

Mandates of the Special Rapporteur on the situation of human rights in Belarus; the Working Group on Arbitrary Detention; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on minority issues; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence

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(Please use this reference in your reply)

27 October 2023

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 issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on minority issues; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, pursuant to Human Rights Council resolutions 53/19, 51/8, 46/7, 52/9, 51/21, 53/12, 52/5, 49/10 and 45/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning alleged practices which may amount to torture, cruel, inhuman or degrading treatment or punishment against Mr. **Andrzej Poczobut**, who is serving a prison sentence in penal colony no. 1 in Navapolatsk. We would also like to bring to your attention allegations of procedural irregularities in relation to Mr. Poczobut's prosecution and conviction.

According to the information received:

Andrzej Poczobut is a Belarusian journalist, member of the independent Belarusian Association of Journalists and of the Union of Poles in Belarus.

On 25 March 2021, he was arrested and charged under article 130(3) of the Criminal Code. This provision criminalizes "incitement of racial, national, religious or other social hatred or discord, committed by a group of persons or having caused by negligence the death of a person or other grave consequences". The charges against Mr. Poczobut stated that he had described, in the media, the Soviet invasion of Poland in 1939 as an "aggression", had made statements in defense of the Polish minority in Belarus, had published articles in Polish newspaper Gazeta Wyborcza about protests in Belarus in

2020 and, in 2006, had dedicated a text in *Magazyn Polski* to a commander of the Polish anticommunist underground in the Hrodna region.

On 17 August 2022, Mr. Poczobut was additionally charged under article 361(3) of the Criminal Code. This provision criminalizes “calls for restrictive measures (sanctions) and other acts aimed at damaging the national security of the Republic of Belarus, committed via mass media or the Internet, or by an official using his or her official powers, or resulting in grave consequences”. The charges accused Mr. Poczobut of acts aimed at damaging the national security of the Republic of Belarus.

Until 16 January 2023, Mr. Poczobut was held in pre-trial detention.

Following a trial behind closed doors, on 8 February 2023, the Hrodna Regional Court convicted Mr. Poczobut under articles 130(3) and 361(3) of the Criminal Code to eight years in a high-security penal colony. On 26 May 2023, the verdict was upheld by the Supreme Court. Details about the grounds for Mr. Poczobut’s conviction are unknown due to the closed format of the hearings.

Mr. Poczobut’s name has been added into the public list of individuals involved in terrorist activities by the State Security Committee and into the public list of individuals involved in extremist activities by the Ministry of Interior, on 4 October 2022 and 23 June 2023, respectively.

In June 2023, it became known that Andrzej Poczobut had been transferred to the penal colony No. 1 in Navapolatsk. This penitentiary facility is reportedly notorious for ill-treatment of inmates, including a widespread practice of arbitrary placements of prisoners into punitive isolation cells (SHIZO) and cell-type premises (PKT) as a punishment for minor transgressions. It is also notorious for its unhealthy environmental situation. The colony is surrounded by oil refineries and chemical plants emitting pollutants, which gives the air a distinctive "chemical" smell.

Under article 112 part 1 of the Penal Enforcement Code, a “violation of the established order of serving a sentence” by an inmate can be punished by detention in a punitive isolation cell for up to 10 days. Whereas article 113 of the Code prohibits imposition of several punitive measures for the same transgression or for several transgressions committed by an inmate within 24 hours, there are reportedly no legal safeguards which would protect an inmate from being placed in a punitive isolation cell again immediately upon release from it, on the grounds that another transgression has been committed. The administration of the penal colony no. 1 in Navapolatsk has allegedly used this legal gap to impose on Mr. Poczobut a detention in a punitive isolation cell for a total of 30 days, that is to say three times longer than the legal maximum.

Mr. Poczobut suffers from a stomach ulcer and atrial fibrillation and requires appropriate medication and regular consultations with medical professionals.

