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**Human Rights Council**  
Working Group on Arbitrary Detention

## **Opinions adopted by the Working Group on Arbitrary Detention at its ninety-second session, 15–19 November 2021**

### **Opinion No. 50/2021 concerning Raman Pratasevich (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,<sup>1</sup> on 10 August 2021 the Working Group transmitted to the Government of Belarus a communication concerning Raman Pratasevich. The Government replied to the communication on 12 October 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).

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<sup>1</sup> [A/HRC/36/38](#).

## Submissions

### *Communication from the source*

4. Raman Pratasevich (also known as Roman Protasevich) is a citizen of Belarus, born in 1995, who usually resides in Vilnius, Lithuania. The source reports that Mr. Pratasevich is a well-known independent journalist and a former editor of the influential NEXTA Telegram channel. The social media channel reportedly played a pivotal role in broadcasting footage of post-election violence in Belarus and was used as a forum for sharing information about protest action and police brutality. Mr. Pratasevich is also a co-founder of the independent “Belarus of the Brain” (Belarus Golovnogo Mozga) Telegram channel. In the wake of a reported pre-election crackdown on independent journalists and bloggers, Mr. Pratasevich fled Belarus and sought political asylum in Poland.

5. On 20 October 2020, the NEXTA Telegram channel was held to be extremist by the Central District Court of Minsk. On 5 November 2020, Mr. Pratasevich was accused of organizing mass riots (under art. 293 (1) of the Criminal Code of Belarus), organizing and preparing activities gravely breaching public order (under art. 342 of the Criminal Code) and deliberate incitement to social hatred (under art. 130 (3) of the Criminal Code) – crimes punishable by up to 15 years of imprisonment. On 19 November 2020, Mr. Pratasevich was placed on the “terrorist list”. On 7 February 2021, the Investigative Committee of Belarus sent an extradition request to the Government of Poland in relation to Mr. Pratasevich.

#### a. Context

6. The source reports that according to official results of a presidential election held on 9 August 2020, the incumbent – in power since 1994 – won another decisive victory. According to observers, the election was in violation of electoral law. In the run-up to the vote, key opposition candidates and vocal critics were reportedly detained and charged with serious crimes. Furthermore, thousands took to the streets denouncing what they perceived as an attempt by the incumbent President to hold on to power. The protests, strikes and vocal challenges were met with suppression and violence by the authorities. Tens of thousands have reportedly been arrested, and many have been subjected to torture, arbitrary detention, inhuman treatment, harassment by law enforcement services, or threats of losing their jobs, custody of their children, or their assets. Leaders of the democratic opposition have been detained or expelled from Belarus by the authorities. Some judicial actors have reportedly targeted opponents and protest organizers with charges that carry lengthy terms of imprisonment.

7. The source submits that it is in this context that the legality of Mr. Pratasevich’s detention must be assessed, and that he is a victim of this repression against critics and opponents. His arrest was motivated by his journalistic activities and was intended to deter the opposition, civil society and independent journalists.

#### b. Arrest and detention

8. According to the source, on 23 May 2021, at around 0700 Coordinated Universal Time (UTC), Mr. Pratasevich reported to his colleagues that he was being followed by a suspicious Russian-speaking man at Athens airport. The man stood behind Mr. Pratasevich in the boarding queue, tried to engage him in innocuous conversation and attempted to take a photograph of his travel documents. As Mr. Pratasevich boarded scheduled Ryanair flight FR4978 to Vilnius, the man disappeared and did not board the aircraft. Flight FR4978 – using a commercial aircraft registered in Poland (with the registration SP-RSM) – took off from Athens at 0729 UTC and proceeded towards Vilnius.

9. The source reports that at 0946 UTC, the flight crew was ordered by Belarusian air traffic control to divert its course and make an emergency landing at the airport in Minsk. Belarusian State media confirmed that the aircraft had been diverted on the orders of the incumbent President. The official reason given for the diversion was a report of an explosive device aboard the aircraft. At the time of the diversion, flight FR4978 was closer to Vilnius than to Minsk (it was estimated to be 40 kilometres from the border between Belarus and Lithuania), while the airport at Minsk was the fifth-closest from the aircraft.

10. The source submits that at 0948 UTC, the aircraft's crew reset the aircraft's transponder to emergency landing code 7700 (squawk code 7700). The aircraft was escorted to the airport in Minsk by a Belarusian MiG-29 fighter jet. A video posted online by the Aviatica Group purports to show the MiG-29 fighter jet after completing its mission. The jet appears to be carrying a total of six rockets and an external fuel tank. It has been also reported that a Belarusian Mi-24 helicopter was used during the diversion. According to the source, it is not known whether the flight crew received an explicit threat of force from Minsk, nevertheless the threat would have been implicit in the use of military aircraft.

11. The source reports that at 1016 UTC, flight FR4978 landed at Minsk National Airport. Despite the official narrative that there was an explosive device aboard the aircraft, the aircraft was ordered to circle over densely populated areas of Minsk. On landing, Belarusian law enforcement authorities entered the aircraft and prioritized the arrest of Mr. Pratasevich and his partner. The authorities' conduct indicates that the alleged bomb threat was a mere pretext, and that the real motivation was Mr. Pratasevich's arrest.

12. According to the source, at 1358 UTC, the Chief of the Directorate for Combating Organized Crime and Corruption published a photograph of Mr. Pratasevich next to two State security officers, confirming his detention. Belarusian authorities then proceeded to check the luggage and the passengers and released flight FR4978 for its onward journey to Vilnius at 1747 UTC.

13. The source reports that on 24 May 2021, Belarusian authorities released a video of Mr. Pratasevich, in which he appears to be reading from a pre-prepared statement, confirming that he is in good health and that he is being adequately treated by law enforcement authorities, and confessing to his role in organizing mass protests in Minsk. Commenting on this video, an observer noted a visible scar on his forehead, what appears to be a broken nose, and "powder" covering up other potential bruises on his face, suggesting that he had been forced to record the video under duress.

