

Mandates of the Special Rapporteur on the situation of human rights in Belarus and the Working Group on Arbitrary Detention

Ref.: AL BLR 5/2022

(Please use this reference in your reply)

15 September 2022

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the situation of human rights in Belarus and Working Group on Arbitrary Detention, pursuant to Human Rights Council resolutions 50/20 and 42/22.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the arrest and detention of Ms. Natalya Nikitina, as well as severe restrictions of freedom of expression and peaceful assembly in the country.

According to the information received:

Ms. Natalya Nikitina, a medical doctor with a 30-year work experience, was arrested on 29 September 2021 by the Belarusian security forces. After spending 12 months in pre-trial detention, on 1 September 2022, the judge of the Minsk city court sentenced Ms. Nikitina to 1 year and 10 months in prison and fined her 200 basic units (2,500 USD) for crimes envisaged under article 369 of the criminal code "insulting a government representative" and article 130 part 1 of the criminal code "inciting hatred" for posting a social media comment on the death of information technology worker Andrei Zeltser.

On 28 September 2021, Andrei Zeltser was shot by members of the State Security Committee during a raid on his apartment, which resulted in a shootout and the death of a State Security Committee officer as well. Immediately after the incident, the State Security Committee of the Republic of Belarus issued a statement declaring Mr. Zeltser a "particularly dangerous criminal" allegedly involved in extremist activities. At the same time, the Ministry of Interior identified and arrested more than 200 people who posted comments about the incident on social media and 136 of them were charged with "insulting a government representative" and "inciting hatred". The definitions of acts described by these provisions of the Criminal Code are both broad and vague, which allows the criminalization of activities that may be part of the legitimate exercise of human rights.

On 28 September 2021, Ms. Nikitina wrote a comment in one of the Telegram channels referring to the death of Mr. Zeltser, which can be translated as "a peaceful man died defending his home from the enemy". The next morning, on 29 September 2021, Ms. Nikitina was informed of her dismissal from the Minsk Center for Child Psychiatry and Psychotherapy. She was arrested and taken to the pre-trial detention centre No. 8 in Zhodino. Ms. Nikitina did not have the possibility to inform her family about the arrest and detention. Her

family did not have any information about Ms. Nikitina's whereabouts for more than 24 hours. Ms. Nikitina was charged under article 369 of the Criminal Code and article 130 of the Criminal Code.

In August 2022, Ms. Nikitina was transferred from the pre-trial detention centre No. 8 in Zhodino to detention centre No. 1 in Minsk (SIZO-1). On 29 August 2022, the trial of Ms. Nikitina began in the Minsk City Court. Ms. Nikitina's lawyer was under a non-disclosure agreement, therefore information about Ms. Nikitina's capacity to prepare and participate in the trial is not available.

On 1 September 2022, the judge of the Minsk city court sentenced Ms. Nikitina to 1 year and 10 months in prison and fined her 200 basic units (2,500 USD) for crimes envisaged under articles 130 and 369 of the criminal code. Ms. Nikitina has already spent 12 months in pre-trial detention and currently she is imprisoned at the detention centre No. 1 in Minsk (SIZO-1). Human rights organisations have raised concerns about the dire conditions in detention, including ill-treatment reportedly focused on women detained on political based charges.

It is reported that Ms. Nikitina's arrest and detention on criminal charges is a retaliatory measure for having voiced dissent through the legitimate exercise of her rights to freedom of expression concerning the Zeltser case, as well as participation in the 2020 protests for which she was twice arrested. The first time, Ms. Nikitina was arrested together with 300 other people for participating in the Unity March, on 6 September 2020. She served a three-day administrative sentence at the Zhodino temporary detention facility and paid a fine for participating in a rally under article 24.23 "violation of the procedure for organizing or holding mass events" of the Code of Administrative Offenses.

In December 2020, Ms. Nikitina was taken to the Zavodskoy district police department for coming to the defence of a teenager who was being grabbed from the street by people in plain clothes. However, due a health-related emergency she was transferred to the hospital, where she spent a month following a heart attack. In addition, Ms. Nikitina was fined a second time under article 24.23 of the Code of Administrative Offenses.

