
Advance Unedited Version

Distr.: General
5 October 2021

Original: English

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 (A/HRC/36/38), 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).

Submissions

Communication from the source

4. Sergey Tihanovski (Siarhei Tsikhanouski) is a citizen of Belarus, born in 1978, usually residing in Homiel, Belarus. Mr. Tihanovski is an entrepreneur, blogger, founder and author of the YouTube channel “Strana Dlya Zhizni” (“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 the Republic of Belarus set the date for the election of the President of the Republic of Belarus for 9 August 2020. On 20 May 2020, the Central Commission for Elections and Referenda of the Republic of Belarus (CEC) registered the initiative group of presidential nominee Sviatlana Tsikhanouskaya, and Mr. Tihanovski was registered as the leader of this group.

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 the intention to prevent the participation of Mr. Tihanovski as the head of the initiative group of one of the alternative candidates in the election. The source adds that Mr. Tihanovski had been arrested on two previous occasions, on 27 December 2019 and 6 May 2020, respectively, and sentenced to administrative detention for participating in unauthorized rallies (see below).

b. Arrest, detention and investigations

7. The source reports that on 29 May 2020, in Sovetskaya square (Savieckaja plošča) in the city of Hrodna, members of the initiative group of presidential nominee Sviatlana Tsikhanouskaya, led by Mr. Tihanovski, held a picket to collect signatures of Belarusian voters for the nomination of the candidate. The source adds that in accordance with the electoral legislation of the Republic of Belarus, holding such pickets is legal and does not require 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 obsessively why the picket was taking place during the COVID-19 pandemic, why Sviatlana Tsikhanouskaya was not present at the picket in person, etc. The source adds that Mr. Tihanovski calmly replied that the presidential election was officially scheduled and 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 trying to grab his hands, although he had clearly expressed his reluctance to continue the conversation and directly, several times called her actions a provocation. After that, the two women were approached by police officers in uniform, and one of the women complained that Mr. Tihanovski "did not answer her questions."

9. According to the source, the police officers immediately approached Mr. Tihanovski and without explaining the reasons tried to stop him, grabbing his hands. Several people in the square at the moment, trying to protect him, pushed Mr. Tihanovski away from the police. Amid the turmoil, one of the police officers reportedly fell to the asphalt, and remained in this position for a few seconds - lying and blowing a whistle, after which he got up. Mr. Tihanovski reportedly began to move away from the place, 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 initiative group and participants of the picket.

10. The source reports that the events were videoed, as the picket was live-streamed on the Internet. The source adds that the video clearly shows the provocative actions of the two women, their attempt to start a conflict, groundless attempts to stop Mr. Tihanovski by police officers, as well as the fact that he did not touch any of the police officers, was at least one

meter away from them, respectively, and did not commit any acts of violence against police officers.

11. The source indicates that the following day, the official Telegram channel of the Ministry of Internal Affairs reported: “On 29 May, in Savieckaja plošča in Hrodna, several persons were arrested, including those 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 is a Homiel-based blogger Sergey Tihanovski. Two police officers were injured to varying degrees and are currently hospitalized. Investigators opened a criminal case for violence against law enforcement officers.”

12. The source reports that on 31 May 2020, an investigator of the Hrodna inter-district department of the Investigative Committee of the Republic of Belarus ordered the detention of Mr. Tihanovski, which was warranted by the prosecutor of the city of Hrodna. He was detained on suspicion of committing violence against a police officer on the basis of Article 364 of the Criminal Code of the Republic of Belarus (Violence or threat of violence against a police officer) and Article 108 of the Code of Criminal Procedure of the Republic of Belarus (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: being suspected of committing a crime punishable by imprisonment for a term exceeding two years, risk of abscond from the prosecuting authority and the court, and obstruction of 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 later, on 8 June 2020, the Main Investigation Department of the Investigative Committee of the Republic of Belarus charged Mr. Tihanovski with committing a crime under Article 342 of the Criminal Code (Organization and preparation for actions that grossly violate public order, or active participation in them).

15. The source reports that Mr. Tihanovski was initially held in a temporary detention facility in the city of Hrodna from 29 to 30 May 2020, and that he was subsequently transferred to a temporary detention facility in the city of Minsk, where he stayed from 31 May to 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 the pre-trial detention center 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 4 June 2020, Mr. Tihanovski’s lawyer petitioned the investigating authority to terminate the criminal prosecution of his client and to reverse the pre-trial 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 the Republic 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 pre-trial detention, and on 15 June, the complaint was declined. On 16 June 2020, Mr. Tihanovski’s lawyer appealed to the Minsk City Court against the decision by the Partyzanski District Court of Minsk to grant the complaint. On 19 June 2020, the appeal was declined.

17. The source reports that the preliminary investigation on Mr. Tihanovski’s case was completed at the end of April 2021, and the case is to be sent to court. At the time of its submission, the source has estimated that hearings will commence as of June 2021.

18. According to the source, Mr. Tihanovski is charged with organization of mass riots, actions which gravely violate the public order, obstructing the activity of the Central Election Commission, and incitement of social hatred (part 1 of Article 293, part 2 of Article 342, part 2 of Article 191, and part 3 of Article 130 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 a long-term imprisonment.

19. The source also notes that there is grave obstruction of fair trial principles even before the hearings. On 27-28 April 2021, just one day after the preliminary investigation was completed, state media broadcasted films in which Mr. Tihanovski was presented as a criminal. The source adds that a video of a consultation between Mr. Tihanovski and his lawyer was demonstrated in one of these films so that confidential communication between a lawyer and his client was disclosed. The source also notes that the court hearings on this case may be closed.

20. The source adds that Mr. Tihanovski remains detained in the pre-trial detention center No. 1 in Minsk. Since August 2020, he is alone in his cell. He is allowed to receive letters and parcels, and the number of books and newspapers 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 is arbitrary under categories II, III and V as established by the Working Group on Arbitrary Detention.

i. Categories II and V

22. As noted in para. 4 above, on 11 March 2019, Mr. Tihanovski founded the YouTube channel "Strana Dlya Zhizni" ("A Country for Living"). Filming content for the channel, in 2019, Mr. Tihanovski began touring the cities of Belarus, interviewing local residents, giving them the opportunity to speak publicly about the conditions of their lives and work, and the attitude of citizens to the actions of the authorities. In these stories, Mr. Tihanovski and the people he interviewed often criticized the authorities. In addition, Mr. Tihanovski made online reports of socio-political events. For example, on 20 and 21 December 2019, he came to Minsk to conduct a live-stream of rallies in Kastychnickaja Square, where citizens protested against the progress of integration processes 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 Homiel, where he was sentenced to 15 days of administrative detention for participating in an unauthorized rally on 21 December 2019 (Article 23.34 of the Code of Administrative Offenses of the Republic of Belarus). On 10 January 2020, the Saviecki District Court of Homiel 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 the temporary detention center in the city of Homiel.

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 the Republic of Belarus in the upcoming election.

26. On 8 May 2020, the Parliament scheduled the election of the President for 9 August 2020. By 15 May 2020, the initiative groups for the nomination of presidential candidates had to submit applications for their registration to the CEC.

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 Sviatlana Tsikhanouskaya submitted an application to the CEC to register an initiative group to nominate Mr. Tihanovski as a candidate for President of Belarus, presenting a power of attorney from him. On 15 May 2020, the CEC reportedly issued Resolution No. 25 refusing to register Mr. Tihanovski's initiative group on the grounds that he did not sign the application in person. On the same day, Sviatlana Tsikhanouskaya submitted documents for the registration of her initiative group to support her presidential nomination. On 20 May 2020, the CEC issued Resolution No. 69, which allowed the registration of Ms. Tsikhanouskaya's initiative group, and Mr. Tihanovski was registered as the head of the 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 signatures of Belarusian voters for the nomination of Sviatlana Tsikhanouskaya as a 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 the Republic of Belarus allegedly publicly attacked Mr. Tihanovski while visiting the Minsk Tractor Plant: “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. This is the 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: “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 this statement, at 8 p.m. on 29 May 2020, Mr. Tihanovski was arrested in the city of Hrodna as a result of clearly provocative actions by women stalking him and unfounded suspicions of violence against police officers, as detailed above.

31. The source further notes that on 28 June 2020, the President of the Republic 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 organisations called Mr. Tihanovski a political prisoner: “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 are detained solely for peacefully exercising their human rights.

33. The source submits that the described context 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 and expressing his opinion, providing 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 the Republic of Belarus allegedly attacked Mr. Tihanovski's public and political activities and confirmed his 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 International Covenant on Civil and Political Rights (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, as the head of the initiative group to nominate an alternative candidate during the election process, shows that he has been deprived of his liberty for reasons of discrimination based on political opinion (category V).

ii. Category III

35. The source further reports that Mr. Tihanovski was arrested on 29 May 2020 at 8 p.m., and before 31 May 2020 at 5 p.m., that is, before the first interrogation, his rights had not been explained to him, including the right to have a lawyer from the moment of arrest. Thus,

during 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 did not commit any illegal acts, and the arrest was the result of provocation.

37. The source also submits that Mr. Tihanovski's arrest and further detention was not reasonable and necessary, nor was it due to the fact that he might abscond or adversely affect the course of the investigation. His personal circumstances, including presence of a family, two minor children, a permanent place of residence, and the specific circumstances of the case were not taken into account during the decision to detain him, and later during the consideration of his lawyer's complaints about his detention by the Partyzanski District Court of Minsk and the Minsk City Court. The source adds that these specific circumstances included, in particular, the fact that the suspicion of violence was not confirmed, but he was charged with another crime, the maximum sentence for which is three years in prison (Article 342 of the Criminal Code) and also the fact that the detention of the head of the initiative group of presidential nominee Sviatlana Tsikhanouskaya created significant difficulties for the process of collecting signatures for her nomination and submission of signature sheets to the CEC.

38. In addition, the source submits that the decision to detain Mr. Tihanovski was warranted 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, Mr. Tihanovski's lawyer's complaints against his detention were considered in closed court hearings without his client's participation and were rejected (see above).

39. The source also refers to the reported grave obstruction of fair trial principles before the hearings, as referred to above, notably that Mr. Tihanovski was recently presented as a criminal on state broadcasted media, that confidential communication between Mr. Tihanovski and his lawyer was disclosed, and that the court hearings on this case may be closed.

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

41. The source also reports that from 12 to 26 June 2020, being detained in pre-trial detention center No. 1 in the city of Minsk, Mr. Tihanovski was placed in a punishment cell. The formal reason for this was reportedly two violations of the facility rules: 1) for approaching the window allegedly to shout from there to other prisoners; and 2) for a poor clean-up in the cell as a cobweb was found off 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 area of the punishment cell, which also includes a toilet, is not more than 4 square meters; there is no window in the cell, the cell is not ventilated; a bright LED lamp is 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 pm to 6 am. In addition, there was no room for a full seat, only a narrow ledge in the wall, so Mr. Tihanovski had to mostly stand or take small steps, which was difficult for him, as he had a sore leg, which he 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 pre-trial detention that makes the detention arbitrary because the manner in which he was treated did not relate to the purpose for which he is 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 can be considered arbitrary, violating 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 Belarus' obligations 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 of Belarus to ensure his physical and mental integrity.

46. In its response of 24 June 2021, the Government of Belarus confirmed that Sergey Leonidovich Tihanovski was detained on 29 May 2020 in Hrodna in accordance with Article 110 of the Criminal Procedure Code on the direct suspicion of committing a crime under Article 364 of the Criminal Code, on the use of violence involving causing bodily harm to two police officers in order to obstruct their lawful actions. This occurred during the gathering on Sovetskaya square in Hrodna to collect signatures in support of the nomination of Sviatlana Tsikhanouskaya as a candidate for President of the Republic of Belarus.

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

48. On 6 August 2020, Mr. Tihanovski was charged with committing a crime under part 1 of Article 342 of the Criminal Code (the organization of group actions that grossly violate public order and are associated with obvious disobedience to the legal requirements of the authorities). Subsequently, 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 the accused Mr. Tihanovski, with the approval of the Deputy Prosecutor General of the Republic of Belarus, has been repeatedly extended.

50. According to the Government, the accused Mr. Tihanovski and his defence, during the course of the investigation of the criminal case, repeatedly appealed against his arrest, the application of a preventive measure in the form of detention, as well as against the extension of the term of the accused's detention in custody. The court refused to satisfy these requests and the case materials contain the relevant court decisions.

51. The Government states that the criminal prosecution authority did not commit any violations of the criminal procedural law during the preliminary investigation, including during the arrest of Mr. Tihanovski, admittance to a defence lawyer, application of a preventive measure and extension of the term of detention of the accused (Articles 41, 108, 110, 119, 126 and 127 of the Criminal Procedure Code).

52. The Government notes that Mr. Tihanovski has been previously repeatedly held administratively liable and punished with arrest under Article 23.34 of the Code of Administrative Offenses for participation in unauthorized mass events and rallies.

53. According to the Government, on 20 May 2020, an initiative group of citizens was reportedly registered to nominate Sviatlana Tsikhanouskaya as a candidate for President of the Republic of Belarus. The head of this group was her husband, Mr. Tihanovski. In accordance with part 11 of Article 61 of the Electoral Code of the Republic of Belarus, the collection of signatures of voters in favour of a person nominated as a candidate for President of the Republic of Belarus can be carried out in the form of picketing. The Government adds that pickets in such a simplified manner without any prior notice or permission are foreseen solely for the collection of signatures. Campaigning, as well as the expression of political views and protests during the aforementioned pickets, are not foreseen in such cases.

54. Nevertheless, the Government notes that in the period from 24 to 29 May 2020, in Minsk and other large cities of Belarus, this group directly under the leadership of Mr. Tihanovski, who was their organizer and main speaker, held a number of unlawful public events, where the collection of signatures in support of Sviatlana Tsikhanouskaya was only

a formal reason, pursuing as their true goal a public expression of their socio-political interests and protests, their attitude to events in socio-political life, conducting active campaigning aimed at, among other things, exacerbating political tensions in the country, with the placement during pickets of 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, while in the city of Mogilev making a video broadcast with the participation of two other individuals, Mr. Tihanovski, in order to obstruct the work of the CEC made a threat against the Chairperson of the Commission. The threat involved holding illegal group mass events near the place of residence of the Chairperson, violation of the inviolability of the residence by unlawful intrusion by a group of people against the will of citizens living in it and violation of the inviolability of legal possessions.

56. The Government notes that in the course of the investigation, it was established that speeches and statements made by Mr. Tihanovski, including during mass rallies in the cities of Belarus, contained calls encouraging destructive, extremist actions directed against the authorities and law enforcement agents, incitement of political and social hostility and hatred, as well as calls for the conduct and active participation in group actions that grossly violate public order, associated with obvious disobedience to 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 with a deliberate violation of the requirements of the relevant legislation.

57. According to the Government, as a result of unlawful actions of Mr. Tihanovski and others, the State has suffered damage in the amount of 3,078,305.24 rubles. The property of the accused was seized in the amount of 2,162,297.85 rubles.

58. The Government adds that during a search in a garden house in the Homiel region, which was used by Mr. Tihanovski for work and living, authorities found and seized in the presence of one of his relatives 900,300 USD and 2 air guns. The Government notes that the nature of the packaging of a significant part of the money and the serial number of banknotes indicate their one-time receipt in a banking or another financial institution.

59. According to the Government, an investigation of the criminal case by the General Prosecutor's Office 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 there were no violations of the criminal procedure law carried out during the preliminary investigation.

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

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

- organization of mass riots (part 1 of article 293 of the Criminal Code);
- incitement of racial, national, religious or other social hostility or hatred, rehabilitation of Nazism, committed by a group of persons (part 3 of Article 130 of the Criminal Code);
- obstruction of the exercise of electoral rights, the right to participate in a referendum, or interference with the exercise of the right to legislative initiatives of citizens, or with the work of the Central Commission for Elections and Referenda of the Republic of Belarus, committed by a group of persons by prior conspiracy (part 1 of Article 191 of the Criminal Code); and
- organization and preparation of actions that grossly violate public order, or active participation in them (part 1 of article 342 of the Criminal Code).

62. The Government notes that in relation to the accused Mr. Tihanovski, a preventive measure in the form of detention was applied. The Government also notes that according to part 13 of Article 127 of the Code of Criminal Procedure, in a criminal case sent by the prosecutor to the court, the extension of the term of detention of the accused is carried out by the court in which the case is being processed. The question of further detention of the accused in custody is considered by the court within a period not exceeding ten days before the expiration of each month of the term of the accused's detention in custody. By a ruling (resolution), the court either extends the term of detention of the accused, or cancels or changes the measure of restraint.

63. The Government adds that by the decision of the Homiel Regional Court dated 12 May 2021, the term of detention in custody for Mr. Tihanovski was extended.

64. The Government refers to part 13 of Article 127 of the Code of Criminal Procedure which stipulates that an accused cannot be held in custody in a criminal case pending in any court for more than six months from the date the criminal case is received by the court and until the verdict is passed, and in cases against persons accused of committing grave and particularly grave crimes - more than twelve months. The term of keeping the accused in custody from the date of the sentence and until its entry into legal force may not exceed three months, and in cases against persons accused of committing grave and particularly grave crimes - 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.

Further comments from the source

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

66. The source also notes that the Government neither disputes nor denies its claim that the detention of Mr. Tihanovski was provocative and that the incumbent President openly expressed that he was the initiator of the arrest. The source adds that the Government also does not dispute that the arrest, pre-trial 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 the deprivation of liberty of Mr. Tihanovski is 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 the international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations. Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations (A/HRC/19/57, para. 68).

70. The Working Group observes that it is not contested that Mr. Tihanovski was arrested on 29 May 2020 during a rally which was called by the organisation he headed to gather the signatures of voters required to enable his wife, Sviatlana Tsikhanouskaya, to run at the then 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 whilst the Government has chosen not to address any of these detailed allegations in its reply. Particularly, the Government has chosen not to address the allegations which strike the Working Group as events fabricated to bring about Mr. Tihanovski's arrest.

71. Instead, the Government has merely stated that the arrest was due to violence used by Mr. Tihanovski against the law enforcement officers. However, the Working Group is mindful of and regrets the failure on behalf of the Government to describe the actual events, which amounted to the alleged commission of the crime of violence against law enforcement officials by Mr. Tihanovski. In this regard, the Working Group also notes that the charges later brought against Mr. Tihanovski did not involve any charges of violence against law enforcement officials nor have there been any claims that he was arrested in flagrante delicto.

72. The Working Group further observes that the source submits that Mr. Tihanovski was placed in pre-trial 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 on the imposition of pre-trial detention was taken by a prosecutor. In fact, Mr. Tihanovski has not appeared in person before a court until the start of his trial in June 2021, as he was not allowed to appear in person 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 shall be brought promptly before a judge 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 longer delay must remain absolutely exceptional and be justified under the circumstances.¹ Noting the uncontested fact pattern 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 the prosecutorial body cannot be considered a judicial authority for the purposes of article 9(3) of the Covenant.²

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 UN Basic Principles and Guidelines on Remedies and Procedures on the Rights 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.³ This right, which is in fact a peremptory norm of international law, applies to all forms of deprivation of liberty,⁴ 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’.⁵ 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’.⁶

75. The right to take proceedings before a court in order that that court decides upon the lawfulness of detention must also be afforded without delay, as specified in article 9(4) of the Covenant and as the Human Rights Committee has specified in General Comment No. 35, the adjudication of the case should take place as expeditiously as possible.⁷ In the present case, Mr. Tihanovski was not availed of the opportunity to exercise his right to challenge the legality of his detention without delay. Furthermore, he was also denied access to his lawyer until some 35 hours after his arrest which further adversely impacted his right and ability to exercise his rights under article 9(4) of the Covenant. Recalling that the judicial oversight of detention is a fundamental safeguard of personal liberty⁸ and is essential in ensuring that detention has a legal basis, the Working Group finds a breach of article 9(4) of the Covenant.

¹ Human Rights Committee, General comment No. 35, paras. 32-33.

² *Ibid.*, para. 32; Opinion Nos. 41/2020, para. 60; 6/2020, para. 47; 5/2020, para. 72; 14/2015, para. 28; and A/HRC/45/16/Add.1, para. 35.

³ A/HRC/30/37, paras. 2 and 3.

⁴ *Ibid.*, para. 11.

⁵ *Ibid.*, para. 47 (a).

⁶ *Ibid.*, para. 47 (b).

⁷ CCPR/C/GC/35, para. 47.

⁸ A/HRC/30/37, para. 3.

76. Moreover, the Working Group considers that Mr. Tihanovski has the right to appear in person at all of his hearings to review the legality of his detention.⁹ As the Human Rights Committee has stated, the physical presence of detainees at the hearing may assist the inquiry into the lawfulness of detention, and serves as a safeguard for the right to security of person.¹⁰ This was denied to Mr. Tihanovski in 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 is lacking a legal basis.

78. The source has further submitted that Mr. Tihanovski was arrested and subsequently detained due to 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 violence against law enforcement officials and subsequently charged with four charges: (i) organization of mass riots; (ii) incitement to racial, national, religious or other social hostility or hatred, rehabilitation of Nazism; (iii) obstruction with the exercise of electoral rights, the right to participate in a referendum, or interference with the exercise of the right to legislative initiatives of citizens, or with the work of the Central Commission for Elections and Referenda of the Republic of Belarus; (iv) organization and preparation of actions that grossly harm the public order or active participation in them.

