



**MISSION PERMANENTE  
DE LA REPUBLIQUE DU  
BELARUS AUPRES DE  
L'OFFICE DES NATIONS UNIES  
ET DES AUTRES  
ORGANISATIONS  
INTERNATIONALES A GENEVE**

№ 02-13/499

The Permanent Mission of the Republic of Belarus to the United Nations Office and other International Organisations in Geneva presents its compliments to the Office of the UN High Commissioner for Human Rights and, with reference to the joint urgent appeal from special procedures (UA BLR 3/2024) has the honour to transmit herewith the information of the Belarusian competent authorities in this regard.

The Permanent Mission of the Republic of Belarus avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.

Encl.: as stated.

Geneva, 1 July 2024



**OFFICE OF THE UNITED NATIONS  
HIGH COMMISSIONER FOR HUMAN RIGHTS  
OHCHR SPECIAL PROCEDURES BRANCH  
GENEVA**

017449

*Translated from Russian*

**Information concerning G.A. Kostusev (R. Kastusiou)**

In accordance with article 14 (1) and (5) of the International Covenant on Civil and Political Rights, all persons are equal before the courts and tribunals. In the determination of any criminal charge against him or her, everyone is entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. Everyone convicted of a crime has the right to his or her conviction and sentence being reviewed by a higher tribunal according to law.

On 5 September 2022, by a judgment of Minsk Provincial Court, G.A. Kostusev was found guilty of conspiracy to seize State power by unconstitutional means, an offence under article 357 (1) of the Criminal Code, and sentenced to 10 years' deprivation of liberty, to be served in a correctional colony with a strengthened regime.

In accordance with article 22 of the Constitution of Belarus, everyone is equal before the law and has the right, without any discrimination, to the equal protection of his or her rights and legitimate interests.

Under article 26 of the Constitution, no one may be declared guilty of a crime unless his or her guilt has been proved in the manner prescribed by law and established in a court judgment that has become final. The accused is not required to prove his or her innocence.

Everyone is guaranteed the protection of his or her rights and freedoms by a competent, independent and impartial tribunal under the procedure and within the periods determined by law (Constitution, art. 60, first part).

The most important principles of the judicial system in Belarus are the independence of judges in the administration of justice, their subordination only to the law and the inadmissibility of interference in the activities of judges. The independence of judges is safeguarded through a number of legal institutions regulating their appointment and dismissal and the extension of their terms of office, the procedures for the consideration of cases, the establishment of criminal liability for interference in the settlement of court cases, and the organizational and technical arrangements for judges' work.

Criminal cases are considered in accordance with the requirements of the law of criminal procedure, which is based on the principles of adversarial proceedings and equality of arms, respect for the right to defence, the presumption of innocence and the thorough, full and objective investigation of the circumstances of the criminal case.

When the case against G.A. Kostusev was heard in open court, the court, in accordance with article 18 (2) and article 24 (5) of the Code of Criminal Procedure, provided the prosecution and the defence with the necessary conditions for exercising their rights and fulfilling their procedural obligations.

The right to defence of G.A.Kostusev was upheld. During the trial, the interests of G.A. Kostusev were looked after by a professional defence lawyer, [REDACTED]

The court's finding that G.A. Kostusev was guilty of committing offences under article 357 (1) of the Criminal Code correspond to the factual circumstances of the case and are confirmed by the evidence cited in the judgment. The evidence collected has been thoroughly, fully and objectively verified in accordance with the provisions of article 105 of the Code of Criminal Procedure.

The Supreme Court reviewed the legality, validity and fairness of the Minsk Provincial Court judgment of 5 September 2022, which had not yet become final, on appeal by G.A. Kostusev and his lawyer.

On 29 November 2022, the judgment of 5 September 2022 was upheld on appeal by the Supreme Court, and the appeals of G.A. Kostusev and his lawyer were dismissed.

G.A. Kostusev could exercise his right to appeal against the court decisions to the Supreme Court under the supervisory review procedure but has not done so to date.

