

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; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the situation of human rights in the Russian Federation; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Working Group on discrimination against women and girls

Ref.: AL BLR 10/2023

(Please use this reference in your reply)

15 December 2023

Excellency,

We have the honour to address you in our capacities 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; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on the situation of human rights in the Russian Federation; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 53/19, 51/8, 52/9, 50/17, 52/4, 53/12, 51/25, 49/10, 52/7 and 50/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the designation of the Human Rights Center Viasna and its Homyel regional office, Homyelskaya Viasna, as extremist formations and the banning of access to their web resources in Belarus.** We would also like to bring to your attention allegations we have received about **arbitrary detention, judicial harassment and ill-treatment suffered by the Russian journalist Ms. Yekaterina Yanshina from Memorial Human Rights Defence Centre, reportedly in retaliation for her attempt to report on the trial of Viasna's Chair and two of its members in January 2023.**

His Excellency
Mr. Sergei Aleinik
Minister for Foreign Affairs

Human Rights Center Viasna (hereafter “Viasna”) is a non-governmental organization established in 1996 in Belarus to help victims of human rights violations and to promote and defend human rights.

Viasna has been facing pressure from the authorities for two decades. The association was dissolved on 28 October 2003 by a ruling of the Supreme Court of Belarus. The Human Rights Committee considered the dissolution of Viasna as an illegitimate restriction to the right of association under article 22 of the International Covenant on Civil and Political Rights and recommended that Belarus proceeds with re-registration of the association (*Human Rights Committee, Belyatsky et al. v. Belarus, Views of 24 July 2007, CCPR/C/90/D/1296/2004, paras 7.2, 9*). This recommendation has not been implemented. Subsequent attempts to re-register the association were denied by the Belarusian authorities, also in violation of article 22 of the Covenant (*Human Rights Committee, Belyatsky v. Belarus, Views of 24 October 2014, CCPR/C/112/D/2165/2012, para. 8.5; Human Rights Committee, Belyatsky v. Belarus, Views of 24 October 2014, para. 8.5*).

Despite the retraction of its registration, Viasna has continued carrying out its legitimate human rights defense work. In 2011, its Chair was sentenced to four years and six months of imprisonment for tax evasion. The Human Rights Committee considered that this conviction resulted from his activities on behalf of the unregistered association Viasna, in violation of his freedom of association under article 22 of the International Covenant on Civil and Political Rights (*Human Rights Committee, Belyatsky v. Belarus, Views of 24 October 2014, CCPR/C/112/D/2165/2012, para. 8.6*).

We have received multiple reports of judicial harassment against members of Viasna (*AL BLR 1/2019, AL BLR 2/2019, AL BLR 8/2021*). On 24 March 2023, the Special Rapporteur on the situation of human rights defenders; 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 and the Special Rapporteur on the rights to freedom of peaceful assembly and of association expressed serious concerns about what appeared to be a politically motivated trial of Viasna Chair and its two members (*AL BLR 1/2023*).

Memorial Human Rights Defence Centre is a Russian human rights non-governmental organization, not registered as a legal entity in Russia. It was founded in 2002 by supporters of Memorial Human Rights Centre, liquidated by Russian judicial authorities in 2022 (*AL RUS 13/2021*).

In 2022, Viasna Chair and Memorial were awarded the Nobel Peace Prize.

According to the information received:

Viasna and Homyelskaya Viasna

Following the contested presidential elections in 2020, Viasna has been advocating for the human rights of political prisoners in Belarus. It co-leads the Steering Committee of the International Accountability Platform for Belarus,

which investigates international crimes allegedly committed in the run-up to the presidential elections in 2020 and in its aftermath.

On 29 November 2020, the website of Viasna (<https://spring96.org/>) became inaccessible in Belarus following a ban decided by the Ministry of Information.

In July 2021, Viasna Chair was arrested and later sentenced to 10 years in prison. After a series of apartment searches and arrests of Viasna employees and volunteers in 2021, its other employees and volunteers were compelled to leave Belarus, with their relatives in most cases (for fear that the latter would suffer retaliation), in order to continue their work in exile.

