

**Mandates of the Special Rapporteur on the situation of human rights in Belarus; 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; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism**

Ref.: OL BLR 9/2022  
(Please use this reference in your reply)

23 December 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights in Belarus; 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; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the independence of judges and lawyers and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 50/20, 43/4, 50/17, 43/16, 44/8 and 49/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **amendments to law No. 136-Z "On Citizenship of the Republic of Belarus" allowing for the deprivation of nationality as a punitive measure and the application of the new Criminal Procedure Code provisions on trials in absentia**. We have doubts about the compatibility of these legislative provisions and their implementation with the international human rights law obligations binding on Belarus. Namely, in terms of their potential negative impact on the right to a nationality and the right to a fair trial, the denial of which would profoundly affect the enjoyment of all other fundamental rights. Furthermore, there could be a potential intimidatory effect of this legislation purporting to limit the exercise of fundamental freedoms, including those of opinion and expression as well as of peaceful assembly and association by Belarusian nationals abroad, preventing them from uniting in any structures, participating in public actions, or expressing dissenting views and criticism towards the current governance.

*Background:*

On 14 December 2022, Belarus' National Assembly approved in two readings a bill with amendments to law No. 136-Z "On Citizenship of the Republic of Belarus" of 1 August 2002. This legislative initiative follows earlier amendments to article 10 of the Constitution, introducing the possibility of termination of citizenship.

The bill, introduced by your Excellency's Government at the initiative of the Ministry of Internal Affairs, supplements article 19 of the law on citizenship with a new provision on withdrawing the nationality of Belarusians abroad "in connection with the existence of a judgment of the court of the Republic of Belarus, which has entered into force, confirming the participation of the person in extremist activities or causing severe damage to the interests of the Republic of Belarus, if such a person is outside the country."

The bill provides a list of crimes that provide grounds of withdrawal of nationality for “participation in extremist activity or infliction severe damage to the interests of the Republic of Belarus”. Namely Criminal Code **articles 122-129 and 131, 132-138** on crimes against peace, crimes against humanity and war crimes, **article 130** on inciting racial, national, religious or other social hatred or discord, **article 130<sup>1</sup>** on the rehabilitation of Nazism, **article 130<sup>2</sup>** on the denial of genocide against the Belarus people, **article 287** on the creation of an illegal armed group, **articles 289-292** on acts of terrorism, **article 293** on mass unrests, part 4 of **article 294** on the theft of firearms, ammunition or explosives, part 4 of **article 295** on the illegal actions regarding firearms, ammunition and explosives, part 4 of **article 309** on the destruction of transport or communication channels, part 3 of **article 311** on hijacking of trains, aircrafts or ships, part 3 of **article 322** on illegal possession and handling of radioactive materials, part 3 of **article 323** on the theft of radioactive materials, part 3 of **article 324** on threats from dangerous uses of radioactive materials, part 2 of **article 333** on the circulation of potent or toxic substances, **articles 341<sup>1</sup>** on promoting Nazi symbols, **article 356** on state treason, **article 357** on conspiracy or other acts committed to seizing state power, **article 359** on acts of terrorism against a public officer, **article 360** on sabotage, **article 361** on calls for restrictive measures (sanctions), other actions aimed at harming the national security of the Republic of Belarus, **article 361-1** on the creation of an extremist formation or participation in it, **article 361-2** on financing extremist activities, **article 361-3** on participation in an armed formation or armed conflict, military actions on the territory of a foreign state, recruitment or preparation of persons for such participation, **article 361-4** on aiding extremist activities, **article 361-5** on the completion of training or other preparation for participation in extremist activities, **article 362** on deprivation of life perpetrated against law enforcement or military officers, part 2 of **article 363** on posing resistance to orders by law enforcement officers, **articles 364** on violence or threats against law enforcement officers, **article 366** on violence or threats against public officers, part 2 of **article 367** on the defamation of the President, **article 388** on violence against a judge or their relatives.

This new provision on deprivation of citizenship concerns Belarusians who acquired or derived nationality from their birth or adoption by Belarusian parents or children born on the territory of Belarus to persons without citizenship or unknown parents (articles 13, 25, 27 and their matching provisions in the 1991 Law No. 1181-XII "On Citizenship of the Republic of Belarus").

