

Mandates of the Special Rapporteur on the situation of human rights in Belarus; the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the situation of human rights defenders

Ref.: AL BLR 6/2022
(Please use this reference in your reply)

10 November 2022

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the situation of human rights in Belarus; Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 50/20, 42/22, 43/4, 50/17 and 43/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the allegations of arbitrary arrest of trade union leaders, Mr. Aliaksandr Yarashuk, Mr. Hennadz Fiadynich, Mr. Vasil Berasneu, and Mr. [REDACTED], on 19 April 2022, and their lengthy pre-trial detention in state custody in violation of the international human rights norms binding Belarus. Moreover, we are concerned about the imminent threats to their health and life due to inadequate detention conditions and lack of access to necessary and proper medical care in detention.

According to the information received:

On 7 April 2022, the Belarusian State Security Committee declared the independent Belarusian Radio-Electronic Manufacturing Workers' Trade Union an "extremist organisation", which marks an intensification of measures taken by Belarusian authorities against independent trade unions.

On 18 and 19 April 2022, law enforcement agencies raided the offices of several independent trade unions, as well as the private homes of trade union leaders. Searches were conducted in the office of the Belarusian Congress of Democratic Trade Unions and the offices of its affiliates - the Belarusian Independent Trade Union, the Free Trade Union of Metalworkers, and the Belarusian Radio-Electronic Manufacturing Workers' Trade Union in Minsk and other regions, as well as in the private homes of a number of trade union leaders and activists.

On 19 April 2022, more than 20 trade union leaders and members were arrested on unclear grounds. While some of them were released afterwards, at least ten are still in custody, including: Mr. Aliaksandr Yarashuk, President of the Belarusian Congress of Democratic Trade Unions and ILO Governing Body; Mr. Hennadz Fiadynich, Vice-chairperson of the Radio-Electronic Manufacturing Workers' Union; Mr. Vasil Berasneu, leader of the Radio-

Electronic Manufacturing Workers' Union; and Mr. [REDACTED], trade union activist at the Radio-Electronic Manufacturing Workers' Union.

Reportedly, they and others have been charged under article 342 under Part 1 of the Criminal Code for the organization and preparation of acts seriously disrupting public order or active participation in them, which carries a penalty of a prison sentence of up to four years. In addition, according to preliminary information, Mr. Vasil Berasneu was also charged under article 130 of the Criminal Code for incitement of racial, national, religious or other social enmity or discord. However, access to information about the charges brought against them and data on preliminary investigation is difficult to access. Communication is only possible through lawyers which are prevented from sharing any information due to the non-disclosure clauses they are obliged to respect. Moreover, lawyers face restrictions and do not benefit automatically from the right to examine the investigation file, to be present during the gathering of evidence, or to look at all elements of proof against their client until the prosecutor formally transmits the case to the court.

Moreover, after the arrests, Belarusian authorities have reportedly threatened to close down the independent trade unions publicly calling them “enemies” of the State. On 10 June 2022, the Prosecutor General filed a claim with the Supreme Court of Belarus requesting the forced dissolution of a number of independent trade unions, claiming that their leaders were engaged in “destructive activities”. After a series of trials behind closed doors, between 12 and 18 July, the Supreme Court of Belarus ordered the dissolution of the Belarusian Congress of Democratic Trade Unions, and its four members: the Belarusian Independent Trade Union of Mineworkers, Chemists, Fuel and Energy Workers, Transport Workers, Workers and Other Workers, the Belarusian Radio-Electronic Manufacturing Workers' Trade Union, the Free Trade Union of Belarus, and the Free Trade Union of Metalworkers.

The forced dissolution of independent trade unions was carried out on the basis of domestic legal provisions regulating foreign financial assistance and peaceful assemblies, which have been previously assessed by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism as incompatible with international human rights law binding on Belarus (OL BLR 2/2021).

While the detention and judicial prosecution of at least four other individuals were reported in May and July 2022, many trade union activists left the country because of fear of persecution for exercising their legitimate right to freedom of association in Belarus and the reported lack of effective avenues for justice and remedies. Union members reported various forms of harassment and intimidation, including prosecution, interrogations and surveillance.

Direct contact and access to persons in detention are not permitted. Moreover, there are no civil society monitoring mechanisms and/or National Preventive Mechanisms in Belarus. In spite on numerous requests, as of 2020, no

independent human rights mechanisms have been allowed to visit detention places in Belarus.

However, it was reported that, since 13 September 2022, Mr. Berasneu's health started to deteriorate significantly. Mr. Berasneu, who is 71-years-old, reported severe pain in his kidney. He has only one kidney because, in 2018, the other kidney was surgically removed due to cancer. His numerous requests for medical assistance or referral for adequate medical examination, have reportedly not been met. He has so far only received analgesic drips for acute pain, without any additional medical treatment. Mr. Berasneu's further suffers from high blood pressure, which significantly increases his health risks. However, he has reportedly not been provided with appropriate medication on a regular basis.

The health condition of Mr. [REDACTED] has reportedly worsened. He suffers from the consequences of an untreated COVID-19 infection, which he allegedly contracted while in detention. In addition, due to inadequate detention conditions and a lack of access to medical care, the retinal tears in his left eye have aggravated, leaving him blind in that eye. Mr. [REDACTED] further suffers from high blood pressure which has been left untreated.