Between 2021 and 2023, Belarusian courts declared websites, social networks and other online information resources of Viasna and its regional subdivisions as `extremist` materials.

By a decision of 9 August 2023, the State Security Committee declared Homiel regional office of Viasna (Homiel'skaya Viasna) an `extremist` formation. By a decision of 23 August 2023 (No. 26ЭК), the Ministry of Internal Affairs also declared Viasna an `extremist` formation. Based on these decisions, Homiel'skaya Viasna and Viasna were added to the list of extremist formations administered by the Ministry of Internal Affairs. Their websites and other online resources were banned.

Ms. Yekaterina Yanshina

Ms. **Yekaterina Yanshina** is a Russian human rights journalist. On 5 January 2023, she attended, on behalf of Memorial Human Rights Defence Centre, the beginning of the trial of Viasna Chair and two other Viasna members in Leninskiy District Court of Minsk.

After the hearing, Ms. Yanshina was taken by bailiffs to the court's back room "for a conversation". She was left under the supervision of a law-enforcement officer to wait for "KGB officers". Men in plain clothes reportedly entered and began questioning Ms. Yanshina about her identity and what she had been doing at the hearing. They demanded that Ms. Yanshina give them her passport. Her questions about whether she was officially being detained and on what grounds were rudely dismissed. The men told her about "banned extremist Telegram channels" in Belarus and asked her to disclose her telephone password, which she repeatedly refused. The men asked the police to take Ms. Yanshina away.

Ms. Yanshina was driven by police officers to the police department of the Moscow District of Minsk ("Moskovsky RUVD"). The grounds for her detention and her rights were not explained to her. Her personal items, including mobile phones, were seized. She was handcuffed while moving from building to building. She was requested to sign an administrative protocol, which stated that she had behaved provocatively, had cursed and yelled at police officers. Ms. Yanshina wrote in the protocol that she disagreed with these accusations. The protocol was allegedly signed by the police officer Aleksandr Viktorovich Bondarenko.

Ms. Yanshina was placed in a RUVD detention cell. At 5 am on 6 January 2023, she was transferred to Akrestsina temporary detention facility (“Akrestsina”).

She was not provided with a lawyer and was not allowed to make a telephone call. For around 24 hours following her detention, her whereabouts were unknown. Late at night on 6 January 2023, a colleague of Ms. Yanshina requested permission to see her or hand her over a care package. Akrestsina officers did not allow access to her, nor hand over the package, citing “COVID restrictions”, orders from their superiors, and the fact that Ms. Yanshina’s colleague was not a close relative.

On 6 January 2023, an administrative trial against Ms. Yanshina was held in Moskovskiy District Court of Minsk. Though her colleagues found an attorney to represent her in court, Ms. Yanshina could not consult the lawyer confidentially before the hearing or attend the hearing in person. She was only allowed to meet the lawyer and later the judge via a Skype video call on a laptop placed in a noisy, crowded hallway of the detention centre.

Ms. Yanshina was sentenced to 15 days of administrative detention under article 19.1 of the Code of Administrative Offences for “minor hooliganism” committed on 5 January 2023 in Mosovsky RUVD. She was found guilty of having screamed, used obscene language and acted defiantly, thereby disturbing the public order and showing disrespect to the society. The sentence was handed down by the judge Tatiana Yaroslavovna Motyl.

Ms. Yanshina was not allowed to have her lawyer visit her to prepare an appeal. She was not informed about the appeal submitted by the lawyer and about the upcoming appellate hearing. In the appeal, her counsel complained of obstructions made to their communication with Ms. Yanshina. The appeal was allegedly rejected on 16 January 2023 by the judge Yevgeniy Khatkevich in Minsk City Court.

