

Mandates of the Special Rapporteur on the situation of human rights in Belarus; the Special Rapporteur in the field of cultural rights and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Ref.: AL BLR 6/2023
(Please use this reference in your reply)

14 September 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights in Belarus; Special Rapporteur in the field of cultural rights and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolutions 50/20, 46/9 and 52/9.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **death in custody of Mr. Alés Puškin**. Mr. Puškin was a famous Belarusian artist, who advocated for protecting the Belarusian language and held performances in protest against violations of freedom of expression and other civil rights. He also participated in peaceful mass protest actions against the results of the 2020 elections.

According to the information received:

Mr. Puškin was convicted under article 370 of the Criminal Code (desecration of state symbols) and article 130 of the Criminal Code (incitement to hatred or discord) and sentenced to five years in a maximum-security penal colony. The criminal case against Alés Puškin was based on his artistic works exhibited at the independent cultural space "Centre of Urban Life" on 19 March 2021.

In August 2022, he was placed in a ward-type room for five months. On 11 November 2022, Ivacevicy District Judge Aliaksandr Kirylovic changed the imprisonment routine from the correctional colony regime to the prison regime for one and a half years. Shortly after, he was transferred to prison no. 1 in Hrodna. No one was allowed to visit Mr. Puškin at Hrodna prison.

Mr. Puškin complained regularly about sharp pain in his stomach. However, he was denied proper healthcare, with prison authorities allegedly accusing him of simulating the illness. On 11 July 2023, Mr. Puškin died in an intensive care unit of Hrodna hospital. It was reported that he developed peritonitis, resulting in a septic condition and multiple organ failure. The official cause of death is unknown. No official inquiry about the causes of his death has been launched.

Without prejudging the accuracy of these allegations, we would like to express our deep concern about the death of Mr. Puškin, allegedly as a result of the lack of timely and adequate medical treatment. These allegations should be promptly, thoroughly and impartially investigated, those responsible brought to justice and effective remedies provided.

The increased practice in 2023 of incommunicado imprisonment of members of the political opposition and prominent figures has been the subject of previous communications sent by Special Procedures, including UA BLR 4/2023. While Belarusian prisons and penal colonies are notorious for their bad conditions, law enforcement bodies and prison authorities appear to systematically expose persons detained on politically motivated grounds to gross human rights violations amounting to torture or other cruel, inhuman or degrading treatment or punishment, which result in irreversible and sometimes life-threatening health deterioration. The conditions of detention have reportedly worsened for people detained for political reasons, including a shift towards a higher level of isolation for longer or repeated periods, which Special Procedures mandate holders are concerned might be intended to dissimulate evidence of torture or other ill-treatment, or amount to enforced disappearance.

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/or comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information on the steps undertaken to ensure the right to health of Mr. Alés Puškin and explain what was done to ensure access to adequate medical treatment.
3. Please clarify whether any investigation was launched into the death in custody of Mr. Alés Puškin. If no investigation was conducted, please explain why.
4. Please explain what complaint mechanisms are available in detention in order to bring grievances about their prison conditions to the attention of the authorities and indicate what follow-up mechanisms are in place.
5. Please indicate what measures have been taken to ensure that political opposition and activists, including those using artistic means of expressions, can operate in an enabling environment and can carry out their legitimate activities without fear of harassment, stigmatization or criminalization 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.

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

Alexandra Xanthaki
Special Rapporteur in the field of cultural rights

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

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to remind your Excellency's Government of obligations binding on Belarus under international human rights treaties.

States should guarantee the right to the highest attainable standard of physical and mental health as per article 12 of the International Covenant on Economic Social and Cultural Rights, ratified by Belarus on 12 November 1973. This includes access to an independent and confidential medical examination for all persons deprived of liberty.

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 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 articles 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).

We would furthermore like to refer to article 9 of the ICCPR, which provides that no one shall be subjected to arbitrary arrest or detention or deprived of their liberty except on such grounds and in accordance with such procedure as are established by law. As interpreted by the Human Rights Committee in general comment no. 35 (CCPR/C/GC/35), the notion of "arbitrariness" is not to be equated with "against the law" but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity, and proportionality (paragraph 12). According to the same General Comment (paragraph 17) and the jurisprudence of the Working Group on Arbitrary Detention, arrest or detention of an individual as punishment for the legitimate exercise of the rights guaranteed by the ICCPR, including freedom of opinion and expression, is arbitrary. Further, the Working Group on Arbitrary Detention has reiterated that a deprivation of liberty is arbitrary when it constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings.

