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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its ninety-first session, 6–10 September 2021

Opinion No. 23/2021 concerning Sergey Tihanovski (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 42/22.
2. In accordance with its methods of work,¹ on 14 May 2021 the Working Group transmitted to the Government of Belarus a communication concerning Sergey Tihanovski. The Government replied to the communication on 24 June 2021. 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.



Submissions

Communication from the source

4. Sergey Tihanovski (also known as “Siarhei Tsikhanouski”) is a citizen of Belarus who was born in 1978 and usually resides in Gomel, Belarus. Mr. Tihanovski is an entrepreneur, blogger and founder of the YouTube channel “A country for living”. He is married to presidential nominee Sviatlana Tsikhanouskaya.

a. Context

5. The source reports that, on 8 May 2020, the House of Representatives of the National Assembly of Belarus set the date for the election of the President of Belarus for 9 August 2020. On 20 May 2020, the Central Electoral Commission registered Ms. Tsikhanouskaya as presidential nominee and Mr. Tihanovski as the leader of the initiative group that nominated her.

6. The source emphasizes that the alleged arbitrary arrest and detention of Mr. Tihanovski is directly related to the presidential election in Belarus. All the circumstances indicated below demonstrate that the intention was to prevent Mr. Tihanovski from acting as the head of an initiative group representing an opposition candidate in the election. The source adds that Mr. Tihanovski had been arrested on two previous occasions, on 27 December 2019 and on 6 May 2020, and that he had been sentenced to administrative detention for participating in unauthorized rallies (see paras. 23–24 below).

b. Arrest, detention and investigations

7. The source reports that, on 29 May 2020, in Sovetskaya Square in the city of Hrodna, members of the initiative group nominating Ms. Tsikhanouskaya, led by Mr. Tihanovski, held a picket to collect the signatures of Belarusian voters in favour of the nomination of their candidate. The source adds that, in accordance with the electoral legislation of Belarus, holding such pickets is legal and does not require the prior permission of the authorities. The square was reportedly crowded and the picket was entirely peaceful.

8. At around 8 p.m., two women reportedly approached Mr. Tihanovski and began to ask him repeatedly why the picket was taking place during the coronavirus disease (COVID-19) pandemic and why Ms. Tsikhanouskaya was not present at the picket in person, among other questions. The source adds that Mr. Tihanovski calmly replied that the presidential election had been scheduled officially and that the collection of signatures was legal. For at least eight minutes, the women stalked Mr. Tihanovski continuously as he moved around the square, expressing their displeasure. One of them tried to grab his hands even though he had clearly expressed his reluctance to continue the conversation and had several times told her directly that her actions were a provocation. After that, the two women were approached by police officers in uniform. One of the women complained that Mr. Tihanovski had not answered her questions.

9. According to the source, the police officers immediately approached Mr. Tihanovski and, without explaining why, tried to stop him, grabbing his hands. Several people in the square at the time pushed Mr. Tihanovski away from the police in an attempt to protect him. In the turmoil, one of the police officers reportedly fell onto the asphalt and remained there for a few seconds, blowing a whistle, then got up. Mr. Tihanovski reportedly began to move away but was arrested, without a warrant, by officers of the special police department who appeared immediately, grabbed him by the arms and forced him into a police car. The source adds that at least 15 people were arrested together with Mr. Tihanovski, including members of the above-mentioned initiative group and participants in the picket.

10. The source reports that the events had been video recorded, as the picket was streamed live on the Internet. The source adds that the video clearly shows the provocative actions of the two women, their attempt to start a conflict and the groundless attempts made by police officers to stop Mr. Tihanovski, as well as the fact that Mr. Tihanovski did not touch any of the police officers, was at least one metre away from them and did not commit any acts of violence against them.

11. The source indicates that, on the following day, the Ministry of Internal Affairs reported that, on 29 May, in Sovetskaya Square in Hrodna, several persons had been arrested, including some previously convicted under administrative charges, for using violence against police officers of the Lieninski District Department of Internal Affairs in order to obstruct their lawful activities. Among the detainees was the Gomel-based blogger Mr. Tihanovski. Two police officers had been injured to varying degrees and had been hospitalized. Investigators had opened a criminal investigation into the alleged violence against law enforcement officers.

12. The source reports that, on 31 May 2020, an investigator from the Hrodna inter-district department of the Investigative Committee of Belarus ordered the detention of Mr. Tihanovski, the warrant for which was issued by the prosecutor of the city of Hrodna. Mr. Tihanovski was detained on suspicion of committing violence against a police officer in violation of article 364 of the Criminal Code (on violence or threat of violence against a police officer) and article 108 of the Code of Criminal Procedure (on detention on suspicion of committing a crime), but at that point he was not charged.

13. According to the source, the authorities imputed the following reasons for Mr. Tihanovski's detention: he was suspected of having committed a crime punishable with imprisonment for a minimum term of two years and there was the risk that he might abscond from the prosecuting authority and the court and that he might obstruct the preliminary investigation. The legal basis for his detention were articles 117 and 126 of the Code of Criminal Procedure.

14. The source adds that, on 8 June 2020, the Main Investigation Department of the Investigative Committee of Belarus charged Mr. Tihanovski with committing a crime under article 342 of the Criminal Code (on the organization and preparation of, or active participation in, actions that grossly violate the public order).

15. The source reports that Mr. Tihanovski was initially held in a temporary detention facility in the city of Hrodna on 29 and 30 May 2020 and that he was subsequently transferred to a temporary detention facility in the city of Minsk, where he stayed on 31 May and 1 June 2020. He was reportedly only allowed access to a lawyer on 31 May 2020, prior to his first interrogation. On 2 June 2020, Mr. Tihanovski was transferred to pretrial detention centre No. 1 in Minsk.