The prosecutor was absent at both hearings, prompting the judge to adopt the role of the prosecution. The finding of Ms. Yanshina’s guilt was allegedly based entirely on reports and testimonies by a police officer S. B. Parfianovich. The officer testified that Ms. Yanshina had begun behaving indecently in Leninskiy District Court, the reason why she was detained and brought to Moskovskiy RUVD, where she allegedly continued her indecent behaviour. Ms. Yanshina motioned the court to request video recordings from cameras inside Moskovskiy RUVD. The judge left the courtroom for 20 minutes and, upon returning, rejected the motion stating that there were no cameras in the RUVD room. When Ms. Yanshina asked the court to request video recordings from the cameras in Leninskiy District Court, the judge rejected this second motion on the grounds that only Ms. Yanshina’s actions in Moskovskiy RUVD were relevant to the hearing.

Following Ms. Yanshina’s conviction on 6 January 2023 and until 20 January 2023, she was detained in Akrestsina offender isolation centre. She was placed into a tiny cell for “political” offenders, with up to 15 other detainees. There

was only one bunk bed in the cell and there were no mattresses, pillows or blankets. The lack of beds and bedding made it impossible for Ms. Yanshina to properly sleep. The light was on twenty-four hours a day. At night, the detainees were woken up every two hours, forced to stand up and answer to their last names. During daytime, they were forbidden to lie down. The detainees were not allowed to have any personal items, such as toothbrushes, toothpaste, toilet paper, spare clothes or underwear. “The cell was almost never ventilated and was infested with bedbugs. Due to the lack of ventilation, all detainees, including Ms. Yanshina, fell sick with COVID-19. They coughed and had fever but did not undergo medical examinations and did not receive any proper medication. No visits from friends, relatives or lawyers were allowed. Neither were deliveries of care packages, including medicine, allowed.

In Akrestsina offender isolation centre, Ms. Yanshina received verbal threats because of her refusal to provide passwords of her telephones seized in Moskovskiy RUVD. She was threatened by Akrestsina staff, allegedly including a senior police sergeant Mr. Yevgeniy Alekseyevich Vrublevskiy. Ms. Yanshina later identified him via Internet articles which accused him of torture of political prisoners. She was also threatened by a criminal investigation officer, who would come to Akrestsina to question all “political” offenders and lecture them on "proper" political views and opinions.

On January 20, she was released from Akrestsina through the back door and deported to Russia, with a ban from re-entering Belarus for the next 10 years. Her lawyer wanted to meet her at the Akrestsina building, but the staff lied about her not being released or having left the building.

The belongings of Ms. Yanshina were given back to her, but the Akrestsina officers took some money as "food expenses" and she was not allowed to retrieve the belongings that she had left at her hotel. Moskovskiy RUVD have not returned her telephones.

In March 2023, the lawyer who defended Ms. Yanshina in court was stripped of her attorney license.

Ms. Yanshina believes that she was targeted due to her having attended, as a journalist, the trial of Viasna’s Chair and members. The purpose of her detention was allegedly to prevent her from publicly reporting about the trial for a wider audience. She believes that the Belarusian authorities seized her telephones in order to search them for connections with Belarusian “extremist organizations”, including subscriptions to “banned” Telegram channels, and for notes she had made at the hearing.

Without prejudging the accuracy of these allegations, we would like to express our deep concern about the reported continuing harassment of the Human Rights Center Viasna and its regional subdivisions, their stigmatization as “extremist formations” and blocking of access to their web resources in Belarus. Once again, we would like to reiterate our concern that the Belarusian counter-terrorist legal framework, by its vague definitions and discriminatory application, appears to be designating individuals and organisations as "extremists"- including through the addition of both Homielskaya

Viasna and Viasna to the list of extremist formations - based on the expression of certain opinions and the exchange of information on websites, social media, online information resources and other instant messaging platforms, in a manner incompatible with fundamental rights and freedoms, including peaceful assembly and freedom of opinion and expression (*BLR 2/2021; BLR 3/2022 and BLR 3/2023*). Echoing the observations of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, we recall that "the term "extremism" has no place in binding international legal standards and, when operating as a criminal legal category, is irreconcilable with the principle of legal certainty; it is therefore per se incompatible with the exercise of certain fundamental human rights" (*A/HRC/43/46, para. 14*).