He has submitted several written requests for medical consultations, which have not been satisfied. He is allegedly denied access to medication which he needs to take on a regular basis.

In August 2023, it became known that Mr. Poczobut had been transferred to cell-type premises (PKT) for six months. His placement in the cell-type premises poses serious risks to his health. He cannot receive packages with medicine.

Under article 113(9) of the Penal Enforcement Code, placement in a punitive isolation cell must be authorized in writing by a medical professional. A medical practitioner who examined Mr. Poczobut reportedly refused to confirm in writing compatibility of Mr. Poczobut's health condition with detention in the punitive isolation cell. A signature by another medical practitioner was however secured the following day.

Article 113(9) also requires that inmates placed in punitive isolation cells and cell-type premises be visited by a medical professional on a daily basis. Mr. Poczobut has not been visited by a doctor either during his prior detention in the punitive isolation cell or during his ongoing stay in the cell-type premises.

Interferences with Mr. Poczobut's communication with his lawyer and family have also been reported. During his stay in the punitive isolation cell, he was in incommunicado detention for 30 days. At other moments, he has only been allowed to meet his lawyer on a date agreed in advance. His correspondence with family has been periodically blocked without any objective reasons. Mr. Poczobut is not permitted to make phone calls nor receive parcels.

The criminal prosecution and conviction of Mr. Poczobut and the disciplinary sanctions imposed on him in the penal colony no. 1 in Navapolatsk have reportedly been made in retaliation for his legitimate exercise of his freedom of expression.

While we do not wish to prejudge the accuracy of the information made available to us, we are concerned that the reported allegations, if they prove to be accurate, would be in contravention with several obligations assumed by Belarus under international human rights law.

Conditions of detention of Mr. Poczobut in the penal colony no. 1 in Navapolatsk

We would like to express serious concern about the alleged ill-treatment of Mr. Poczobut in the penal colony no. 1 in Navapolatsk, including denial of appropriate and timely medical care and lengthy placements in a punitive isolation cell and cell-type premises, resulting in temporary *incommunicado* detention and in the sharp deterioration of his health. We are preoccupied about the reported restrictions imposed on Mr. Poczobut's communication with his family and legal counsel. We are also concerned about the reported unhealthy environmental

conditions in the penal colony no. 1 in Navapolatsk.

In this regard, we would like to remind your Excellency's Government of the following relevant standards of international human rights law.

Access to medical care and healthy environment

Torture and cruel, inhuman or degrading treatment or punishment are prohibited under article 5 of the Universal Declaration of Human Rights, article 7 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Belarus on 12 November 1973, and articles 1, 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by Belarus on 13 March 1987. Under article 10 of the ICCPR, all persons deprived of their liberty shall be treated humanely and with respect for the inherent dignity of the human person.

Articles 7 and 10 of the ICCPR require that “persons deprived of their liberty must not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty”. Inmates should be provided with access to appropriate and timely medical care (*Human Rights Committee, Dafnis v. Greece, Views of 19 July 2022, CCPR/C/135/D/3740/2020, para. 8.5*).

As per article 12 of the International Covenant on Economic Social and Cultural Rights, ratified by Belarus on 12 November 1973, States parties recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and take steps to achieve the full realization of this right, including those necessary for improvement of all aspects of environmental hygiene and the creation of conditions which would assure to all medical service and medical attention in the event of sickness. In particular, States are under the obligation to respect the right to health by refraining from denying or limiting equal access for all persons, including prisoners (*CESCR, general comment no. 14 (2000), para. 34*).

The Basic Principles for the Treatment of Prisoners, adopted by the General Assembly in resolution 45/111, provide that prisoners shall have access to health services available in the country without discrimination on the grounds of their legal situation (principle 9).

Under the rule 24(f) the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), the provision of health care for prisoners is a state responsibility, free of charge, without discrimination and at the same level as the health care services provided in the community. Rule 27 provides that prisoners requiring specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals. 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”.

