

Mandates of the Special Rapporteur on the situation of human rights in Belarus and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Ref.: UA BLR 8/2022
(Please use this reference in your reply)

2 December 2022

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the situation of human rights in Belarus and Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, pursuant to Human Rights Council resolutions 50/20 and 51/21.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the emergency hospitalization of Ms. Maria Kalesnikova, a prominent member of the opposition and one of the leaders of peaceful protests in Belarus, serving an 11-year prison sentence.**

Concerns at Ms. Kalesnikova's prosecution on politically motivated charges and denial of her right to a fair trial have been raised by the Special Rapporteur on the situation of human rights in Belarus in her report to the Human Rights Council (A/HRC/50/58).

In addition, several mandate holders have previously expressed concerns about Ms. Kalesnikova's enforced disappearance and attempted forced expulsion from Belarus in connection to her activity as part of the opposition associated with the Coordination Council (AL BLR 7/2020).

According to the information received:

On 28 November 2022, Ms. Kalesnikova was taken to the emergency hospital in Homiel, where she underwent surgery and was subsequently transferred to intensive care in grave condition. Reportedly, prior to her emergency transfer to the hospital, Ms. Kalesnikova was kept in solitary confinement as a punishment measure, which included deprivation of access to lawyer and communication with family.

Ms. Kalesnikova's family and lawyer are reportedly not allowed to see her on grounds of "absence of patient's request". They are also denied any information about the surgery and her current health condition. According to the information received, it has been more than a month since her father saw Ms. Kalesnikova during a visit to the women's correctional colony No. 4 in Homiel where she was serving her sentence.

According to reports, including the latest Concluding Observations by the Committee Against Torture (CAT/C/BLR/CO/5), women in detention are at risk

of serious human rights violations, including lengthy isolation in punishment cells, forced and non-voluntary labour, humiliating practices and ill-treatment targeting women detained on politically motivated charges. There are reports of limited access to sanitation, insufficient food, and denied access to medical examination and health care, resulting in emergency hospitalizations immediately after release. Moreover, there are reports of denial of access to correspondence and sources of information that is regularly used as a punishment practice.

We express serious concern at the emergency hospitalization of Ms. Maria Kalesnikova and the reported denial of access to information about her current health condition and visits by her family members and lawyer.

We are also seriously concerned about the alleged denial of access to medical examination and health care and punishment practices amounting to ill-treatment and torture in detention targeting women sentenced on politically motivated grounds. This is even more concerning given that Belarus has not yet addressed the recommendations of the Committee Against Torture (CAT/C/BLR/CO/5 para. 35) concerning granting access to independent national and international monitors to all detention facilities in Belarus and strengthening the mandate of the public monitoring commissions in line with the standards for national mechanisms for the prevention of torture in places in which persons are deprived of their liberty.

Without expressing, at this stage, an opinion on the facts of the case, we urge your Excellency's Government to provide Ms. Kolesnikova with all the necessary medical care available in the country and provide, without further delay, information about her current health condition to her family and lawyer.

We also wish to draw the attention of the Government that denial of access to health care may constitute cruel, inhuman or degrading treatment, which in turn may amount to torture. We urge your Excellency's Government to take all necessary measures to guarantee Ms. Kolesnikova her right to be free from torture or to cruel, inhuman or degrading treatment or punishment, which is prohibited under article 5 of the Universal Declaration of Human Rights, article 7 of the International Covenant on Civil and Political Rights, and articles 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by Belarus on 12 November 1973 and 13 March 1987, respectively. We wish to also raise concerns regarding the right to life guaranteed under article 6 of the International Covenant on Civil and Political Rights. The duty to protect the life of all detained individuals includes providing them with the necessary medical care and appropriate regular monitoring of their health. A heightened duty to protect the right to life also applies to individuals quartered in liberty-restricting State-run facilities, such as mental health facilities (Human Rights Committee, General Comment No. 36). In this regard, these allegations seem to contravene article 12 and 2.2 of the International Covenant on Economic Social and Cultural Rights, also ratified on 12 November 1973, which establishes an obligation to respect the right to health by, inter alia, refraining from

denying or limiting equal access for all persons, including prisoners or detainees to preventive, curative and palliative health services (Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 14, para. 34).

In addition, we would like to underline the Basic Principles for the Treatment of Prisoners, adopted by the General Assembly in resolution 45/111, according to which prisoners should have access to health services available in the country without discrimination on the grounds of their legal situation (principle 9). We further recall that detention conditions and treatment should always comply with international standards, in particular the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), taking into account any personal vulnerability due to factors such as medical condition, among others. In this regard, we wish to bring the attention of your Excellency's Government that the provision of health care for prisoners is a State responsibility, free of charge, without discrimination and at the same level of the health care services provided in the community (rule 24). In addition, rule 27 provides that prisoners requiring specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals. Furthermore, rule 58 (b) provides that prisoners shall be allowed to communicate with their family, at regular intervals, by receiving visits and rule 69 provides that individuals designed by a prisoner to received his or her her information shall be notified by the director of the prisoner's serious illness or transfer to a health institution, among others.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned person(s) in compliance with international instruments.

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 on the health situation of Ms. Maria Kalesnikova and measures taken to ensure that she could communicate with her family and lawyer and that her family could be properly informed about her health situation.
3. Please indicate what measures have been taken to guarantee Ms. Kalesnikova's physical and psychological integrity while in detention, including guarantees against any form of abuse of power that may amount to torture or other cruel, inhumane, degrading treatment or punishment.

4. Please explain the reasons why the family is allegedly denied access to seeing Ms. Maria Kalesnikova at the hospital.

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 responsible of the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will 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 accept, Excellency, the assurances of our highest consideration.

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

Tlaleng Mofokeng
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health