We are also deeply concerned about information received in relation to the alleged enforced disappearance, arbitrary detention, unfair trial, ill-treatment, both physical and psychological, and deportation of the Russian journalist Ms. Yekaterina Yanshina, allegedly in retaliation for her attempt to monitor and report on the trial of the Chair of Viasna and two of its members. Of utmost concern are the allegations that, along with Ms. Yanshina, up to 15 other persons have also been detained for political motives and transferred to Akrestsina offender isolation centre where they have been subjected to inhumane and degrading conditions of detention and other ill-treatment.

In connection with the 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 individuals 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 or comments in relation to the above-mentioned allegations.
2. Please provide detailed information on the legal and factual grounds and the procedures followed for the designation of the Human Rights Center Viasna and Homyelskaya Viasna as "extremist formations", for the designation of online information resources produced by Viasna and its regional subdivisions as "extremist materials" and for their banning in Belarus.
3. Please provide information on how these measures comply with the limits to legitimate restrictions on the right to freedom of expression and the right to freedom of association under articles 19 (3) and 22 of the International Covenant on Civil and Political Rights.
4. Please clarify the consequences entailed by these measures, under domestic legislation, for Viasna, its Board members, staff and volunteers

and for individuals who financially support Viasna, subscribe to its information resources or otherwise engage with the organization.

5. Please provide information on how the arrest and the detention of Ms. Yanshina, which resulted in her being unable to continue attending as a journalist the trial of Viasna Chair and members, is compatible with the right to freedom of expression under article 19 of the International Covenant on Civil and Political Rights.
6. Please provide information on the reasons and legal grounds for Ms. Yanshina's detention prior to her trial and explain how these actions comply with Belarus's obligations under international human rights law.
7. Please indicate the measures you have taken or foresee to take to conduct an investigation into Ms. Yanshina's alleged arbitrary and *incommunicado* detention, denial of access to legal counsel and ill-treatment in Akrestsina temporary detention facility.
8. Please indicate the measures you have been taking or foresee to take to protect persons serving administrative sentences from ill-treatment.
9. Please indicate the measures you have taken or foresee to take to conduct an investigation into the alleged violations of fair trial guarantees during Ms. Yanshina's trial, including lack of independence and impartiality of the judge, denial of access to lawyer and preventing Ms. Yanshina from attending the hearings at first and second instance.
10. Please clarify the factual and legal grounds for Ms. Yanshina's deportation and the prohibition to re-enter Belarus for the next 10 years.
11. Please provide information on the measures taken to prevent gender-based discrimination and violence against Ms. Yanshina from the moment of her apprehension until her deportation, in line with obligations under the Convention on the Elimination of All Forms of Discrimination against Women.
12. Please provide information about the legal grounds for the confiscation of Ms. Yanshina's telephones and for the requests for her to disclose the telephones' passwords. Please explain how these measures are compatible with articles 17 and 19 of the International Covenant on Civil and Political Rights and articles 12 and 17 of the Universal Declaration of Human Rights.

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.

Further, we would like to inform your Excellency's Government that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit the case 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.

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.

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

Irene Khan

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

Clement 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

Margaret Satterthwaite

Special Rapporteur on the independence of judges and lawyers

Mariana Katzarova

Special Rapporteur on the situation of human rights in the Russian Federation

Ben Saul

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

Alice Jill Edwards

Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Dorothy Estrada-Tanck

Chair-Rapporteur of the Working Group on discrimination against women and girls

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to the following provisions of international human rights law.

Freedom of expression

Article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Belarus on 12 November 1973, enshrine the right to freedom of expression, including the right to impart information and ideas through any media and regardless of frontiers. As interpreted by the Human Rights Committee, article 19 of the ICCPR protects the expression of every form of idea and opinion capable of transmission to others, including, *inter alia*, political discourse, commentary on public affairs, discussion of human rights and journalism (*Human Rights Committee, General comment No. 34, CCPR/C/GC/34, para. 11*).

