



Human Rights Council
Working Group on Arbitrary Detention**Opinions adopted by the Working Group on Arbitrary Detention at its sixty-third session, 30 April–4 May 2012****No. 14/2012 (Belarus)****Communication addressed to the Government on 9 February 2012****Concerning Andrei Sannikov****The Government replied to the communication on 17 April 2012.****The State is a party to the International Covenant on Civil and Political Rights.**

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. In accordance with its working methods, the Working Group transmitted the above-mentioned communication to the Government.

2. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to the detainee) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or other status, and which aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

3. Andrei Sannikov, national of Belarus, is a politician and activist. He was a career diplomat who served as Deputy Foreign Minister in Belarus. In November 1996, Mr. Sannikov resigned from his post as Deputy Foreign Minister, allegedly in protest of a referendum held that year, which amended the Constitution of Belarus, expanding the powers of the executive and restraining certain rights and freedoms. Mr. Sannikov co-founded Charter'97, a civil rights organization that hosts a news website. He had organized non-violent protests in opposition to the presidential elections of 2001, 2004, 2006, and 2008. In 2003, he was arrested for organizing a peaceful march demanding better living standards. In 2005, Mr. Sannikov was awarded the Bruno Kreisky Award for his service to the cause of human rights. In 2010, Mr. Sannikov ran in the presidential election as a candidate affiliated with the European Belarus Civil Campaign.

4. According to the source, on 19 December 2010, Mr. Sannikov and other electoral candidates encouraged supporters to defend their vote by peacefully demonstrating in Minsk. Thousands of protesters gathered in Independence Square and listened to speeches by the electoral candidates advocating for new elections. The source states that at approximately 10:00 p.m., Mr. Sannikov was giving a speech in which he reportedly called for a second round of elections. At that point, a group of approximately 20 individuals, allegedly Government agents, began breaking windows at Government House, the headquarters of the National Assembly and the Central Election Commission. It is reported that Mr. Sannikov told the crowd to remain peaceful and to keep away from the doors of Government House. It is further reported that the Special Police Unit forcibly broke up the crowd and made mass arrests even though most of the demonstrators peacefully left the square within 20 minutes. The police allegedly stormed the square and put groups of protestors into the trucks. According to the source, over 700 persons, including electoral candidates, other peaceful protesters and bystanders, were arrested.

5. The source contends that the police forces assaulted Mr. Sannikov by pinning him down with a riot shield and jumping on it repeatedly, thereby severely injuring his legs. Mr. Sannikov's friends attempted to shield his head, and with the help of his wife, Iryna Khalip, managed to free him.

6. As they were on their way to a hospital, the Special Police Unit stopped the car, dragged Mr. Sannikov out and arrested him. He was not presented with a warrant and no specific charges were pressed against him at that point. Mr. Sannikov was taken by the police to the KGB pretrial detention centre in Minsk, also known as Amerikanka, where he remained until the conclusion of his trial.

7. Although most of the people initially arrested on the night of the election on 19 December 2010 were released after several days in detention, at least 37 persons, including electoral candidates, journalists and activists, were charged with criminal offences of organizing and participating in mass disturbances. Most of these individuals, including Mr. Sannikov, received heavy sentences of up to seven years' imprisonment.

8. The source alleges that the order for Mr. Sannikov's arrest was issued by the President of Belarus and other high-ranking officials. Mr. Sannikov was charged with "organization of mass disorder accompanied by violence against persons, pogroms, arson, destruction of property, or armed resistance of the authority" under article 293(1) of the Belarus Criminal Code and with "involvement in riots, as expressed in the immediate

fulfilment of actions specified in the first part of this article” under article 293(2) of the Belarus Criminal Code.

9. The source states that Mr. Sannikov faced harsh conditions at the KGB pretrial detention centre in Minsk. He was held in a cold cell; reportedly beaten on multiple occasions; denied access to the toilet and forced to confess to accusations of attempting a coup d’Etat, armed resistance against representatives of the Government, planning pogroms and arson and organizing mass disorder accompanied by violence. Mr. Sannikov was reportedly threatened by the head of the KGB with possible measures against his wife and child unless he gave a self-incriminating testimony.

10. According to the source, Mr. Sannikov was also denied access to a lawyer. His initial lawyer visited him on 20 December 2010, and publicly raised concerns about his ill-treatment in pretrial detention. It is reported that the lawyer was subsequently disbarred by the Minsk City Bar Association. Following this incident, Mr. Sannikov was not permitted to confer with a lawyer in private until 22 March 2011. According to the source, when reading out the charges against Mr. Sannikov in April 2011, the prosecution declared that his “guilt was proved in full”. However, the source maintains that Mr. Sannikov’s lawyers were not provided with any evidence, nor with the Government’s official statement of the charges until three weeks before the trial commenced. This did not leave Mr. Sannikov’s lawyers sufficient time to prepare a proper defence. Attempts by Mr. Sannikov’s lawyers to have him released on bail proved unsuccessful.

11. Mr. Sannikov’s trial commenced on 27 April 2011. He was tried alongside protesters Ilya Vasilevich, Alekh Hnedchyk, Fyodar Mirzayanaw and Vladzimir Yeramyanok. Prior to the trial, Mr. Sannikov did not know the co-defendants and had no affiliation with them; they were not from his campaign.

12. The trial lasted 10 days and the defendants were forced to sit in the courtroom during the proceedings on a hard bench in a barred cage. In addition to the injuries to his legs sustained during the arrest, Mr. Sannikov has a documented history of medical problems. He requested the court on multiple occasions to pause the trial so that he could receive medical assistance. These requests were allegedly refused.

13. During his testimony in court, Mr. Sannikov stated that prison guards had tortured him and other persons involved in the elections; that he had been deprived of sleep; exposed to severe cold and his family had been threatened in an effort to secure confessions. He testified that some of the Government’s evidence had been obtained from him under duress. The court did not order an investigation of these allegations.

14. The source reports a number of procedural irregularities during the trial. It is alleged that the defence took witness statements on Mr. Sannikov’s behalf and provided photographs of Independence Square on the night of the demonstration. These, however, were not accepted as evidence by the court. In contrast, the court allowed the prosecutor to enter recorded conversations from Mr. Sannikov’s telephone which was tapped during the presidential campaign. Moreover, while 29 prosecution witnesses were announced, only eight showed up to testify. The prosecution explained that the others were on “holiday”. According to the source, the prosecution furnished no evidence that Mr. Sannikov had engaged in or incited any disorder or violence at the demonstration, nor caused or incited harm to people, nor destroyed or incited destruction of property. Reportedly, none of the prosecution witnesses specifically identified Mr. Sannikov as one of the persons who had committed violence or disobeyed police orders. The source reports that the defence presented numerous witnesses, all of whom testified that the demonstration was peaceful and that Mr. Sannikov did not encourage any rioting or violent acts.

15. On 14 May 2011, the District Court sentenced Mr. Sannikov to a five-year prison term. It is alleged that in its judgment, the Court adopted the prosecution’s indictment and statement of evidence verbatim, without making any reference to the evidence presented by the defence.

16. On 15 July 2011, the Minsk City Court dismissed a post-conviction cassation appeal filed by Mr. Sannikov's lawyers. Mr. Sannikov was not permitted to attend the hearing.

17. Subsequent to his sentencing, Mr. Sannikov was transferred to Novapolatsk penal colony No. 10, which is allegedly known for extremely harsh conditions, inter alia, due to its proximity to chemical plants that lack proper safety mechanisms. Around August 2011, Mr. Sannikov was transferred to the labour detachment of the third squad of penal colony No. 10 in Novapolatsk, where he has been forced to work producing corrugated carton boxes.

18. The source submits that Mr. Sannikov's arrest and detention are arbitrary as they are directly linked to his activities in opposition to the ruling Government and, in particular, the fact that he ran for presidential elections and took part in the protests of 19 December 2010. The source maintains that Mr. Sannikov's detention is in breach of his fundamental rights and freedoms under articles 18, 19, 21, 22 and 25 of the International Covenant on Civil and Political Rights and articles 19, 20 and 21 of the Universal Declaration of Human Rights. Similarly, the source submits that his detention breaches articles 33, 35, 36, 37 and 38 of the Constitution of Belarus. The source maintains that the measures taken by the authorities of Belarus cannot be qualified under the exceptions to the rights and freedoms recognized in articles 18, 19, 21, 22 and 25 of the Covenant. According to the source, although the authorities have invoked national security reasons for the arrests in connection with the 19 December events, a number of international observers have recognized – and the evidence available has shown – that the protests, in general, and Mr. Sannikov's speech, in particular, did not constitute a threat to the national security of Belarus. The source submits that finding the narrow exception here would put in jeopardy the very core of these rights and freedoms.

19. Furthermore, the source submits that Mr. Sannikov's trial failed to comply with the minimum due process guarantees under the International Covenant on Civil and Political Rights the Universal Declaration of Human Rights and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles).¹ The source sustains that in violation of articles 14, paragraph 1, of the Covenant and article 10 of the Declaration, Mr. Sannikov was not tried by an impartial judiciary. His right to "be presumed innocent until proved guilty" as set out in article 14, paragraph 2, of the Covenant and article 11 of the Declaration was allegedly not respected. The source contends that international observers have unanimously pointed to the lack of impartiality of Mr. Sannikov's trial. In particular, the source points to a violation of article 14, paragraph 3 (b) and (e) of the Covenant regarding the limited time for the preparation of his defence, the lack of unimpeded access to counsel and the failure to objectively assess evidence presented by the prosecution and the defence. In addition, the source submits that Mr. Sannikov's trial breached principles 10, 15, 17, 18, 19 and 21 of the Body of Principles and articles 60 and 115 of the Constitution of Belarus.

Response from the Government

20. On 19 December 2010, an unauthorized street protest against the results of the presidential election took place in Minsk. Mr. Sannikov, in violation of the law, was one of the organizers of the protest. During the protest there were calls for a change in Government and new election without participation of the current President.

21. According to the response, a group of about 400 people attempted to attack Government House in order to occupy it, then stage a coup d'état. Mr. Sannikov was among those who attacked the House. The assailants used stones, bottles, and iron bars. The Government states that the video equipment, which has been turned over to the

¹ General Assembly resolution 43/173, annex.

investigation, enabled identification of all the assailants, including Mr. Sannikov who was among them.

22. The protesters also used iron bars, tire levers and other objects to attack the police, a demonstration of the obviously aggressive nature of the protesters' actions. As a result of the clashes with protesters, 87 policemen were injured and 9 were hospitalized.

23. Mr. Sannikov was detained when he tried to escape in the car that was stopped by the police. To detain him, the police used a permitted combat technique which resulted in a minor injury to his leg. Mr. Sannikov did not complain about injuries to the Office of Attorney General.

24. The Government explains that, in accordance with the Code of Criminal Procedure, an arrest warrant and/or charges are not required at the moment of apprehension. Detention involves physical apprehension of a person, bringing him/her to the investigative institution, and arrest up to 72 hours after apprehension. As soon as a person is brought to the investigative institution, a formal record is drawn up. The record shall indicate, inter alia, the reasons, place and time of apprehension.

25. During the pretrial detention, Mr. Sannikov did not submit any complaint about treatment by the prison staff and the conditions of his detention. All prisoners are given access to toilet facilities and cells are kept at pre-established temperatures.

26. There were no restrictions on Mr. Sannikov's meetings with his lawyer. He met with the lawyer in private on numerous occasions.

27. On 23 January 2012, the Department of Citizenship and Pardon of the Administration of the President received a petition for pardon from Mr. Sannikov. On 14 April 2012, by the decision of the President, Mr. Sannikov was granted pardon and released.

Further comments from the source

28. The source reiterates that Mr. Sannikov's arrest and detention were politically motivated. In this regard, the source refers to the fact that the President held a press conference shortly after security forces had arrested the protesters and most of the opposition candidates, at which he claimed that he had thwarted attempts by the opposition to stage a revolution. According to the source, the President also announced the true basis for the crackdown and arrests, stating: "That's enough of that. There won't be any more silly democracy, muddle-headed democracy in the country." The source concludes that, consistent with the Belarusian Government's demonstrated practice of stifling political dissent, the arrest and detention of Mr. Sannikov were politically motivated and approved at the highest levels of power.

29. The source emphasizes that the prosecution provided no evidence at the trial that Mr. Sannikov was guilty of the crimes with which he was charged: it adduced no evidence that Mr. Sannikov had engaged in or incited any violence at the demonstration, nor caused or incited harm to people, nor destroyed or incited destruction of property. Although the prosecution witnesses presented an assortment of non-credible statements, none of them identified Mr. Sannikov as the person who had committed violence or disobeyed police orders.

30. As to the Government's claim that the court based its decision on the petitions of both the prosecution and the defence, the source notes that in its judgement, the court adopted the prosecution's indictment and statement of evidence verbatim, without any reference to the evidence submitted by the defence. Furthermore, the defence took witness statements on Mr. Sannikov's behalf and provided photographs of the square on the night of the demonstration, but the court did not accept them as evidence.

31. The source also emphasizes that the Government presented no evidence that Mr. Sannikov was among those who had stormed Government House on the night of 19

December 2010. No evidence of this was introduced at Mr. Sannikov's trial; the videotape referred to in the Government's response was not presented and no witness identified Mr. Sannikov as one of the persons who had committed violence or disobeyed orders. The source contends that Mr. Sannikov did not participate in storming the building, but he did exhort the crowd to remain peaceful and to keep away from the government building.

32. The source reiterates that Mr. Sannikov was not permitted to see a lawyer in private until he had been in detention for nearly three months.

33. The Government's response failed to address the fact that Mr. Sannikov's wife, Iryna Khalip was also detained at the same time as he was arrested; nor does the Government refute the fact that the authorities threatened to seize their son and put him in an orphanage. The Government's response does not address the evidence showing that when Mr. Sannikov refused to confess to any crimes, Vadim Zaitsev, the head of the KGB, threatened that brutal measures would be taken against his wife and child if he did not provide a self-incriminating testimony. The source also notes that the Government's response does not address the evidence showing that Mr. Sannikov was denied access to counsel after his first lawyer, Pavel Sapelko, was disbarred by the Minsk City Bar Association. That Mr. Sapelko was disbarred after, and as a result of, publicly raising concerns about Mr. Sannikov's "horrendous" condition and the Government's mistreatment of him during his pretrial detention is uncontested.

34. Mr. Sannikov's civil and political rights are restricted and he risks re-arrest. Under paragraph 17 (a) of its Revised methods of work, the Working Group "reserves the right to render an opinion, on a case-by-case basis, whether or not the deprivation of liberty was arbitrary, notwithstanding the release of the person concerned."

35. According to the source, the President of Belarus has threatened to re-arrest Mr. Sannikov and his campaign aid, Zmister Bandarenka, if they exercise their right to freedom of expression. During a press conference on 21 April 2012, President Lukashenko is quoted as saying in reference to Messrs. Sannikov and Bandarenka, "[o]ne more [act of] pressure and those blabbermouths, who have been set free and should say thanks for that, may return to prison. If they blabber, they will go back there." In the light of the continued limitations placed on Mr. Sannikov's fundamental rights, including the right to political participation, and the constant threat of re-arrest, it is fitting that the Working Group should consider his case under paragraph 17 (a) of its Revised methods of work.

Discussion

36. The Working Group recalls that in his report (A/HRC/4/16), the Special Rapporteur on the situation of human rights in Belarus had noted systematic violations of civil and political rights and the deprivation of Belarusian citizens' right to effectively take part in the conduct of public affairs continued to be observed (para. 10).²

37. In this case, the Working Group finds that Mr. Sannikov's right to a fair trial, as provided for in article 14 of the International Covenant on Civil and Political Rights and articles 10 and 11 of the Universal Declaration of Human Rights, has been violated.

38. Mr. Sannikov was deprived of the right to effective legal assistance at the pretrial stage, and his trial was accompanied by a number of procedural irregularities, as pointed out by the source, which have not been sufficiently rebutted by the Government. Following his lawyer's disbarment by the Minsk City Bar Association, Mr. Sannikov, for several months, was not permitted to confer with a lawyer in private, nor was he provided with adequate time and facilities for the preparation of his defence, which constitutes violation of article 14, paragraph 3 (b), of the Covenant.

² See also the Working Group's opinion No. 13/2011 (Belarus).

39. The Working Group considers that Mr. Sannikov's right to a fair trial was substantially infringed and his deprivation of liberty falls within category III of the categories applicable to the cases submitted for consideration by the Working Group.

40. The Working Group also considers that Mr. Sannikov was deprived of his liberty because of his activities in opposition to the Government and, in particular, the fact that he was an electoral candidate and allegedly took part in the protests of 19 December 2010. These points are well illustrated in statements made by the President of Belarus following Mr. Sannikov's release and the continuous limitations imposed on his fundamental rights and freedoms. The deprivation of Mr. Sannikov's liberty between 20 December 2010 and 21 April 2012 constitutes a breach of his fundamental rights and freedoms under articles 19, 21, 22 and 25 of the International Covenant on Civil and Political Rights, and therefore also falls within category II of the categories applicable to the cases submitted for consideration to the Working Group.

Disposition

41. In the light of the foregoing, the Working Group on Arbitrary Detention renders the following opinion:

The deprivation of liberty of Andrei Sannikov was arbitrary, being in contravention of articles 9, 14, 19, 21, 22 and 25 of the International Covenant on Civil and Political Rights, as well as articles 7, 10, 11, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights; it falls within categories II and III of the categories applicable to the cases submitted for consideration to the Working Group.

42. Consequent upon the opinion rendered and taking into account that Mr. Sannikov has been released, the Working Group requests the Government to take all necessary steps to provide him compensation for the harm and damages he suffered during the period of his arbitrary detention, in accordance with article 9, paragraph 5 of the International Covenant on Civil and Political Rights.

43. In accordance with article 33 (a) of its Revised methods of work, the Working Group considers it appropriate to refer the allegations of torture to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for appropriate action.

[Adopted on 4 May 2012]