Thus, the right of G.A. Kostyusev under the law of criminal procedure to a fair and public hearing by a competent, independent and impartial tribunal established by law and his right to have his case reviewed by a higher tribunal under the appeal procedure were fully upheld. G.A. Kostusev now has the possibility of exercising his right to appeal against the judgment under the supervisory review procedure. There were no violations of the rights of G.A. Kostusev guaranteed by the Code of Criminal Procedure, including his right to defence.

As for the penalty imposed on G.A. Kostusev, the following may be noted.

In accordance with article 62 (1) of the Criminal Code, when imposing a penalty, the court proceeds from the principle of individualized punishment, taking into account the nature and degree of danger to the public of the offence committed, the motives and objectives behind it, the personality of the perpetrator, the nature of the harm and amount of the damage caused, the income obtained by criminal means, the circumstances mitigating and aggravating liability, and the opinion of the victim in the case of private prosecutions; these factors constitute the basis for the penalty selected in the judgment.

Punishment in the form of deprivation of liberty may be imposed only if the goals of criminal liability cannot be achieved through the imposition of a milder penalty provided for in the relevant article of the special part of the Criminal Code (Code, art. 62 (2)).

When sentencing G.A. Kostusev, the court took into account – along with the nature and degree of danger to the public of the offence committed – information on the personality of G.A. Kostusev, the motives and objectives behind the offence, and the state of health of G.A. Kostusev.

The court was convinced that the goals of criminal liability could be achieved only by sentencing G.A. Kostusev to deprivation of liberty, which would contribute to the reform of the perpetrator, as well as to the prevention of new acts posing a danger to the public, by both G.A. Kostusev and other persons.

Under article 402-2 of the Code of Criminal Procedure, issues related to sentence enforcement are resolved by the judge alone, in a court hearing, with the participation a procurator and a representative of the body responsible for enforcing the penalty. The participation of the convicted person in the court hearing is not required.

Nevertheless, G.A. Kostusev participated in the hearing at Ivatsevichy District Court on 15 January 2024, using remote communication technology.

His defence counsel, the lawyer [REDACTED], also took part in the hearing.

In accordance with article 144 (2)–(4) of the Code of Criminal Procedure, the review by the court of the legality and validity of the extension of the period of remand in custody is conducted in a closed hearing. When necessary for the examination of a motion, the judge may summon the person remanded in custody. Persons participating in a closed hearing sign an undertaking not to disclose information pertaining to the hearing.

The motion filed by defence counsel for G.A. Kostusev, the lawyer [REDACTED], was examined on 21 December 2021 in Tsentralny District Court in Minsk in a closed hearing. The court did not deem it necessary for G.A. Kostusev to participate in the hearing, so the review by the court of the legality of the extension of the period of remand in custody was conducted in his absence. Defence counsel for G.A. Kostusev, the lawyer [REDACTED], took part in the court hearing and, as directly prescribed by law, signed an undertaking not to disclose information pertaining to the hearing.

In accordance with article 69 (1) of the Penalties Enforcement Code, depending on the behaviour and attitude to work of persons sentenced to deprivation of liberty, changes may be made to the type of correctional institution in which they are held and the custodial regime.

Persons sentenced to deprivation of liberty who maliciously violate the established procedure for serving their sentences may be transferred from a correctional colony for persons serving a sentence of deprivation of liberty for the first time or a correctional colony for persons who have previously served a sentence of deprivation of liberty to a prison, for a period not exceeding three years, with the remainder of the sentence to be served in the correctional colony under the custodial regime specified in the court sentence (Penalties Enforcement Code, art. 69 (5) (3)).

Changes to the type of correctional institution and the custodial regime are made by the courts upon application by the administration of the institution concerned (Penalties Enforcement Code, art. 69 (6)).

In accordance with article 402 (2) of the Code of Criminal Procedure, transfers from a correctional colony to a prison and from a prison to a correctional colony are authorized pursuant to a ruling or decision by the district or municipal court at the place where the convicted person is serving his or her sentence, irrespective of which court passed the sentence or handed down the relevant ruling or decision.