Restrictions on the right to freedom of expression must be compatible with the requirements set out in article 19 (3) of the ICCPR. This means that they must 1) be "provided by law"; 2) be necessary for respect of the rights or reputations of others or for the protection of national security or of public order (*ordre public*), or of public health or morals; and 3) conform to the strict tests of necessity and proportionality (*Ibid., para. 22*). 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 (*Ibid., para 23*).

With regard to the reported designation of the **Human Rights Center Viasna** and **Homyelskaya Viasna** as "extremist formations" and the designation of online resources produced by Viasna and its regional subdivisions as extremist materials, we wish to underline that in compliance with article 19 (3) of the ICCPR, in order to prevent unnecessary or disproportionate interferences with freedom of expression, States parties should ensure that offences such as "extremist activity" are clearly defined (*Human Rights Committee, General comment No. 34, CCPR/C/GC/34, para. 46*).

We would like to remind your Excellency's Government that the counter-terrorism and countering 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*) and 27 April 2023 (*UA BLR 3/2023*), 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 are concerned that this vague terminology contravenes the requirement of legality as required by the ICCPR, as well as the guarantee of *nullum crimen sine lege* under international law and is vulnerable to abuse without further precision. In this context, we observe how globally the lack of semantic and conceptual clarity surrounding the term “extremism” risks hindering the effective implementation of human rights-compliant strategies and policies to prevent and counter violent extremism and terrorism (*A/HRC/43/46, para. 12-14*). As the Special Rapporteur for the promotion and protection of human rights and fundamental freedoms while countering terrorism has concluded, “the term ‘extremism’ has no purchase in binding international legal standards and, when operative as a criminal legal category, is irreconcilable with the principle of legal certainty; it is therefore per se incompatible with the exercise of certain fundamental human rights (*A/HRC/43/46, para. 14*).

We bring your attention to the ‘principle of legal certainty’ under article 15(1) of the ICCPR, ratified by Belarus on 12 November 1973, requires that criminal laws are sufficiently precise so it is clear what types of behaviour and conduct constitute a criminal offence and what would be the consequence of committing such an offence. This principle recognizes that ill-defined and/or overly broad laws are susceptible to arbitrary application and abuse. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has highlighted the dangers of overly broad definitions of terrorism in domestic law that fall short of international obligations (*A/73/361, para. 34*).

We wish to reiterate our 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.

With regard to the apprehension of Ms. **Yekaterina Yanshina** while she was attending as a journalist the trial of Viasna Chair and members, her subsequent conviction in an allegedly unfair trial to administrative detention and deportation to Russia upon release, we wish to stress that article 19 of the ICCPR requires that all threats, acts of intimidation and attacks against journalists should “be vigorously investigated in a timely fashion, and the perpetrators prosecuted, and the victims (...) be in receipt of appropriate forms of redress” (*Human Rights Committee, General comment No. 34, CCPR/C/GC/34, para. 23*).

We would like to draw your Excellency’s attention to the report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on Reinforcing media freedom and the safety of journalists in the digital age, issued in 2022. The report highlights that the right of journalists to work safely and without fear. The safety of journalists encompasses not only protection against physical attacks but also against prosecution, arrest, imprisonment and denial of journalistic access, as well as the fight against impunity for crimes against journalists (*A/HRC/50/29, paras. 24, 25*). The recommendations of the report include, among others, putting an end to the weaponization of courts against journalists, ending impunity for crimes against journalists and protecting women journalists from gender-based violence.

We would also like to note the report on Combating violence against women journalists, issued by the former Special Rapporteur on violence against women, its

causes and consequences in 2020, which highlights “the obligation of States to include a gender perspective in all initiatives aimed at creating and maintaining a safe and favourable environment for free and independent journalism” (*A/HRC/44/52, para. 92*).

We would like to refer your Excellency's Government to 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.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- article 6 point a), which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms;
- article 6 points b) and c), which provides for the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights.

Freedom of association

Regarding the situation of **Human Rights Center Viasna and Homyelskaya Viasna**, we wish to refer to article 20 (1) of the Universal Declaration of Human Rights and to article 22 of the ICCPR, which guarantee everyone's right to freedom of association with others.

