



JOINT OPEN LETTER

Three months to convince: EU must obtain human rights commitments from Belarus before the February 2016 decision on sanctions

Brussels, Minsk, Paris - 1 December 2015

Dear Foreign Affairs Ministers,
Dear Members of the Political and Security Committee,

On 29 October 2015, the Council of the European Union decided to suspend the application of the restrictive measures taken against 175 individuals and 14 entities in Belarus until 28 February 2016.

Despite some positive developments since August 2015, FIDH and its member organisation in Belarus Human Rights Center "Viasna" assert that there is no systemic improvement of the human rights situation in Belarus.

The poor human rights record that formed the basis for the instalment of the EU sanctions¹ remains. We urge the EU to set up a strategy to reach key human rights achievements before 28 February 2016, which corresponds with the deadline the Council set to decide on reinstating, prolonging the suspension or lifting of restrictive measures.

We emphasise that the Government's intent to improve human rights protection in Belarus should be assessed with respect to legislative reforms and law enforcement practices. Only systemic reforms would safeguard from a risk of a repeated deterioration in human rights situation.

1. Sanctions' objectives have not been met

The Council renewed the sanction regime last October 2014 since political prisoners remained behind bars in Belarus and since the respect for human rights, the rule of law and the respect for democratic principles had not significantly improved. FIDH and HRC *Viasna* consider that this assessment remains valid today.

1. a) Political prisoners

Six political prisoners granted the Presidential amnesty in August 2015 were released but

¹ See Council of the European Union 's decision from 15 October 2012 (2012/642/CFSP), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:285:0001:0052:EN:PDF>.

their criminal record not removed and their rights not rehabilitated, as noted by Ms. Mogherini and Mr. Hahn in their statement dated 15 August 2015². Former political prisoners are deprived of numerous civil and political rights, including the right to run for election of all levels.

Former political prisoners with criminal record might be at any moment placed under the so called preventive supervision that significantly restricts their rights. Violation of such a preventive regime might lead to another criminal prosecution and subsequent imprisonment.³

We would like to draw your attention to politically-motivated criminal cases that have not been closed to date. Thus, charges against Ales Mikhalevich, 2010 presidential candidate, have not been dropped. He is accused of organising mass riots on December 19, 2010 in Minsk under part 2 of the Art. 293. He remains the last defendant in the given criminal case.

Criminal charges have not been dropped either against youth activists Yaraslau Ulyianenkau, Maksim Piakarski, Vadzim Zharmoski and Viachaslau Kasinerau. They are charged with hooliganism under part. 2 of Art. 339 of the Criminal Code after having drawn graffiti on a number of buildings in Minsk. While V. Zharmoski and V. Kasinerau were released from the remand center (SIZO) on August 31, 2015 under an obligation not to leave town, the above mentioned youth activists still might face penalty up to deprivation of freedom.

1. b) Respect for human rights, rule of law and democratic principles

In its election observation report, the OSCE concluded that the Presidential poll in Belarus fell short of international standards. Moreover, Belarus failed to introduce crucial reforms in its Electoral Code, as was recommended by the OSCE on numerous occasions in order to ensure the transparency and openness of elections⁴. Local election observers highlighted that the elections were marked by a lack of equal access to the media for all candidates, the lack of impartiality of election commissions, the use of administrative resources in favour of the incumbent, numerous facts of coercion of voters to participate in early voting⁵. Most importantly, the lack of transparency in electoral vote count does not allow to consider the election results as reflecting the will of the Belarusian people.

Citizens' right to exercise civil and political rights guaranteed in the Constitution is restricted, namely through repressive legislative provisions still in force. In Minsk, peaceful assemblies, that took place during the election campaign and shortly after, were not interrupted by law

2 Ms. Mogherini and Mr. Hahn indicated in their Statement on the release of political prisoners: "We now expect the authorities of Belarus to remove all restrictions on the enjoyment of full civil and political rights of the released. "

Statement by EU High Representative/Vice-President Federica Mogherini and EU Commissioner for Neighborhood policy and Enlargement negotiations, Johannes Hahn on the release of political prisoners in Belarus, 22 August 2015, http://europa.eu/rapid/press-release_STATEMENT-15-5522_en.htm