Moreover, as the bill applies to Belarusians abroad only, on 21 July 2022, the President signed into law amendments to the Criminal Procedure Code of 1999 allowing for trials in absentia by introducing the institution of "special proceedings in criminal cases in relation to accused who are outside Belarus". The possibility of carrying out special proceedings is envisaged for 34 crimes in the category of threats to national security and the defence of state interests, including the same crimes for which withdrawal of nationality is envisaged. Defendants in trials in absentia could be subject to deprivation of nationality, if the bill is signed into law, and confiscation of assets on the territory of Belarus.

The first trials in absentia started in December 2022. According to available information, the defendants are accused under two articles of the Criminal Code, including part 3 of article 130 for which deprivation of nationality is envisaged, and part 3 of article 203-1. In the judicial practice established over the past 18 months, article 130 on incitement to hatred has been interpreted to include representatives of the Government, public officials and law enforcement as

members of the protected “social group”. Punishable actions include the public expression of negative or critical comments against the above-mentioned groups. This article is often used in conjunction with article 203-1 of the Criminal Code on the disclosure of personal data for which a punishment of up to 5 years in prison is provided.

Furthermore, article 2 of the bill on amendments to the Law on Citizenship provides for retroactive application to acts that did not give rise to the withdrawal of nationality before the entry into force of these new provisions of the law.

The bill, which is currently pending the President’s signature into law, will enter into force six months after its official publication in the Belarusian Official Gazette. The Deputy Chairman of the House of Representatives of the National Assembly of the Republic of Belarus, Liliya Ananich, stated that the decision to revoke nationality will be at President’s discretion.

Also, in article 2, the bill introduces a new legal responsibility for citizens of Belarus “to inform the internal affairs authorities or diplomatic service agencies in writing or in electronic form about the presence of citizenship of a foreign state, a residence permit or another document of a foreign state, which gives the right to benefits and other benefits in connection with political, religious views or national affiliation”.

In connection with the above-mentioned legal amendments, please refer to the overview of applicable international human rights law and standards.

*Overview of international human rights law standards applicable:*

The fundamental right to a nationality and the prohibition of arbitrary deprivation of nationality are set out in numerous international human rights instruments, including article 15 of the Universal Declaration of Human Rights.

We would like to reiterate the obligation of Your Excellency’s Government to respect and protect this right in line with its binding obligations under the International Covenant on Civil and Political Rights (ICCPR), which Belarus ratified on 12 November 1973. Article 5 of the Convention on the Elimination of Racial Discrimination (CERD), ratified by Belarus on 08 April 1969, obligates States to guarantee the right of everyone to enjoy certain rights, explicitly including the right to a nationality, without distinction as to race, colour, or national or ethnic origin.

The fundamental nature of the right to a nationality and the prohibition of arbitrary deprivation of nationality was recalled by the General Assembly in Resolution 50/152 of 1996, in which the General Assembly called upon States to “adopt nationality legislation with a view to reducing statelessness, consistent with the fundamental principles of international law, in particular by preventing arbitrary deprivation of nationality” (see para.16). Human Rights Council Resolutions 2005/45 of 2005, 7/10 of 2008, 10/13 of 2009, 13/2 of 2010, 20/5 of 2012, 26/14 of 2014 and 32/5 of 2016 also reaffirm that the right to nationality is a fundamental human right.

We strongly encourage Your Excellency’s Government to ratify the 1961 Convention on the Reduction of Statelessness, which provides the legal framework to prevent statelessness from occurring. The Convention prohibits the deprivation of

nationality where it would leave a person stateless and provides only very limited exceptions to this rule, including where nationality has been acquired through misrepresentation or fraud.

In specific circumstances, the duty of loyalty to the State may also be grounds for an exception to the prohibition where, for example, it is seriously prejudicial to a State's vital interests. However, governments would still have a duty to determine whether decisions to deprive an individual of nationality would result in statelessness.

Furthermore, the deprivation of nationality is contingent on the enjoyment of the rights to a fair trial and due process. Hence, the withdrawal of a person's nationality without providing them procedural safeguards as well as safeguarding the right to a fair hearing before a court or independent body is arbitrary. Recognizing the importance of a defendant's right to be physically present and to participate in his or her trial, we are concerned about the large number of crimes that provide for trials in absentia. Trials in absentia compromise the ability of a defendant to exercise their rights under article 14 of the International Covenant on Civil and Political Rights, which provides that the accused should be tried in his presence.