Article 22 (2) of the ICCPR provides that no restrictions may be placed on the exercise of the right to freedom of association 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. The reference to “democratic society” indicates that the protection of article 22 extends to the existence and operation of associations that peacefully promote ideas not necessarily favourably viewed by the Government or the majority of the population (*Human Rights Committee, Adyrkhayev et al. v. Tajikistan, Views of 7 July 2022, CCPR/C/135/D/2483/2014, para. 9.8; Human Rights Committee, Zvozkov v. Belarus, Views of 17 October 2006, CCPR/C/88/D/1039/2001, para. 7.2.*).

By taking acts which lead to the unlawfulness of operation of an organization, without observing the strict requirements of article 22 (2) of the ICCPR, States violate the right to freedom of association (see on refusal to register an organization, *Katsora et al. v. Belarus, Views of 25 October 2010, CCPR/C/100/D/1383/2005, para. 8.3*).

In this connection, we would like to remind your Excellency's Government that the Human Rights Committee has established no valid grounds, under article 22 (2) of the ICCPR, for the stripping the Human Rights Center Viasna of its registration in 2003 and for subsequent refusals of its re-registration (*Human Rights Committee, Belyatsky et al. v. Belarus, Views of 24 July 2007, CCPR/C/90/D/1296/2004, para. 7.2; Belyatsky v. Belarus, Views of 24 October 2014, CCPR/C/112/D/2165/2012, para. 8.5; Belyatsky v. Belarus, Views of 24 October 2014, c, para. 8.5*).

We would also like to refer to the following provision of 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, which was adopted without vote by General Assembly Resolution 53/144 on 9 December 1998.

Under article 1 of the Declaration, everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels. Under article 2 (1), each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, *inter alia*, by adopting the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice. According to article 5 (b), for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels, to form, join and participate in non-governmental organizations, associations or groups.

In addition, we would also like to draw your Excellency's Government's attention to the principles enunciated by the Human Rights Council Resolution 50/17, adopted without vote on 8 July 2022, in particular to its operative paragraph 7, which "*calls upon States to respect, fully protect and fulfil the rights of all individuals to assemble peacefully and associate freely, online and offline, including in the context of elections, including (...) persons expressing dissenting views or beliefs, human rights defenders (...), and to take all measures necessary to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association (...) are in accordance with their obligations under international human rights law, and also calls upon States to take measures, in a manner consistent with those obligations, to ensure that these rights continue to be respected and protected during crises*".

We would like to recall that paragraph 10 of the Resolution "*calls upon States to establish and maintain a safe and enabling environment in which civil society actors can operate freely (...), to ensure that national legislation, policies and practices are in compliance with their international human rights obligations and commitments, and to refrain from applying laws and engaging in practices that unduly interfere with their ability to do so*" (para. 9) and "*also calls upon States to refrain (...) from ordering partial or full Internet shutdowns and from blocking websites and platforms around peaceful assemblies, including peaceful protests, or key political moments*".

Prohibition of arbitrary detention and fundamental guarantees upon arrest

Concerning the arrest of Ms. **Yekaterina Yanshina** and her detention while awaiting trial, we would like to refer to the absolute prohibition of arbitrary detention, as set forth in article 9 of the ICCPR. Under this provision, no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. Arrest or detention as punishment for the legitimate exercise of the right to freedom of opinion and expression, guaranteed by article 19 of the ICCPR, is arbitrary (*Human Rights Committee, General comment No. 35, CCPR/C/GC/35, para. 17*).

Article 9 of the ICCPR requires compliance with domestic rules providing safeguards for detained persons, such as permitting access to counsel (*Human Rights Committee, General comment No. 35, CCPR/C/GC/35, para. 23*). Under paragraph 2 of article 9, anyone who is arrested shall be informed, at the time of arrest, of the reasons for his or her arrest and shall be promptly informed of any charges against him or her. Paragraph 3 of article 9 provides that anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power. The detainee must be brought to appear physically before the judge or other officer authorized by law to exercise judicial power, in order to allow for an opportunity for inquiring into the treatment they serve (*Human Rights Committee, General comment No. 35, CCPR/C/GC/35, para. 34*). The Human Rights Committee has established that the guarantees of article 9 (3) apply in cases of administrative detention imposed for minor offences (*Human Rights Committee, Volchek v. Belarus, Views of 23 July 2020, CCPR/C/129/D/2337/2014, para 7.4*).