3 FIDH, The release of six political prisoners should not overshadow ongoing human rights violations, 2 September 2015, <https://www.fidh.org/en/region/europe-central-asia/belarus/the-release-of-six-political-prisoners-should-not-overshadow-ongoing>

4 OSCE (Organisation for the Security and Cooperation in Europe) ODIHR (Office for Democratic Institutions and Human Rights), Republic of Belarus, Presidential election, October 2015, OSCE/ODIHR Needs assessment mission report, 14-17 July 2015, <http://www.osce.org/odihr/elections/belarus/174771?download=true>

5 Human Rights Centre 'Viasna, Election process did not meet a number of key international standards for democratic and free elections, 13 October 2015, <http://spring96.org/en/news/80734>

enforcement officials and no participant was arrested. However, a number of opposition leaders who organised public gatherings were charged with administrative offences and sentenced to disproportionately high fines. In the regions, the practice of arbitrary and ungrounded refusals to authorise peaceful assemblies is widespread.

Registration of independent public associations and political parties is almost impossible. Registration procedures established in the Law "On public organisations" allows for selective approach of the state registration bodies dominated by political expediency. Since 2000, no political party was registered in Belarus. Activists struggling to register the Belarusian Christian Democracy party are systematically denied registration over the last six years. Despite two UN Human Rights Committee's decisions pertaining to the liquidation and subsequent three refusals to register HRC "Viasna", the FIDH member organisation continues its work without official state registration. Such a situation significantly limits the capacity of HRC "Viasna".

The provision 193.1 of the Criminal Code criminalises activity on behalf of an unregistered association, foundation, political party or religious organisation. While the given provision has not been applied by the prosecutors since 2008, security services regularly issue warnings to activists notifying them about the inadmissibility of work on behalf of unregistered organisation.

Access to foreign funding is severely restricted to Belarusian NGOs. All foreign grants have to be registered with the Department of Humanitarian Aid of the Presidential Administration. Obtaining and use of non-registered aid carries administrative or criminal responsibility.

Independent journalists are subject to significant restrictions in exercising their professional activity and regularly harassed. The law continues to oblige persons working for foreign media to register with the Ministry of Foreign Affairs thus violating the right to access information. For example, the "Belarusian Radio Racyja" and TV channel "Belsat" (both broadcast from Poland) have sought formal accreditation for several years now. Each time they get a refusal. Thus, journalists cooperating with these media are being judicially prosecuted for working without the accreditation. In 2015, 28 journalists were sentenced to financial penalties.

Despite the fact that since August 2015, administrative liability was not incurred against freelance journalists reporting for foreign media not accredited in Belarus their work continues to be under the scrutiny of law enforcement.

The new Law "On media" adopted in the end of 2014 deteriorated the situation of independent media, including the online ones. Furthermore, this Law has granted the Ministry of Information with the authority to block any Internet website (including those outside the domain zone of Belarus) without a judicial decision, if information published on the said website may threaten the national interests of Belarus.

It is worth emphasising that the Criminal Code of Belarus contains five clauses on defamation, including "insult of the President of the Republic of Belarus", "libel against the President of the Republic of Belarus", "insult of a public official" and "discreditation of the Republic of Belarus".

FIDH and its member organisation *Viasna* therefore conclude that Belarus continues to

impose politically motivated administrative and criminal sanctions against large groups of representatives of the civil society, democratic opposition, NGOs and free media. Systematic violations of international human rights standards prevail. The latter arguments were invoked in a decision to impose sanctions against Belarus back in 2012.

Finally, Belarus is the last country in Europe and in post-Soviet space to practice the death penalty. This year, two death sentences were handed down by Belarusian courts. In March 2015, the Gomel oblast court sentenced to death a 21-year old resident of Rechytsa town Siarhei Ivanou. In July, the Judicial Panel on Criminal Affairs of the Supreme Court of Belarus upheld the decision and the death verdict came into force. Currently S. Ivanou is awaiting execution in the remand centre No. 1 of the Ministry of Interior. In November 2015, the Grodno oblast court sentenced to death Ivan Kulesh, 28 years old.