We would like to remind your Excellency that the Human Rights Committee has recommended that Belarus strengthen its efforts to improve conditions of detention and the provision of adequate and timely medical care, in accordance with the ICCPR and the Nelson Mandela Rules (*Human Rights Committee, Concluding observations on the fifth periodic report of Belarus (2018), CCPR/C/BLR/CO/5, para. 36(b)*). The Committee against Torture has recommended that Belarus “[i]mprove access to and the quality of health care, including psychiatric care, for prisoners in all places of deprivation of liberty” and “increase the number of professional medical staff in all detention facilities and ensure their independence and impartiality” (*CAT, Concluding observations on the fifth periodic report of Belarus (2018), CAT/C/BLR/CO/5, para. 22(f)*).

Finally, we would like to recall the recognition by the Human Rights Council (*Resolution of 8 October 2021, A/HRC/RES/48/13*) and the General Assembly in 2022 (*Resolution of 28 July 2022, A/RES/76/300*) of the human right to a clean, healthy and sustainable environment.

Incommunicado detention

We would like to draw the attention of your Excellency’s Government to the fact that prolonged *incommunicado* detention is incompatible with article 2(1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which requires States parties to take effective legislative, administrative, judicial or other measures to prevent acts of torture (*CAT, Djamila Bendib v. Algeria, Decision of 8 November 2013, para. 6.4; CAT, Rached Jaïdane v. Tunisia, Decision of 11 August 2017, CAT/C/61/D/654/2015, para. 7.6*), and with the prohibition of torture, cruel, inhuman or degrading treatment or punishment under article 7 of the ICCPR (*Human Rights Committee, Salah Drif and Khoukha Rafrat v. Algeria, Views of 8 July 2022, CCPR/C/135/D/3321/2019, para. 8.6; Human Rights Committee, general comment no. 20 (1992)*).

We respectfully remind that the General Assembly has repeatedly affirmed that “prolonged *incommunicado* detention or detention in secret places can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment” and urged “all States to respect the safeguards concerning the liberty, security and dignity of the person and to ensure that prolonged *incommunicado* detention and secret places of detention and interrogation are abolished” (*GA, Resolutions of 15 December 2022 (A/RES/77/209, para. 18), 18 December 2019 (A/RES/74/143, para. 17), 19 December 2017 (A/RES/72/163, para. 16), 17 December 2015 (A/RES/70/146, para. 13), 18 December 2013 (A/RES/68/156), para. 27, 19 December 2011 (A/RES/66/150, para. 22), 18 December 2009 (A/RES/64/153, para. 20)*).

According to rule 61(1) of the Nelson Mandela Rules, prisoners shall be provided with adequate opportunity, time and facilities to be visited by and to communicate and consult with a legal adviser of their own choice or a legal aid provider, without delay, interception or censorship and in full confidentiality, on any legal matter, in conformity with applicable domestic law. Consultations may be within sight, but not within hearing, of prison staff.

Rule 43(3) of the Nelson Mandela Rules provides that “[d]isciplinary sanctions or restrictive measures shall not include the prohibition of family contact”. Under Rule 58, prisoners shall be allowed to communicate with their family and friends at regular intervals by corresponding in writing and using, where available telecommunication, electronic, digital and other means, and by receiving visits.

Alleged arbitrariness of Mr. Poczobut’s prosecution and punishment

We would like to express our utmost concern about the alleged arbitrariness of Mr. Poczobut’s criminal prosecution, sentencing and repeated submission to disciplinary sanctions in the penitentiary facility, presumably in retaliation for his journalistic work, the legitimate exercise of his freedom of expression and/or due to the fact that he is an ethnic Pole. We note that it appears from the information made available to us that Mr. Poczobut’s conviction may have been connected to the opinions he expressed about historical events and to his statements in defense of the rights of the Polish minority in Belarus.

