "On Public Organisations" allows for a selective approach in registering organisations: the relevant authorities are legally authorized to base refusals on various technical grounds, in violation of the Article 22 of the Covenant prohibiting any restriction to the right to freedom of association, if it is not for the purposes of national security and public safety.

Another significant obstacle to register an association is the official requirement for an association to secure a legal address in a non-residential real estate property. It is often reported that land lords refuse to lend premises to NGOs critical of the government, which serves the authorities a ground to refuse or to withdraw registration.

As evidenced by these and other cases, the Views adopted by the Committee in Communication No. 2165/2012, whose disposition carry a non-repetition value with regard to the right to freedom of association through revision of the existing legislation, have been ignored by the Belarusian authorities in their policies and practices towards independent associations.

We therefore urge you to take all necessary steps at your disposal to remedy the violations committed against A. Bialiatski, and to fulfill the obligations Belarus undertook under the International Covenant on Civil and Political Rights: namely, the obligation to respect the right to freedom of association, the right to fair trial and the right to liberty and security of person.

We also strongly recommend you to set forth a concrete plan of action that would bring Belarusian legislation in line with its obligations under the Covenant, put an end to arbitrary refusals to register civil society organisations, including Viasna Association, and cease harassment and intimidation of members of associations who defend human rights.

Yours sincerely,

Aliaksandr Bialiatski
President, Human Rights Center "Viasna"
Vice-President, FIDH

Antoine Bernard