

**Mandates of the Working Group on Enforced or Involuntary Disappearances; the Working Group on Arbitrary Detention; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

Ref.: UA RUS 1/2022

(Please use this reference in your reply)

7 January 2022

Excellency,

We have the honour to address you in our capacity as Working Group on Enforced or Involuntary Disappearances; Working Group on Arbitrary Detention; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 45/3, 42/22 and 43/20.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning Mr. Dzmitry Padlobnikau, who is reportedly at risk of extradition from the Russian Federation to Belarus, where there are substantial grounds for believing that he would be in danger of being subjected to torture or other cruel, inhuman or degrading treatment, arbitrary detention and enforced disappearance.

According to the information received:

Mr. Dzmitry Padlobnikau, a Belarussian national, participated in peaceful protests in his home town of Zhlobino, Belarus following the presidential election of August 2020. At that time, similar rallies took place throughout the country, during which hundreds of thousands of people came out to express their dissatisfaction with the election results. The peaceful protests were met with brutal force, as a result of which tens of thousands of people were detained, more than 5,000 people were injured, and 10 people died. The protests were met with the same violence in Zhlobino. Following a clash with the police, a scuffle ensued, during which Mr. Padlobnikau's head, ribs, and legs were severely injured. He was detained and sentenced to 15 days of imprisonment. However, Mr. Padlobnikau was released on 14 August 2020 in the wake of widespread strikes throughout the country. Upon his release, he fled to the Russian Federation fearing political persecution.

On 5 May 2021, Mr. Padlobnikau was arrested in Lyubertsy city, Moscow region pursuant to an arrest warrant issued by the Belarusian authorities. He is wanted on suspicion of committing crimes related to his participation in protests in Belarus on 9-10 August 2020 (Article 342 of the Criminal Code of Belarus - organisation and preparation of actions that grossly violate public order, or active participation therein; Article 364 – violence or threat of violence against an employee of the security agencies). No information was provided to Mr. Padlobnikau's relatives or his lawyer regarding his arrest and the ensuing deprivation of liberty. He was instead assigned a State attorney, who assisted him in the proceedings concerning his extradition to Belarus, which he opposed

out of fear of being subjected to severe human rights violations, including enforced disappearance.

On 24 November 2021, the Russian authorities decided to extradite Mr. Padlobnikau to Belarus. On 2 December 2021, the decision was upheld by the Moscow region court, despite his claims that (a) he is persecuted solely for participating in a peaceful rally and protecting himself in the face of illegal suppression of the rally by brutal force on the part of the authorities; (b) his persecution is motivated by the political desire of the authorities to suppress dissent and (c) that on his return he may be subjected to arbitrary detention, enforced disappearance, torture and ill-treatment due to his affiliation with the opposition. Despite Mr. Padlobnikau's publicly expressed desire to appeal the decision before the Court of Appeals, it is alleged that the assigned state attorney ignored his request and did not file the complaint on time. Mr. Padlobnikau attempted to appeal the decision himself, but unknowingly and without any professional assistance, he sent the application to the Supreme Court of the Russian Federation, which is not the competent authority

On 22 December 2021, a lawyer appointed by Mr. Padlobnikau's relatives filed an appeal to the First Court of Appeal (both via mail and the electronic system "Justice") together with a request for the restoration of the missed appeal deadline. The Lyubertsy city prosecutor's office was notified of this and the extradition was halted for the duration of the proceedings (Articles 130 and 389.5 of the Criminal Procedure Code of the Russian Federation), allowing the applicant's appeal to be heard and offering him an opportunity to apply for international protection in the Russian Federation.

Nevertheless, on 28 December 2021, Mr. Padlobnikau's relatives received a phone call from him, during which he said that he was about to be extradited. Since then, his relatives have not been able to reach him and his whereabouts are unknown. His lawyer lodged urgent complaints with the Office of the Prosecutor General and the Office of the Prime Minister, but no reply was received. On the evening of the same day, the lawyer received an unverified information that Mr. Padlobnikau was transferred from the detention facility where he was being held. Furthermore, the Court of Appeals informed Mr. Padlobnikau's lawyer by phone that the request for restoration of the missed appeal deadline was dismissed. It is further alleged that the lawyer was never invited to a court hearing, as well as no official documents in connection with the proceedings were ever shared by the Russian authorities.

On 31 December 2021, the Public Monitoring Commission of Moscow for the Protection of Human Rights in Places of Detention confirmed that Mr. Padlobnikau is still in the Russian Federation. Unverified information suggests that he has been transferred from temporary detention center "Lyubertsy" in Moscow region to Pre-trial detention center No. 4 (SIZO-4) in Moscow, where he is awaiting extradition to Belarus. He is still not allowed to

contact his lawyer or relatives, who therefore are not sure about his fate and whereabouts.

According to the information received, since August 2020, the Russian authorities have extradited at least 5 Belarussian nationals to Belarus in violation of the non-refoulement principle.

While we do not wish to prejudge the accuracy of these allegations, we are concerned that the imminent extradition of Mr. Dzmitry Padlobnikau, which if executed, may place him at serious risk of being subjected to arbitrary arrest and detention, and possibly enforced disappearance and torture or other ill-treatment. In view of the abuses to which Mr. Padlobnikau was subjected in Belarus, and the government's request for his extradition, we fear that he may be denied effective legal representation of his choice upon return as well as, if charged and prosecuted, the right to a fair trial as guaranteed by, among others, article 14 of the International Covenant on Civil and Political Rights (ICCPR).