In this regard, we are preoccupied about the lack of transparency around Mr. Poczobut’s trial, which took place behind closed doors, and about unavailability of information on the exact grounds for his conviction. We also note with concern that prior to his trial, Mr. Poczobut had allegedly spent almost two years in custody.

We are alarmed about the absence of clarity as to the legal grounds and the procedure which lead to including Mr. Poczobut’s name into the lists of individuals involved in terrorist and extremist activities, administered by the State Security Committee and the Ministry of interior. We note that the provisions of articles 130 and 361 of the Criminal Code, which served as a basis for Mr. Poczobut’s conviction, do not refer to commission of acts of terrorism and extremism and that the inclusion of Mr. Poczobut’s name into the list of terrorists reportedly happened prior to his conviction. We recall that the placement of individuals or groups on a terrorism watchlist should be necessary and proportionate and therefore only in response to an actual, distinct, and measurable terrorism act or demonstrated threats of an act of terrorism. Only through the use of an international law-compliant definition of terrorist acts can the necessity and proportionality elements for listing be met to ensure that the Government’s listing is in response to an actual, distinct, and measurable threat as defined by law.

Guarantees of fair trial

We would like to draw your Excellency’s attention to the requirement under article 14(1) of the ICCPR, that “all trials in criminal matters (...) must in principle be conducted orally and publicly. The publicity of hearings ensures the transparency of proceedings and thus provides an important safeguard for the interest of the individual and of society at large” (*Human Rights Committee, general comment no. 32 (2007), para. 28*). Even though courts can exclude all or part of the public in exceptional circumstances, for example for protection of national security in a democratic society, “[e]ven in cases in which the public is excluded from the trial, the judgment, including the essential findings, evidence and legal reasoning must be made public,

except where the interest of juvenile persons otherwise requires, or the proceedings concern matrimonial disputes or the guardianship of children” (*Ibid.*, para. 29).

The presumption of innocence, guaranteed by article 14(2) of the ICCPR, poses “a duty for all public authorities to refrain from prejudging the outcome of a trial, e.g. by abstaining from making public statements affirming the guilt of the accused” (*Ibid.*, para. 30).

Under article 9(3) of the ICCPR, anyone arrested or detained on a criminal charge shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody. Extremely prolonged pretrial detention may jeopardize the presumption of innocence (*Human Rights Committee, general comment no. 35 (2014), para. 37*).

Lack of legal certainty in the domestic counter-terrorism, anti-extremism and national security legal framework

We would like to remind your Excellency’s Government that the counter-terrorism and extremist legal framework of Belarus have been the subject of previous communications sent by Special Procedures. These include the communications sent on date 3 March 2021 (BLR 2/2021), 23 May 2022 (BLR 3/2022), 27 April 2023 (UA BLR 3/2023) and 25 May 2023 (UA BLR 4/2023) which raised 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 freedom of opinion and expression. We note that there appears to be overlap in charging practices between a range of national security provisions in the Criminal Code particularly Article 357(1) and Article 361-1(1) with Article 361(3), and that charging appears to contain a degree of arbitrariness inconsistent with the obligation of legal certainty under international law. We would like to underline that any restriction on expression or information that a government seeks to justify on grounds of national security and counter terrorism must have the genuine purpose and demonstrable effect of protecting a legitimate national security interest (CCPR/C/GC/34).

We recall that the principle of legal certainty, enshrined in article 15 of the ICCPR and article 11 of the Universal Declaration of Human Rights, requires that criminal laws are sufficiently precise so it is clear what types of behavior and conduct constitute a criminal offense and what would be the consequence of committing such an offense. States must ensure that counter-terrorism legislation is limited to criminalizing properly and precisely defined conduct based on the provisions of international counter-terrorism instruments and is strictly guided by the principles of legality, necessity, and proportionality.

We wish to call on your Excellency’s Government to bring the Belarusian legislation on countering terrorism and extremism and the related Criminal Code provisions in compliance with the international human rights law standards.