We would also like to refer to article 2 (1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by Belarus on 13 March 1987. Under this provision, each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. The Committee against Torture has clarified that, under article 2, certain basic guarantees apply to all persons deprived of their liberty, including, *inter alia*, the right of detainees to be informed of their rights, the right promptly to receive independent legal assistance, independent medical assistance, and to contact relatives and the availability to detainees of judicial and other remedies that will allow them to have their complaints promptly and impartially examined, to defend their rights, and to challenge the legality of their detention or treatment. The Committee has also emphasized the importance of videotaping all interrogations, as a measure to prevent torture (*CAT, General comment No. 2, paras. 13, 14*).

We would like to remind your Excellency's Government that the Committee against Torture has recommended that Belarus ensure, in law and in practice, that all detainees are afforded all the fundamental legal safeguards from the outset of their deprivation of liberty. In particular, the Committee recommended that Belarus continue its efforts to ensure the right to have prompt and confidential access to an independent lawyer, or to free legal aid, when needed, and contact with a family member or any other person of their choice (*CAT, Concluding observations on the fifth periodic report of Belarus (2018), CAT/C/BLR/CO/5, para. 8*).

Fair trial guarantees

With regard to Ms. **Yekaterina Yanshina**'s trial, we would like to recall the fair trial guarantees enshrined in article 14 of the ICCPR. In the determination of any criminal charge against him or her, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law (para. 1). Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law (para 2). In the determination of criminal charges against him or her, everyone shall be entitled to have adequate time and facilities for the preparation of his or her defence and to communicate with counsel of his or her own choosing (para. 2 (b)), to be tried in his or her presence, and to defend himself or herself in person or through legal assistance of his or her own choosing; to be informed, if he or she does not have legal assistance, of this right (para. 2 (d)); to examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her (para. 2 (e)). "Criminal charges" within the meaning of article 14 of the ICCPR "*relate in principle to acts declared to be punishable under domestic criminal law. The notion may also extend to acts that are criminal in nature with sanctions that, regardless of their qualification in domestic law, must be regarded as penal because of their purpose, character or severity*" (*Human Rights Committee, General comment No. 32, CCPR/C/GC/32, para. 15*).

Whereas proceedings in the absence of the accused persons may in some circumstances be permissible under article 14 (3) (d) of the ICCPR, this is only so "if the necessary steps are taken to summon accused persons in a timely manner and to inform them beforehand about the date and place of their trial and to request their attendance" (*Human Rights Committee, General comment No. 32, CCPR/C/GC/32, para. 36*).

Prohibition of ill-treatment

Concerning the alleged ill-treatment of Ms. **Yekaterina Yanshina** in detention, we would like to recall the following standards.

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 ICCPR and articles 1, 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. 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", such as lack of access to appropriate and timely medical care, overcrowded cells and lack of access to facilities for basic hygiene (*Human Rights Committee, Dafnis v. Greece, Views of 19 July 2022, CCPR/C/135/D/3740/2020, para. 8.5; Human Rights Committee, Pichugina v. Belarus, Views of 7 July 2021, CCPR/C/132/D/2711/2015, para. 6.3*).

Under article 7 of the ICCPR, States must recognize in their domestic law the right to lodge complaints against maltreatment prohibited by article 7 of the ICCPR and must be investigated promptly and impartially all the complaints lodged (*Human Rights Committee, General comment No. 20, para. 14*).

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 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 without vote by the General Assembly Resolution 45/111 on 14 December 1990, provide that all prisoners shall be treated with the respect due to their inherent dignity and value as human beings (Principle 1). Prisoners shall have access to health services available in the country without discrimination on the grounds of their legal situation (Principle 9).