14. According to the source, on 26 May 2021 a lawyer retained by Mr. Pratasevich's family attempted to visit him in custody but was denied access to her client by the authorities. On the same day, commenting on the arrest of Mr. Pratasevich, the incumbent President reportedly stated that he had warned his opponents before that they would be found and punished.

15. The source submits that on 30 May 2021, there were credible reports that Mr. Pratasevich was being detained at a facility administered by the State Security Committee (KGB).

16. The source reports that on 2 June 2021, Belarusian public broadcaster ONT aired what appears to be a recording of Mr. Pratasevich's interrogation. In the video, Mr. Pratasevich discussed an alleged conflict with members of the Belarusian opposition and suggested that they may be responsible for his arrest. On 3 June 2021, ONT aired an "interview" with Mr. Pratasevich, during which he appeared to "confess" to plotting anti-government protests and to praise the incumbent President. When the interviewer asked Mr. Pratasevich whether he feared being extradited to eastern Ukraine, the question caused Mr. Pratasevich visible distress followed by an appeal for clemency by the incumbent President. Mr. Pratasevich was also filmed breaking down into tears towards the end of the "interview", revealing bruise marks on his wrists. The source indicates that the "interview" has been widely condemned as a "forced televised confession" amounting to ill-treatment.

17. According to the source, Mr. Pratasevich's access to legal assistance has been restricted. His chosen counsel had no access to Mr. Pratasevich for at least four days following his arrest (his counsel was not given information about his whereabouts and was denied access to the detention facility). Mr. Pratasevich's counsel is bound by strict non-disclosure rules, preventing him or her from disclosing any information about the charges, the investigation or the client's instructions. The source notes with concern that Mr. Pratasevich is unable to speak freely to his legal counsel. His counsel is also absent from the broadcast footage of Mr. Pratasevich's interrogations and "confessions". The authorities have provided no information on Mr. Pratasevich's health condition. Despite multiple requests from Mr. Pratasevich's family, the authorities have refused to allow an independent physician to conduct a medical assessment of Mr. Pratasevich's physical and mental state.

18. The source submits that on 14 June 2021, Belarusian authorities held a press conference during which it was announced that Mr. Pratasevich was being charged with the following offences under the Criminal Code: deliberate incitement to social hatred (under art. 130 (3)), organization of mass riots (under art. 293 (1)) and organizing and preparing activities that gravely breach public order (under art. 342). If found guilty, Mr. Pratasevich faces up to 15 years of imprisonment.

19. According to the source, on 25 June 2021 Mr. Pratasevich's family was informed that he had been transferred to an unknown location, to be held under de facto house arrest. On the same day, the Investigative Committee announced that Mr. Pratasevich had signed a cooperation agreement with the authorities and had been granted a request to be placed under house arrest. Mr. Pratasevich is reportedly being held under armed guard, is unable to leave the location of his detention and is unable to communicate freely with his family or anyone else (he has been allowed to make two calls to his family – both under supervision).

20. According to the source, it has been alleged that the so-called "Luhansk People's Republic" has requested Mr. Pratasevich's extradition to face unspecified charges. The source notes with concern that an "extradition" or transfer of Mr. Pratasevich into the custody of the militia there would raise a serious risk of his death and/or torture and would constitute a grave violation of his fundamental rights.

c. Analysis of violations

21. The source argues that Mr. Pratasevich's detention meets the Working Group's definition of arbitrary deprivation of liberty under categories I, II, III and V.

i. Category I

22. The source submits that Belarusian authorities did not release any official information on the legal basis or reasons for Mr. Pratasevich's arrest and detention until a journalist asked the authorities to list the charges at the press conference held on 14 June 2021. Footage purporting to show Mr. Pratasevich's "confessions" to organizing mass disturbances do not satisfy the requirement of formal charges and reasons for detention, especially where there is a strong presumption that such "confessions" were obtained under duress. There is no indication that Mr. Pratasevich's detention has been judicially approved or reviewed since his arrest. Reportedly, genuine and independent judicial review, capable of rendering his detention lawful, is not available in cases against critics and political opponents, considering the well-documented absence of judicial independence and impartiality in such cases.

ii. Category II

23. The source argues that notwithstanding the Belarusian authorities' efforts to demonstrate that Mr. Pratasevich was involved in organizing riots and mass disturbances, there are compelling reasons to believe that he is being punished for his journalistic activities. The source notes that the NEXTA Telegram channel broadcast footage of the authorities' violent crackdown on peaceful demonstrators during an information blackout of the events by Belarusian State-controlled media. As editor-in-chief of that platform, Mr. Pratasevich was exercising a journalistic activity – that is, exercising the fundamental right to freedom of expression protected by article 19 of the Universal Declaration of Human Rights and article 19 of the Covenant. The platform's function as a tool for information-sharing about peaceful demonstrations and civil action is further protected by the right to peaceful assembly under article 20 of the Universal Declaration of Human Rights and article 21 of the Covenant.

24. According to the source, despite continuous efforts by the authorities to discredit the protests as "riots" or "extremist activities", there is a body of audiovisual and witness evidence which demonstrates that the protests were peaceful, and that violence was meted out or directly provoked by Belarusian authorities. The placement of the NEXTA Telegram channel and its editors on the list of "extremists" and the seeking of their extradition as "terrorists" further demonstrate the authorities' intention to persecute Mr. Pratasevich and his colleagues for their journalistic activities.

## iii. Category III

25. According to the source, Mr. Pratasevich has been deprived of fundamental fair trial guarantees and other human rights standards, rendering his detention unlawful. Mr. Pratasevich's access to independent legal assistance of his choice has been severely restricted. He had no access to his chosen counsel for four days following his arrest. There is a strong presumption that Mr. Pratasevich is unable to give confidential instructions to or receive confidential advice from his counsel, based on evidence of routine violations of counsel-client confidentiality in Belarusian pretrial detention facilities. Video footage released by the authorities demonstrates that Mr. Pratasevich has been interrogated without the presence of his counsel (which includes the televised "interview" broadcast on 3 June 2021, which may be regarded as a form of interrogation). Furthermore, there is no evidence that Mr. Pratasevich has any legal recourse to challenge his detention, or that his detention has been reviewed by an independent or impartial judiciary. The source argues that the Belarusian judiciary is not independent of the executive and therefore cannot be regarded as adequate "judicial supervision" for the purposes of determining lawful pretrial detention. Cumulatively, these due process violations are of such gravity as to give the deprivation of liberty an arbitrary character.