79. The Working Group notes that in its reply, the Government has also submitted that indeed all pickets for gathering signatures for the electoral purposes are exempt from the need to obtain prior permissions. However, this exemption only applies to the gathering of signatures and any political activity such as speech giving or expression of political views during such events are not permitted. The Government contends that between 24 and 29 May 2020 in Minsk and a number of other large cities of Belarus, Mr. Tihanovski organized public events to gather signatures (see para. 54 above). However, noting the numerous political speeches he delivered during such rallies, it was clear to the Government that these were not organised for the sole purpose of gathering signatures and were therefore not exempt from the need for prior authorisation.

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 and in fact constitute the foundation stone for every free and democratic society.¹¹

81. The 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, including political opinions.¹² Moreover, the permitted restrictions to this right may relate either to respect of the rights or reputations of others or to the protection of national security or of public order (*ordre public*) or of 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'.¹³ It should be noted that 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 have cited a number of criminal acts allegedly committed by Mr. Tihanovski without any explanation as

⁹ See Opinions Nos. 18/2018, paras. 54-55 and 9/2018, para. 50. See also A/HRC/30/37, principle 11 and guideline 10.

¹⁰ See General Comment No. 35, CCPR/C/GC/35, paras. 34 and 42. See also the Body of Principles, at principles 32(2) and 37.

¹¹ CCPR/C/GC/34, para. 2.

¹² *Ibid*, para. 11.

¹³ *Ibid*, para. 22.

to what actions led to these violations. 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 freedom of expression and freedom of assembly as well as the right to take part in public affairs of Belarus. There is no evidence whatsoever that any of his actions have been violent, that he incited to violence or that his actions indeed have led to violence by others. While the 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’.¹⁴ Moreover, ‘paragraph 3 may never be invoked as a justification for the muzzling of any advocacy of multi-party democracy, democratic tenets and human rights’.¹⁵ It appears to the Working Group, however that this is exactly what happened in the present case.

83. The Working Group wishes to specifically recall Human Rights Council Resolution 24/5 which “reminds 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. Equally, the Working Group recalls the principle enunciated in Human Rights Council Resolution 12/16 calling on States to refrain from imposing restrictions which are not consistent with article 19(3) of the Covenant, including: 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.¹⁶ 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 also wishes to emphasize the practical impossibility of satisfying the requirements of the law which, while allowing gathering of signatures for 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. Equally, the Working Group also wishes to emphasize that “the power to detain persons during public health emergencies must not be used to silence the work of human rights defenders, journalists, members of the political opposition”.¹⁷

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 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 wishes to emphasize that no trial of Mr. Tihanovski should have taken place. However, the trial proceedings are on-going, and the source has submitted that Mr. Tihanovski has been denied his fair trial rights and that his detention is therefore

¹⁴ Ibid, para. 21.

¹⁵ Ibid, para. 23.

¹⁶ Opinions Nos. 61/2018, para. 59; 36/2017, para. 108; 33/2015, paras. 83-85; 30/2015, paras. 39, 44, 47 and 24/2015, para. 44. See also A/HRC/36/37, para. 48(d).

¹⁷ Deliberation No. 11, para. 22.

arbitrary. In particular, he was reportedly denied access to his lawyer initially; his presumption of innocence was not preserved and his subsequent trial may be conducted behind closed doors.

90. The Working Group notes that all these allegations were detailed to the Government. However, the Government has chosen not to address any of these allegations 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.¹⁸

91. The Working Group recalls that the right to legal assistance is an essential element of the right to fair trial as encapsulated in article 10 of the Universal Declaration of Human Rights and article 14 of the Covenant as it preserves the 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 adequate time and facilities for the preparation of his defence and to communicate with counsel under article 14(3)(b) of the Covenant. The Working Group wishes to reiterate 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 such access shall be provided without delay.¹⁹

92. Furthermore, the source has argued and the Government has not denied that various films were broadcasted on national television on 27 and 28 April 2021, right before the trial of Mr. Tihanovski was due to commence, included a video of a private consultation between Mr. Tihanovski and his lawyer. The Working Group, however, notes that the right to communicate with counsel as encapsulated in article 14(3)(b) of the Covenant entails the requirement that the 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.²⁰ 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 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 in relation to the arrest and the case of Mr. Tihanovski were broadcasted on public television. The Working Group wishes to emphasize that the presumption of innocence is one of the fundamental principles of fair trial and thus non-derogable²¹ and it guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt.²² As the Human Rights Committee has stated, it is the duty of public authorities to refrain from prejudging the outcome of a trial, for example by abstaining from making public statements affirming the guilt of the accused.²³ 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

¹⁸ See e.g. Opinions Nos. 17/2021, 86/2020, 50/2018, 37/2018, 20/2018, 1/2018, 79/2017, 50/2017, 42/2012 and 46/2011.

¹⁹ A/HRC/45/16, paras. 50-53; see the UN Basic Principles and Guidelines, principle 9 and guideline 8 as well as Opinions Nos. 42/2018, 83/2018 and 67/2020.

²⁰ CCPR/C/GC/32, para. 34; see also Communications No. 1117/2002, *Khomidova v. Tajikistan*, para. 6.4; No. 907/2000, *Siragev v. Uzbekistan*, para. 6.3; No. 770/1997, *Gridin v. Russian Federation*, para. 8.5 as well as Opinions Nos. 42/2018, 83/2018 and 67/2020.

²¹ CCPR/C/GC/32, para. 6; see also Opinion No. 67/2020.

²² *Ibid*, para. 30.

²³ *Ibid*; see also Opinions Nos. 63/2020, 45/2019 and 30/2017.

article 11(1) of the Universal Declaration of Human Rights and article 14(2) of the Covenant was violated.

94. The Working Group further notes that not every period of pre-trial detention from the moment of arrest to the time of trial is automatically a breach of article 14(3)(c) of the Covenant as there can be legitimate reasons justifying a delay. In the present case, however, the Working Group notes that Mr. Tihanovski was detained and placed in pre-trial 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 trial of Mr. Tihanovski constituted a breach of article 14 (3) of the Covenant.²⁴

95. Noting this, the Working Group concludes that the violations of Mr. Tihanovski's right to a fair trial were 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 fair trial may be violated if his trial is conducted behind closed doors. In this respect, the Working Group recalls its jurisprudence²⁵ and notes that as the Human Rights Committee states in its general comment No. 32:

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.²⁶

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

98. Finally, the source has also submitted that Mr. Tihanovski is being prosecuted and imprisoned as a political opponent of the incumbent President, as the head of the initiative group to nominate an alternative candidate during the election process, 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 as detailed in para. 61 above.

99. The Working Group observes that both the source and the Government have noted a number of previous occasions where Mr. Tihanovski was arrested and indeed served periods of administrative detention of 15 days (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 relation to public assembly, a rally, in connection with the then upcoming presidential elections and campaign of an opposition candidate in such elections. In the view of the Working Group, there is a clear pattern of attitude 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, have been documented as arrests carried out in the context of presidential elections of an opposition candidate or one supporting an opposition candidate by the Special Rapporteur on the situation of human rights in Belarus in 2020 and 2021.²⁷ This also correlates to 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.²⁸

²⁴ See also CCPR/C/GC/35, para. 37 and CCPR/C/GC/32, para. 35.

²⁵ See e.g. Opinions Nos. 2/2018 and 29/2017.

²⁶ CCPR/C/GC/32, para. 29.

²⁷ A/HRC/47/49, at para. 79. See also A/75/173, at para. 68.

²⁸ A/HRC/46/4, at para. 14.

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 his 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 subjected to a punishment of 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 concerning the denial to Mr. Tihanovski of contact with his family. The Working Group therefore finds a violation of principle 19 of the Body of Principles.

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, a reprisal and is incompatible with the obligations which Belarus has undertaken under article 10 of the Covenant.

105. The Working Group has held²⁹ that according to rule 45 of the Mandela Rules, the imposition of solitary confinement must be accompanied by certain safeguards. 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 authorised 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 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, which appears to Working Group to be an attempt to circumvent rules 43(1)(b) and 44 of the 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, 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.

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 coronavirus disease (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.

²⁹ See e.g. Opinions Nos. 54/2020, 17/2019 and 83/2018.

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 (i) the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; (ii) the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and (iii) 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.³⁰

[Adopted on 6 September 2021]

³⁰ See Human Rights Council resolution 42/22, paras. 3 and 7.