2. Decisive months ahead to obtain tangible commitments on human rights

In that context, FIDH and HRC *Viasna* call on the EU to set up clear guidelines to assess the progress made by Belarus in terms of respect for human rights by the end of February 2016.

Our organisations remind that Belarus is a country where the opposition is not represented in the parliament. The EU should be able to keep a means of pressure on the Belarus authorities so that the September 2016 parliamentary elections take place in a reformed electoral framework in line with the recommendations of the OSCE ODIHR.

Most importantly, tangible improvements of the overall human rights situation should be assessed along with authorities' willingness for reform. The absence of a massive violent crackdown similar to the one that followed 2010 elections does not constitute in itself a criteria to measure progress in respecting human rights.

FIDH and HRC *Viasna* therefore urge the EU to:

1. Engage the Belarus authorities on the adoption of a political declaration entailing the commitment for a list of key reforms and the recognition of the legitimacy of the independent civil society.
2. Assert that the rehabilitation of political prisoners is a clear precondition for a move towards the normalisation of relations with Belarus. Urge the Belarus to implement its obligations undertaken in UN conventions, notably to accept visits of the thematic Special Rapporteurs of the UN and in particular the UN Special Rapporteur on human rights in Belarus.
3. Include the implementation of the following key measures and reforms among the criteria assessing the progress made by Belarus in terms of respect for human rights:

Civil and political rights

- Immediately ending persecution, arbitrary arrest or harassment of citizens for political reasons.
- Ensuring the possibility to return to the country to persons who were forced to leave the country due to a threat of a possible politically motivated judicial prosecution and

- repealing the decision to deport human rights defender Elena Tonkacheva.
- Ensuring that all the country's citizens have the right to enjoy fundamental rights, including freedom of expression and assembly; and taking effective steps to investigate any cases of arbitrary arrests.
 - Repealing article 193-1 of the Criminal Code, which penalises the organisation of, and participation in, activities of non-registered public associations.
 - Conducting a reform of legislation regulating the realisation of civil and political rights. In particular, amending restrictive legislative provisions in the following laws: the Law on Public Associations, the Law on Political Parties, the Electoral Code, the Code of Administrative Offences, the Criminal Code, the Criminal Procedure Code of Belarus, the Law on Public Gatherings (which further restricts freedom of peaceful assembly), and the Law on State Security (which allows for significant expansion of the powers of the State Security Committee, KGB).
 - Registering the HRC *Viasna* and all the previously dissolved organisations which lead pacific activities in the framework of the rule of law.
 - Enabling freedom of assembly in law, through the simplification of the procedure of notification, suppression of the obligation for organisers to bear the costs for "guaranteeing law and order and safety for citizens" and suppressing the restrictions on place, time and procedure for holding events; repealing all other law which limit freedom of expression and assembly, with a view to bringing domestic law into conformity with internationally recognised human rights standards.
 - Introducing a moratorium on the death penalty, ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights and taking steps to remove the death penalty from the penal system.
 - Taking effective steps to ensure the freedom of the independent media, both domestic and foreign ones.
 - Promoting the role of the judiciary in Belarus and its activity without Executive interference; implementing the recommendations of the UN Special Rapporteur on the independence of judges and lawyers; ensuring appropriate publicity for the judicial process; conforming with the OSCE Human Dimension commitments in particular in the field of the Rule of Law.

Economic and social rights

- Guaranteeing freedom of association by putting an end to state trade union monopoly' and by recognising workers' rights to independently form and join organisations of their choice. Refrain from repressing and persecuting labour activists engaged in trade union activities.
- Implementing the recommendations issued by the International Labour organisation's commission of Inquiry on freedom of association.
- Implementing the recommendations issued by UN treaty bodies, in particular in the concluding observations of the Committee on Economic, Social and Cultural Rights issued on November 2013.
- Repealing legislation provisions authorising forced labour of vulnerable groups, such as drug and alcohol dependents. Abolish repressive and discriminatory practices with respect to such vulnerable groups and focus on their rehabilitation and social reintegration instead.