## iv. Category V

26. The source argues that Mr. Pratasevich is being detained on the basis of his political opinions, and as such, his deprivation of liberty is grounded in discrimination. It is well known that Mr. Pratasevich is an active member of a Belarusian democratic movement that opposes the Government of the incumbent President as well as human rights violations. His arrest, detention and televised "confessions" indicate that he is being punished for his journalistic activities, which facilitated the expression of political opinion by opposition to the Government. As such, the authorities have specifically targeted Mr. Pratasevich, alongside other political opponents and critics, on the basis of their political opinion.

*Response from the Government*

27. On 10 August 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 11 October 2021, detailed information about the current situation of Mr. Pratasevich and to clarify the legal provisions justifying his continued detention, as well as its compatibility with the obligations of Belarus under international human rights law, and in particular with regard to the treaties ratified by the State. Moreover, the Working Group called upon the Government of Belarus to ensure his physical and mental integrity.

28. On 11 October 2021, the authorities of Belarus informed the Working Group that they would require additional time to transmit the response. On 12 October 2021, the Government's response was received by the Working Group.

29. In this reply, the Government states that on 23 May 2021, the Minsk National Airport email address "info@airport.by" received from a "protonmail.com" email address a message written in English that read: "We, the Hamas soldiers, demand that Israel ceases fire in the Gaza Strip. We demand that the European Union renounces its support for Israel in this war. It is known that attendees of Delphi Economic Forum are returning home on the flight FR4978. This plane has a bomb. If you do not fulfil our demands, the bomb will explode on 23 May over Vilnius." Taking into account the seriousness of the threat received, the information from Minsk National Airport was forwarded to the relevant air traffic control bodies of the State enterprise "Belaeronavigatsia".

30. The Government notes that in accordance with the requirements of appendix 17 to the Convention on International Civil Aviation (the Chicago Convention) and of the National Programme for the Protection of Civil Aviation from Acts of Unlawful Interference in the Republic of Belarus, a mechanism was activated to guide the response to this act of unlawful interference in civil aviation activities.

31. Flight FR4978 followed the route from Athens to Vilnius and was operated by Ryanair using a Boeing 737-800. The aircraft departed Athens airport at 0710 UTC (10.10 a.m.

Belarusian time) and entered the airspace of Belarus, coming under the control of the Minsk Regional Air Traffic Control Centre, at 0930 UTC (12.30 p.m. Belarusian time).

32. After communication was established between Belarusian air traffic control and the crew of the aircraft, the crew was immediately informed about the incoming threat regarding the possible presence of an explosive device on board the aircraft, and a recommendation was issued to land at an alternate airfield at Minsk National Airport. The crew sought clarification several times about the source of the information and was informed that the initial information with threats had been received at Minsk National Airport.

33. Prior to that, the flight director at the Minsk Regional Air Traffic Control Centre tried several times to call the office of the Ryanair representative in Lithuania using the phone number provided by the aircraft's crew, but it was not possible to contact any of the airline's representatives.

34. After receiving and clarifying the information, the crew of flight FR4978, in accordance with the established international requirements, at 0947 UTC (12.47 p.m. Belarusian time), reset the aircraft's transponder to code 7700 (indicating an emergency), and in radio-telephone mode requested assistance, using the established phrase "Mayday". Thereafter, the crew, in accordance with the requirements of standard 3.7.2 in annex 2 to the Chicago Convention, announced that they had decided to land at Minsk National Airport.

35. Taking into account the decision made independently by the crew, the air traffic control bodies of Belarus provided the flight's crew with all the necessary priority assistance. An appropriate emergency plan was put into effect at Minsk National Airport, and all relevant services of the airport and other concerned State bodies were notified and alerted in accordance with the established procedure.

36. The landing of flight FR4978 at Minsk National Airport was safely completed at 1015 UTC (1.15 p.m. Belarusian time).

37. After landing, the aircraft, in accordance with the established international and national requirements in the area of aviation security, was assigned a special isolated parking stand, where the relevant actions for inspection and questioning were carried out in relation to the aircraft, the crew, the passengers, baggage, cargo and mail.

38. These actions are provided for and must be performed by States in accordance with the standards set out in chapter 5 of annex 17 to the Chicago Convention.

39. After completion, at 1320 UTC, of all procedures established by international and national law, flight FR4978 departed Minsk National Airport at 1748 UTC and at 1827 UTC made a safe landing at the airport in Vilnius.

40. According to preliminary conclusions from the Aviation Department, bearing in mind the requirements under international law, the Belaeonavigatsia air traffic control services, the aircraft's crew, and the Minsk National Airport staff involved in the situation described, acted within the framework of the requirements prescribed by the International Civil Aviation Organization (ICAO).

41. The Government explains that representatives of Belarus took part in an extraordinary meeting of the ICAO Council on 27 May 2021 and, in a spirit of cooperation and transparency, provided all available information on the emergency landing of the aircraft. For the first time in its history, the ICAO Council decided to conduct an investigation under article 55 (e) of the Chicago Convention. The Government notes, however, that the case in Minsk on 23 May 2021 is not exceptional. A number of incidents of coerced landing of civilian aircraft have occurred during the twenty-first century alone. In 1956, France forced a flight to land to arrest Algerian independence fighter Ahmed Ben Bella. None of these cases were investigated by ICAO.

42. The Government submits that without waiting for the preliminary results from the ICAO working group investigating this "incident", on 4 June 2021 the European Union decided to ban aircraft of the national airline, Belavia, from flying to European Union airports and flying over European Union territory. It recommended that European carriers refrain from flying in Belarusian airspace. At the same time, not being a member of ICAO, the European Union has no legal basis for applying sanctions in respect of foreign aircraft, or for

interfering in the scope of bilateral agreements on air services between European Union members and other countries, in violation of the provisions of the Chicago Convention.

43. According to the Government, despite the readiness of Belarus to receive international experts, it was only two months after the start of the investigation that the ICAO mission arrived in Belarus. During the visit, the ICAO representatives were provided with documentation, as well as the opportunity to interview a number of aviation specialists from Belaeronavigatsia and Minsk National Airport, and military personnel of the Air Force and Air Defence Forces of the Armed Forces of Belarus. ICAO experts have refused to meet with passengers who refused to fly on to Vilnius and stayed in Minsk, including Mr. Pratasevich, who was detained by law enforcement agencies.

44. The Investigative Committee carried out a preliminary investigation in a criminal case in connection with mass riots, as well as other connected crimes that took place on 9 August 2020 and the following days.

45. The Government notes that, according to the results of an examination of information published on the NEXTA, NEXTA Live and “Belarus of the Brain” Telegram channels, of which Mr. Pratasevich was editor-in-chief, it was established that these contained: (a) calls for violence against representatives of the authorities of Belarus, and other information aimed at organizing mass riots on the territory of Belarus, and group actions grossly violating public order, and at educating and preparing persons to participate in the named illegal actions; and (b) publications aimed at fomenting and reinforcing hostility and hatred towards law enforcement officials, civil servants, government officials and the public who actively advocate for the observance of law and order and for the preservation of the current State constitutional system of Belarus, discrediting and insulting them.

46. The Government submits that in the course of the investigation, a psycholinguistic examination of the information posted on the NEXTA and NEXTA Live Telegram channels was carried out. According to the expert conclusion of 29 October 2020, the information contains signs of extremism and calls for extremist activity.

47. On 23 November 2020, Partizansky District Court, in Minsk, ruled that these Internet resources should be recognized as extremist materials.

48. According to the Government, on the basis of the evidence collected against Mr. Pratasevich, who left to seek permanent residence in Poland in November 2019, orders were issued on applying a preventive measure in respect of Mr. Pratasevich in the form of detention and on prosecuting him for committing crimes under parts 1 and 2 of article 342, parts 1 and 3 of article 293 and part 3 of article 130 of the Criminal Code, and it was announced that he had been included on a wanted list.

49. During the passport control check on 23 May 2021 at Minsk National Airport, Mr. Pratasevich was detained by police officers in accordance with article 108 of the Criminal Procedure Code. On the same day, with the approval of the deputy prosecutor of the city of Minsk, a preventive measure was applied in respect of Mr. Pratasevich in the form of detention, which was subsequently changed to house arrest on 23 June 2021.

50. The necessary investigations were carried out, with the participation of Mr. Pratasevich and his legal counsel, and with the use of some video recordings, during which the accused pleaded guilty to the crimes imputed to him, and made a confession.

51. At Mr. Pratasevich’s initiative, a pretrial cooperation agreement was concluded with him on 30 June 2021, under which he actively provides assistance in investigating the criminal case, identifying all instances of criminal activity and exposing the participants.

52. Mr. Pratasevich has not made any complaints about the criminal case, or about the state of his health during the investigation. In addition, the accused personally rejected, in the presence of his defence lawyer, the defence lawyer’s petition to conduct a forensic medical examination of Mr. Pratasevich, pointing out that no violence had been used against him. The accused did not request a medical assessment of his physical and psychological condition. According to the conclusion of the forensic psychological examination of Mr. Pratasevich on 10 August 2021, his psychological state is intact and he is not suffering from any mental disorder.

53. The accused provides testimony voluntarily without any influence from law enforcement officers. All investigations and proceedings are carried out with the participation of defence counsel and observance of the rights of the accused under the Criminal Procedure Code, in accordance with the objectives and principles of the criminal process. Mr. Pratasevich communicates freely with his defence lawyer, in private and confidentially, without a limitation on the number or the duration of the conversations.

54. Currently, the preliminary investigation in the criminal case against Mr. Pratasevich continues.

*Further comments from the source*

55. On 12 October 2021, the reply of the Government was transmitted to the source, for further comments, which the source submitted on 27 October 2021, rejecting the submissions made by the Government. Firstly, the source argues that the submissions by the Government, claiming that an email containing a threat of terrorism was received by the airport, which served as the basis for the request to ground the aircraft, lack credibility.

56. The source further contends that, in any case, these submissions have no bearing upon the subsequent arbitrary detention of Mr. Pratasevich, which the Government has failed to rebut. The source submits that, following his arrest on the airfield, Mr. Pratasevich has been held in what authorities describe as house arrest, yet his exact location is unknown. The source argues that the Government has failed to explain the reasons for his arrest, just as it has failed to show what actions of Mr. Pratasevich invoked his individual responsibility for a specific crime. Moreover, the source points out that all accusations against Mr. Pratasevich have been presented by the authorities and the procuracy, as he has never appeared before a court of law.

57. The source concludes by reiterating that the detention of Mr. Pratasevich since 23 May 2021 amounts to arbitrary deprivation of liberty.

## **Discussion**

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

59. As a preliminary issue, the Working Group notes that the Government has argued that Mr. Pratasevich has been under house arrest as of 23 June 2021, while the source states that the family was informed of his house arrest on 25 June 2021. The source has further submitted that Mr. Pratasevich is under house arrest at an unknown location, and that he is reportedly being held under armed guard, is unable to leave the location of his detention and is unable to communicate freely with his family or anyone else (he has been allowed to make two calls to his family – both under supervision). While the Government had the opportunity to address these allegations, it has chosen not to do so; neither has the Government contested the source's claim that the current situation of Mr. Pratasevich amounts to deprivation of liberty.

60. Since not every house arrest amounts to a deprivation of liberty,<sup>2</sup> the Working Group recalls that an assessment must be carried out in each individual case. As the Working Group has stated, "deprivation of liberty is not only a question of legal definition, but also of fact. If the person concerned is not at liberty to leave, then all the appropriate safeguards that are in place to guard against arbitrary detention must be respected."<sup>3</sup> Moreover, in its jurisprudence, the Working Group maintains that house arrest amounts to a deprivation of liberty provided that it is carried out in closed premises which the person is not allowed to leave.<sup>4</sup> In determining whether this is the case, the Working Group considers whether there are limitations on the person's physical movements, on receiving visits from others and on

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<sup>2</sup> See, for example, opinion No. 37/2018.

<sup>3</sup> [A/HRC/36/37](#), para. 56.

<sup>4</sup> See, for example, opinions No. 37/2018 and No. 13/2007; and deliberation No. 1 ([E/CN.4/1993/24](#), sect. II).



various means of communication, as well as the level of security around the place where the person is allegedly detained.<sup>5</sup>

61. In the present case, the source has alleged, and the Government does not contest, that Mr. Pratasevich has been held at an unknown location since 23 June 2021, that he is being held under armed guard, that he is unable to leave the place at will and that his ability to communicate with the outside world is severely restricted. The Working Group therefore considers that Mr. Pratasevich's situation amounts to that of deprivation of liberty. In making this determination, the Working Group recalls that it applies a heightened standard of review in cases in which freedom of expression and opinion is restricted.<sup>6</sup> Moreover, it is not contested that Mr. Pratasevich was arrested on 23 May 2021 and was in pretrial detention in custody until 23 June 2021.

62. In determining whether the deprivation of liberty of Mr. Pratasevich was 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 requirements 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.<sup>7</sup>

63. The source has argued that the arrest and detention of Mr. Pratasevich is arbitrary and falls under categories I, II, III and V. The Government denies these allegations. The Working Group shall proceed to examine the allegations in turn.

#### *Category I*

64. The source has argued that the detention of Mr. Pratasevich falls under category I since the authorities did not release the official list of charges against him until this was requested by journalists on 14 June 2021. The source also argues that the grounding of the plane on 23 May 2021 was a mere pretext for the arrest of Mr. Pratasevich. However the Government denies these allegations, arguing that the grounding of the plane was warranted by a credible terrorist threat received by Minsk National Airport on 23 May 2021. According to the Government, the arrest of Mr. Pratasevich had in fact been warranted since 23 November 2020, when a court accepted the expert evidence in a case against him and ordered pretrial detention. However, given that Mr. Pratasevich had left Belarus, the pretrial detention could not be effected until he was discovered among the passengers on flight FR4978 on 23 May 2021. Mr. Pratasevich was therefore arrested on 23 May 2021.

65. From the outset, the Working Group wishes to remark on the incredible circumstances of the present case, involving the grounding of an aeroplane, which was followed by the arrest of Mr. Pratasevich. While the Working Group takes note of the Government's submissions that these two events are not connected, it is nevertheless perplexed that in its reply the Government also draws a parallel between these events and those of 1956 where it alleges that France forced the grounding of an airplane in order to carry out the arrest of an Algerian national. The Government contends that this was accepted as legitimate by the international community and that the same should be the case in respect of the events of 23 May 2021, thus implying that the true reason for grounding the plane was indeed the arrest

<sup>5</sup> See, for example, opinion No. 16/2011, para. 7: an individual under house arrest could not meet with foreign diplomats, journalists or other visitors at her apartment, and her mobile telephone and the Internet were cut off. She was not allowed to leave her apartment, except on short approved trips and under police escort, and the entrance to the compound was guarded by security agents. See also opinions No. 39/2013, No. 30/2012, No. 12/2010, No. 47/2006, No. 18/2005, No. 11/2005, No. 11/2001, No. 4/2001, No. 41/1993 and No. 21/1992.

<sup>6</sup> Opinions No. 57/2017, para. 46; No. 41/2017, para. 95; No. 62/2012, para. 39; No. 54/2012, para. 29; and No. 64/2011, para. 20. Domestic authorities and international supervisory bodies should apply the heightened standard of review of government action, especially when there are claims of a pattern of harassment (see opinion No. 39/2012, para. 45). See also the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, art. 9 (3).

<sup>7</sup> [A/HRC/19/57](#), para. 68.

of Mr. Pratasevich. However, noting the ongoing investigation into the incident by ICAO, the Working Group refrains from making any further comments on the matter.

66. Notwithstanding this, the Working Group notes that, as submitted by the Government, when arrested on 23 May 2021 Mr. Pratasevich was placed in pretrial detention by the deputy prosecutor of the city of Minsk, who also was the authority who substituted his pretrial detention with house arrest on 23 June 2021.

67. The Working Group recalls that according to article 9 (3) of the Covenant, anyone arrested or detained on a criminal charge is to 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.<sup>8</sup> The Working Group emphasizes that the prosecutorial body cannot be considered a judicial authority for the purposes of article 9 (3) of the Covenant.<sup>9</sup> Noting the uncontested facts described above, the Working Group finds that Mr. Pratasevich was not brought promptly before a judicial authority, in violation of article 9 (3) of the Covenant.

68. 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 provided by article 9 (4) of the Covenant. The Working Group recalls that according to the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, the right to challenge the lawfulness of detention before a court is a self-standing human right, which is essential to preserve legality in a democratic society.<sup>10</sup> This right, which is in fact a peremptory norm of international law, applies to all forms of deprivation of liberty<sup>11</sup> and 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”.<sup>12</sup> 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.”<sup>13</sup>

69. The right to take proceedings before a court in order for the court to decide upon the lawfulness of detention also must take place without any substantial delay, as specified in article 9 (4) of the Covenant, and as the Human Rights Committee has specified in its general comment No. 35 (2014), the adjudication of the case should take place as expeditiously as possible.<sup>14</sup> In the present case, Mr. Pratasevich was not availed of the opportunity to exercise his right to challenge the legality of his detention without delay. In fact, he was not presented before a judicial authority either upon his arrest on 23 May 2021 or when his pretrial detention was substituted with house arrest on 23 June 2021. In fact, from the submissions made by the Government, it appears that Mr. Pratasevich has not been presented before a judicial authority at all since his arrest on 23 May 2021. The Working Group therefore finds that both of these failures amounted to a violation of article 9 (4) of the Covenant.

70. Furthermore, the source has submitted that Mr. Pratasevich was denied access to legal counsel of his choice for at least four days after his detention. While the Government argues that Mr. Pratasevich was granted the legal assistance of his choice, the Working Group is mindful that the Government has neither submitted the date when such legal assistance was granted nor indeed challenged the submissions about access to legal counsel being denied for the first four days. In these circumstances, the Working Group finds that the denial of legal assistance for four days after the arrest further adversely impacted Mr. Pratasevich’s ability

<sup>8</sup> See the Committee’s general comment No. 35 (2014), paras. 32–33.

<sup>9</sup> *Ibid.*, para. 32. See also opinions No. 23/2021; No. 41/2020, para. 60; No. 6/2020, para. 47; No. 5/2020, para. 72; and No. 14/2015, para. 28; and [A/HRC/45/16/Add.1](#), para. 35.

<sup>10</sup> [A/HRC/30/37](#), paras. 2–3.

<sup>11</sup> *Ibid.*, para. 11.

<sup>12</sup> *Ibid.*, para. 47 (a).

<sup>13</sup> *Ibid.*, para. 47 (b).

<sup>14</sup> See para. 47.

to exercise his rights under article 9 (4) of the Covenant. Recalling that judicial oversight of detention is a fundamental safeguard of personal liberty<sup>15</sup> and is essential in ensuring that detention has a legal basis, the Working Group finds a breach of article 9 (4) of the Covenant.

71. Noting all the above, the Working Group concludes that the Belarusian authorities failed to establish the legal basis of Mr. Pratasevich'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 lacking legal basis.

#### *Category II*

72. The source has argued that the detention of Mr. Pratasevich was based solely on his legitimate exercise of rights under articles 19 and 21 of the Covenant. The Government has argued that Mr. Pratasevich was arrested and charged because an investigation established that certain resources on Telegram channels for which Mr. Pratasevich performed the functions of editor-in-chief contained elements which included (a) calls for violence against representatives of the authorities of Belarus, and other information aimed at organizing mass riots on the territory of Belarus, and group actions grossly violating public order, and at educating and preparing persons to participate in the named illegal actions; and (b) publications aimed at fomenting and reinforcing hostility and hatred towards law enforcement officials, civil servants, government officials and the public who actively advocate for the observance of law and order and for the preservation of the current State constitutional system of Belarus, discrediting and insulting them. The Government has specified that the Internet outlets that Mr. Pratasevich worked for were recognized as extremist by a court on 23 November 2020 on the basis of an expert opinion issued on 29 October 2020, without providing any further details, especially concerning the individual actions of Mr. Pratasevich.

73. Thus, the Working Group observes that while the Government had the opportunity to explain which specific actions by Mr. Pratasevich amounted to crimes, it has chosen not to do so. Equally, while the Government had the opportunity to address the specific allegations of infringements upon Mr. Pratasevich's freedoms of expression and assembly, it has chosen not to address these at all.

74. 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.<sup>16</sup> 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."<sup>17</sup> It should be noted that article 21 of the Covenant permits restrictions to the right of assembly on the same three grounds.

75. In the present case, the Government of Belarus, in its response to the submissions made by the source, has not invoked any of the permitted restrictions; the Government has cited a number of criminal acts allegedly committed by Mr. Pratasevich without any explanation as to what actions constituted these violations. It is quite clear to the Working Group that in fact the basis for the arrest and subsequent detention of Mr. Pratasevich was his exercise of freedom of expression and freedom of assembly. There is no evidence whatsoever that any of his actions have been violent, that he incited violence or indeed that his actions have led to violence by others. While freedom of expression and freedom of assembly are not absolute rights, "when a State party imposes restrictions on the exercise of

<sup>15</sup> A/HRC/30/37, para. 3.

<sup>16</sup> Human Rights Committee, general comment No. 34 (2011), para. 11.

<sup>17</sup> *Ibid.*, para. 22.

freedom of expression, these may not put in jeopardy the right itself”.<sup>18</sup> 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”.<sup>19</sup> It appears to the Working Group, however, that this is exactly what happened in the present case.

76. 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”.

77. Equally, the Working Group recalls the principle enunciated in Human Rights Council resolution 12/16, in which the Council calls upon States to refrain from imposing restrictions which are 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.

78. Finally, the Working Group notes the undisputed fact that Mr. Pratasevich is a journalist, and in this regard recalls the 2021 report of the United Nations High Commissioner for Human Rights which records the following in the context of the pre-election events in Belarus in 2020:

Journalists and human rights defenders were regularly harassed and detained while exercising their legitimate functions in the context of assemblies, including on the grounds of “participating in unauthorized events” while covering public gatherings.<sup>20</sup>

79. Very similar reports followed the post-election period in the country:

Journalists have been routinely detained in the context of the protests, even when they clearly identified themselves as such with their press cards, without regard for their protection under international human rights law to exercise their functions of reporting during assemblies. Between 9 August and 20 December, 384 journalists were arrested, 80 were sentenced to administrative detention, several were fined, and 62 reportedly experienced violence and beatings.<sup>21</sup>

80. Turning specifically to the outlets and publications that Mr. Pratasevich worked for, both the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Special Rapporteur on the situation of human rights in Belarus have raised concerns about the Telegram-based channel NEXTA Live and its logo being held to be “extremist” by national courts, since the legislation on extremism contains unclear definitions and imprecise procedures for determining what is considered extremist, thus raising concerns about the inhibiting effect of the use of such legislation on freedom of expression and freedom of the media.<sup>22</sup>

81. The Working Group recalls that the Human Rights Committee, in its general comment No. 37 (2020),<sup>23</sup> has clarified that the protection 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.