16. In terms of domestic remedies, the source reports that, on 1 June 2020, Mr. Tihanovski's lawyer petitioned the investigating authority to terminate the criminal prosecution of his client and to release the detainee. On 4 June 2020, the request was declined. On the same day, Mr. Tihanovski's lawyer again petitioned the investigating authority to terminate the criminal prosecution of his client and to reverse the pretrial detention. On 5 June 2020, the request was declined. On 19 June 2020, Mr. Tihanovski's lawyer complained to the Prosecutor General's Office of Belarus against the refusal to grant the petition. On 25 June 2020, the complaint was forwarded to the investigating authority. The source also notes that on 10 June 2020 Mr. Tihanovski's lawyer complained to the Partyzanski District Court of Minsk against the pretrial detention and that, on 15 June, the complaint was rejected. On 16 June 2020, Mr. Tihanovski's lawyer appealed to Minsk City Court against the decision by the Partyzanski District Court to grant the complaint. On 19 June 2020, the appeal was declined.

17. The source reports that the preliminary investigation into Mr. Tihanovski's case was completed at the end of April 2021 and has yet to be brought before a court. At the time of its submission to the Working Group, the source estimated that hearings would commence in June 2021.

18. According to the source, Mr. Tihanovski has been charged with organizing mass riots, being involved in actions that gravely violate the public order, obstructing the activities of the Central Electoral Commission and inciting social hatred (arts. 293 (1), 342 (2), 191 (2) and 130 (3) of the Criminal Code). The source adds that the nature of the charges and the established practice obviously suggest that his detention will be prolonged until the trial and that he could be sentenced to long-term imprisonment.

19. The source also notes that there has been grave obstruction of fair trial principles even before the hearings. On 27 and 28 April 2021, just after the preliminary investigation was completed, State media broadcast films presenting Mr. Tihanovski as a criminal. The source adds that a video of a consultation between Mr. Tihanovski and his lawyer was included in one of those films, breaking the confidentiality of the communication between a lawyer and his client. The source also notes that the court hearings on this case might be held behind closed doors.

20. The source adds that Mr. Tihanovski remains detained in pretrial detention centre No. 1 in Minsk. Since August 2020, he has been alone in his cell. While he is allowed to receive letters and parcels, the number of books and newspapers to which he can gain access is limited. The source notes that, except for lawyers and investigators, no one has the right to visit him.

c. Analysis of violations

21. The source submits that the arrest and detention of Mr. Tihanovski are arbitrary under categories II, III and V of the Working Group.

i. Categories II and V

22. As noted in paragraph 4 above, on 11 March 2019, Mr. Tihanovski founded the YouTube channel “A country for living”. In order to film content for the channel, in 2019 Mr. Tihanovski began to travel to cities in Belarus and to interview local residents, giving them the opportunity to speak publicly about the conditions of their lives and work and about their opinions of the actions of the authorities. In these recordings, Mr. Tihanovski and the people he interviewed often criticized the authorities. In addition, Mr. Tihanovski posted online reports of sociopolitical events. For example, on 20 and 21 December 2019, he went to Minsk to record and stream live rallies held in Kastychnickaja Square by citizens protesting the process of integration between Belarus and the Russian Federation.

23. The source reports that, on 27 December 2019, Mr. Tihanovski was arrested in the city of Žlobin. He was taken to the Saviecki District Court of Gomel, where he was sentenced to 15 days of administrative detention for participating in an unauthorized rally on 21 December 2019 (art. 23.34 of the Code of Administrative Offences). On 10 January 2020, the Saviecki District Court of Gomel sentenced Mr. Tihanovski to another 15 days of administrative detention for participating in an unauthorized rally on 20 December 2019.

24. On 6 May 2020, Mr. Tihanovski was reportedly arrested to serve a new term of administrative detention under a court ruling of 10 January 2020 and taken to a temporary detention centre in the city of Gomel.

25. On 7 May 2020, a video was reportedly released on the YouTube channel “A country for living”, in which Mr. Tihanovski announced his intention to run for President of Belarus in the upcoming election.

26. On 8 May 2020, Parliament scheduled the presidential election for 9 August 2020. By 15 May 2020, initiative groups nominating presidential candidates had to submit applications for their registration to the Central Electoral Commission.

27. The source notes that, as Mr. Tihanovski was then in a temporary detention facility and his lawyer was not allowed to visit him, his wife, Ms. Tsikhanouskaya, submitted an application to the Central Electoral Commission to register an initiative group nominating Mr. Tihanovski as a candidate for President of Belarus, presenting a power of attorney from him. On 15 May 2020, the Central Electoral Commission reportedly issued resolution No. 25, by which it refused to register Mr. Tihanovski’s initiative group on the grounds that he had not signed the application in person. On the same day, Ms. Tsikhanouskaya submitted documents for the registration of her initiative group to support her own nomination as presidential candidate. On 20 May 2020, the Central Electoral Commission issued resolution No. 69, by which it allowed the registration of Ms. Tsikhanouskaya’s initiative group and of Mr. Tihanovski as the head of that group. On the same day, he was released from the temporary detention centre.

28. On 26 May 2020, the initiative group led by Mr. Tihanovski began collecting the signatures of Belarusian voters for the nomination of Ms. Tsikhanouskaya as presidential candidate, first in Minsk and later in other cities of Belarus. These signature-collecting pickets were attended by numerous voters.

29. According to the source, on 29 May 2020, the incumbent President of Belarus allegedly publicly attacked Mr. Tihanovski while visiting a tractor manufacturing plant in Minsk. The source quotes him as saying: “Recently, my spokeswoman reported to me that he insulted a police officer after he made a remark to him. They come cool-looking, all in SUVs, 10–12 cars. They came to another city, lined up and went through the squares and the streets. And, after all, those are risky people. If I were them, I would be more careful with the police. These are corporate people. If they find an opportunity, they will respond. It’s not easy for me to hold them back. They have been asking for it. Provocation is the best advertising. That’s how they understand it.” The source adds that the President also mentioned Mr. Tihanovski’s interview for the Russian *Kommersant* daily newspaper, and quotes the President as saying: “It looks like an independent newspaper in Russia. But we know who finances it ... Interviewing one scoundrel, otherwise you can’t name it, walking around, shouting in Minsk and in other cities. But we know whose cars he drives, who finances him. We know where he came from, what his citizenship is and so on... We know all this. Yes, I’m already watching, I’m being updated, our people have already seen it.”

30. The source notes that a few hours after that statement, at 8 p.m. on 29 May 2020, Mr. Tihanovski was arrested in the city of Hrodna as a result of the clearly provocative actions of women stalking him and on the basis of unfounded suspicions of violent acts against police officers, as detailed above.

31. The source claims that, on 28 June 2020, the President of Belarus said, when addressing the government officials of the Minsk region: “Yes, I blew the whistle about Tihanovski. Did I do something wrong? I was worried about my country, for which I am still responsible. And I will always be – in any capacity.”

32. The source notes that, on 1 June 2020, a coalition of Belarusian human rights organizations called Mr. Tihanovski a political prisoner. The source quotes them as stating: “All the above facts allow us to assert the existence of a political motive on the part of the authorities in the persecution of Siarhei Tsikhanouski [Sergey Tihanovski], as an attempt to sanction his public activities.” The source also notes that an international non-governmental organization called Mr. Tihanovski and the eight men arrested alongside him prisoners of conscience, as they were detained solely for peacefully exercising their human rights.

33. The source submits that the context described above and the course of events demonstrate the long-term persecution of Mr. Tihanovski since December 2019 for his participation in peaceful assemblies, disseminating information about peaceful assemblies, expressing his opinion and providing others with opportunities to express their views to other citizens through the YouTube channel “A country for living”. The source adds that the groundless arrest of Mr. Tihanovski on 29 May 2020 and his subsequent detention on criminal charges related to the peaceful picket in the framework of the electoral process, which occurred against the background of public statements by the Head of State, in which the President of Belarus allegedly attacked Mr. Tihanovski’s public and political activities and confirmed his own direct participation in the authorization of his arrest, testify that Mr. Tihanovski has been deprived of liberty as a result of the exercise of his rights and freedoms guaranteed by articles 19, 21 and 25 of the Covenant (category II).

34. The source also submits that the fact that Mr. Tihanovski is being prosecuted and imprisoned as a political opponent of the incumbent President and as the head of the initiative group representing an opposition candidate in the election, shows that Mr. Tihanovski has been deprived of his liberty for reasons of discrimination based on political opinion (category V).

ii. Category III

35. The source reports that Mr. Tihanovski was arrested on 29 May 2020 at 8 p.m., that is, before his first interrogation on 31 May 2020 at 5 p.m. and before his rights had been explained to him, including his right to have a lawyer from the moment of arrest. Thus, during

the first 35 hours of his detention, Mr. Tihanovski was reportedly denied access to a lawyer and the opportunity to prepare and present arguments in his defence.

36. The source submits that the circumstances of Mr. Tihanovski's arrest show that it was devoid of factual grounds: he had not committed any illegal acts and the arrest was the result of provocation.

37. The source also submits that Mr. Tihanovski's arrest and further detention were not reasonable or necessary, nor were they due to the risk that he might abscond or adversely affect the course of the investigation. His personal circumstances, including the fact that he had a family, including two underage children, and a permanent place of residence, nor the specific circumstances of the case were taken into account by the Partyzanski District Court of Minsk and the Minsk City Court when taking the decision to detain him or, later, when considering the lawyer's complaints about Mr. Tihanovski's detention. The source adds that the specific circumstances of the case included, in particular, the fact that the suspicion of violence had not been confirmed and that Mr. Tihanovski was subsequently charged with another crime carrying a maximum sentence of three years in prison (art. 342 of the Criminal Code). Another aspect was the fact that detaining the head of the initiative group nominating Ms. Tsikhanouskaya as presidential candidate created significant difficulties for those collecting signatures for her nomination and for the submission of signature sheets to the Central Electoral Commission.

38. In addition, the source submits that the warrant for the detention of Mr. Tihanovski was issued by the prosecutor. From the moment of his arrest and until the source's submission, Mr. Tihanovski has not appeared before a court or other body authorized by law to exercise judicial power. According to the source, the lawyer's complaints about Mr. Tihanovski's detention were considered in closed court hearings without Mr. Tihanovski's participation and were rejected (see para. 19 above).

39. The source also refers to the reported grave obstruction of fair trial principles before the hearings, as mentioned above, notably in respect of the fact that Mr. Tihanovski had recently been depicted as a criminal on State broadcast media, that confidential communication between Mr. Tihanovski and his lawyer had been disclosed and that the court hearings on this case might be closed to the public.

40. According to the source, all the above indicates that, during the arrest and detention of Mr. Tihanovski, the international norms relating to the right to a fair trial, specifically articles 9 (1), (3) and (4) and 14 (3) (b) of the Covenant, were not observed (category III).

41. The source adds that, from 12 to 26 June 2020, while in pretrial detention centre No. 1 in Minsk, Mr. Tihanovski was placed in a punishment cell. The formal reason for this was reportedly two violations of the facility rules: (a) for approaching the window allegedly to shout to other prisoners; and (b) for not cleaning his cell well, as a cobweb was found on the ceiling.

42. The source adds that Mr. Tihanovski was kept in solitary confinement for 14 days in the following conditions: there was no drinking water, only tap water; the cell was not clean; the surface area of the punishment cell, which also included a toilet, was not more than 4 metres square; the cell was windowless and not ventilated; a bright LED lamp was turned on around the clock; and the cell was damp due to a leaking water pipe, so the concrete floor was constantly wet. The source also notes that the folding bed could only be used at night from 10 p.m. to 6 a.m. In addition, there was no room for a full seat, only a narrow ledge in the wall, so Mr. Tihanovski had to either stand or take small steps, which was difficult for him, as he had a sore leg, which he had injured before his arrest. The source adds that, on 22 June 2020, Mr. Tihanovski complained to the Moskovski District Court of Minsk about his placement in the punishment cell.

43. The source submits that these conditions, in which Mr. Tihanovski was held for a long time, on far-fetched pretexts, are evidence of cruel and inhuman treatment during pretrial detention that makes the detention arbitrary because the manner in which he was treated did not relate to the purpose for which he was ostensibly being detained.

44. The source also submits that, as deprivation of liberty includes certain further restrictions on a person who is already detained, Mr. Tihanovski's placement in a punishment

cell without any reasonable grounds could be considered arbitrary, in violation of article 9 (1) of the Covenant (category III).

Response from the Government

45. On 14 May 2021, 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 13 July 2021, detailed information about the current situation of Mr. Tihanovski and to clarify the legal provisions justifying his continued detention, as well as its compatibility with the obligations of Belarus under international human rights law and, in particular, with regard to the treaties ratified by the State. Moreover, the Working Group called upon the Government to ensure Mr. Tihanovski's physical and mental integrity.

46. In its response of 24 June 2021, the Government confirmed that Sergey Leonidovich Tihanovski was detained on 29 May 2020 in Hrodna in accordance with article 110 of the Code of Criminal Procedure on suspicion of having committed a crime under article 364 of the Criminal Code, which deals with the use of violence causing bodily harm to two police officers in order to obstruct their lawful actions. These acts occurred during the gathering in Sovetskaya Square in Hrodna organized to collect signatures in support of the nomination of Ms. Tsikhanouskaya as a candidate for President of Belarus.

47. According to the Government, on 1 June 2020, with the sanction of the prosecutor of Hrodna, a preventive measure was applied to Mr. Tihanovski in the form of detention.

48. On 6 August 2020, Mr. Tihanovski was charged with committing a crime under part article 342 (1) of the Criminal Code (on the organization of group actions that grossly violate the public order and are associated with obvious disobedience of the legal requirements of the authorities). Subsequently, the criminal prosecution of Mr. Tihanovski under article 364 of the Criminal Code was not carried out.

49. The Government adds that, during the preliminary investigation of the criminal case, the term of detention of Mr. Tihanovski was repeatedly extended with the approval of the Deputy Prosecutor General of Belarus.

50. According to the Government, during the course of the criminal investigation Mr. Tihanovski and his defence lawyer repeatedly appealed against the accused's arrest and detention, as well as against the extension of the detention. The court refused to satisfy those requests. The case materials contain the relevant court decisions.

51. The Government states that the criminal prosecution did not commit any violations of the criminal procedure law during the preliminary investigation, including in respect of the arrest of Mr. Tihanovski, the granting of access to a defence lawyer, the application of a preventive measure and the extension of the term of detention (arts. 41, 108, 110, 119 and 126–127 of the Code of Criminal Procedure).

52. The Government notes that Mr. Tihanovski has on multiple previous occasions been held administratively liable and punished with arrest under article 23.34 of the Code of Administrative Offences for his participation in unauthorized mass events and rallies.

53. According to the Government, on 20 May 2020, an initiative group was reportedly registered to nominate Ms. Tsikhanouskaya as candidate for President of Belarus. The group was headed by her husband, Mr. Tihanovski. In accordance with article 61 (11) of the Electoral Code of Belarus, the signatures of voters in favour of a person nominated as candidate for President of Belarus can be collected through pickets. The Government adds that pickets organized without any prior notice or permission are foreseen solely for the collection of signatures. It is not permissible to campaign, to express political views or to carry out protests during such pickets.

54. Nevertheless, the Government notes that, during the period from 24 to 29 May 2020, in Minsk and other large cities of Belarus, this initiative group, directly under the leadership of Mr. Tihanovski, who was its organizer and main speaker, held a number of unlawful public events at which the collection of signatures in support of Ms. Tsikhanouskaya was only a formal reason and the true goals of which were: to express publicly group members' sociopolitical interests and complaints; to voice participants' attitude to sociopolitical events;

and to campaign actively with the aim, among other things, of exacerbating political tensions in the country by distributing, during pickets, printed materials of an offensive nature against the highest officials of Belarus, posters and banners with appeals and other campaign materials.

55. The Government adds that, on 27 May 2020, Mr. Tihanovski was in the city of Mogilev making a video together with two other individuals and that, on that day, in order to obstruct the work of the Central Electoral Commission, he threatened the Chair of the Commission with holding illegal group mass events near the Chair's place of residence, having a group of people unlawfully enter the residence and violating the principle of the inviolability of legal possessions.

56. The Government notes that, in the course of the investigation, it was established that Mr. Tihanovski had made speeches, including during mass rallies in several cities of Belarus, that encouraged the taking of destructive, extremist actions against the authorities and law enforcement agents, incitement to political and social hostility and hatred, and the conduct of and active participation in group actions that grossly violated the public order, associated with obvious disobedience of the legal requirements of government officials. These entailed disruption of transport, enterprises, institutions and organizations, as well as mass riots in the territory of Belarus, including unlawful public events such as rallies in deliberate violation of the relevant legislation.

57. According to the Government, the unlawful actions of Mr. Tihanovski and others have cost the State damages in the amount of 3,078,305.24 roubles. The property of the accused, worth 2,162,297.85 roubles, has been seized.

58. The Government adds that, during a search of a garden house in the Gomel region where Mr. Tihanovski had worked and lived, the authorities had found and seized, in the presence of one of Mr. Tihanovski's relatives, 900,300 United States dollars and two air guns. The Government notes that the packaging of a significant part of the money and the serial numbers of the banknotes indicate a one-time receipt from a banking or other financial institution.

59. According to the Government, an investigation of the criminal case by the General Prosecutor's Office has established that the charges against Mr. Tihanovski were presented on reasonable grounds and confirmed by the evidence in the case. The preventive measure chosen against him in the form of detention was applied reasonably. The Government notes that there are no grounds for changing or cancelling it. The circumstances of the criminal case were investigated fully, comprehensively and objectively, and no violations of the criminal procedure law occurred during the preliminary investigation.

60. On 4 May 2021, the case was reportedly sent to the Supreme Court of Belarus in order for it to determine jurisdiction.

61. The Government adds that the criminal case against Mr. Tihanovski and others was sent for consideration at the first instance to the Gomel Regional Court. Mr. Tihanovski is accused of committing the following crimes:

- (a) Organization of mass riots (art. 293 (1) of the Criminal Code);
- (b) Incitement to racial, national, religious or other kind of social hostility or hatred, rehabilitation of Nazism, committed by a group of persons (art. 130 (3) of the Criminal Code);
- (c) Obstruction of the exercise of electoral rights, the right to participate in a referendum or interference in the exercise of the right to legislative initiatives of citizens or in the work of the Central Electoral Commission, committed by a group of persons after prior conspiracy (art. 191 (1) of the Criminal Code);
- (d) Organization and preparation of, or active participation in, actions that grossly violate the public order (art. 342 (1) of the Criminal Code).

62. The Government notes that, in relation to Mr. Tihanovski, a preventive measure in the form of detention was applied. The Government also notes that, according to article 127 (13) of the Code of Criminal Procedure, in a criminal case sent by the prosecutor to the court, the

decision on extending the term of detention of the accused is taken by the court dealing with the case within a period not exceeding 10 days before the end of each month of the period of detention. By a ruling (resolution), the court extends or cancels the term of detention or changes the nature of the preventive measure.

63. The Government adds that on 12 May 2021 the Gomel Regional Court extended the term of detention of Mr. Tihanovski.

64. The Government refers to article 127 (13) of the Code of Criminal Procedure, which stipulates that a person accused in a criminal case cannot be held in pretrial detention for more than six months from the date on which the criminal case is received by the court and only until the verdict is passed. In cases against persons accused of committing grave and particularly grave crimes, pretrial detention lasts no more than 12 months. Moreover, accused persons in custody may not, from the date of the sentence until its entry into legal force, be detained for more than three months. In cases against persons accused of committing grave and particularly grave crimes, such detention lasts no more than six months. The ruling of the court to extend the period of detention may be appealed to a higher court, the decision of which is final.

Additional comments from the source

65. On 29 June 2021, the response from the Government was sent to the source for additional comments. In its response of 13 July 2021, the source notes that the Government confirmed the circumstances of Mr. Tihanovski's arrest and detention. In other words, the Government confirmed that Mr. Tihanovski was arrested and detained while holding an election rally and on suspicion that he might use violence against police officers, and also that that suspicion was not confirmed and that no criminal proceedings were pursued against him. The source adds that this means that Mr. Tihanovski was arrested and detained on no grounds.

66. The source also notes that the Government neither disputes nor denies the claim that the detention of Mr. Tihanovski was the result of a provocation and that the incumbent President had openly expressed that he was the initiator of the arrest. The source adds that the Government also does not dispute that the arrest, pretrial detention and criminal prosecution of Mr. Tihanovski are solely related to his activities in the pre-election period. According to the source, these activities are a necessary element of political discourse in the election period.

67. The source further reiterates its initial submission and asserts that Mr. Tihanovski's detention is arbitrary under categories II, III and V.

Discussion

68. The Working Group thanks the source and the Government for their timely submissions.

69. In determining whether Mr. Tihanovski's detention was arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has presented a *prima facie* case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.² Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations.

70. The Working Group observes that it is not contested that Mr. Tihanovski was arrested on 29 May 2020 during a rally that was called for by the organization he headed to gather enough signatures of voters to enable his wife, Ms. Tsikhanouskaya, to run in the forthcoming presidential elections. The Working Group also observes that the source has provided a detailed account of the events leading to the arrest of Mr. Tihanovski, while the Government has chosen not to address any of those detailed allegations in its reply. Particularly, the

² A/HRC/19/57, para. 68.

Government has chosen not to address the allegations linked to events that strike the Working Group as having been fabricated to bring about Mr. Tihanovski's arrest.

71. Instead, the Government has merely stated that the arrest was due to violence committed by Mr. Tihanovski against law enforcement officers. However, the Working Group is mindful and regrets the failure of the Government to describe the actual events allegedly amounting to the commission of violence against law enforcement officers by Mr. Tihanovski. In that regard, the Working Group notes that the charges later brought against Mr. Tihanovski did not include any mention of violence committed against law enforcement officers, nor was it claimed that he had been arrested in *flagrante delicto*.

72. The Working Group observes that the source submits that Mr. Tihanovski was placed in pretrial detention on 31 May 2020, while the Government contends that this took place on 1 June 2020. Irrespective of the exact date, the Working Group notes that it is not disputed that the decision to impose pretrial detention was taken by a prosecutor. In fact, Mr. Tihanovski did not appear in person before a court until his trial started in June 2021, as he was not allowed to be present during the various challenges to his detention presented by his lawyer.

73. According to article 9 (3) of the Covenant, anyone arrested or detained on a criminal charge should be brought promptly before a judge or other officer authorized by law to exercise judicial power. As the Human Rights Committee has noted, 48 hours is ordinarily sufficient to satisfy the requirement of bringing a detainee "promptly" before a judge; any delay longer than 48 hours must remain absolutely exceptional and be justified under the circumstances.³ Noting the uncontested allegations described above, the Working Group finds that Mr. Tihanovski was not brought promptly before a judicial authority, in violation of article 9 (3) of the Covenant. The Working Group recalls that a public prosecutor cannot be considered a judicial authority for the purposes of article 9 (3) of the Covenant.⁴

74. Moreover, to establish that a detention is indeed legal, anyone detained has the right to challenge the legality of his or her detention before a court, as envisaged by article 9 (4) of the Covenant. The Working Group recalls that, according to the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of their Liberty to Bring Proceedings Before a Court, the right to challenge the lawfulness of detention before a court is a self-standing human right, which is essential to preserve legality in a democratic society.⁵ This right, which is in fact a peremptory norm of international law, applies to all forms of deprivation of liberty,⁶ applies to all situations of deprivation of liberty, including not only to detention for purposes of criminal proceedings but also to situations of detention under administrative and other fields of law, including military detention, security detention, detention under counter-terrorism measures.⁷ Moreover, it also applies irrespective of the place of detention or the legal terminology used in the legislation. Any form of deprivation of liberty on any ground must be subject to effective oversight and control by the judiciary.⁸

75. The right to take proceedings before a court, in order that that court may decide without delay on the lawfulness of detention must also be afforded, as specified in article 9 (4) of the Covenant. Furthermore, as the Human Rights Committee has specified in paragraph 47 of its general comment No. 35 (2014), the adjudication of the case should take place as expeditiously as possible. In the present case, Mr. Tihanovski was not given the opportunity to exercise his right to challenge the legality of his detention without delay. He was also denied access to his lawyer until some 35 hours after his arrest, which further adversely affected his ability to exercise his rights under article 9 (4) of the Covenant. Recalling that the effective exercise of the right to challenge the lawfulness of detention is a fundamental

³ General comment No. 35 (2014), paras. 32–33.

⁴ *Ibid.*, para. 32. See also opinions No. 41/2020, para. 60; No. 6/2020, para. 47; No. 5/2020, para. 72; and No. 14/2015, para. 28; and A/HRC/45/16/Add.1, para. 35.

⁵ A/HRC/30/37, paras. 2–3.

⁶ *Ibid.*, para. 11.

⁷ *Ibid.*, annex, para. 47 (a).

⁸ *Ibid.*, annex, para. 47 (b).

safeguard of personal liberty,⁹ the Working Group finds a breach of article 9 (4) of the Covenant.

76. Moreover, the Working Group considers that Mr. Tihanovski has the right to appear in person at all of hearings held to review the legality of his detention.¹⁰ As the Human Rights Committee has stated, the physical presence of detainees at hearings might serve the inquiry into the lawfulness of detention and serves as a safeguard for the right to security of person.¹¹ The right to be physically present was denied to Mr. Tihanovski, a further breach of article 9 (4) of the Covenant.

77. Noting all the above, the Working Group concludes that the Belarusian authorities failed to establish the legal basis of Mr. Tihanovski's detention in accordance with the provisions of the Covenant. The Working Group therefore finds that his detention was arbitrary and falls under category I, as it lacks a legal basis.

78. The source has submitted that Mr. Tihanovski was arrested and subsequently detained because of his peaceful exercise of rights protected by articles 19, 21 and 25 of the Covenant. The Government, however, argues that Mr. Tihanovski was arrested for committing violence against law enforcement officers and that he was subsequently charged with: (a) organization of mass riots; (b) incitement to racial, national, religious or other kind of social hostility or hatred, rehabilitation of Nazism; (c) obstruction of the exercise of electoral rights, the right to participate in a referendum or interference in the exercise of the right to legislative initiatives of citizens or in the work of the Central Electoral Commission; and (d) organization and preparation of, or active participation in, actions that grossly harm the public order.

79. The Working Group notes that, in its reply, the Government has confirmed that all pickets for gathering signatures for electoral purposes may be held without having to obtain prior permission. However, this exemption only applies to the gathering of signatures and any political activity – such as speech-giving or the expression of political views – during such events is not permitted. The Government contends that, between 24 and 29 May 2020, in Minsk and in other large cities of Belarus, Mr. Tihanovski organized public events to gather signatures (see para. 54 above). Noting the numerous political speeches he delivered during such rallies, it was clear to the Government, however, that these had not been organized for the sole purpose of gathering signatures and were not, therefore, exempt from the requirement to obtain prior authorization.

80. At the outset, the Working Group notes that freedom of opinion and freedom of expression as expressed in article 19 of the Covenant are indispensable conditions for the full development of the person. They are essential for any society. They constitute the foundation stone for every free and democratic society.¹²

81. Freedom of expression includes the right to seek, receive and impart information and ideas of all kinds regardless of frontiers and includes also the expression and receipt of communications of every form of idea and opinion capable of transmission to others, including political opinions.¹³ The only restrictions to this right that are permitted may relate either to respecting the rights or reputations of others or to protecting national security, the public order or public health or morals.¹⁴ Moreover, restrictions are not allowed on grounds not specified in article 19 (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

⁹ Ibid., para. 3.

¹⁰ See opinions No. 18/2018, paras. 54–55; and No. 9/2018, para. 50. See also A/HRC/30/37, annex, paras. 18 (principle 11) and 75 (guideline 10).

¹¹ General comment No. 35 (2014), paras. 34 and 42. See also principles 32 (2) and 37 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

¹² Human Rights Committee, general comment No. 34 (2011), para. 2.

¹³ Ibid., para. 11.

¹⁴ Ibid., para. 21.

predicated.¹⁵ Article 21 of the Covenant permits restrictions to the right of assembly on the same three grounds.

82. In the present case, the Government of Belarus, in its response to the submissions made by the source, has not invoked any of the permitted restrictions; the Government has cited a number of criminal acts allegedly committed by Mr. Tihanovski without any explanation as to how they came about. It is quite clear to the Working Group that the basis for the arrest and subsequent detention of Mr. Tihanovski was in fact his exercise of the rights to freedom of expression and freedom of assembly, as well as the right to take part in the public affairs of Belarus. There is no evidence whatsoever that any of his actions have been violent, that he incited others to violence or that his actions have led others to commit violence. While the rights to freedom of expression and freedom of assembly are not absolute rights, when a State party imposes restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself.¹⁶ Moreover, article 19 (3) may never be invoked as a justification for the muzzling of any advocacy of multiparty democracy, democratic tenets and human rights.¹⁷ It appears to the Working Group, however, that this is exactly what happened in the present case.

83. The Working Group recalls specifically Human Rights Council resolution 24/5, in which the Council reminded States 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.

84. The Working Group also recalls Human Rights Council resolution 12/16, in which the Council called upon States to refrain from imposing restrictions that are not consistent with article 19 (3) of the Covenant, including on the discussion of government policies and political debate; reporting on human rights; engaging in peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief.

85. In its jurisprudence, the Working Group has consistently found that detention is arbitrary when the context suggests that the authorities have detained a person to prevent him or her from participating in public life, for example by bringing criminal proceedings that result in a political leader being unable to hold or seek political office.¹⁸ The Working Group considers that the present case is a further example of criminal proceedings being used to prevent a high-level political opponent expressing his views and participating in public life, in violation of articles 19, 20 and 21 of the Universal Declaration of Human Rights and articles 19, 21 and 25 of the Covenant. The Working Group specifically notes the statements by the incumbent President (see paras. 29 and 31 above) in this regard, which the Government has not contested.

86. The Working Group emphasizes the practical impossibility of satisfying the requirements of the law, which, while allowing the gathering of signatures in support of presidential candidates, prohibits any political campaigning. To draw a distinction between the two in the circumstances of a campaign for a political office is nearly impossible as the public is very likely to have questions about the political views of the candidate and without giving some expression of such views, the signature-gathering process is unlikely to have any success.

87. The Working Group also emphasizes that the power to detain persons during public health emergencies must not be used to silence the work of human rights defenders, journalists or members of the political opposition, among others.¹⁹

88. The Working Group consequently finds that the arrest and detention of Mr. Tihanovski is arbitrary and falls under category II. The Working Group refers the case to the

¹⁵ Ibid., para. 22.

¹⁶ Ibid., para. 21.

¹⁷ Ibid., para. 23.

¹⁸ Opinions No. 61/2018, para. 59; No. 36/2017, para. 108; No. 33/2015, paras. 83–85; No. 30/2015, paras. 39, 44 and 47; and No. 24/2015, para. 44. See also A/HRC/36/37, para. 48 (d).

¹⁹ Deliberation No. 11 (A/HRC/45/16, annex II), para. 22.

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.

89. Given its finding that the deprivation of liberty of Mr. Tihanovski is arbitrary under category II, the Working Group emphasizes that no trial of Mr. Tihanovski should have taken place. However, the trial proceedings are ongoing, and the source has submitted that Mr. Tihanovski has been denied his fair trial rights and that his detention is therefore arbitrary. In particular, he was reportedly denied access to his lawyer initially, his right to be presumed innocent until proven guilty was not protected and his forthcoming trial might be conducted behind closed doors.

90. The Working Group notes that all the allegations were transmitted to the Government but that the Government has chosen not to address any of them in its response to the Working Group. Instead, the Government has merely provided a summary dismissal of all allegations by stating that no violations of Mr. Tihanovski's procedural rights have taken place. The Working Group recalls that it has repeatedly stated in its jurisprudence that, even when the detention of a person is carried out in conformity with national legislation, it must be ensured that the detention is also consistent with the relevant provisions of international law.²⁰

91. The Working Group recalls that the right to legal assistance is an essential element of the right to a fair trial set out in article 10 of the Universal Declaration of Human Rights and article 14 of the Covenant, as it preserves the principle of equality of arms and thus the overall fairness of the proceedings. In the present case, the Working Group finds that Mr. Tihanovski was denied access to legal assistance following his arrest, in violation of his right to have adequate time and facilities for the preparation of his defence and to communicate with counsel (art. 14 (3) (b) of the Covenant). The Working Group reiterates that all persons deprived of their liberty have the right to legal assistance by counsel of their choice at any time during their detention, including immediately after their apprehension, as well as throughout their detention, and that such access should be provided without delay.²¹

92. Furthermore, the source has argued, and the Government has not denied, that films were broadcast on national television on 27 and 28 April 2021, right before the trial of Mr. Tihanovski was due to commence, including a video of a private consultation between Mr. Tihanovski and his lawyer. The Working Group, however, notes that the right to communicate with counsel set out in article 14 (3) (b) of the Covenant entails the requirement that counsel be able to meet clients in private and to communicate with them in conditions that fully respect the confidentiality of their communications.²² This was denied to Mr. Tihanovski, and the Working Group therefore finds a breach of article 14 (3) (b) of the Covenant, as well as of rule 61 (1) of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and of principle 18 (3) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

93. The Working Group notes that numerous statements on the arrest and the case of Mr. Tihanovski have been broadcast on public television. The Working Group emphasizes, as the Human Rights Committee has also stated, that the presumption of innocence is one of the fundamental principles of the right to a fair trial and therefore is non-derogable.²³ Moreover, it guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt.²⁴ It is a duty of the public authorities to refrain from prejudging the

²⁰ See, e.g., opinions No. 17/2021, No. 86/2020, No. 50/2018, No. 37/2018, No. 20/2018, No. 1/2018, No. 79/2017, No. 50/2017, No. 42/2012 and No. 46/2011.

²¹ A/HRC/45/16, paras. 50–53. See also the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of their Liberty to Bring Proceedings Before a Court, annex, paras. 12–15 (principle 9) and 67–71 (guideline 8), as well as opinions No. 42/2018, No. 83/2018 and No. 67/2020.

²² Human Rights Committee, general comment No. 32 (2007), para. 34. See also *Khomidov v. Tajikistan* (CCPR/C/81/D/1117/2002), para. 6.4; *Siragev v. Uzbekistan* (CCPR/C/85/D/907/2000), para. 6.3; and *Gridin v. Russian Federation* (CCPR/C/69/D/770/1997 and Corr.1), para. 8.5; as well as opinions No. 42/2018, No. 83/2018 and No. 67/2020.

²³ Human Rights Committee, general comment No. 32 (2007), para. 6. See also opinion No. 67/2020.

²⁴ Human Rights Committee, general comment No. 32 (2007), para. 30.

outcome of a trial, for example by abstaining from making public statements affirming the guilt of the accused.²⁵ In the present case, the Working Group considers that the broadcasting on national television on 27 and 28 April 2021, shortly before the trial of Mr. Tihanovski was due to commence, portraying him as a criminal, have breached this obligation. In these circumstances, the Working Group finds that Mr. Tihanovski's right to the presumption of innocence under article 11 (1) of the Universal Declaration of Human Rights and article 14 (2) of the Covenant has been violated.