According to Rule 13 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), all accommodation provided for the use of prisoners, in particular all sleeping accommodation, shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation. Under Rule 21, every prisoner shall, in accordance with local or national standards, be provided with a separate bed and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness.

Under Rule 24 (f), 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. Under Rule 42, general living conditions addressed in the Nelson Mandela Rules, including those related to light, ventilation, temperature, sanitation, nutrition, drinking water, access to open air and physical exercise, personal hygiene, health care and adequate personal space, shall apply to all prisoners without exception.

We would like to remind your Excellency's Government 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)*).

According to article 12, paragraphs 2 and 3 of the UN Declaration on Human Rights Defenders, the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

Prohibition of gender-based discrimination and violence

We wish to emphasize the obligation of your Excellency's Government, under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, ratified by Belarus on 4 February 1981, to protect women against gender-based discrimination and violence as a manifestation of such discrimination, namely, "violence that is directed against a woman because she is a woman or violence that affects women disproportionately". Gender-based violence includes "acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty". Women deprived of their liberty are particularly vulnerable to discrimination through civil and penal laws, regulations and customary law and practices (*CEDAW, General recommendation No. 28, CEDAW/C/GC/28, paras 19, 31*). Gender-based violence takes multiple forms, including acts or omissions intended or likely to cause or result in physical or psychological harm or suffering to women, threats of such acts, harassment, coercion and arbitrary deprivation of liberty (*CEDAW, General recommendation No. 35, CEDAW/C/GC/35, para. 14*).

The United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules) complementary to the Nelson Mandela Rules, address specific needs of women in detention. We would like to recall that the Committee on the Elimination of Discrimination against Women has recommended that Belarus improve the conditions of detention for women, in line with the Bangkok Rules. In particular, women in detention should have equal access to free legal aid, and the right to private communication with counsel must be guaranteed and not restricted by the prison administration (*CEDAW, Concluding observations on the eighth periodic report of Belarus, CEDAW/C/BLR/CO/8, para. 45*).

Furthermore, article 4 (c) of the Declaration on the Elimination of Violence against Women holds that States should exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women.

We would also like to highlight the findings of the Working Group on Discrimination against Women and Girls (*A/HRC/41/33*) that deprivation of liberty is deeply linked to gender. Against the backdrop of unequal power dynamics and systemic discrimination, women are deprived of their liberty, mostly arbitrarily and in a discriminatory fashion, and often in violation of the law and human rights standards. In particular, women human rights defenders, perceived as challenging traditional notions of family and gender roles in society are increasingly at risk of facing criminalization and detention as a result of their legitimate public activism. The Working Group has urged States to support and protect women's engagement in public and political life, including the work of women human rights defenders, and eliminate any measures designed to criminalize the public roles of women. Furthermore, States should ensure that measures addressing conflict, crisis, terrorism, and national security incorporate a women's human rights focus and do not instrumentalize women's deprivation of liberty

for the purposes of pursuing government aims. This position is reflected as well in the consideration of the concrete situation of women human rights defenders recently in Belarus (CEDAW/C/BLR/QPR/9, paras. 9 and 10).

Confiscation of Ms. Yanshina's telephones

With regard to the confiscation of Ms. **Yekaterina Yanshina**'s telephones and the attempts to coerce her into disclosing the telephones' passwords, we would like to refer to article 12 of the Universal Declaration of Human Rights and article 17 of the ICCPR, which provide that no one shall be subjected to arbitrary or unlawful interference with his or her privacy or correspondence.

Under article 17 of the Universal Declaration of Human Rights, everyone has the right to own property. No one shall be arbitrarily deprived of his or her property.

Furthermore, given that Ms. Yanshina was apprehended while attending a trial as a journalist, we would like to once again recall provisions of article 19 (3) of the ICCPR related to legitimate restrictions to the exercise of freedom of expression. The Human Rights Committee has stated, with regard to this provision, that "States parties should recognize and respect that element of the right of freedom of expression that embraces the limited journalistic privilege not to disclose information sources" (*Human Rights Committee, General comment No. 45, CCPR/C/GC/34, para. 45*).