Freedom of opinion and expression

We would like to remind your Excellency's Government that the legitimate exercise of freedom of opinion and expression is protected under article 19 of the Universal Declaration of Human Rights and article 19 of the ICCPR. In accordance with paragraph 3 of this provision, any restrictions to the exercise of the right to freedom of expression 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 necessary for respect of the rights or reputation of others, for the protection of national security, public order, public health or morals.

States must exercise extreme care to ensure that laws relating to national security are crafted and applied in a manner that conforms to the strict requirements of article 19(3) of the ICCPR. Such laws cannot be invoked to prosecute journalists for having disseminated information of legitimate public interest (*Human Rights Committee, general comment no. 34 (2011), para. 30*). The penalization of a journalist solely for being critical of the government or the political social system espoused by the government¹ cannot be considered to be a necessary restriction of freedom of expression (*Ibid., para. 42*). We would like to stress that the freedom of expression requires, *inter alia*, that the State does not penalize the expression of opinions about the historical events (*Ibid., para. 49*).

Moreover, we would like to recall that as established in principle 3 of the Updated set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, "a people's knowledge of the history of its oppression is part of its heritage and, as such, must be ensured by appropriate measures in fulfilment of the State's duty to preserve archives and other evidence concerning violations of human rights and humanitarian law and to facilitate knowledge of those violations. Such measures shall be aimed at preserving the collective memory from extinction and, in particular, at guarding against the development of revisionist and negationist arguments".

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 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 adopt urgent measures to ensure Mr. Andrzej Poczobut's immediate access to quality medical care and medication.

3. Please promptly investigate all allegations of Mr. Poczobut's ill-treatment in the penal colony no. 1 in Navapolatsk, including denial of timely and appropriate medical care, restrictions imposed on Mr. Poczobut's communication with his family and legal counsel, his incommunicado detention for at least 30 days and his repeated arbitrary placements into a punitive isolation cell and cell-type premises. If the allegations are confirmed, please take immediate measures to put an end to the violations of Mr. Poczobut's human rights and sanction those responsible.
4. Please provide detailed information on the state of Mr. Andrzej Poczobut's health, and the frequency and nature of medical care provided to him.
5. Please provide information about the reasons for the repeated placement of Mr. Andrzej Poczobut into a punitive isolation cell and in cell-type premises.
6. Please provide information about the frequency and type of communication allowed to Mr. Poczobut with his family and lawyer.
7. Please explain what complaint mechanisms are available to Mr. Poczobut in order to bring grievances about his detention conditions to the attention of the authorities and indicate what follow-up mechanisms are in place.
8. Please provide information about the factual and legal basis for the arrest, detention, charging, and grounds for conviction of Mr. Andrzej Poczobut and explain how these actions comply with Belarus's obligations under international human rights law, in particular the principles of legality, proportionality, necessity and non-discrimination.
9. Please indicate the reasons for the lengthy placement of Mr. Poczobut in pretrial detention.
10. Please explain the reasons why Mr. Poczobut's trial was held behind closed doors and why his verdict has not yet been made public.
11. Please indicate the legal and factual basis for adding Mr. Poczobut's name into the lists of individuals involved in terrorist and extremist activities by the State Security Committee and by the Ministry of Interior, previous to his condemnation. Please indicate the process required and undertaken to support such a determination and how these measures are compatible with Belarus's international human rights obligations and comply with the principles of proportionality, necessity, and non-discrimination.

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 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 an urgent appeal to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such appeals in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

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

Anaïs Marin

Special Rapporteur on the situation of human rights in Belarus

Matthew Gillett

Vice-Chair on communications of the Working Group on Arbitrary Detention

David R. Boyd

Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

Irene Khan

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

Tlaleng Mofokeng

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

Margaret Satterthwaite

Special Rapporteur on the independence of judges and lawyers

Fernand de Varennes

Special Rapporteur on minority issues

Fionnuala Ní Aoláin

Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Fabian Salvioli

Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence