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Human Rights Council
Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its ninety-seventh session, 28 August–1 September 2023

Opinion No. 45/2023 concerning Igor Alyaksandravich Losik (Belarus)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 51/8.
2. In accordance with its methods of work,¹ on 16 May 2023 the Working Group transmitted to the Government of Belarus a communication concerning Igor Alyaksandravich Losik. The Government has not replied to the communication. The State is a party to the International Covenant on Civil and Political Rights.
3. 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 him or her) (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 Covenant (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 on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

¹ [A/HRC/36/38](#).

1. Submissions

(a) Communication from the source

4. Igor (or Ihar) Alyaksandravich Losik, born in 1992, is a citizen of Belarus. He is an activist, blogger and consultant for the Belarus service of Radio Free Europe/Radio Liberty, a non-profit news network. He is the co-founder and main administrator of “Belarus of the Brain” (or “Belanova”), a Telegram channel founded in 2016 to create a news platform accessible to all Belarusians.

5. The source submits that, prior to the presidential election of 9 August 2020, “Belarus of the Brain” became the main media outlet used by members of the Belarusian opposition. At the time of the protests in August 2020, “Belarus of the Brain” had more than 170,000 subscribers. It is currently the second most visited channel in the country. Mr. Losik was an active participant in the channel, using it to cover and report on the human rights violations committed by the Government. In the lead-up to the presidential election, he continued to cover these topics in addition to giving coverage to the opposition candidate.

6. Previously, in 2011, Mr. Losik had led peaceful, silent protests as part of the Revolution through Social Networks movement. Although he officially ended his association with the movement and no longer participates in its administration, government officials kept him under informal investigation.

(i) Context

7. According to the source, censorship and violence against members of the press have become more prevalent following the presidential election of 9 August 2020, with hundreds of journalists having been detained. As a result of the censorship, Belarusian journalists have resorted to using alternative social media platforms, including Telegram. Telegram has become the primary source of information for most Belarusians. However, in response to the widespread adoption of Telegram, the Government has labelled all Telegram channels that it does not administer or manage as “extremist” sources and, as is the case with its media restrictions, all participation in these channels, including sharing, commenting and liking posts and even visiting the channels, is considered a strict liability crime.

(ii) Arrest and detention

8. The source submits that, on 25 June 2020, Mr. Losik was arrested at his home in Baranavichy and accused of using the “Belarus of the Brain” Telegram channel to disrupt public order ahead of the presidential election of 9 August 2020. The arrest came several hours after a two-hour-long search by 15 militia officers of the apartment in which he lived with his family. During the search, Mr. Losik’s laptop, computer and telephone were seized.

9. At the time of the search, the reason for the law enforcement action was unknown. Although the law enforcement officials produced a signed search warrant issued by the Office of the Procurator General of Belarus, the warrant did not include a name or department and did not indicate who had authorized it. In addition, neither Mr. Losik nor his family was given a copy of the search warrant or was allowed to read it in its entirety or make a copy for later reference. Immediately after the search, he was arrested and taken to Okrestina, a detention facility in Minsk.

10. Neither Mr. Losik nor his family was presented with an arrest warrant or was informed of the reason for his arrest. Several hours after his arrest, he and his family learned that a criminal case had been opened against him under article 342 of the Criminal Code of Belarus (“organization of and active participation in actions that grossly disrupt public order”), which carries a sentence of three years’ imprisonment. After the arrest, Mr. Losik was kept in a district pretrial prison in Minsk. His arrest appears to have been “pre-emptive”, as, at the time, the authorities had no conclusive proof that he was posting to or was associated with the “Belarus of the Brain” Telegram channel or that he had acted in any way that might have disturbed public order. Instead, it is alleged that the authorities used the disturbance of public order as a pretext on which to arrest him for his work as a journalist for Radio Free Europe/Radio Liberty.

(iii) *Trial and conviction*

11. The source reports that, on 18 August 2020, two months after his arrest, Mr. Losik was transferred to the pretrial detention centre in Zhodzina. While there, he was subjected to physical and psychological violence. He was forced to undress and hold humiliating and uncomfortable positions for several hours at a time. He was subjected to arbitrary searches and cell transfers, including to a basement cell with no toilet, light, ventilation or space to sit or lie down, which he shared with five cellmates, two of whom were severely ill and contagious. He was transferred from cell to cell with no warning or explanation. He was arbitrarily prohibited from receiving letters, newspapers or information in any other form and from seeing members of his family. Moreover, all communication between Mr. Losik and the outside world was heavily monitored and redacted by the prison wardens.

12. Furthermore, the authorities reportedly interviewed Mr. Losik at least once a week and tried to make him confess to the charges against him by threatening him and his family.

13. On 15 December 2020, a month after Mr. Losik had been placed in an individual cell and prohibited from communicating with all outside sources, an additional charge was brought against him under article 293 (2) of the Criminal Code. Article 293 establishes penalties relating to “mass disturbances”. The combined charges under articles 342 and 293 (2) carried a penalty of up to 11 years in a maximum-security facility.

14. In response to the additional charges brought against him, Mr. Losik started a hunger strike, claiming on the “Belarus of the Brain” Telegram channel that it was his last hope to challenge the unsubstantiated accusations against him and his wrongful detention. He ended his hunger strike on 25 January 2021, when, through an intermediary, he posted a statement on Telegram, citing nationwide support and solidarity as the reason for his decision. Following the hunger strike, he was transferred to a cell with 24-hour video surveillance. The authorities claimed that Mr. Losik was periodically monitored by prison doctors and visited by prison psychologists. He was then transferred to the Gomel detention centre.

15. On 18 February 2021, in response to the arrest and sentencing of two other journalists, Mr. Losik wrote a letter – later published on “Belarus of the Brain” – in which he revealed that the conditions of his detention in Gomel were no better than those that he had endured in Zhodzina. The letter’s hopeless and defeated tone sparked concerns for his mental and physical well-being among his supporters and family. On 11 March 2021, two new charges were brought against Mr. Losik under articles 130 (“incitement to racial, national or religious hatred or discord”) and 138 (“illegal use of signs protected by international treaties”) of the Criminal Code, the latter offence being categorized as a war crime. These charges brought his maximum possible sentence to 15 years’ imprisonment. When he was informed of the new charges, Mr. Losik attempted to injure his wrists in the presence of his lawyer and the investigator and went on a dry hunger strike for six days, after which he was placed in solitary confinement. In April 2021, law enforcement officials censored all correspondence between him and the outside world.

16. In May 2021, the Office of the Procurator General finalized the charges against Mr. Losik and his five co-defendants. In addition to charging him under articles 293 and 130 of the Criminal Code, the procurators requested that he and his co-defendants be found liable for 3,078,000 roubles (\$1.2 million) in damages. In June 2021, the trial began.

17. On 14 December 2021, six months after the trial had begun, Mr. Losik was found guilty and sentenced to 15 years’ imprisonment under articles 293 and 130 of the Criminal Code. The trial took place behind closed doors, at the Gomel detention centre. Members of the press and the general public were not allowed to attend any of the trial sessions. Family members were allowed to attend only the last session, when the verdict was announced. Mr. Losik had access to his lawyer while in pretrial detention and during the trial. It appears that the lawyer had an opportunity to present a defence for Mr. Losik at trial, but this cannot be confirmed, as the lawyer signed a non-disclosure agreement that forbids him from revealing details of the case. A week after the trial, the Ministry of Internal Affairs added the Belarus service of Radio Free Europe/Radio Liberty to its register of extremist organizations and restricted public access to the network’s social media content and websites.

18. On 1 June 2022, the Supreme Court rejected Mr. Losik's appeal and upheld his 15-year sentence. The trial was presided over by a panel of three judges and held behind closed doors. The names of the presiding judges were not disclosed to the public or to Mr. Losik's family. However, all Supreme Court judges are appointed by the President, and they commonly rule in favour of the prosecution.

19. As a result of the Supreme Court decision, Mr. Losik was transferred from Gomel to Navapolatsk correctional colony No. 1, a high-security facility, where he is expected to serve the remainder of his sentence. Since his transfer to Navapolatsk, he has been subjected to harsher and stricter measures. He can receive visitors other than his lawyer only twice a year. He can receive correspondence only once a month. Moreover, he is liable to lose all rights and benefits after two violations of the facility's guidelines, which include not being clean-shaven and dressing inappropriately and are enforced at the discretion of the prison wardens. Mr. Losik has already been punished for not being clean-shaven. With regard to the specific date of his release, when handing down their verdict, the judges stated that he would be released in 2034 and that the period that he had spent in pretrial detention would count towards his sentence.

20. Since Mr. Losik's transfer to Navapolatsk, concerns have been growing for his and his family's health and well-being. On 29 June 2022, Mr. Losik was added to the Belarusian terrorist watch list. Mr. Losik has started another hunger strike and has experienced suicidal thoughts. In addition, the authorities have reportedly started to threaten his family.

(iv) *Analysis of violations*

21. The source submits that the arrest and detention of Mr. Losik are arbitrary under categories I, II and III.

a. Category I

22. The source recalls that a detention is arbitrary under category I when it is impossible to invoke any legal basis to justify the deprivation of liberty. In Mr. Losik's case, the authorities have had no legal basis on which to justify his deprivation of liberty since 25 June 2020, owing to the improper arrest procedures carried out by the authorities and the fact that he has not committed a criminal offence.

Improper arrest procedures carried out by the authorities

23. The source notes that, although there are no articles of the Constitution of Belarus stating that an arrest warrant is a mandatory precondition for a lawful arrest, international law clearly requires law enforcement officials to present a warrant when conducting an arrest. Article 9 (2) of the Covenant provides that anyone who is arrested is to be informed, at the time of arrest, of the reasons for the arrest and is to be promptly informed of any charges against him or her. The source contends that, in accordance with article 9 (1), a warrant establishes the legal basis for the arrest. Thus, the failure to show an arrest warrant and promptly inform a detainee of the charges against him or her demonstrates that there is no valid basis on which to justify the arrest and that the resulting deprivation of liberty falls within category I.

24. The source submits that Mr. Losik was neither shown an arrest warrant nor informed of the grounds for his arrest at the time of his arrest in June 2020. As a result, the authorities failed to comply with the standards of due process established under international law. The source therefore argues that there is no legal basis on which the deprivation of liberty of Mr. Losik can be justified, which renders his detention arbitrary under category I.

Lack of a criminal offence

25. The source recalls that the Working Group has found that a detention has no legal basis when the detainee was arrested without substantive evidence to justify the arrest. However, at the time of Mr. Losik's arrest, the authorities presented no evidence to suggest that he was engaged in any activity that would justify his detention. By working as a consultant for a media organization and posting to a Telegram channel, he was peacefully exercising his right to freedom of expression. Moreover, there is no direct evidence that

Mr. Losik's posts incited actions during the August 2020 protests, which took place two months after his arrest. Thus, the source concludes that there is no sound basis on which his arrest could be legally justified and, as such, his detention falls within category I.

b. Category II

26. The source submits that a detention is arbitrary under category II when it results from the exercise of fundamental rights or freedoms protected under international law, including the rights to freedom of expression and of association.

Freedom of expression

27. The source recalls that article 19 of the Universal Declaration of Human Rights and article 19 (1) of the Covenant provide for the right to freedom of opinion, which includes opinions of a political, scientific, historic, moral or religious nature. A State party violates its obligations under article 19 (1) of the Covenant if it harasses, intimidates or unlawfully detains an individual for holding a particular opinion. Article 19 of the Universal Declaration of Human Rights and article 19 (2) of the Covenant explicitly protect the right to express one's thoughts and opinions. Similarly, those two articles protect the corresponding right to receive such information free from government interference or censorship. Thus, the Universal Declaration of Human Rights and the Covenant provide for special protection for the work of journalists, who must be able to gather information and disseminate news and ideas, this being a cornerstone of a democratic society.

28. The source submits that, despite those protections under international law, the authorities arbitrarily detained Mr. Losik, on fabricated charges, for exercising his right to freedom of expression. He was charged with disturbing public order and promoting national hatred, both justifications that the authorities have used to jail journalists in the past. The source considers that the abusive nature of the charges is evident in the light of the past conduct of the authorities, the procedural violations at trial and, more importantly, the fact that the authorities have not produced any evidence that links Mr. Losik's articles or posts to the August 2020 protests.