G.A. Kostusev was serving a sentence of deprivation of liberty in correctional colony No. 22, a facility of the Brest Province office of the Penalties Enforcement Department in the Ministry of Internal Affairs of Belarus.

By a decision of Ivatsevichy District Court of 15 January 2024, upon application by the administration of correctional colony No. 22, G.A. Kostusev was transferred from the colony to a prison, for a period of 3 years, to continue serving his sentence. The basis for such a decision was the systematic and malicious violation by G.A. Kostusev of the established procedure for serving a sentence of deprivation of liberty.

In accordance with article 96 (1) of the Criminal Code, pardon may be granted by the President of Belarus to designated individuals.

In paragraph 6, first part, and paragraph 8 of the Regulations on the procedure for pardoning convicted persons and exempting from criminal liability persons who have contributed to the clearing up of offences and the remedying of their effects, approved pursuant to Presidential No. 250 of 3 December 1994 on the procedure for pardoning convicted persons and exempting from criminal liability persons who have contributed to the clearing up of offences and the remedying of their effects, it is specified that pardon may be granted on the basis of personal petitions submitted by convicted persons through the administration of a correctional facility or other body enforcing a penalty or other criminal sanction.

Thus, G.A. Kostusev has the right to submit independently a petition for pardon to the President of Belarus through the administration of the body enforcing his penalty.

In accordance with article 82 (1) of the Criminal Code, a person who has committed an offence may be exempted from criminal liability or punishment or released early from serving a sentence imposed by a court only in the cases provided for by the Criminal Code.

Under article 90 (1) of the Criminal Code, persons serving a sentence of deprivation of liberty may be granted parole.

A convicted person may be granted parole only if his or her behavior is exemplary, demonstrating that he or she has been reformed (Criminal Code, art. 90 (2)).

Under article 91 (1) of the Criminal Code, persons sentenced to deprivation of liberty may have the unserved portion of their sentence commuted to a milder penalty.

For the unserved portion of a convicted person's sentence to be commuted to a milder penalty, he or she must be firmly on the path of reform and have served the portion of the sentence specified in article 91 (2) of the Criminal Code.

In accordance with article 92 (2) of the Criminal Code, a person suffering from a serious illness that prevents him or her from serving a sentence may be released by the court from serving the sentence or have his or her penalty commuted to a milder one. The seriousness of the crime committed, the personality of the convicted person, the nature of the illness and other circumstances must be taken into account.

Under article 402 (2) of the Code of Criminal Procedure, exemption from punishment on grounds of illness, parole and commutation of the unserved portion of a sentence to a milder penalty are authorized pursuant to a ruling or decision by the district or municipal court at the place where the convicted person is serving his or her sentence, irrespective of which court passed the sentence or handed down the relevant ruling or decision.

The body or institution enforcing the penalty or other criminal sanction must send to the court in respect of a convicted person who may be granted parole or have the unserved portion of his or her sentence commuted to a milder penalty a submission addressing the parole of the convicted person or the commutation of the unserved portion of his or her sentence to a milder penalty (Penalties Enforcement Code, art. 187 (1)).

Submissions regarding the release of a convicted person from serving a sentence owing to serious illness must be sent to the court by the head of the body or institution enforcing the penalty or other criminal sanction (Penalties Enforcement Code, art. 187 (6)).

The courts of general jurisdiction of Belarus have not received any submission regarding parole, commutation of the unserved portion of a sentence or release from serving a sentence owing to serious illness in respect of G.A. Kostusev.

According to information from the Penalties Enforcement Department of the Ministry of Internal Affairs, the convict G.A. Kostusev is under dynamic monitoring by health-care workers. His health status is satisfactory, and he does not need urgent medical care.

The Office of the Procurator General has not received any complaints about the procedure and conditions of detention of the convict G.A. Kostusev.

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