

No. 13/2011 (Belarus)

Communication addressed to the Government on 1 February 2011

Concerning: Mikalai Statkevich

The State is a party to the International Covenant on Civil and Political Rights.

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights. The mandate of the Working Group was clarified and extended in Commission resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102. The mandate was extended for a further three-year period in Council resolution 15/18 of 30 September 2010.
2. The Working Group regards deprivation of liberty as arbitrary in the following cases:
 - (a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his sentence or despite an amnesty law applicable to him) (category I);
 - (b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);
 - (c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);
 - (d) When asylum-seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);
 - (e) When the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; disability or other status, and which aims towards or can result in ignoring the equality of human rights (category V).
3. The case concerns Mikalai Statkevich, who is the leader of the Social Democratic Party of Belarus (*Narodnaya Hramada*), and who was a presidential candidate in the 2010 elections.

Submissions

Communication from the source

4. The case has been reported to the Working Group on Arbitrary Detention as follows: Mikalai Statkevich was born on XX August XXXX and is a national of Belarus. On 19 December 2010, the day of the presidential elections in Belarus, Mr. Statkevich was arrested along with many others who protested against the way in which the election process had been organized. Together with other opposition leaders he was taken to the detention facility in Independence Square in Minsk. His arrest was carried out by the Special Police Unit. The source reports that arrest of Mr. Statkevich was based on breaches of article 293 of the Criminal Code of the Republic of Belarus relating to mass riot. Mr. Statkevich is detained in isolation at a prison at ulitsa Volodarskogo 2 in Minsk.

5. Mr. Statkevich has been on a hunger strike since 20 December 2010. He has been denied access to medical staff. The source reported on 18 January 2011 that Mr. Statkevich's lawyer has not been allowed to speak to his client since 29 December 2010, and that a delegation of the German Social Democratic Party to Belarus in January 2011 was not allowed to visit Mr. Statkevich in prison.

Response from the Government

6. The Working Group forwarded a communication to the Government on 1 February 2011 and regrets that the Government has not provided the requested information within 90 days in accordance with paragraph 15 of the Working Group's methods of work. The Working Group would have welcomed the cooperation of the Government.

Discussion

7. According to its revised methods of work, the Working Group is in a position to render an opinion on the case on the basis of the submissions that have been made.

8. In the present case the pressing question is whether the deprivation of liberty is the result of the exercise of the rights and freedoms in articles 18 (freedom of thought), 19 (freedom of opinion and expression), 20 (freedom of peaceful assembly and association) and 21 (the right to take part in the government of one's country, directly or through freely chosen representatives) of the Universal Declaration of Human Rights, and in articles 18 (freedom of thought), 19 (freedom of opinion and expression), 21 (freedom of peaceful assembly) and 22 (freedom of association) of the International Covenant on Civil and Political Rights.

9. The source points to the link to the election process. When issues of freedom of political expression and assembly come before this Working Group, it undertakes a particularly intensive review, as the use of the freedoms in the political process concern the very core of these fundamental freedoms. In the present case, the Working Group holds that the deprivation of liberty is the result of the exercise of the rights and freedoms listed above in paragraph 8. The Working Group has not been provided with any grounds to justify the detention of Mr. Statkevich. The arbitrary detention falls within category II of the categories applicable to the cases submitted for consideration of the Working Group.

10. There are also violations of the relevant international standards contained in the Universal Declaration of Human Rights and in the Covenant relating to the right to a fair trial, which are of such gravity as to confer on the detention an arbitrary character. Mr. Statkevich has been held in isolation and his access to counsel has been restricted. This is in violation of article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights. The arbitrary detention thus also falls within category III of the categories applicable to the cases submitted to the Working Group.

11. Article 9, paragraph 5, of the International Covenant on Civil and Political Rights provides for an enforceable right of compensation. The Working Group has in its jurisprudence continued to develop, based on general principles, the right to a remedy, which consists primarily of immediate release and compensation. In the present case, it is clear that Mr. Statkevich has a claim to compensation under article 9, paragraph 5, of the Covenant. The reasons that may be given for the detention of Mr. Statkevich cannot be used against his claim for compensation.

12. In conclusion, the Working Group points out that the political process in Belarus has given rise to several reports of human rights violations to United Nations human rights bodies; see for instance the statement of the Special Rapporteur on the situation of human rights in Belarus, who on 7 June 2005 expressed deep concern and strong condemnation over the sentencing of, among others, Mr. Statkevich, and the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment submitted to the Human Rights Council at its thirteenth session (see A/HRC/13/39/Add.1 and Corr.1, case summary no. 16, pp. 30-31). The Working Group reminds the Government of Belarus of its duties to comply with international human rights obligations not to detain arbitrarily, to release persons who are arbitrarily detained, and to provide compensation to them. The duty to comply with international human rights rests not only on the Government but on all officials, including judges, police and security officers, and prison officers with relevant responsibilities. No person can contribute to human rights violations.

Disposition

13. In the light of the foregoing, the Working Group renders the following opinion:
The deprivation of liberty of Mikalai Statkevich is arbitrary, and constitutes a breach of article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights, falling within categories II and III of the categories applicable to the cases submitted for consideration of the Working Group.

14. The Working Group requests the Government of Belarus to take the necessary steps to remedy the situation, which include the immediate release of Mr. Statkevich and adequate reparation to him.
[Adopted on 4 May 2011]