29. The source recalls that freedom of expression is not an absolute right under the Covenant and may be subject to limited restrictions in certain circumstances. Under article 19 (3), such restrictions must be provided by law and must be necessary either to respect the rights and reputations of others or to protect national security, public order or public health or morals. The Human Rights Committee has interpreted the limited provisions of article 19 (3) narrowly, noting that any restrictions must meet a strict test of justification and must not jeopardize the right itself. Thus, the Government may not use such restrictions to silence independent journalists who report on important issues, even if it disapproves of the reporting.

30. According to the source, in the present case, the restrictions do not apply. In his articles and posts on Telegram, Mr. Losik only reported on and reflected the circumstances imposed on the Belarusian people by their Government, and his reporting did not conclusively or directly incite violence among the Belarusian population. Thus, the Government did not have a justification for limiting his right to freedom of expression and effectively violated his exercise of that fundamental right. The Government targeted Mr. Losik for his legitimate work as a journalist reporting on critical issues in Belarus, which does not fall within the narrow exceptions set out in article 19 (3) of the Covenant. As such, the source considers that the continued imprisonment of Mr. Losik violates article 19 (2), as it results from his peaceful free expression.

Freedom of association

31. The source recalls that article 20 of the Universal Declaration of Human Rights and article 22 of the Covenant provide for the right to freedom of association. Those articles protect the right of individuals to associate with like-minded persons and join groups to pursue a common interest and the right of such groups to form and carry out activities in accordance with their mission, including if this mission is political, social, cultural, religious or commercial. By targeting Mr. Losik because of his association with "Belarus of the Brain"

and Radio Free Europe/Radio Liberty, the Government violated his right to freedom of association.

32. The source submits that article 22 (2) of the Covenant establishes the limited circumstances in which a State party may restrict freedom of association. Article 22 (2) prohibits restrictions “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”. Although the Government used Belarusian law to justify its treatment of Mr. Losik, citing his work as a reporter for “extremist” organizations such as “Belarus of the Brain” and Radio Free Europe/Radio Liberty, the provisions in question exist in contravention of international law. As such, the Government cannot justify its violation of Mr. Losik’s rights under article 22 of Covenant.

c. Category III

33. The source notes that a detention is arbitrary under category III when it violates the right to due process or one of the tenets of the right to a fair trial. With regard to due process, the minimum international standards are established in the Covenant, the Universal Declaration of Human Rights, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). The source argues that the authorities have committed numerous violations of Mr. Losik’s rights under those standards.

Right to a fair hearing

34. The source recalls that a fair hearing may be described as a trial conducted by a competent, independent and impartial tribunal established by law. Furthermore, fairness requires the absence of any direct or indirect influence, pressure, intimidation or intrusion from any side and for whatever motive. For example, a hearing is not fair or independent if the court openly supports one party over another or is subject to political interference by the executive branch.

35. According to the source, all federal and Supreme Court judges are appointed by the President and are under significant pressure to rule in favour of the Government, in particular in cases involving political activists or opposition figures. The executive capture of the judiciary, the restrictions on Mr. Losik’s access to his lawyer and the fact that his trial was held behind closed doors meant that he was denied a fair consideration of his case at trial. According to the source, by failing to try Mr. Losik before an impartial court, the authorities violated his right to a fair hearing.

Right to a public hearing

36. The source notes that article 14 (1) of the Covenant provides that everyone is entitled to a public hearing. The right to a public hearing means that an accused person has the right to an open hearing attended by the public. In general, a hearing must be open to everyone, including members of the press and relatives of the accused. Courts are under an obligation to disclose information about the time and venue of the hearing and provide adequate time and facilities for attendance by interested members of the public.

37. The source submits that, in the present case, by holding his pretrial hearing, trial and Supreme Court appeal hearing behind closed doors, thereby preventing the attendance of any members of the press or relatives of the accused, and failing to disclose any court documents or transcripts after the hearing, the authorities violated Mr. Losik’s right to a public hearing.

Right to the assistance of legal counsel

38. The source recalls that article 14 (3) (b) of the Covenant enshrines the right to have adequate time and facilities to prepare a defence and to communicate with a lawyer of one’s own choosing. This right includes access to a qualified lawyer of one’s choosing, sufficient time and facilities to communicate with a lawyer and the lawyer’s freedom from intimidation, hindrance and harassment when representing his or her client.

39. The source argues that, although Mr. Losik was assigned a lawyer, whom his family plans to continue using, and has had access to his lawyer's services throughout his detention, the lawyer has been subjected to government intimidation and hindrance for representing him. Like all lawyers in Belarus, Mr. Losik's lawyer had to sign a non-disclosure agreement that prevents him from revealing details of the case to anyone other than his client. In addition, all meetings and correspondence between Mr. Losik and his lawyer are continuously monitored by law enforcement officials. Moreover, all Belarusian lawyers are licensed by the executive branch; the Government has been known to suspend the licences of lawyers who present defences that contradict the agenda of the executive branch and, in some cases, even to prosecute them. Therefore, the lawyer representing Mr. Losik is not only being hindered from representing his client effectively but is also facing significant government intimidation. In view of the above, the source contends that the authorities have violated Mr. Losik's right to the assistance of legal counsel.

Right to a prompt trial and release pending trial

40. The source notes that article 9 (3) of the Covenant provides that anyone arrested or detained on a criminal charge is to be brought promptly before a judge or other officer authorized by law to exercise judicial power. Under the Covenant, criminal defendants are entitled to trial within a reasonable time or to release. Although the Human Rights Committee has recognized that the reasonableness of trial delays must be assessed on a case-by-case basis, the Government is obliged to provide a justification for delaying a trial, in particular in cases in which the defendant is held in pretrial detention. Moreover, the Covenant and the Committee have established that pretrial detention should not be the general rule. Rather, unless the State can demonstrate that there is an extreme need for detention, a criminal defendant is entitled to pretrial release.

41. According to the source, in the present case, Mr. Losik was held in pretrial detention for one year, without justification. The authorities failed to provide an explanation either for the decision to hold him in pretrial detention or for the delay in the first instance trial. Therefore, the source submits that Mr. Losik's right to be promptly brought before a judicial authority has been violated.

(b) Response from the Government

42. On 16 May 2023, the Working Group transmitted the allegations from the source to the Government under its regular communications procedure. The Working Group requested the Government to provide, by 17 July 2023, detailed information about the current situation of Mr. Losik and to clarify the legal provisions justifying his continued detention and the compatibility of his continued detention with the obligations of Belarus under international human rights law, in particular with regard to the treaties ratified by the State.

43. The Working Group regrets that the Government did not submit a reply and did not seek an extension in accordance with paragraph 16 of the Working Group's methods of work.

2. Discussion

44. In the absence of a response from the Government, the Working Group has decided to render the present opinion, in conformity with paragraph 15 of its methods of work.

45. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has established a prima facie case for breach of international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.² In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

46. The source has argued that the detention of Mr. Losik is arbitrary and falls under categories I, II and III. The Working Group shall proceed to examine these allegations in turn.

² A/HRC/19/57, para. 68.

(a) Category I

47. The source alleges, and the Government has not contested, that Mr. Losik was arrested on 25 June 2020 and that, although the arresting authorities did not present an arrest warrant, the reasons and legal basis for the arrest were explained.

48. The Working Group recalls that, as it has stated on numerous occasions, for a deprivation of liberty to have a legal basis, it is not sufficient for there to be a law that might authorize the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case.³ This is typically⁴ done by means of an arrest warrant, arrest order or equivalent document.⁵ The Working Group finds that no such document was presented to Mr. Losik, in violation of articles 3 and 9 of the Universal Declaration of Human Rights and article 9 (1) of the Covenant.

49. Furthermore, the Working Group recalls that article 9 (2) of the Covenant requires that anyone who is arrested not only be informed of the reasons for the arrest but also be promptly informed of any charges against him or her. The Government did not contest this allegation, and the Working Group cannot but conclude that there has been a breach of article 9 (2) of the Covenant in respect of Mr. Losik.

50. Lastly, the Working Group recalls that it is a well-established norm of international law that pretrial detention should be the exception and not the rule and that it should be ordered for as short a time as possible.⁶ Article 9 (3) of the Covenant provides that it should not be the general rule that persons awaiting trial should be detained, but release may be subject to guarantees to appear for trial and at any other stage of the judicial proceedings. It follows that liberty is recognized as a principle and detention as an exception in the interests of justice.

51. In the present case, according to the source, Mr. Losik spent about a year in pretrial detention, and the possibility of alternative preventive measures was not duly considered, contrary to article 9 (3) of the Covenant. In the absence of any argument to the contrary, the Working Group finds his detention to be in violation of article 9 (3) of the Covenant.

52. Accordingly, the Working Group considers that the arrest and subsequent detention of Mr. Losik are arbitrary under category I.

53. Furthermore, the source invokes category I to claim that Mr. Losik was detained not for any crime that he had committed but solely for his journalistic activities. The Working Group will examine this allegation under category II.

(b) Category II

54. The source submits that a detention is arbitrary under category II when it results from the exercise of fundamental rights or freedoms protected under international law, including the rights to freedom of expression and of association provided for in articles 19 and 22 of the Covenant.

55. The Working Group observes that, while the Government had the opportunity to explain which specific actions by Mr. Losik amounted to crimes, it chose not to do so. Moreover, it did not address the specific allegations of infringements of his rights to freedom of expression and of association.

56. Freedom of expression includes the right to seek, receive and impart information and ideas of all kinds, regardless of frontiers, and this right includes the expression and receipt of communications of every form of idea and opinion capable of transmission to others,

³ In cases of flagrante delicto, the opportunity to obtain a warrant will typically not be available.

⁴ Human Rights Committee, general comment No. 35 (2014), para. 23; see also opinions No. 88/2017, para. 27; No. 3/2018, para. 43; and No. 30/2018, para. 39.

⁵ See, for example, opinion No. 30/2017, paras. 58 and 59.

⁶ Opinions No. 28/2014, para. 43; No. 49/2014, para. 23; No. 57/2014, para. 26; No. 1/2020, para. 53; and No. 8/2020, para. 54. See also the Human Rights Committee, general comment No. 35 (2014), para. 38; and [A/HRC/19/57](#), paras. 48–58.

including political opinions.⁷ Moreover, the restrictions that may be imposed on that right may relate either to respect for the rights and reputations of others or to the protection of national security, public order or public health or morals. As the Human Rights Committee has stipulated: “Restrictions are not allowed on grounds not specified in paragraph 3, even if such grounds would justify restrictions to other rights protected in the Covenant. Restrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.”⁸ It should be noted that article 22 of the Covenant permits restrictions of the right of association on the same three grounds.

57. In the present case, the Government of Belarus has not invoked any of the permitted restrictions. Given the general context of the case and the opinion rendered by the Working Group in the case of another co-founder of the “Belarus of the Brain” Telegram channel,⁹ it is clear to the Working Group that Mr. Losik was in fact arrested and subsequently detained for exercising his rights to freedom of expression and of association. There is no evidence whatsoever that any of his actions have been violent, that he incited violence or indeed that his actions led others to commit acts of violence. While the rights to freedom of expression and of association are not absolute, “when a State party imposes restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself”.¹⁰

58. The Working Group wishes to recall Human Rights Council resolution 24/5, in which States are reminded of “their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others”.

59. Equally, the Working Group recalls the principle enunciated in Human Rights Council resolution 12/16, namely that States should refrain from imposing restrictions that are not consistent with article 19 (3) of the Covenant, including restrictions on discussing government policies and political debate, reporting on human rights, engaging in peaceful demonstrations or political activities, including for peace or democracy, and expressing opinion and dissent, religion or belief.

60. Lastly, the Working Group notes the undisputed fact that Mr. Losik is a journalist and, in this regard, recalls the 2021 report of the United Nations High Commissioner for Human Rights on the situation of human rights in Belarus in the context of the 2020 presidential election, which states that: “Journalists and human rights defenders were regularly harassed and detained while exercising their legitimate functions in the context of assemblies, including on the grounds of ‘participating in unauthorized events’ while covering public gatherings.”¹¹

61. Very similar reports have been received in relation to the post-election period in the country: “Journalists have been routinely detained in the context of the protests, even when they clearly identified themselves as such with their press cards, without regard for their protection under international human rights law to exercise their functions of reporting during assemblies. Between 9 August and 20 December, 384 journalists were arrested, 80 were sentenced to administrative detention, several were fined, and 62 reportedly experienced violence and beatings.”¹²

62. It is thus clear to the Working Group that the arrest and detention of Mr. Losik were based solely on his journalistic activity and his exercise of the freedoms of expression and of association, in violation of articles 19 and 22 of the Covenant and consistent with the pattern identified by the Office of the United Nations High Commissioner for Human Rights, as noted above.

63. The Working Group concludes that the arrest and detention of Mr. Losik are arbitrary and fall under category II. The Working Group refers the present case to the Special

⁷ Human Rights Committee, general comment No. 34 (2011), para. 11.

⁸ *Ibid.*, para. 22.

⁹ Opinion No. 2021/50.

¹⁰ Human Rights Committee, general comment No. 34 (2011), para. 21.

¹¹ A/HRC/46/4, para. 19.

¹² *Ibid.*, para. 37.

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, for appropriate action.

(c) **Category III**

64. Given its finding that the deprivation of liberty of Mr. Losik is arbitrary under category II, the Working Group wishes to emphasize that he should not have been tried. Nevertheless, as a trial did take place and Mr. Losik was sentenced to a long period of imprisonment, the Working Group will proceed to an examination of the source's submissions concerning the denial of Mr. Losik's fair trial rights.

65. The source makes three allegations under this category: that Mr. Losik was not tried by an independent and impartial tribunal, that he did not have a public hearing and that his right to effective legal representation was impaired. The Working Group will examine these allegations in turn.

66. With regard to the independence of the judiciary, the Working Group recalls that it is a *sine qua non* of the right to a fair hearing as enshrined in article 10 of the Universal Declaration of Human Rights and article 14 of the Covenant. Issues relating to the separation of powers between the political organs of government and the judiciary and the safeguarding of the independence of the judiciary are a matter of growing concern. The Working Group refers to the report submitted by the Special Rapporteur on the situation of human rights in Belarus to the Human Rights Council in respect of the period in question, which states that: "The Special Rapporteur observed in her latest report to the General Assembly (A/75/173) that institutional deficiencies and politically motivated interference and pressure on courts and the judiciary undermined judicial independence and negatively affected the realization of the right to a fair trial in Belarus. As much became evident in the context of the deterioration in the situation of human rights in 2020 and 2021."¹³

67. The independence of judges has been systemically restricted in Belarus. In politically sensitive cases, judges are apparently expected to implement the requests of the Procurator General, whose role is to implement the executive's repressive policy of harshly punishing dissent. Judges therefore often deny defendants their rights to the presumption of innocence and to present witnesses in their defence. In the context of arrests and deprivation of liberty, consistent testimonies about delays in access to a lawyer and to other legal and procedural safeguards increase concerns. Lawyers are obliged to sign a non-disclosure agreement, which makes it difficult to obtain information on the specific articles under which any charges have been brought. The penitentiary authorities have repeatedly denied lawyers access to their defendants in pretrial detention, invoking precautions on health grounds, even though no preventive measures related to coronavirus disease (COVID-19) or restrictions have been officially enacted by the Government to date.

68. In view of the above findings, and in the absence of any reply from the Government, the Working Group cannot but find that Mr. Losik was not tried by an independent and impartial tribunal, contrary to article 10 of the Universal Declaration of Human Rights and article 14 (1) of the Covenant. Furthermore, article 14 (1) of the Covenant provides that, in the determination of any criminal charge, everyone is entitled to a public hearing. Article 10 of the Universal Declaration of Human Rights similarly guarantees the right to a public hearing. As the Human Rights Committee has explained in its general comment No. 32 (2007): "The publicity of hearings ensures the transparency of proceedings and thus provides an important safeguard for the interest of the individual and of society at large."¹⁴ Although the right to a public hearing is not absolute, it may be restricted only "for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would be prejudicial to the interests of justice", and, in the absence of such exceptional circumstances, "a hearing must be open to

¹³ A/HRC/47/49, para. 53.

¹⁴ Human Rights Committee, general comment No. 32 (2007), para. 28.

the general public, including members of the media”, with entrance not limited to a select group of persons.¹⁵

69. It is alleged by the source that the authorities did not grant the public and the media access to Mr. Losik’s trial, in violation of the provisions mentioned above. Given that no explanation of those restrictions has been provided by the Government, the Working Group finds that the hearing of Mr. Losik’s case behind closed doors violated his rights under article 10 of the Universal Declaration of Human Rights and article 14 (1) of the Covenant.

70. Lastly, as concerns the submissions relating to effective legal representation, the Working Group is concerned that the confidentiality of Mr. Losik’s communication with his lawyer was not guaranteed. The Working Group reiterates that respect for lawyer-client confidentiality is an important part of the right of defence. The right of a defendant to have private discussions with his or her legal counsel, without surveillance, constitutes one of the fundamental aspects of a fair trial. Preventing a lawyer from conferring with his or her client and obtaining confidential instructions defeats much of the purpose of legal assistance. In this respect, the Human Rights Committee has stressed that counsel should be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications and, furthermore, that lawyers should be able to advise persons charged with a criminal offence without restrictions, influence, pressure or undue interference from any quarter.¹⁶

71. Noting that the source’s complaint about the intimidation of Mr. Losik’s lawyer is in line with the findings of the Special Rapporteur (see para. 66 above), and in the absence of any explanation from the Government, the Working Group concludes that Mr. Losik was deprived of effective legal representation, contrary to article 14 (3) (b) of the Covenant, rule 61 (1) of the Nelson Mandela Rules and principle 18 (3) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

72. Given all the above, the Working Group considers that the violations of Mr. Losik’s right to a fair trial are of such gravity as to give his deprivation of liberty an arbitrary character, falling under category III.

(d) Concluding remarks

73. The Working Group is disturbed by the uncontested allegations concerning Mr. Losik’s health and well-being. It notes with great concern that he has allegedly been severely humiliated and subjected to numerous arbitrary acts, including searches and unexplained constant changes of cell, which might have exacerbated the distress already inherent in any measure of deprivation of liberty and might have created further anxiety regarding his adaptation to the different places of detention. The Working Group considers that the treatment to which Mr. Losik was subjected appears to constitute retaliation for his activism and is incompatible with the obligations that Belarus has assumed under article 10 of the Covenant. It notes that he was added to the Belarusian terrorist watch list, and it appears that his family was intimidated as well.

74. Referring to the source’s statements about the psychological and physical ill-treatment of Mr. Losik, and noting that he has started another hunger strike and has expressed some suicidal thoughts, the Working Group reminds the Government of its duty to treat all detainees with humanity and with respect for the inherent dignity of the human person, as required by article 10 of the Covenant and rule 1 of the Nelson Mandela Rules.

¹⁵ Ibid., para 29.

¹⁶ Ibid., para. 34. See also the Basic Principles on the Role of Lawyers, para. 16; [A/HRC/45/16](#), para. 54; and opinions No. 29/2017, No. 32/2017, No. 34/2017, No. 36/2017, No. 70/2017, No. 66/2019 and No. 70/2021.

3. Disposition

75. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Igor Alyksandravich Losik, being in contravention of articles 3, 9, 10, 19 and 20 of the Universal Declaration of Human Rights and articles 9, 14, 19 and 22 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II and III.

76. The Working Group requests the Government of Belarus to take the steps necessary to remedy the situation of Mr. Losik without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

77. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Losik immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law.

78. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Losik and to take appropriate measures against those responsible for the violation of his rights.

79. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to 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, for appropriate action.

80. The Working Group requests the Government to disseminate the present opinion through all available means and as widely as possible.

4. Follow-up procedure

81. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

- (a) Whether Mr. Losik has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Losik;
- (c) Whether an investigation has been conducted into the violation of Mr. Losik's rights and, if so, the outcome of the investigation;
- (d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Belarus with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

82. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example through a visit by the Working Group.

83. The Working Group requests the source and the Government to provide the above-mentioned information within six months of the date of transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as of any failure to take action.

84. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.¹⁷

[Adopted on 30 August 2023]

¹⁷ Human Rights Council resolution 51/8, paras. 6 and 9.