

**Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the situation of human rights in Belarus and the Independent Expert on the enjoyment of all human rights by older persons**

Ref.: UA BLR 1/2024  
(Please use this reference in your reply)

15 February 2024

Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Special Rapporteur on the situation of human rights in Belarus and Independent Expert on the enjoyment of all human rights by older persons, pursuant to Human Rights Council resolutions 51/8, 53/19 and 51/4.

We would like to bring to the attention of your Excellency's Government information we have received concerning **the alleged ill-treatment in detention of Mr. Ryhor Kastusiou (Grigoriy Kostusev)**.

We would like to recall that in 2010, several Special Procedures issued an urgent appeal in relation to alleged arbitrary detention of several political figures, journalists and human rights defenders, including Mr. Kastusiou, back then a candidate for presidential elections (BLR 1/2010).

According to the information received:

Mr. Ryhor Kastusiou is a 66-year-old veteran opposition politician and the Chairman of the Belarusian Popular Front (BNF) Party. On 12 April 2021, he was arrested in Sklou, Mahiliou region, as a suspect under Art. 357(1) of the Criminal Code ("Conspiracy to seize power in an unconstitutional way") and placed under custody in the KGB's pre-trial detention centre (SIZO) in Minsk.

From 2 to 14 July 2021, Mr. Kastusiou underwent a medical examination and treatment in a prison hospital located in the pre-trial detention center no. 1 (SIZO-1). His bloodwork showed high cancer markers. His lawyer petitioned the investigator to change Mr. Kastusiou's measure of restraint. Despite his poor health condition, Mr. Kastusiou was transferred back to the KGB's SIZO and placed in a regular cell. On 24 July 2021, an ambulance was called to him.

In mid-August 2021, Mr. Kastusiou underwent a biopsy. Its results and the results of other medical examinations were not shared with him, his lawyer and family for a long time, depriving them of a possibility to support with evidence their repeated petitions to the investigator for substituting Mr. Kastusiou's pre-trial detention for a home arrest and providing him with a timely and adequate medical treatment. Their petitions were either ignored or rejected.

On 14 October 2021, Mr. Kastusiou underwent another medical examination, which confirmed the cancer diagnosis. He began receiving medical treatment. Yet, he also required an urgent surgery. In September 2021, he fell ill with COVID-19. In November 2021, he was again transferred to the prison hospital at SIZO-1 in Minsk, but the required surgery was not performed. In addition,

Mr. Kastusiou suffered a heart attack while in custody.

On 5 September 2022, the Minsk Regional Court found Mr. Kastusiou guilty under Art. 357(1) of the Criminal Code and sentenced him to 10 years of imprisonment in a medium-security penal colony. Since December 2022, he has been serving his prison sentence in the medium-security Penal Colony no. 22 in Brest region.

In August 2023, Mr. Kastusiou underwent an oncological examination. Its results have not been shared with him, his family or his lawyer.

Despite his deteriorating health situation, Mr. Kastusiou has been placed on four occasions in a punishment cell (SHIZO), for up to 15 days each time. On 11 November 2023, he was placed in a cell-type premise (PKT) for four months.

On 15 January 2024, the Ivacevicy District Court substituted Mr. Kastusiou's detention regime from colony to prison, which involves confinement in a multi-person cell. Mr. Kastusiou was not brought into the courtroom. He participated by video conference from the penal colony.

While we do not wish to prejudge the accuracy of the information made available to us, we would like to express our utmost concern about the alleged denial of timely and adequate medical assistance to Mr. Ryhor Kastusiou, incompatibility of his detention conditions with his right to health, including his repeated transferrals to a SHIZO and prolonged placement in PKT, and lack of effective remedies which would allow Mr. Kastusiou to challenge his detention conditions.

In this regard, we would like to refer to several recent communications sent by various Special Procedures to your Excellency's Government, which included concurrent allegations of inhuman detention conditions in SHIZO and PKT, frequent arbitrary use of these disciplinary sanctions by penitentiary administrations and lack of proper legal safeguards and effective remedies which would allow for preventing and challenging abusive resort to such disciplinary measures (BLR 3/2023, BLR 4/2023, BLR 9/2023, BLR 12/2023, BLR 13/2023).

In connection with the above allegations, we would like to remind your Excellency's Government of the following relevant international human rights standards, which appear to be disregarded in light of the reported allegations.

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". (*Human Rights Committee, Dafnis v. Greece, Views of 19 July 2022, CCPR/C/135/D/3740/2020, para. 8.5*).

Paragraph 1 of the Basic Principles for the Treatment of Prisoners, adopted by the General Assembly in resolution 45/111, and rule 1 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) provide that all prisoners shall be treated with the respect due to their inherent dignity and value as human beings.

Failure by a State party to provide medical treatment and care in detention adequate to the condition of the detainee constitutes a violation of the right to be treated with humanity and with respect for the inherent dignity of the human person under article 10(1) of the ICCPR (*Human Rights Committee, Suleimenov, Views of 21 March 2017, CCPR/C/119/D/2146/2012, para. 8.7*), whereas lack of medical assistance and refusal of hospitalization of a detainee in critical condition “can be characterized as severe pain and suffering inflicted intentionally by an official,” in violation of articles 1 and 2 of the Convention against Torture (*CAT, Rakishev v. Kazakhstan, Decision of 31 July 2017, CAT/C/61/D/661/2015, paras. 8.2, 8.3*). Under the revised Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, denial of medical care and treatment should be considered as a potential method of inflicting torture or ill-treatment (*Istanbul Protocol, 2002, para. 372(o)*).

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).

Effective remedies must be made available to victims of torture and other forms of inhuman and degrading treatment, to allow them to complain against such treatment (article 13 of the Convention against Torture, article 2(3)(a) of the ICCPR).

Article 9(1) of the ICCPR provides that everyone has the right to liberty and security of person. The right to personal security protects interests in bodily and mental integrity and obliges States parties to protect individuals from foreseeable threats to life or bodily integrity (*Human Rights Committee, general comment 35, CCPR/C/GC/35, paras. 9, 56*). The appropriateness of the conditions prevailing in detention to the purpose of detention is sometimes a factor in determining whether detention is arbitrary within the meaning of article 9 (*Ibid., para. 59*). Under article 9(4) of the ICCPR, persons deprived of liberty shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention. According to the Human Rights Committee, when exercising this right, in general, the detainee has the right to appear in person before the court, especially where such presence would serve the inquiry into the lawfulness of detention or where questions regarding ill-treatment of the detainee arise (*Ibid., para. 42*).

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), E/C.12/2000/4, para. 34*). The right to health under article 12 of the Covenant encompasses information accessibility, *i.e.* the right to seek, receive and impart information and ideas concerning health issues (*Ibid., para. 12(b)(iv)*).

Under rule 24(f) of the 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’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)*). Furthermore, during its Universal Periodic Review in 2020, Belarus accepted as implemented a recommendation to improve access to and the quality of health care, including psychiatric care, for prisoners, and increase the number of professional medical staff in all detention facilities (recommendation 138.228 in A/HRC/46/5 and A/HRC/46/5/Add.1).

Regarding the imposition of disciplinary sanctions on prisoners, we would like to draw your Excellency’s Government’s attention to rule 39(2) of the Nelson Mandela Rules, which requires proportionality between a disciplinary sanction and the offence for which it is established and requires that prison administrations keep a proper record of all disciplinary sanctions imposed. Under rule 43, in no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhuman or degrading treatment or punishment, including prolonged and indefinite solitary confinement. As per rule 41, any allegation of a disciplinary offence by a prisoner shall be reported promptly to the competent authority, which shall investigate it without undue delay. Prisoners shall be informed without delay of the nature of the accusations against them and shall be given adequate time and facilities for the preparation of their defense. Prisoners shall be allowed to defend themselves in person, or through legal assistance when the interests of justice so require, particularly in cases involving serious disciplinary charges. Prisoners shall have an opportunity to seek judicial review of disciplinary sanctions imposed against them.

Finally, we would like to underline that due to his age, Mr. Kastusiou may be disproportionately affected by inhumane conditions of detention. We recall that under rule 2(2) of the Nelson Mandela Rules, in order for the principle of non-discrimination to be put into practice, prison administrations shall take account of the

individual needs of prisoners, in particular the most vulnerable categories in prison settings.

According to the United Nations Principles for Older Persons, adopted by the General Assembly resolution 46/91 on 16 December 1991, older persons should be able to live in dignity and security and should have access to health care to help them to maintain or regain the optimum level of physical, mental and emotional well-being and to prevent or delay the onset of illness (paras. 11 and 17).

In her report on older persons deprived of liberty, the Independent Expert on the enjoyment of all human rights by older persons calls on paying special attention to applying the principles of necessity and proportionality when the deprivation of liberty is decided against older persons in the context of criminal justice, considering the severity of the offence, and whether the dignity of older persons is being protected based on their age and intersectional factors (A/HRC/51/27, para. 17). States must treat older persons with dignity during the entire duration of their detention and must take into consideration their specific needs with respect to their age, health and disability status. Those considerations are especially critical at every stage of the criminal justice process (especially pretrial, trial, sentencing, appeal and post-sentencing detention) (para. 15). The expert warned that older persons face heightened risk of discrimination, abuse and violence at all stages of their incarceration (para. 41).

The report of the Independent Expert further notes that when older persons are detained in the criminal justice system, States have the obligation to uphold and protect their human rights and ensure their safety. As is done in some countries, it is good practice to adopt constitutional and legal age-related provisions ensuring the realization of the special needs of older persons lawfully deprived of liberty, in accordance with international human rights standards (para. 70). States have a positive obligation to protect the liberty of all individuals under their jurisdiction and should take measures to prevent the deprivation of their liberty. As a heterogenous group with complex needs, alternatives to deprivation of liberty for older persons should be prioritized and encouraged through State actions (para. 71). In the criminal justice context, several promising practices have emerged offering alternative solutions for older persons, such as prioritizing house arrest for persons aged 70 or above during pre-trial and for minor offense convictions; prison sentences carried out (partially or fully) in hospitals, family care, in-home or in institutional care based on various criteria, including age; overruling life imprisonment for persons over age 65 and affording amnesty, parole, compassionate or early conditional release for older persons, based on their age, the time served in prison and health status (chronic and/or life-threatening illnesses); temporary release; pardon or amnesty; or electronic monitoring to track and supervise older persons convicted of minor offenses. Studies show that older persons are far less likely to reoffend following release from prison (para. 72). During the ongoing COVID-19 pandemic and due to the overcrowding in some detention settings, several States privileged non-custodial measures and allowed for the early release of older prisoners to ensure their protection and safety, as older age represents a significant risk for contracting the virus (para. 73)

In the context of criminal detention, the Independent Expert makes the following recommendations: (a) States must adopt age-sensitive policies and strategies in the criminal justice context to ensure respect for and protection of the human rights of older persons, in line with international and regional human rights

standards regulating the deprivation of liberty; (b) Age-friendly detention environments, including appropriate infrastructure, accommodations and living conditions, and age-sensitive training for custodial staff to foster respectful communication and informed decision-making should be ensured; older persons should have access to age-appropriate services and activities, including opportunities for lifelong learning and vocational training; (c) Appropriate health-care services for older persons should be provided to meet their individual needs, according to the principle of equality in health care; screening upon admission, transition and throughout the period of detention must be in place to identify the risks and specific needs of older detainees; (d) States should ensure that, when released, older persons have benefited from individualized pre-release programmes designed for their specific needs and wishes, including access to medical and mental health care for longstanding, undertreated health conditions, housing solutions, access to pensions and financial support; (e) Intersectional factors should be given due consideration throughout all stages of the criminal justice process, especially when older persons have other intersecting bases for discrimination, such as gender, disability, indigenous or ethnic identities; individual care plans should be created to ensure that older persons at higher risk of violence, ill-treatment and persecution are provided with security in detention, including older women, older lesbian, gay, bisexual, transgender and intersex persons and older persons belonging to ethnic, religious or indigenous groups; (f) States, through their judicial systems, should consider the necessity and proportionality of detaining older persons with complex health conditions and in need of palliative care; States should also examine the possibility of non-custodial alternatives at all stages of detention, including serving sentences in facilities where the needs of older persons would be addressed through or benefit from humanitarian or compassionate release (para. 88).

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://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 persons in compliance with international instruments.

We are issuing this appeal in order to safeguard the rights of abovementioned individual 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 and any comment you may have on the above-mentioned allegations.
2. Please provide information about the factual and legal basis for the arrests, detention, charging, and sentencing of Mr. Ryhor Kastusiou and explain how these actions comply with Belarus's obligations under international human rights law.
3. Please provide information about the current state of health of Mr. Ryhor Kastusiou and explain how medical assistance received by

him and his conditions of detention are compatible with the aforementioned provisions of international human rights law.

4. Please ensure that Mr. Kastusiou receives timely and adequate medical treatment according to his medical diagnosis and that his detention conditions are compatible with his health condition and age.
5. Please ensure, without delay, that Mr. Ryhor Kastusiou, his legal representative and family receive comprehensive information and relevant medical documents about his state of health and medical assistance provided to him since his deprivation of liberty on 12 April 2021 until now.
6. Please explain which remedies have been available to Mr. Ryhor Kastusiou for challenging compatibility of his detention conditions and medical assistance received in pre-trial detention and in prison with Belarus's obligations under international human rights law.
7. Please explain the reasons why Mr. Ryhor Kastusiou did not attend in person the hearing on 15 January 2024 at the Ivacevičy District Court.
8. In light of Mr. Kastusiou's severe health condition, please consider granting him pardon or remission of sentence or substituting his imprisonment for an alternative form of deprivation of liberty, in accordance with the United Nations Standard Minimum Rules for Noncustodial Measures (Tokyo Rules).

While awaiting a reply, we urge that all necessary interim measures be taken to prevent any irreparable harm to the life and personal integrity of the persons concerned, halt the alleged violations and prevent their re-occurrence and, in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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 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.

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

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