Under article 14, every defendant has a right to be tried by a competent, independent, and impartial tribunal.

Moreover, we are concerned about the retroactive application of legislation to acts that did not give rise to the withdrawal of nationality before the entry into force of these new provisions of the law. In this connection, we would like to remind your Excellency's Government about the principle of non-retroactive application of law, which prohibits the application of law to events that took place before the law was introduced. Article 11(2) of the Universal Declaration of Human Rights prohibits criminal convictions for any conduct which did not constitute a crime, under national or international law, at the time when it was committed. In addition, it bans imposing a penalty heavier than the one applicable when the crime was committed. The International Covenant for Civil and Political Rights contains similar provisions in article 15(1).

Concerns about the application of article 130 on the incitement of hatred against a social group to prosecute peaceful critics have been previously expressed by the Special Rapporteur on Belarus (A/HRC/47/49 para.65, A/77/195 para.56). We would like to draw your Excellency's Government attention to the international human rights standards in this area binding on Belarus, namely articles 19 and 20 of the International Covenant on Civil and Political Rights (ICCPR) and article 4 of the Convention on the Elimination of All Forms of Racial Discrimination (CERD).

In a report to the Human Rights Council, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (see A/67/357) has outlined the essential elements for the determination of incitement to hatred: real and imminent danger of violence resulting from the expression; intent of the speaker to incite discrimination, hostility or violence; and careful consideration by the judiciary of the context in which hatred was expressed, given that international law prohibits some forms of speech for their consequences, and not for their content as such, because what is deeply offensive in one community may not be so in another.

In the same vein, the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence provides a high threshold for defining restrictions on freedom of expression, incitement to hatred: (1) the social and political context, (2) status of the speaker, (3) intent to incite the audience against a target group, (4) content and form of the speech, (5) extent of its dissemination and (6) likelihood of harm, including imminence.

Article 4 of the Convention on the Elimination of All Forms of Racial Discrimination incorporates the obligation to take “immediate and positive measures” to eradicate incitement to hatred and discrimination and should be read in conjunction with article 1 which identifies the protected groups based on race, colour, descent, or national or ethnic origin. Accordingly, any assessment by courts in Belarus must include solid argumentation proving the need for the inclusion of the Government, public functionaries and law enforcement officers in the category of “socially protected” groups.

The relevant part of General Recommendation No. 35, Combating Racist Hate Speech observes that broad or vague restrictions on freedom of speech have been used to the detriment of groups protected by the Convention on the Elimination of All Forms of Racial Discrimination. States parties should formulate restrictions on speech with sufficient precision, according to the standards in the Convention as elaborated in the present recommendation. The Committee stresses that measures to monitor and combat racist speech should not be used as a pretext to curtail expressions of protest at injustice, social discontent or opposition.

Also, we would like to remind Your Excellency’s Government that the anti-terrorism and extremist legal framework of Belarus have been the subject of previous communications sent by Special Procedures. These include the communications sent on 3 March 2021 ([BLR 2/2021](#)) and 23 May 2022 ([BLR 3/2022](#)), including concerns about the vague definition and discriminatory application of these criminal provisions targeting citizens for the mere exercise of their human rights and freedoms, including peaceful assembly and freedom of opinion and expression in connection to the contested Presidential elections of August 2020. We thank your Excellency’s Government for its answer of [17 May 2021](#) to BLR 2/2021.

*Concluding remarks:*

Without wishing to draw prejudged conclusions on the amendments to legislation, we wish to express concern about their compliance with international human rights obligations. We recommend reviewing and reconsidering certain aspects of this legislation in light of Belarus’ international human rights obligations and constitutional guarantees. We would like to encourage Your Excellency’s Government to seek support and cooperate with the United Nations, including its human rights mechanisms, in promoting and encouraging respect for human rights and for fundamental freedoms, including assistance in harmonizing domestic legislation with international human rights law and best practices.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all issues brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned analysis.
2. Please provide information in detail on how the current amendments to law No. 136-Z "on Citizenship of the Republic of Belarus" allowing for the deprivation of nationality as a punitive measure would comply with the international human right law and best practices.
3. Please provide information about how trials in absentia would comply with the guarantees of due process and fair hearing as established in international human rights law. Please explain what avenues, if any, are available for the defendants' remote participation in hearings.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. 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.

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