There are serious concerns about the irreversible impact of the inadequate detention condition on Mr. Hennadz Fiadynich's health condition, which has been considerably deteriorating in spite of the limited health care he is receiving since his detention.

Without prejudging the accuracy of the received information, we express grave concern at lengthy detention pending investigation and lack of judicial oversight as to its continuing lawfulness and proportionality. We also note what appears to be a pattern of arbitrary arrest and detention of independent trade union leaders for exercising their legitimate rights to freedom of association, peaceful assembly and expression. Human rights defenders and trade union leaders and members' ability to mobilize and speak publicly on human rights issues must be protected. Therefore, we call for their immediate and unconditional release. We express further concerns at allegations of continued denial of access to medical care in detention as, what appears to be, a punitive measure against independent trade union leaders linked to their legitimate human rights activities, and the overall inadequate detention conditions, putting at imminent threat their health and life. We urge the relevant authorities in Belarus to take all necessary measures to protect the mental and physical integrity of persons in detention. Furthermore, we remain concerned about reports of systemic impunity for human rights violations perpetrated against civil society representatives and human rights defenders in Belarus, as well as the lack of effective remedies for victims at the domestic level.

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.

We are issuing this appeal in order to safeguard the rights of the above-mentioned individual from irreparable harm and without prejudicing any eventual legal determination.

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 information concerning the factual and legal grounds for the arrest and detention of the independent trade union leaders and activists listed in this letter, and how these measures are compatible with international norms and standards binding on Belarus, especially the prohibition of arbitrary detention.
3. Please provide information on the measures taken to safeguard the abovementioned individuals' rights to access family members, legal counsel, as well as provided guarantees of due process and fair trial.
4. Please provide information about the conditions of detention and access to adequate medical care, as well as measures taken to prevent violations of the right to health, torture and ill-treatment in custody.
5. Please explain what measures have been taken, including harmonisation of national legislation with binding international human rights norms and standards, to ensure that the independent trade union movement in Belarus can carry out their peaceful and legitimate human rights activities without fear of restrictions, judicial, prosecution or reprisals.
6. Please provide information on measures taken to ensure that human rights defenders, including trade unionists, are able to carry out their legitimate activities without restrictions, intimidation or harassment of any kind.

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 having transmitted an allegation letter to the Government, the Working Group on Arbitrary Detention may also transmit cases 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 allegation letter and 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

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Clément Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Annex

Reference to international human rights law

In connection with above alleged, we would like to bring to your Excellency's attention to international human rights instruments and standards relevant to these allegations. In particular, we would like to remind you of the articles 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.

As concerns the prolonged pre-trial detention, article 9 establishes in particular 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. 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.

With regard to allegations of dire conditions in custody, we would like to remind your Excellency's Government that conditions of detention themselves, under certain circumstances, can be considered as amounting to ill-treatment or even torture. The right of every individual to freedom from torture, or cruel, inhuman or degrading treatment or punishment is protected under articles 7 of the ICCPR, and 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. Furthermore, in its General Comment No. 20, the Human Rights Committee states that the protection of the detainees against torture and other cruel, inhuman or degrading treatment or punishment also requires that prompt and regular access be given to doctors and lawyers and, under appropriate supervision when the investigation so requires, to family members (see para.11).

Concerning the obligation to provide adequate medical services to persons deprived of their liberty, we would like to remind your Excellency's Government of article 12, coupled with article 2.2 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which Belarus ratified on 12 November 1973. This includes an obligation on the part of all States parties to ensure that health facilities, goods and services are accessible to everyone, including prisoners and detainees without discrimination. Accordingly, States must not discriminate against groups and individuals in regard to their access to medical care by impeding access to health care or treatment as a punitive measure.

Furthermore, the UN Standard Minimum Rules for the Treatment of Prisoners (“Mandela Rules”) adopted unanimously by the UN General Assembly (A/RES/70/175) establish that “[s]ick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers” (Standard Minimum Rules for the Treatment of Prisoners. Rule 22(2)). In this vein, prisoners are entitled to the same standards of health care that are available in the community, free of charge and without discrimination (rule 24.1) and prisoners who require specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals (rule 27.1).

In connection to the duty of the states to provide remedies for human rights violations, article 2, paragraph 3, of the ICCPR requires that in addition to effective protection of Covenant rights, States Parties must ensure that individuals also have accessible and effective remedies to vindicate those rights. This includes appropriate judicial and administrative mechanisms for addressing claims of rights violations under domestic law. In any judicial proceedings, a person is entitled to due process and a fair trial, as guaranteed under article 14 of the ICCPR. In particular, article 14 (1) of the ICCPR sets out a general guarantee of equality before courts and tribunals and the right of every person to a fair and public hearing by a competent, independent and impartial tribunal established by law. In addition, article 14 (3) of the ICCPR guarantees the right of any individual charged with a criminal offence to have adequate time and facilities for the preparation of their defence, to communicate with counsel of their own choosing, and to be tried without undue delay. The right to have access to a lawyer without delay, including immediately after the moment of apprehension, and to communicate and consult with such counsel 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).