94. The Working Group also notes that not every case of pretrial detention is automatically a breach of article 14 (3) (c) of the Covenant, as there can be legitimate reasons for keeping a suspect in custody, including when the trial has been delayed. In the present case, however, the Working Group notes that Mr. Tihanovski was detained and placed in pretrial detention purely for exercising his rights protected by the Covenant (see paras. 78–88 above). The Working Group therefore finds that the delay between the arrest and the trial of Mr. Tihanovski constitutes a breach of article 14 (3) of the Covenant.²⁶

95. The Working Group therefore concludes that the violations of Mr. Tihanovski's right to a fair trial are of such gravity as to give his deprivation of liberty an arbitrary character, falling under category III.

96. The source has also argued that Mr. Tihanovski's right to a fair trial might be violated if his trial is conducted behind closed doors. In this respect, the Working Group recalls its jurisprudence²⁷ and paragraph 29 of the Human Rights Committee's general comment No. 32 (2007), which states:

Article 14, paragraph 1, acknowledges that courts have the power to exclude all or part of the public 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. Apart from such exceptional circumstances, a hearing must be open to the general public, including members of the media, and must not, for instance, be limited to a particular category of persons.

97. The Working Group reminds the Government of Belarus of its duty to comply with its obligations arising from article 14 (1) of the Covenant.

98. Finally, the source has submitted that Mr. Tihanovski is being prosecuted and imprisoned as a political opponent of the incumbent President and as the head of the initiative group nominating an opposition candidate in the election, and that this shows that he has been deprived of his liberty for reasons of discrimination based on political opinion (category V). The Government has argued that Mr. Tihanovski was arrested and charged with numerous offences (see paras. 61 and 78 above).

99. The Working Group observes that both the source and the Government have stated that Mr. Tihanovski was arrested and placed in administrative detention on previous occasions (see paras. 23–24 and 52 above). The Working Group is mindful that the Government has provided no account as to how the entirely peaceful actions of Mr. Tihanovski amounted to a crime and in particular observes that all these previous arrests concern events similar to those preceding the arrest at the centre of the present case – an arrest in the context of a public assembly, a rally, in connection with the then upcoming presidential elections and campaign of an opposition candidate in those elections. In the view of the Working Group, there is a clear pattern of behaviour on behalf of the Belarusian authorities in relation to Mr. Tihanovski.

100. In this regard, the Working Group notes that the numerous arrests of Mr. Tihanovski, including the one of 29 May 2020, were documented in 2020 and 2021 by the Special Rapporteur on the situation of human rights in Belarus as arrests carried out in the context of

²⁵ Ibid. See also opinions No. 63/2020, No. 45/2019 and No. 30/2017.

²⁶ See also general comments No. 32 (2007), para. 35; and No. 35 (2014), para. 37.

²⁷ See, e.g., opinions No. 2/2018 and No. 29/2017.

presidential elections of an opposition candidate or one supporting an opposition candidate.²⁸ This also correlates with the observations made in 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.²⁹

101. Noting all the above and especially its findings under category II (see paras. 78–88 above), the Working Group finds that the arrest and detention of Mr. Tihanovski constitute a violation of articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant, on the ground of discrimination based on political opinion. His detention is therefore arbitrary under category V.

Concluding remarks

102. The Working Group notes the uncontested allegations that Mr. Tihanovski has not been allowed to meet with anyone else but his lawyer since his arrest and throughout his detention and that he was held for 14 days in a punishment cell.

103. The Working Group notes the absence of a response from the Government in relation to allegations made by the source that Mr. Tihanovski has been denied contact with his family. The Working Group therefore finds a violation of principle 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

104. The Working Group also notes the absence of a Government reply to the allegations concerning the treatment of Mr. Tihanovski in detention and in particular his placement in a punishment cell for 14 days due to his alleged violations of the internal rules of the facility. The Working Group considers that the treatment that Mr. Tihanovski was subjected to appears to be retaliatory for his political activism, in other words an act of reprisal, and to be incompatible with the obligations that Belarus has undertaken under article 10 of the Covenant.

105. The Working Group has held that, according to rule 45 of the Nelson Mandela Rules, the imposition of solitary confinement must be accompanied by certain safeguards.³⁰ Solitary confinement must only be used in exceptional cases as a last resort, for as short a time as possible, subject to independent review and authorized by a competent authority. These conditions do not appear to have been observed in the present case. Prolonged solitary confinement in excess of 15 consecutive days is prohibited under rules 43 (1) (b) and 44 of the Nelson Mandela Rules. In the present case, the Working Group finds that the solitary confinement in a punishment cell for 14 days has been used against Mr. Tihanovski, without proper justification and in a manner that appears to the Working Group to be an attempt to circumvent rules 43 (1) (b) and 44 of the Nelson Mandela Rules. The Working Group therefore concludes there has been a breach of these provisions.

106. The Working Group refers the present case to the Special Rapporteur on the situation of human rights in Belarus for appropriate action.

Disposition

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

The deprivation of liberty of Sergey Tihanovski, being in contravention of articles 2, 7, 9, 10, 11, 19, 20 and 21 of the Universal Declaration of Human Rights and articles 2 (1), 9, 14, 21, 25 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

108. The Working Group requests the Government of Belarus to take the steps necessary to remedy the situation of Mr. Tihanovski 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.

²⁸ A/HRC/47/49, para. 79; and A/75/173, para. 68.

²⁹ A/HRC/46/4, para. 14.

³⁰ See, e.g., opinions No. 54/2020, para. 100; and No. 83/2018, para. 60.

109. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Tihanovski immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law. In the current context of the global COVID-19 pandemic and the threat that it poses in places of detention, the Working Group calls upon the Government to take urgent action to ensure the immediate release of Mr. Tihanovski.

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

111. 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, the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the situation of human rights in Belarus, for appropriate action.

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

Follow-up procedure

113. 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. Tihanovski has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Tihanovski;
- (c) Whether an investigation has been conducted into the violation of Mr. Tihanovski'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.

114. 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.

115. 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 any failure to take action.

116. 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.³¹

[Adopted on 6 September 2021]

³¹ Human Rights Council resolution 42/22, paras. 3 and 7.