Our concern also stems from previous instances of extraditions from Russia to Belarus that were in breach of the cardinal principle of international protection of non-refoulement, without any apparent legal consequences for those who expelled him, thus encouraging impunity for breaches of key international law principles.

We are also particularly alarmed by reports that Russian authorities have repeatedly ignored legal safeguards which include immediate registration and judicial oversight of detention, the possibility of lodging an appeal, notification of family members as soon as an individual is deprived of liberty, and the hiring of a defence lawyer of one's choice. Extraditions in these conditions, may amount to violations of articles 9 and 10 of the Universal Declaration of Human Rights (UDHR) and articles 9 and 14 of the ICCPR that guarantee the right not to be deprived arbitrarily of liberty, including the right to challenge the legality of detention, and the right to a fair trial and due process.

Mr. Padlobnikau's forcible return to Belarus may result in serious violations of his rights to liberty, personal security, integrity and fair trial in contravention of articles 3, 5, 9, 10 and 14 of the UDHR, of articles 7, 9, 13, 14, 18, 19 and 22 of the ICCPR, as well as the Convention against torture and other cruel, inhuman or degrading treatment or punishment, which the Russian Federation duly ratified.

The fundamental international protection principle of non-refoulement is enshrined in several key human rights instruments ratified by the Russian Federation, in particular the Convention against Torture (article 3) and the 1951 Convention on the status of refugees (article 33). The extradition of Mr. Padlobnikau could also amount to a violation of obligations pursuant to articles 3, 6 and 13 of the European Convention on Human Rights, to which the Russian Federation is a party. Equally so, the principle of non-refoulement is universally recognized as a principle of international customary law and, as such, constitutes an indispensable component of the customary prohibition of torture and other cruel, inhuman or degrading treatment and punishment. We also

remind your Excellency's Government of its obligation to conduct individual risk assessments to evaluate whether Mr. Padlobnikau's rights may be violated in the event of his extradition to Belarus.

Furthermore, we draw your Excellency's Government's attention to the Declaration for the Protection of All Persons from Enforced Disappearance, which establishes that no State shall practice, permit or tolerate enforced disappearances. The Declaration proclaims that each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction. In particular, we recall the Declaration sets out the necessary protection by the State, in particular the rights to a prompt and effective judicial remedy to determine the whereabouts of persons deprived of their liberty; to access of competent national authorities to all places of detention; to be held in an officially recognized place of detention, and to be brought before a judicial authority promptly after detention; to accurate information on the detention of persons and their place of detention being made available to their family, counsel or other persons with a legitimate interest; and to the maintenance in every place of detention of official up-to-date registers of all detained persons, including information related to any transfers. The Declaration also stipulates that no State shall expel, return or extradite a person to another State where there are substantial grounds to believe that he would be in danger of enforced disappearance. We also wish to underline that enforced disappearances constitute a particularly aggravated form of arbitrary detention (see CCPR/C/GC/35, at para. 17).

In view of the urgency of the matter, we respectfully call on your Excellency's Government to halt the current procedure of extradition of Mr. Padlobnikau's in view of the state of the Russian Federation duty to protect his rights to liberty, personal safety and integrity, to allow him to communicate with his lawyer and relatives, and consider to afford him the international protection in the Russian Federation where he has sought asylum.

We are issuing this appeal in order to safeguard the rights of Mr. Padlobnikau from irreparable harm and without prejudicing any eventual legal determination. It is relief *pendente lite*.<sup>1</sup>

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://www.ohchr.org) or can be provided upon request.

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 any comment(s) you may have on the above-mentioned allegations.

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<sup>1</sup> Article 41 ICJ Statute 'Interim Protection': Part III, Section D (Incidental Proceedings), Subsection 1.

2. Please provide information on the current whereabouts and the state of health of Mr. Padlobnikau.
3. Please provide information on the factual and legal basis for Mr. Padlobnikau's arrest and detention, as well as on the measures taken to ensure that he enjoys prompt and regular access to legal representation.
4. Please provide information on the grounds for dismissal by the Court of Appeals of the request for the restoration of the missed appeal deadline filed on 22 December 2021.
5. Please provide detailed information on whether Mr. Padlobnikau's request for international protection in the Russian Federation was received and processed.
6. Please provide detailed information as to how comprehensive individual risk assessments were carried out by relevant Russian authorities in this case, both in terms of procedural safeguards and analysis of the country of return situation, so as to ensure that Mr. Padlobnikau will not be subjected to violations of his fundamental rights in transit and upon return to Belarus.
7. Please provide information on the measures adopted by the Russian authorities to ensure the right of persons to effective remedy for human rights violations, including arbitrary detention, enforced disappearance, torture and ill-treatment.

We would like to inform your Excellency's Government that after having transmitted an urgent appeal to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such appeals in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

We reserve the right to consider to publicly express our concerns in the near future in this case. In our view, the information at hand is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that should the Russian Federation disregards its obligations under international law to afford the guarantees of due process to protect the right of political asylum seekers, the wider public should be alerted to the human rights implications of this departure from an important and precious practice. Any public expression of concern on our part would indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within

60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council. Please note that a copy of the communication will be transmitted to the Government of Belarus.

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

Luciano Hazan

Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Elina Steinerte

Chair-Rapporteur of the Working Group on Arbitrary Detention

Nils Melzer

Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment