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Human Rights Council
Working Group on Arbitrary Detention

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

Opinion No. 52/2023 concerning Piotr Butsko (Belarus)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 51/8.

2. In accordance with its methods of work,¹ on 16 May 2023 the Working Group transmitted to the Government of Belarus a communication concerning Piotr Butsko. The Government has not replied to the communication. The State is a party to the International Covenant on Civil and Political Rights.

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

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

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

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

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

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

¹ [A/HRC/36/38](#).

1. Submissions

(a) Communication from the source

4. Piotr Butsko is a national of Belarus, born on 30 March 1977. He used to work for the police force for more than 20 years, until 2017, when he retired as deputy head of the Korelichy district police department, with the rank of lieutenant colonel. In January 2018, he became the executive director of a limited liability company.

5. According to the information received, on 9 August 2020, the results of the presidential election in Belarus were announced. According to the official account, the President was re-elected for a sixth consecutive term. The campaign period leading up to the election and following the announcement of the results was reportedly marked by numerous protests, violence and the arrest of presidential candidates. In 2020, more than 30,000 persons were allegedly detained. The majority of them were punished after participating in peaceful assemblies, under article 23.34 of the Code of Administrative Offences, for “participation in an unauthorized mass event”.

6. The source reports that, on 15 August 2020, Mr. Butsko and others participated in a rally against the election results, in the town of Lida, Belarus, with trucks carrying opposition symbols. On 30 August 2020, Mr. Butsko again took part in another rally with opposition symbols. An investigation was then conducted into his participation in an unauthorized mass event, punishable under article 23.34 of the Code of Administrative Offences. The investigation and the case were closed on 8 September 2020.

7. On 3 December 2020, Ivie District Court, in Hrodna Province, reportedly sentenced Mr. Butsko to 10 days of detention for his participation in two peaceful opposition assemblies on 13 and 15 November 2020, during which dissatisfaction with the actions of law enforcement bodies and the presidential election procedure was expressed. Mr. Butsko was found guilty since the local authorities had not given their permission for the assemblies to take place.

8. In addition, the source also reports that, on 11 December 2020, Korelichy District Court, in Hrodna Province, sentenced Mr. Butsko to 7 days of detention for his participation in a peaceful opposition assembly on 29 November 2020. Again, the reason for the verdict was the lack of permission from the local authorities to hold the assembly.

9. On 14 December 2020, Lida District Court, in Hrodna Province, reportedly sentenced Mr. Butsko to 15 days’ detention for his participation in a peaceful opposition assembly on 25 October 2020. The reason for the verdict was once again the lack of permission from the local authorities to hold the assembly.

10. The source informs the Working Group that all the judicial decisions referred to above were made under article 23.34 of the Code of Administrative Offences. Mr. Butsko could not appeal against those decisions, as the time limit to lodge an appeal expired before he was released. He was unable to appeal while serving the sentences.

11. On 12 March 2021, Mr. Butsko reportedly took part in a peaceful opposition assembly in Ivie. He held a banner and an image of a white-red-white flag. Subsequently, the police started a criminal investigation into insulting behaviour, under article 369 of the Criminal Code, because of the message expressed on the banner, since the police allegedly believed that the banner might have insulted a former Minister of Internal Affairs. On 5 July 2021, the Investigative Committee refused to charge Mr. Butsko, due to a revision of article 369 of the Criminal Code that decriminalized the conduct in question.

12. On 4 May 2021, Mr. Butsko and approximately 80 other former law enforcement officers were stripped of their ranks by a presidential decree due to “discreditable actions”. According to the source, an official news agency indicated that those individuals stirred up protest in society, organized and participated in unauthorized events and posted extremist materials on the Internet, with the aim of destabilizing the country during a period of sociopolitical difficulties.

13. According to the source, on 27 May 2021, Mr. Butsko had a fight with the in-house lawyer of the company in which he was working as executive director. On the same day, the in-house lawyer filed a complaint with the police, asking them to prosecute Mr. Butsko.

14. Initially, the police investigated the case as an administrative offence under article 10.1 of the Code of Administrative Offences. On 25 June 2021, after receiving a medical report stating that the company's lawyer had sustained "less serious bodily injuries", the police terminated the administrative case.

15. On the same day, 25 June 2021, a criminal investigation into the incident was initiated under article 149 (1) of the Criminal Code, relating to intentionally inflicting less serious bodily injuries. According to the source, such a crime is classified as a "less serious crime" under article 12 of the Criminal Code.

16. The source explains that, according to article 26 (4) of the Code of Criminal Procedure, charges under article 149 (1) of the Criminal Code should be pressed by the victim. A prosecutor may press charges in the absence of such a complaint, if the crime concerns substantial interests of the State or society or was committed against persons who are dependent on the accused or are unable to do so on their own behalf.

17. On 16 July 2021, the company's lawyer submitted a statement to the police in which he requested the police to terminate the criminal case because he had reconciled with Mr. Butsko. After that, no criminal proceedings could be carried out under article 149 (1) of the Criminal Code, as the victim had declared his unwillingness to press charges and the prosecutor could not press charges because the case did not concern a public interest and the victim could defend his own rights.

18. On 19 August 2021, a criminal case under article 426 (3) of the Criminal Code (exceeding authority or official powers) was opened against Mr. Butsko for causing injuries to the company's lawyer. Under article 12 of the Criminal Code, the crime stipulated in article 426 (3) is classified as a "serious crime". Pursuant to article 26 of the Code of Criminal Procedure, charges under article 426 (3) of the Criminal Code may be brought by the authorities, without a victim's request or consent.

19. On 20 August 2021, Mr. Butsko was informed about the decision to institute criminal proceedings against him under article 426 (3) of the Criminal Code and, on the same day, he was detained.

20. On 23 August 2021, an investigator decided that pretrial detention should be maintained. That decision was authorized by a prosecutor. The pretrial detention was subsequently extended several times and Mr. Butsko was kept in custody until sentencing by the court.

21. On 30 August 2021, Mr. Butsko was charged under article 426 (3) of the Criminal Code. According to the charges, he intentionally committed actions that went beyond the rights and powers granted to him in his position, which no one is entitled to commit under any circumstances, accompanied by violence, causing substantial harm to the rights and interests of the alleged victim. The accusation states that, during working hours, in a rude manner and using foul language, Mr. Butsko made remarks to his subordinate about the latter's work. Those negative remarks caused an argument, during which Mr. Butsko allegedly intended to inflict bodily harm.

22. According to the source, during the preliminary inquiry into the beating, the investigator took measures to identify the persons who had organized the opposition rally of 15 August 2020, while interviews were conducted with those who had participated in the rally and traffic police who had been on duty at the time. At the end of the investigation, the materials gathered were sent to the police to prosecute those who had taken part in the rally, although the statutory time limit had expired. The investigator included information in the criminal case about the three instances of Mr. Butsko's administrative responsibility under article 23.34 of the Code of Administrative Offences, between October and December 2020.

23. The source informs the Working group that, during the investigation, Mr. Butsko's home and place of work were reportedly searched. The office of the company headed by Mr. Butsko, its director's home and other employees' houses were also searched. A total of

six search warrants were issued. During the searches, mobile phones, computers, storage media, and a large amount of documentation were seized from the homes and offices of Mr. Butsko and his former colleagues.

24. On 6 September 2021, the investigator sent all the information and documentation seized during the searches to another law enforcement body, the Department of Financial Investigations. Reportedly, the cover letter states that that was done to establish whether Mr. Butsko had been involved in other unlawful activities. On 2 November 2021, the Department of Financial Investigations responded that it had found no evidence of any crime having been committed during its examination of the case.

25. The source states that, during the trial, Mr. Butsko pleaded guilty to causing less serious bodily injuries. He explained that he fought with the company's lawyer out of personal animosity caused by an insult, and pleaded guilty to the crime under article 149 (1) of the Criminal Code, that is, intentionally inflicting less serious bodily injuries.

26. On 10 February 2022, the Lida District Court, in Hrodna Province, fully endorsed the charges and found Mr. Butsko guilty under article 426 (3) of the Criminal Code. The Court sentenced him to six years' imprisonment in a strict-regime penal facility. It also imposed a fine of 16,000 Belarusian roubles on Mr. Butsko and barred him from holding executive positions for five years. When imposing the punishment, the Court considered, as aggravating circumstances, the instances in which Mr. Butsko was prosecuted for participating in unauthorized assemblies.

27. On 20 and 21 February 2022, Mr. Butsko and his lawyer lodged appeals. On 17 May 2022, the Judicial Board of the Hrodna Provincial Court upheld the verdict. Subsequently, Mr. Butsko filed a supervisory appeal to the Chair of the Hrodna Provincial Court, which was dismissed on 1 November 2022.

28. According to the source, after his conviction and transfer to the penal facility, Mr. Butsko was placed on a list of political persons: this allegedly meant that a yellow tag was placed on his clothes, which he always has to wear. Moreover, his rights as a prisoner are limited, in particular, the number and duration of phone calls to his family.

Analysis of violations

29. The source claims that the prosecution and deprivation of liberty of Mr. Butsko violated articles 9, 14, 19 and 21 of the Covenant.

a. Violations of articles 19 and 21 of the Covenant

30. The source submits that the only reason that Mr. Butsko was convicted was as a result of the requalification of charges from "less serious crime" (article 149 (1) of the Criminal Code on intentionally inflicting less serious bodily injuries) to "serious crime" (article 426 (3) of the Criminal Code on exceeding authority or official powers). Notwithstanding Mr. Butsko's commission of unlawful acts, the investigation under article 149 (1) of the Criminal Code would have been terminated upon receipt of the statement of reconciliation.

31. The source claims that the authorities wanted to put Mr. Butsko in prison because, as a former high-ranking police officer, he publicly expressed his political views, which were critical of the authorities, and participated in opposition rallies. Under the pretext of criminal prosecution for causing bodily harm, the authorities punished Mr. Butsko for exercising his rights under articles 19 and 21 of the Covenant.

32. In that context, the source claims that, even before the conflict with the company's lawyer, Mr. Butsko had been stripped of the rank of lieutenant colonel. That reportedly demonstrates that his opposition activities were closely monitored by the authorities.

33. In addition, it is stated that the investigation of the beating also focused on Mr. Butsko's own opposition activities, which were in no way connected to the incident. In the criminal case file, 68 pages were dedicated to the inquiry into the circumstances surrounding the organization of the opposition rally on 15 August 2020. As a result of the inquiry, the investigator tried to initiate proceedings against Mr. Butsko in relation to the rally, even though it was impossible due to the relevant statute of limitations. Also enclosed

in the case file was a ruling to dismiss the administrative case against Mr. Butsko for participation in the opposition rally of 30 August 2020. Copies of the three judgments in which Mr. Butsko was found guilty of participating in peaceful assemblies were also included in the case file. The administrative case against Mr. Butsko regarding his participation in the peaceful assemblies of 13 and 15 November 2020 was included in its entirety in the criminal case file, which also contained materials from the preliminary investigation that had been conducted into the allegation that Mr. Butsko had insulted the former Minister of the Interior.

34. At the same time, the source reports that the criminal case file did not contain any rulings on Mr. Butsko's administrative liability for offences unrelated to the exercise of civil and political rights, although such offences had been prosecuted by the authorities. That allegedly demonstrates that the prosecuting authorities were interested specifically in his opposition activities.

35. Moreover, according to the source, when imposing the sentence for causing bodily harm, the Lida District Court considered the instances in which Mr. Butsko had been prosecuted for participating in unauthorized rallies as an aggravating circumstance. The source claims that, if he had not taken part in those peaceful assemblies, his punishment for the beating would have been more lenient.

36. It is alleged that the criminal investigation was conducted in violation of the right to privacy, home and correspondence. Numerous searches were conducted at the homes of Mr. Butsko and other individuals and legal entities, accompanied by the seizure of equipment and documents. There is no explanation in the criminal case file as to why six searches were necessary in a case concerning a beating. The verdict was mainly based on company documents and witness statements. Thus, the items seized during the searches were allegedly not necessary for the purpose of prosecution. Moreover, none of the search warrants stated what the investigator intended to find during the search. All search warrants were motivated by abstract reasons: they either stated that the search was conducted "for the purpose of finding and seizing items of relevance to the case, as well as items prohibited for circulation" or ordered the search because, in a particular person's home, there "may be instruments and means of committing a crime, items, documents and valuables that may be relevant to the criminal case". The source claims that there has been a violation of article 17 of the Covenant, because a search warrant should be limited to the search for necessary evidence,² while all search warrants in the present case were worded broadly, which did not strike a balance between the rights of the parties concerned. Article 17 was also allegedly violated because the searches were carried out without judicial authorization.

37. In addition to instituting criminal proceedings under article 426 (3) of the Criminal Code, the investigation sought to establish Mr. Butsko's involvement in financial crimes by unilaterally sending seized documents and equipment to the financial police. Such scrutiny was not connected to the charge of causing bodily harm. The fact that the investigator tried to find new charges against Mr. Butsko reportedly demonstrates that the main purpose of the prosecution was to put him in prison.

38. The source claims that, once in the penal facility in which Mr. Butsko is serving his sentence, he was placed on the register of political prisoners.

39. The source states that, even if there is no mention in the judgment against Mr. Butsko of his prosecution for expressing opinions and participating in peaceful assemblies, the very fact that the prosecution resulted in a sentence, the manner of the investigation, the trial and the penalty imposed by the court indicate that he was punished specifically for the exercise of his rights guaranteed by articles 19 and 21 of the Covenant. Thus, the source claims that his deprivation of liberty is arbitrary according to category II.

b. Violation of articles 9 and 14 of the Covenant

40. The source claims that the requalification of the charge from article 149 (1) to article 426 (3) of the Criminal Code was arbitrary. Accordingly, the detention of Mr. Butsko, on the

² Human Rights Committee, general comment No. 16 (1988).

basis of such a requalification, was allegedly arbitrary, thus violating article 9 (1) of the Covenant.

41. The Human Rights Committee has observed that, although an arrest or detention may be authorized by domestic law, it may nonetheless be arbitrary and that the notion of “arbitrariness” is not to be equated with “against the law” but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality.³

42. According to the source, the initial charge under article 149 (1) of the Criminal Code was requalified to a more serious charge to punish Mr. Butsko for exercising his rights under the Covenant. This is also confirmed by the fact that the charge was requalified only after the company’s lawyer had reconciled with Mr. Butsko and the criminal case could not have been prosecuted under article 149 (1) of the Criminal Code.

43. Moreover, the source submits that such requalification could not have been predicted and was not in line with national criminal law. The prosecuting authorities themselves initially considered the beating to be a less serious offence. Article 426 (3) of the Criminal Code provides for criminal liability for abuse of power by an official accompanied by violence. Initially, the investigation was carried out within the framework of an administrative case, although for qualification under article 426 (3) of the Criminal Code, the severity of the violence is not important. Had there been a uniform law enforcement practice, criminal proceedings under article 426 (3) of the Criminal Code would have been initiated at the outset, without an investigation within the framework of an administrative case. Thus, the initial qualification of Mr. Butsko’s actions allegedly contradicts the final qualification; this means that, for the prosecuting authorities themselves, the final qualification was not foreseeable.

44. Article 149 (1) of the Criminal Code criminalizes violence motivated by personal enmity, while article 426 (3) thereof criminalizes violence perpetrated by persons against individuals under their control. Deeds imputed to Mr. Butsko cannot qualify under article 426 (3) because that article criminalizes beatings in situations in which the victim depends on the defendant, who has power over the victim. The subordinate relationship in a private company does not fall under that category because the boss has no power over the subordinate, only authority in work-related matters, and such authority does not fall under the definition of power in article 426 (3). That was pointed out by an expert who supported his position by referring to the Criminal Code’s commentary and who gave examples of situations in which article 426 (3) would be relevant, such as the beating of a pupil by an orphanage educator or the unreasonable use of violence by a police officer against a detainee.

45. According to the source, another element of the crime stipulated in article 426 (3) of the Criminal Code is the use of violence “out of other personal interest”. In the present case, the court dismissed the statements of Mr. Butsko and the company’s lawyer that the former man beat the latter out of enmity and decided that Mr. Butsko beat him out of “personal interest”, which manifested itself in the demonstration of personal and physical superiority over a subordinate. Such an interpretation was allegedly arbitrary because the beating was artificially given a different meaning using abstract language. That allowed the court to qualify Mr. Butsko’s actions under a more serious article of the Criminal Code, which does not require the victim’s consent for prosecution.

46. The source claims that there is no reason to think that the charge was requalified to a more serious one lawfully, because, in their decisions, the courts of the three instances did not explain why the actions of Mr. Butsko could not be qualified under article 149 (1), although they were explicitly requested to address this matter. Reportedly, the judge who handed down the verdict in the first instance and the judges who rejected the appeals in the second instance routinely sentence to prison persons who express opposition views. Since August 2020, Belarusian human rights organizations have allegedly identified other persons

³ Human Rights Committee, general comment No. 35 (2014), para. 12.

who were considered political prisoners by those judges. The failure to provide a proper reasoning in the judgment is allegedly a violation of article 14 of the Covenant.⁴

47. Moreover, the Human Rights Committee has stated that detention pending trial must be based on an individualized determination that it is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime.⁵ The relevant factors should be specified in law and should not include vague and expansive standards such as “public security”.⁶

48. The source states that Mr. Butsko was in pretrial detention between 20 August 2021 and 10 February 2022. He was detained pending trial even though he had no previous criminal record, had a permanent place of residence and a family with two minor children, had reconciled with the victim and there were no legal grounds for criminal prosecution. Approximately two months elapsed between the beating and the institution of criminal proceedings. During that time, Mr. Butsko did not abscond or try to influence the investigation. Accordingly, he was detained solely because of the gravity of the suspicion imputed and later because of the gravity of the charge. Moreover, when a measure to restrict liberty was selected, the possibility of another less restrictive measure was not even considered. Accordingly, detention did not meet the criteria of necessity and proportionality.

49. Under 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 and should be entitled to trial within a reasonable time or to release. That condition applies in all cases without exception and does not depend on the choice or ability of the detainee to assert it.⁷ That condition applies even before formal charges are brought, that is from the moment a person is detained or taken into custody on suspicion of committing a criminal act. Forty-eight hours is normally sufficient for the delivery of individuals, as well as for the preparation of a court hearing, any delay beyond that period must be strictly exceptional and justified by specific circumstances.⁸ Inherent in the proper exercise of judicial power is the principle that it must be exercised by a body that is independent, objective and impartial. Therefore, the public prosecutor cannot be regarded as an official competent to exercise judicial power.⁹

50. The source claims that the order to arrest Mr. Butsko was issued by the investigator and authorized by the prosecutor. In violation of article 9 of the Covenant, Mr. Butsko was not brought before a court or other body authorized by law to exercise judicial power within 48 hours. The fact that his arrest was authorized by a prosecutor did not exempt the authorities from complying with the requirement of the Covenant to bring him before a judge to verify the lawfulness and validity of detention.

51. The source claims that the charges against Mr. Butsko were brought one week after his arrest, which is allegedly another violation of article 9 (3) of the Covenant.

52. According to the source, it follows that the arrest and detention of Mr. Butsko were arbitrary under category III.

(b) Response from the Government

53. On 16 May 2023, the Working Group transmitted the allegations from the source to the Government under its regular communications procedure. The Working Group requested the Government to provide, by 17 July 2023, detailed information about the current situation of Mr. Butsko 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.

⁴ Human Rights Committee, general comment No. 32 (2007), para. 49.

⁵ Human Rights Committee, general comment No. 35 (2014), para. 38.

⁶ Ibid.

⁷ Ibid., para. 32.

⁸ Ibid., para. 33.

⁹ *Torobekov v. Kyrgyzstan* (CCPR/C/103/D/1547/2007), para. 6.2; and *Reshetnikov v. Russian Federation* (CCPR/C/95/D/1278/2004), para. 8.2.

54. The Working Group regrets that the Government did not submit a reply, nor did it seek an extension in accordance with paragraph 16 of the Working Group's methods of work.

2. Discussion

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

56. In determining whether Mr. Butsko's detention is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has established a prima facie case for breach of international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.¹⁰ In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

57. The source has argued that the detention of Mr. Butsko, both in his administrative and criminal cases, is arbitrary, falling under categories II and III. The Working Group, nevertheless, considers that some of the allegations fall under category I; it thus proceeds to examine these categories in turn.

(a) Category I

58. According to the source and not contested by the Government, Mr. Butsko was in pretrial detention in his criminal case for about six months without any less restrictive measure being considered, despite the fact he had no previous criminal record, had a permanent place of residence and a family with two minor children and had reconciled with the victim.

59. The Working Group recalls that it is a well-established norm of international law that pretrial detention should be the exception and not the rule and that it should be ordered for as short a time as possible.¹¹ Article 9 (3) of the Covenant provides that it should not be the general rule that persons awaiting trial should be detained, while release may be subject to guarantees to appear for trial or at any other stage of the judicial proceedings. It follows that liberty is recognized as a principle and detention as an exception in the interests of justice. As no justification for not using less intrusive preventive measures, such as bail or undertaking not to abscond, has been provided in the present case, the Working Group concludes that there has been a violation of article 9 (3) of the Covenant.

60. Moreover, according to the same provision, anyone arrested or detained on a criminal charge should be brought promptly before a judge. As the Human Rights Committee has stated, 48 hours is ordinarily sufficient to satisfy the requirement of bringing detainees "promptly" before a judge following their arrest and any longer delay must remain absolutely exceptional and be justified under the circumstances.¹² In the present case, it has not been contested that Mr. Butsko was brought before a judicial authority after a week following his arrest. Rather, he was arrested and held in police custody under the supervision of the public prosecutor. As the Working Group has stated, a prosecutorial body cannot be considered a judicial authority for the purposes of article 9 (3) of the Covenant.¹³ The Working Group thus finds a violation of that provision.

61. Accordingly, the Working Group considers that the detention of Mr. Butsko in his criminal case was arbitrary under category I.

¹⁰ [A/HRC/19/57](#), para. 68.

¹¹ Opinions No. 28/2014, para. 43; No. 49/2014, para. 23; No. 57/2014, para. 26; No. 1/2020, para. 53; and No. 8/2020, para. 54. See also Human Rights Committee, general comment No. 35 (2014), para. 38; and [A/HRC/19/57](#), paras. 48–58.

¹² Human Rights Committee, general comment No. 35 (2014), para. 33; and [CAT/C/GAB/CO/1](#), para. 10.

¹³ Human Rights Committee, general comment No. 35 (2014), para. 32; See also opinions No. 14/2015, para. 28; No. 5/2020, para. 72; and No. 41/2020, para. 60; and [A/HRC/45/16/Add.1](#), para. 35.

(b) Category II

62. The source submits that the administrative detention of Mr. Butsko in 2020 was arbitrary under category II as it resulted from the exercise of his fundamental rights or freedoms protected under international law, including the rights to freedom of expression and freedom of assembly provided for in articles 19 and 21 of the Covenant.

63. In particular, he was sentenced, on 3 December 2020, to 10 days of detention under article 23.34 of the Code of Administrative Offences for his participation in two peaceful opposition rallies on 13 and 15 November; on 11 December 2020, to 7 days of detention for his participation in another peaceful opposition rally on 29 November 2020; and, on 14 December 2020, he was sentenced to 15 days of detention for his participation in a peaceful opposition rally on 25 October 2020. Altogether, he spent 31 days in detention in relation to the above-mentioned administrative proceedings.

64. The Working Group observes that, while the Government had the opportunity to address the specific allegations of violations of Mr. Butsko's rights to freedom of expression and assembly, it chose not to do so.

65. The Working Group recalls that 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.¹⁴ Moreover, the permitted restrictions to this right may relate either to respect for the rights or reputations of others or to the protection of national security, public order or public health or morals. As the Human Rights Committee has stipulated, restrictions are not allowed on grounds not specified in article 19 (3), even if such grounds would justify restrictions on 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.¹⁵ It should be noted that article 21 of the Covenant permits restrictions on the right of assembly on the same three grounds.

66. The Working Group wishes to specifically recall 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 – including, persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others – to assemble peacefully and associate freely, online as well as offline, including in the context of elections.

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

68. Lastly, the Working Group notes the undisputed fact that Mr. Butsko participated in peaceful rallies in the context of post-electoral debate in Belarus and, in this regard, recalls the report of the United Nations High Commissioner for Human Rights published in 2021, in which the High Commissioner records the following in the context of the post-election period in the country:

Charges were overwhelmingly brought against people under article 23.34 of the Code of Administrative Offences for “participation in an unauthorized mass event”. While the maximum sentence for such acts is 15 days, several people reportedly received successive sentences, accumulating up to almost 90 days of detention. In several cases, criminal charges were additionally brought against persons serving administrative sentences, leading to further remand in custody. Reportedly, some were

¹⁴ Human Rights Committee, general comment No. 34 (2011), para. 11.

¹⁵ *Ibid.*, para. 22.

detained and released without proceedings or charges, on condition that they pledge to stop taking part in protests.¹⁶

69. The Working Group recalls that the Human Rights Committee, in its general comment No. 37 (2020), has clarified that the protection afforded under article 21 of the Covenant extends to participating in an “assembly” by organizing or taking part in a gathering of persons for a purpose such as expressing oneself, conveying a position on a particular issue or exchanging ideas. It is thus clear to the Working Group that the above periods of detention of Mr. Butsko, albeit short, were based solely on his freedoms of expression and assembly, following the pattern identified by OHCHR as noted above.

70. The Working Group concludes that those periods of detention of Mr. Butsko were arbitrary, falling under category II.

(c) Category III

71. The source alleges that the criminal proceedings against Mr. Butsko were unfair, thus rendering his detention arbitrary under category III. While the nature of the crime committed by Mr. Butsko was not disputed (causing bodily harm to the in-house lawyer), the source complains mostly about an allegedly incorrect legal qualification of the crime, which led to more severe punishment. The source suggests that the court considered the multiple instances in which Mr. Butsko was prosecuted for participation in unauthorized peaceful assemblies as an aggravating circumstance. The source claims that, if he had not taken part in the peaceful assemblies, his punishment for the beating would have been more lenient.

72. The Working Group reiterates that it has consistently refrained from taking the place of the national judicial authorities or acting as a kind of supranational tribunal when it is urged to review the application of national law by the judiciary.¹⁷ It is outside the mandate of the Working Group to reassess the sufficiency of the evidence or to deal with errors of law allegedly committed by national courts.¹⁸

73. In the case at stake, no prima facie arbitrariness can be detected in the domestic courts’ reasoning; and the Working Group considers that the source did not provide sufficient information demonstrating violations of Mr. Butsko’s rights to a fair trial. Furthermore, noting that the source has not alleged that Mr. Butsko was convicted following proceedings that were not adversarial or in the course of which he was not represented by a lawyer of his choice or given ample opportunity to state his case, to challenge the evidence against him or to submit what he found relevant for the outcome, the Working Group is unable to make any finding under category III.

74. The Working Group considers that the source did not provide sufficient information demonstrating violations of Mr. Butsko’s rights to a fair trial. The Working Group is thus unable to make any finding under category III.

3. Disposition

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

The deprivation of liberty of Piotr Butsko, being in contravention of articles 3, 9, 19 and 20 of the Universal Declaration of Human Rights and articles 9, 19 and 21 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I and II.

76. The Working Group requests the Government of Belarus to take the steps necessary to remedy the situation of Mr. Piotr Butsko 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.

¹⁶ A/HRC/46/4, para. 41.

¹⁷ See, for example, opinion No. 16/2017.

¹⁸ See, for example, opinion No. 5/2021.

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

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

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

4. Follow-up procedure

80. 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 compensation or other reparations have been made to Mr. Butsko;
- (b) Whether an investigation has been conducted into the violation of Mr. Butsko's rights and, if so, the outcome of the investigation;
- (c) 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;
- (d) Whether any other action has been taken to implement the present opinion.

81. 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.

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

83. 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.¹⁹

[Adopted on 31 August 2023]

¹⁹ Human Rights Council resolution 51/8, paras. 6 and 9.