

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

Ref.: UA BLR 3/2024
(Please use this reference in your reply)

3 May 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 right of everyone to the enjoyment of the highest attainable standard of physical and mental health and Independent Expert on the enjoyment of all human rights by older persons, pursuant to Human Rights Council resolutions 51/8, 53/19, 51/21 and 51/4.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning ongoing deterioration of the health condition of Mr. Ryhor Kastusiou (Grigoriy Kostusev), who is serving a sentence in prison No. 1 in Hrodna.

We would like to thank you for your note verbale, dated 29 March 2024, by which you transmitted a response to the urgent appeal BLR 1/2024 of 15 February 2024 concerning the alleged ill-treatment in detention of Mr. Kastusiou.

We acknowledge with gratitude the information you provided in response to our questions about the legal basis for Mr. Kastusiou's sentencing, the legal remedies available to him for challenging the disciplinary measures imposed by the penitentiary administration and about his state of health and medical assistance provided to him. We also appreciate the information you shared with us about the legal remedies available to Mr. Kastusiou for challenging his sentence under domestic legislation, the rulings of higher jurisdictions upholding this sentence and the judgement of Ivacevičy District Court of 15 January 2024 on his transferal from a correctional colony to a prison.

We regret, however, that most of the questions and recommendations formulated in the urgent appeal BLR 1/2024 remain unanswered. In light of the gravity of the allegations received and in the absence of comprehensive clarifications from your Excellency's Government, we remain concerned about the compatibility of Mr. Kastusiou's detention with the international human rights law standards cited in the urgent appeal.

Furthermore, we have received the following allegations, provided to us on 23 April 2024, which raise additional concerns about the situation of Mr. Kastusiou.

According to the information received:

Mr. Ryhor Kastusiou was arrested on 12 April 2021 and placed in the pretrial detention centre of State Security Committee (KGB) in Minsk. Criminal proceedings were opened against him under article 357(1) ("Conspiracy to

seize power in an unconstitutional way”) because he had participated in a Zoom meeting, where several persons discussed possible changes in Belarus, including radical proposals to solve the socio-political crisis.

Mr. Kastusiou’s pre-trial detention lasted for over 1,5 years, until 29 November 2022 (date of entry in force of his sentence). As required by article 127(3) of the Criminal Procedure Code, the decisions about extension of pre-trial detention were taken first by the prosecuting authority, and, from the moment the case was transferred to court for trial, by a judge.

Due to poor conditions of detention and other ill-treatment suffered in pre-trial detention, Mr. Kastusiou’s health deteriorated rapidly. By the end of April 2021, he started experiencing health issues with [REDACTED]

Mr. Kastusiou twice motioned the investigator to substitute his pre-trial detention with a house arrest, and both times his motions were denied. His lawyer and family repeatedly motioned the investigator to mitigate the measure of restraint, citing his poor health, his suspected [REDACTED] and the need for constant monitoring by a medical professional. Their motions were denied or ignored.

According to information shared by Mr. Kastusiou in 2021, his lawyer also unsuccessfully challenged his pre-trial detention in the Partyzanski District Court of Minsk. The court hearing was held behind closed doors, as required by article 144(2) of the Criminal Procedure Code and, according to common practice, without participation of the suspect. Mr. Kastusiou’s lawyer was obliged to sign a non-disclosure agreement, which is why no further information is available about these court proceedings.

On 29 July 2022, the trial began in Minsk Regional Court, in a closed-door session in the morning and in a public session in the afternoon. The prosecutor accused Mr. Kastusiou of having reached a secret agreement with two other defendants to seize power by violent means. Mr. Kastusiou pleaded not guilty claiming that he had participated in the Zoom meeting as a listener, in order to find a way out of the sanctions pressure on the country. Another defendant claimed that the plan of the seizure of power was instigated by a KGB officer who infiltrated the group.

Following his conviction, in December 2022, Mr. Kastusiou was transferred to the correctional colony No. 22 in Brest region. In late January 2024, he was transferred to prison No. 1 in Hrodna, where he is detained in a multi-person cell.

Throughout his detention, Mr. Kastusiou has been repeatedly provided with emergency medical assistance. On three occasions, he was examined and received treatment in the Republican Hospital for Convicts of the Detention Center No. 1 in Minsk, under the Ministry of Interior: from 2 July 2021 to 15 July 2021, from 22 November 2021 to 24 December 2021 and from 27 April 2023 to 29 May 2023. He has also been examined at the N.N. Aleksandrov National Cancer Center of Belarus.

Following the medical examination at the Hospital for Convicts in October 2021, medical practitioners concluded that the [REDACTED] was worsening and that Mr. Kastusiou required [REDACTED]. They stated that failure to provide timely medical treatment to Mr. Kastusiou would significantly increase the risk of cancer progression, leading to irreversible complications, up to a fatal outcome.

According to a medical report dated 22 April 2022, issued by Dr. [REDACTED] [REDACTED] Mr. Kastusiou was diagnosed with:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

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

On 25 March 2024, Mr. Kastusiou underwent [REDACTED]. It is not known whether it was [REDACTED]. In any case, this fact indicates [REDACTED]. Immediately thereafter Mr. Kastusiou was transferred back to the prison cell.

The "active surveillance approach" currently adopted by penitentiary authorities with regard to Mr. Kastusiou's healthcare is not sufficient. He cannot be provided with proper qualified medical treatment in detention. His various diseases require constant referral to third-party state healthcare organizations.

Mr. Kastusiou's sentence expires in 2030.

While we do not wish to prejudge the accuracy of the information made available to us, we are highly concerned about the allegations that in addition to the diagnosis indicated in the response of your Excellency's Government, Mr. Kastusiou suffers from other health issues, that his state of health continues to deteriorate and that, according to medical professionals who have examined Mr. Kastusiou, lack of timely medical treatment, currently not available to him, may lead to irreversible complications and even to loss of life.

In light of the foregoing information and without prejudicing any eventual legal determination, it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek further clarifications on this case with a view to safeguarding the rights of Mr. Kastusiou from irreparable harm.

We would therefore like to reiterate our request for your Excellency's Government to provide observations on the following matters:

1. Please provide information about the factual basis for the arrest, detention, charging and sentencing of Mr. Ryhor Kastusiou and explain how these actions comply with Belarus's obligations under international human rights law.
2. Please explain which remedies, other those foreseen under article 113(11) of the Penalties Enforcement Code, 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.
3. Please explain the reasons why Mr. Ryhor Kastusiou did not attend in person the hearing on 15 January 2024 at the Ivacevičy District Court.

In addition, in light of new information made available to us, we would be grateful if you could provide observations on the following matters:

4. Please provide any additional information and any comment you may have on the above-mentioned allegations.
5. Please provide information on Mr. Kastusiou's current health status and all medical treatment he is receiving, including specialized treatment.
6. Please explain the reasons behind multiple denials of motions submitted by Mr. Kastusiou, his legal counsel and family to investigative and judicial authorities in order to request substitution of his pretrial detention for a milder measure of restraint due to his health condition.
7. Please provide legal and factual reasons why it was necessary for Partyzanski District Court of Minsk to consider Mr. Kastusiou's appeal against his pre-trial detention in a closed hearing, to hold the hearing in Mr. Kastusiou's absence and to impose on Mr. Kastusiou's counsel a non-disclosure agreement.
8. Please provide information about the factual basis for the disciplinary sanctions imposed on Mr. Kastusiou in the correctional colony No. 22 and for his transfer to prison by the judgement of 15 January 2024 of Ivacevičy District Court.
9. Please explain how the transferal of Mr. Kastusiou to prison No. 1 in Hrodna in January 2024 has affected his detention conditions and medical assistance available to him.

10. Please explain which legal remedies are available to Mr. Kastusiou to request remission of sentence based on his health condition and/or older age.
11. Please explain whether, when sentencing Mr. Kastusiou, the court took into account his older age, in addition to information on his personality, motives and objectives, nature of the harm caused, and the state of his health, and if age was not considered, please clarify why this was overlooked.

In light of the alleged gravity of Mr. Kastusiou's health condition and its alleged ongoing deterioration, we would like to reiterate the following recommendations formulated in the urgent appeal BLR 1/2024:

12. 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.
13. 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, including the results of the oncological examination of August 2023 and the details of the medical intervention related to [REDACTED] 25 March 2024.
14. In light of Mr. Kastusiou's severe health condition and older age, please consider granting him pardon or remission of sentence, 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.

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

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