

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the situation of human rights in Belarus; the Special Rapporteur on the rights of persons with disabilities and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Ref.: UA BLR 2/2024
(Please use this reference in your reply)

19 March 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; Special Rapporteur on the rights of persons with disabilities and Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, pursuant to Human Rights Council resolutions 51/8, 53/19, 53/14 and 51/21.

In this connection, 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. Pavel Kuchynski**.

According to the information received:

In March 2021, Mr. Pavel Kuchynski, born in 1994, was diagnosed with grade 4 cancer (*Hodgkin's lymphoma*) and was certified as having a second-degree disability status in line with the national disability classification.

On 26 January 2022, he was arrested on suspicion of having committed offences under articles 369 (insulting a public official) and 391 (insulting a judge) of the Criminal Code. He was placed in the pre-trial detention centre in Zhodzina city, Minsk region. As he was repeatedly transferred to Maladziechna city for investigative actions, he missed his scheduled chemotherapy.

On 24 February 2022, Mr. Kuchynski's family motioned the Maladziechna district office of the Investigative Committee to select another measure of restraint, not associated with deprivation of liberty. On 26 February 2022, the Investigative Committee rejected the motion stating that it had established no grounds for substituting the restraint measure with a milder one.

On 1 March 2022, Mr. Kuchynski's family filed a motion to the Prosecutor's Office of Maladziechna city, asking it to substitute the measure of restraint with a milder one, not associated with deprivation of liberty, due to his health condition. The Prosecutor's Office rejected the motion noting that the criminal case file did not contain any information about incompatibility of Mr. Kuchynski's health condition with detention.

On 25 March 2022, a computed tomography scan revealed further progression of lymphoma and the presence of inflammation in Mr. Kuchynski's lung.

On 7 June 2022, the Vilyeyka District Court sentenced Mr. Kuchynski to 5 years of imprisonment in a medium-security penal colony under several criminal charges, including insult against a public official, insult against the President of the Republic Belarus, violence or threat of violence against an employee of internal affairs bodies, threat to a judge or lay judge and insult against a judge.

On 22 July 2022, a medical and rehabilitation expert commission assigned to Mr. Kuchynski the first-grade disability status, the most severe one according to the Belarusian classification.

In August 2022, Mr. Kuchynski appealed his sentence to the Vilyeyka District Court, pointing at his disability status and progression of his disease. On 2 September 2022, the Minsk Regional Court maintained the conviction but reduced the prison sentence by three months, to 4 years and 9 months. In addition, a fine of 120 basic units (1,570 Euros) was added to the sentence.

Pursuant to the final sentence of the Minsk Regional Court, Mr. Kuchynski had to be transferred to a penal colony. However due to his health condition he was instead transferred to the Prison Hospital in Kaliadzichy, Minsk Region, for chemotherapy. In this hospital, prisoners are placed not in wards but in ordinary cells refurbished for medical needs. The health condition of Mr. Kuchynski has continued worsening.

The treatment received by Mr. Kuchynski is reportedly insufficient, and his disease keeps progressing. Mr. Kuchynski requires a bone marrow transplant, which cannot be performed in a prison hospital.

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 adequate medical assistance to Mr. Pavel Kuchynski and incompatibility of his detention conditions with his health condition.

In this regard, we would like to refer to several recent communications sent by various Special Procedures to your Excellency's Government, which included allegations about lack of timely and adequate healthcare in pre-trial detention facilities, penal colonies and prisons.

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*).

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*).

Furthermore, we would like to refer to the Convention on the Rights of Persons with Disabilities, ratified by Belarus on 29 November 2016, and which

provides that any person with a disability deprived of his/her liberty should be provided with ‘reasonable accommodation’ in places of detention, that persons with disabilities have the right to respect for their physical and mental integrity on an equal basis with others, even in and perhaps especially in places of detention, and that State Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. In this respect, we particularly refer to articles 5, 14, 16, 17 and 25 of the Convention.

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.

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).

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(s) in compliance with international instruments.

We are issuing this appeal in order to safeguard the rights of the above-mentioned 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. Pavel Kuchynski and explain how these actions comply with Belarus’s obligations under international human rights law.

3. Please explain how Mr. Kuchynski's health situation and disability status were taken into account by relevant authorities when deciding on his pre-trial detention and on his sentence.
4. Please provide information about the current state of health of Mr. Pavel Kuchynski and explain how medical assistance received by him and his conditions of detention are compatible with Belarus's obligations under international human rights law.
5. Please ensure that Mr. Kuchynski receives timely and adequate medical treatment according to his medical diagnosis and that his detention conditions are compatible with his health condition and disability status. If some medical procedures required for his health condition cannot be performed in the prison hospital, please ensure without delay that Mr. Kuchynski is transferred to an appropriate civil hospital.
6. Please explain which remedies have been available to Mr. Kuchynski for challenging compatibility of his detention, its conditions and medical assistance received in pre-trial detention and in penal colony with Belarus's obligations under international human rights law.
7. Please explain the legal and administrative consequences of the deterioration of Mr. Kuchynski's health condition and of modification of his disability degree from second to first.
8. In light of Mr. Kuchynski'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 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.

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

Anaïs Marin
Special Rapporteur on the situation of human rights in Belarus

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