Without making any judgment at this point as to the accuracy of the information made available to us, we reiterate our serious concern at the allegations of arbitrary arrest and detention of Ms. Nikitina for the legitimate exercise of her fundamental civil and political rights. We are concerned that such disproportionate charges and harsh punishment imposed on Ms. Nikitina for posting comments on social media pursue the aim of dissuading people from participating in public debate and exercising their right to freedom of expression and peaceful assembly by creating an environment of fear. We refer in this context to the international human rights obligations binding on Belarus, including the prohibition against arbitrary arrest, and the rights to freedom of expression and of peaceful assembly, guaranteed by articles 7, 9, 14, 19, 21 and 26 of the International Covenant on Civil and Political Rights

(ICCPR), ratified by Belarus on 12 November 1973.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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 any comment you may have on the above-mentioned allegations.
2. Please provide detailed information about the factual and legal grounds for the arrest and continued imprisonment of Ms. Nikitina. Please clarify the legal and factual basis for her conviction, as well as how she was provided guarantees of due process and fair trial, and indicate how the basis for their conviction is compatible with international human rights law binding on Belarus.
3. Please provide information about the conditions of detention to ensure Ms. Nikitina's right to freedom from torture or cruel, inhuman or degrading treatment or punishment in line with international human rights obligations.
4. Please provide information about measures to bring the criminal code provisions that served as grounds for Ms. Nikitina's conviction in compliance with international human rights obligations and to ensure a safe environment in which freedoms of expression and peaceful assembly are exercised without fear of undue criminalization, detention or ill-treatment.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

We would like to inform your Excellency's Government that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit specific cases relating to the circumstances outlined in this communication through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the present communication and to the regular procedure.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

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

Anaïs Marin
Special Rapporteur on the situation of human rights in Belarus

Mumba Malila
Vice-Chair of the Working Group on Arbitrary Detention

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer to article 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Belarus on 12 November 1973, which guarantees the right not to be arbitrarily deprived of liberty and to fair proceedings before an independent and impartial tribunal. We wish to highlight that, according to the criteria applied by the Working Group on Arbitrary Detention, deprivation of liberty resulting from the exercise of the rights or freedoms guaranteed by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the ICCPR is arbitrary.

Article 9 establishes in particular that no one shall be deprived of his or her liberty except on such grounds and in accordance with such procedure as are established by law, and that anyone who is arrested shall be informed, at the time of arrest, of the reasons behind such arrest and be brought promptly before a judge to determine the lawfulness of the detention.

We recall that article 9(3) of the ICCPR requires that detention in custody of persons awaiting trial shall be the exception rather than the rule. It should not be the general practice to subject defendants to pre-trial detention. Detention pending trial must be based on an individualized determination that it is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime. Pre-trial detention should not be mandatory for all defendants charged with a particular crime, without regard to individual circumstances (Human Rights Committee, General Comment No. 35, para. 38).

Article 9 (4) specifies that anyone who is arrested shall be brought promptly before a judge for the purpose of legal review and challenge of the detention. Article 14 stipulates that, in the determination of any criminal charge, everyone shall be entitled to adequate time to communicate with counsel of choice. Article 14 also guarantees the right to be tried without undue delay. The right to have access to a lawyer without delay and in full confidentiality is also enshrined in principle 9 and guideline 8 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court (A/HRC/30/37), and the Basic Principles on the Role of Lawyers (Principles 7 and 8).

Article 19 of the ICCPR guarantees the right to freedom of expression, which includes “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”.

We would like to remind your Excellency’s Government that any limitation to the right to freedom of expression must meet the criteria established by international human rights standards, such as article 19 (3) of the ICCPR. Under these standards,

limitations must be determined by law and must conform to the strict test of necessity and proportionality, must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.

Regarding the criminalization of defaming and insulting an official or State actor under article 369 of the Criminal Code, we are seriously concerned that such legislation does not comply with international standards. Even more so, from the information provided to us, it appears that these overly broad and vague provisions allow Governments to use them arbitrarily against anyone perceived to exercise political dissent.

We urge Belarus to recognize in its legislation, policy and practice, the right to freedom of expression, including speech that may be perceived as critical or even offensive, including on digital communication platforms. Any restrictions on freedom of expression should comply with international law and meet the three-pronged test of legality, necessity and legitimate aims set out in article 19 (3) of the International Covenant on Civil and Political Rights.

We would also like to draw your Excellency's Government attention to the international human rights standards that require that only advocacy of hatred that constitutes incitement to discrimination, hostility or violence can be prohibited by law, in accordance with article 20(2) of the International Covenant on Civil and Political Rights. In the Rabat Plan of Action, it is also clarified that criminalization should be left for the most serious sorts of incitement under article 20 (2) of the Covenant, and that, in general, other approaches deserve consideration first (A/HRC/22/17/Add.4, appendix, para. 34). The criminalisation of "incitement of hatred or discord" under article 130 of the Criminal Code, is not defined with sufficient precision what constitutes prohibited behaviour or what harm it seeks to prevent allowing for the arbitrary sanctioning of other forms of speech that doesn't meet the article 20 (2) threshold.

With regard to allegations of dire conditions and reports of ill-treatment in detention, we would like to remind your Excellency's Government of the internationally recognized right of every individual to freedom from torture or to cruel, inhuman or degrading treatment or punishment, protected under articles 7 of the International Covenant on Civil and Political Rights (ICCPR). We would like to draw attention to the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment, as an international norm of jus cogens.