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.

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 designated by a prisoner to receive his or her information shall be notified by the director of the prisoner's serious illness or transfer to a health institution, among others.

Rule 46 stresses that health-care personnel shall "pay particular attention to the health of prisoners held under any form of involuntary separation, including by visiting such prisoners on a daily basis and providing prompt medical assistance and treatment at the request of such prisoners or prison staff" and that "[h]ealth-care personnel shall report to the prison director, without delay, any adverse effect of disciplinary sanctions or other restrictive measures on the physical or mental health of a prisoner subjected to such sanctions or measures and shall advise the director if they consider it necessary to terminate or alter them for physical or mental health reasons." We also draw the attention that under the Mandela Rules solitary confinement of longer than 22 hours per day, or continuously 15 days constitutes prohibited conduct per the absolute prohibition against torture and other cruel, inhuman or degrading treatment or punishment, even when applied as disciplinary sanctions or restrictive measures.

We would like to recall that article 19 of the ICCPR guarantees the right to opinion and expression. In the General Comment 34, the Human Rights Committee stated that States parties to the ICCPR are required to guarantee the right to freedom of opinion and expression, including inter alia 'political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism', subject only to admissible restrictions as well as the prohibition of propaganda for hatred and incitement to hatred, violence and discrimination.

We wish to remind your Excellency's Government restrictions on the right to freedom of expression must be compatible with the requirements set out in article 19(3), that is, they must be provided by law, pursue a legitimate aim, and be necessary and proportionate. The State has the burden of proof to demonstrate that any such restrictions are compatible with the Covenant. An attack on a person because of the exercise of his or her freedom of opinion or expression, including arbitrary arrest, torture, threats to life and killing, cannot be compatible with article 19 (Human Rights Committee, general comment no. 34).

We would like to refer your Excellency's Government to article 15 paragraph 1(a) of International Covenant on Economic, Social and Cultural Rights (ICESCR), recognizing the right of everyone to take part in cultural life. Under this provision, States Parties have also undertaken to respect the enjoyment and development of cultural practices and respect the freedom indispensable for creative activity.

The Committee on Economic, Social and Cultural Rights, in its 2009 general comment 21 on the right to take part in cultural life (E/C.12/GC/21) recalled the right of everyone to seek, receive and impart information and ideas of all kinds and forms including art forms; to enjoy the freedom to create, individually, in association with

others, or within a community or group, which implies that States parties must abolish censorship of cultural activities in the arts and other forms of expression.

States have the challenge of ensuring the full implementation of artistic freedoms and resort to limitations only when absolutely necessary (A/HRC/23/34, paras.3 and 32). Regarding the imposition of sanctions, including criminal sanctions, deprivation of liberty and the closing of public space, we would like to recall the recommendations made by the Special Rapporteur on freedom of opinion and expression and the Special Rapporteur in the field of cultural rights to distinguish between a) expression that constitutes a criminal offence; (b) expression that is not criminally punishable but may justify a civil suit or administrative sanctions; and (c) expression that does not give rise to criminal, civil or administrative sanctions but still raises a concern in terms of tolerance, civility and respect for the rights of others (A/66/290, para. 18; A/HRC/23/34, para. 31). What may be morally objectionable (from one point of view) may not necessarily be legally inadmissible or condemnable. Criminal sanctions should be the very last resort measures only, to be applied in strictly justifiable situations. In this regard, we would like to draw your Excellency's Government attention to a particularly useful suggestion in the Rabat Plan of Action, to use a six-part threshold test for those expressions that are criminally prohibited, implying an analysis of the context, speaker, content or form (which implicitly also refers to "the form of art"), extent of the speech, and likelihood, including imminence (A/HRC/22/17/Add.4).

Furthermore, we bring to your attention the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

In particular, we wish to remind your Excellency's Government that any restrictions on the exercise of these rights must be provided by law and be necessary and proportionate to the aim pursued. No restrictions may be placed on the exercise of this right other than those which are prescribed by law, and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right (International Covenant on Civil and Political Rights, article 22(2)).

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