82. It is thus clear to the Working Group that the arrest and detention of Mr. Pratasevich was based solely on his journalistic activity, and his freedoms of expression and assembly, following the pattern identified by OHCHR and the Special Rapporteur on the situation of human rights in Belarus, as noted above.

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<sup>18</sup> Ibid., para. 21.

<sup>19</sup> Ibid., para. 23.

<sup>20</sup> [A/HRC/46/4](#), para. 19.

<sup>21</sup> Ibid., para. 37.

<sup>22</sup> Ibid., para. 36; and [A/74/196](#), para. 54.

<sup>23</sup> See para. 12.

83. The Working Group consequently finds that the arrest and detention of Mr. Pratasevich is arbitrary and falls under category II. The Working Group refers the present case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the rights to freedom of peaceful assembly and of association, for appropriate action.

### *Category III*

84. Given its finding that the deprivation of liberty of Mr. Pratasevich is arbitrary under category II, the Working Group wishes to emphasize that no trial of Mr. Pratasevich should take place. However, the investigations against Mr. Pratasevich are ongoing, he remains charged, and court proceedings are expected. The source has made a number of submissions concerning the denial of fair trial rights to Mr. Pratasevich, which the Working Group shall proceed to examine.

85. The source has submitted that Mr. Pratasevich's fair trial rights were denied and that his detention is therefore arbitrary. In particular, the source has alleged that Mr. Pratasevich was denied access to legal counsel for the first four days of his detention, and that subsequently such access was seriously impeded as he was unable to speak freely with his lawyer and to receive confidential advice. The source has also argued that Mr. Pratasevich appeared in a number of televised interviews and confessions during which his lawyer was not present.

86. The Working Group notes that all these allegations were detailed to the Government. However, the Government has merely stated that the requisite investigatory actions were undertaken with the cooperation of Mr. Pratasevich and his lawyer, which included a video recording during which Mr. Pratasevich himself voluntarily confessed to the charges. The Government has also argued that Mr. Pratasevich voluntarily entered a pretrial cooperation agreement on 30 June 2021, under which he actively provides assistance in investigating the criminal case, identifying all instances of criminal activity and exposing the participants. However, the Government has chosen not to address the credible allegations that the confidentiality of communication between Mr. Pratasevich and his lawyer was not preserved.

87. The right to legal assistance is an essential element of the right to a fair trial as encapsulated in article 10 of the Universal Declaration of Human Rights and article 14 of the Covenant, as it preserves equality of arms and thus the overall fairness of the proceedings. In the present case, the Working Group finds that Mr. Pratasevich 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 recalls that all persons deprived of their liberty have the right to legal assistance by counsel of their choice at any time during their detention, including immediately after their apprehension, as well as throughout their detention, and that such access is to be provided without delay.<sup>24</sup>

88. Furthermore, the source has argued that Mr. Pratasevich was unable to speak freely with his lawyer and that the Government has not addressed the allegation concerning the denial of confidential communications with his lawyer. The Working Group notes that the right to communicate with counsel, as encapsulated in article 14 (3) (b) of the Covenant, entails the requirement that the legal counsel be able to meet his or her client in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications.<sup>25</sup> In the view of the Working Group, this was denied to Mr. Pratasevich, and it 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

<sup>24</sup> A/HRC/45/16, paras. 50–53; and A/HRC/30/37, principle 9 and guideline 8. See also opinions No. 42/2018, No. 83/2018 and No. 67/2020.

<sup>25</sup> Human Rights Committee, general comment No. 32 (2007), para. 34. See also *Khomidova v. Tajikistan* (CCPR/C/81/D/1117/2002), para. 6.4; *Siragev v. Uzbekistan* (CCPR/C/85/D/907/2000), para. 6.3; and *Gridin v. Russian Federation* (CCPR/C/69/D/770/1997), para. 8.5; and opinions No. 42/2018, No. 83/2018 and No. 67/2020.

Mandela Rules) and principle 18 (3) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

89. The Working Group also wishes to place on record its discomfort over the uncontested allegations that strict confidentiality and non-disclosure covenants have been placed on Mr. Pratasevich's lawyer. The Working Group is concerned that such covenants have a serious adverse impact on the ability of the lawyer to represent the client properly, and amount to a further violation of Mr. Pratasevich's right to a lawyer of his own choosing as provided under article 14 (3) (b) of the Covenant as well as principle 9 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court.<sup>26</sup> The Working Group refers the present case to the Special Rapporteur on the independence of judges and lawyers, for further consideration.

90. The Working Group notes the allegations of various televised appearances of Mr. Pratasevich which the source argues were forced, but which the Government contends were entirely voluntary and took place with the cooperation of Mr. Pratasevich and his lawyer. The Working Group notes, however, that the Government has not addressed the allegations about these various "interviews" and "confessions" being aired on national television on several occasions, nor the allegation that Mr. Pratasevich's lawyer did not appear in them. Moreover, the Working Group has already established serious interference with Mr. Pratasevich's right to legal assistance, as well as with the confidentiality of the communication with his lawyer, which casts further serious doubt on the voluntariness of these televised appearances.

91. Furthermore, the Working Group observes that the Government has provided no explanation as to the purpose of these televised appearances, although it had the opportunity to do so. Noting that Mr. Pratasevich at the time of these televised appearances was a suspect, with charges against him and liable to court proceedings, he was and remains entitled to be presumed innocent until proven guilty, as required under article 14 (2) of the Covenant, and it was the duty of the Belarusian authorities to preserve this right.

92. The Working Group wishes to emphasize that the presumption of innocence is one of the fundamental principles of a fair trial and is thus non-derogable,<sup>27</sup> and guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt.<sup>28</sup> 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.<sup>29</sup> In the present case, the Working Group considers that Mr. Pratasevich's right to the presumption of innocence under article 11 (1) of the Universal Declaration of Human Rights and article 14 (2) of the Covenant was violated.

93. The Working Group also notes the source's submissions that during the televised interview of 24 May 2021, Mr. Pratasevich appeared to have a visible scar on his forehead, as well as a broken nose and "powder" covering up possible bruising. Although these allegations were put to the Government, it has chosen not to address them, but has merely stated that all televised appearances of Mr. Pratasevich were entirely voluntary and he declined medical examinations requested by his lawyer. The Government has submitted that the medical examination ordered by the court took place on 10 August 2021, which concluded that he was in good physical and mental health.

94. The Working Group is seriously disturbed by the allegations concerning Mr. Pratasevich's television appearance on 24 May 2021 and is mindful of the failure of the Government to address these, as well as its failure to allow an independent medical examination of Mr. Pratasevich at the time. Although the Government contends that Mr. Pratasevich refused the medical examination requested by his lawyer, the Working Group is mindful of the very serious interference it has already established with the right of Mr. Pratasevich to communicate confidentially with his lawyer.

<sup>26</sup> Opinions No. 42/2020, No. 66/2019, No. 28/2018, No. 70/2017, No. 36/2017, No. 34/2017, No. 32/2017, No. 29/2017 and No. 14/2017.

<sup>27</sup> Human Rights Committee, general comment No. 32 (2007), para. 6; see also opinion No. 67/2020.

<sup>28</sup> Human Rights Committee, general comment No. 32 (2007), para. 30.

<sup>29</sup> Ibid. See also opinions No. 63/2020, No. 45/2019 and No. 30/2017.



95. Equally, the Working Group is not persuaded by the argument presented by the Government that Mr. Pratasevich was examined on 10 August 2021 and was found to be in good health. Any examination that may have been carried out on that date may not have uncovered whatever may have happened to Mr. Pratasevich some three months prior, in May 2021. In this regard, the Working Group recalls that the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol)<sup>30</sup> specifically highlights the particular importance of the timeliness of the medical examination. The Working Group also recalls that prompt and regular access to family members as well as to independent medical personnel and lawyers – all of which was denied to Mr. Pratasevich – is an essential and necessary safeguard for preventing as well as protecting against arbitrary detention and infringement of personal security.<sup>31</sup>

96. Given this, and once again highlighting the incompatibility of such televised appearances with the presumption of innocence, the Working Group considers that Mr. Pratasevich was subjected to forced confession. The Working Group recalls that the burden is on the Government to prove that the statements made by Mr. Pratasevich were given freely,<sup>32</sup> which the Government in the present case has not done. Mr. Pratasevich's right to be presumed innocent under article 14 (2) of the Covenant and his right not to be compelled to confess guilt under article 14 (3) (g) were thus violated.

97. Although the trial proceedings against Mr. Pratasevich are yet to commence, the Working Group recalls that forced confession taints the entire proceedings, regardless of whether other evidence is available to support the verdict.<sup>33</sup> The Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, for further action.

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

#### *Category V*

99. The source has alleged that the arrest and detention of Mr. Pratasevich was based solely on his political opinions, while the Government has merely stated a number of accusations brought against the online outlet that Mr. Pratasevich worked for (see para. 45 above).

100. The Working Group recalls the observations of the United Nations High Commissioner for Human Rights in her report on the situation of human rights in Belarus in the context of the 2020 presidential election, noting that:

Criminal charges were increasingly brought in the context of protests. According to official sources, between 9 August and 30 November, more than 1,000 criminal cases were opened against peaceful protesters, opposition members and supporters, journalists, human rights defenders, lawyers, peaceful protesters and persons critical of the Government.<sup>34</sup>

101. The Working Group also notes the failure of the Government to respond to the source's allegation regarding the comments made by the President in the context of Mr. Pratasevich's arrest, in which he allegedly referred to having warned his opponents earlier that they would be found and punished (see para. 14 above).

102. Mindful of these observations as well as those cited above (see paras. 72–83)<sup>35</sup> and of its own findings under category II, the Working Group finds that the arrest and detention of

<sup>30</sup> See para. 104.

<sup>31</sup> See, for example, opinion No. 34/2021, para. 77.

<sup>32</sup> Opinions No. 45/2018 and No. 86/2020. See also Human Rights Committee, general comment No. 32 (2007), para. 41.

<sup>33</sup> Opinion No. 34/2015, para. 28.

<sup>34</sup> A/HRC/46/4, para. 43.

<sup>35</sup> *Ibid.*, paras. 19 and 36–37.

Mr. Pratasevich was based on discrimination on the grounds of his political opinions, in violation of article 26 of the Covenant. His detention is therefore arbitrary under category V.

103. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the situation of human rights in Belarus, for appropriate action.

#### *Concluding remarks*

104. The Working Group wishes to place on record its very serious concern for the physical and psychological well-being of Mr. Pratasevich, who has been in the custody of the Belarusian authorities, who was initially arrested on 23 May 2021 and has then been held at an unknown location since 23 June 2021, and has since appeared in a number of televised interviews during which, according to his family, he has acted entirely out of character. While the Government has argued that Mr. Pratasevich has been examined by medical experts, the source has argued that independent medical examination has not been permitted.

105. The Working Group reminds the Government of its duty to treat all detainees with humanity and with respect for the inherent dignity of the human person, as required by article 10 of the Covenant and rule 1 of the Nelson Mandela Rules.

#### **Disposition**

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

The deprivation of liberty of Raman Pratasevich, being in contravention of articles 2, 3, 7, 9, 10, 11, 19 and 20 of the Universal Declaration of Human Rights and articles 9, 14, 19, 21 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

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

108. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Pratasevich 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, unconditional release of Mr. Pratasevich.

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

110. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to (a) the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, (b) the Special Rapporteur on the rights to freedom of peaceful assembly and of association, (c) the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, (d) the Special Rapporteur on the independence of judges and lawyers, and (e) the Special Rapporteur on the situation of human rights in Belarus, for appropriate action.

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

#### **Follow-up procedure**

112. 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:



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

113. 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.

114. 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.

115. 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.<sup>36</sup>

*[Adopted on 15 November 2021]*

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<sup>36</sup> Human Rights Council resolution 42/22, paras. 3 and 7.