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Human Rights Council
Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its ninety-third session, 30 March–8 April 2022

Opinion No. 24/2022 concerning Maksim Znak (Belarus)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 42/22.

2. In accordance with its methods of work,¹ on 22 December 2021 the Working Group transmitted to the Government of Belarus a communication concerning Maksim Znak. 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](#).

Submissions

Communication from the source

4. Maksim Znak is a citizen of Belarus, born in 1981, who usually resides in Minsk.
5. Mr. Znak is a lawyer and partner in the law firm of Borovtsov & Salei. He is also professor at the Law Faculty of the Belarusian State University, where he is the author and lecturer of the course entitled “The legal environment of business” for the Master of Business Administration programme. In addition, he is a member of the Presidium of the Coordination Council.

Context

6. According to the source, Mr. Znak was the electoral campaign lawyer of Viktor Babaryka, the main rival of the incumbent President leading up to the presidential election scheduled for 9 August 2020. Mr. Babaryka was reportedly arrested on 18 June 2020. Later, Mr. Znak reportedly represented presidential nominee, Sviatlana Tsikhanouskaya, who was registered as an alternative candidate. The source notes that according to an independent count of the votes, Ms. Tsikhanouskaya won the majority of votes in the 2020 presidential election, and after the election, she was forcibly expelled from the country.

Arrest and detention

7. The source reports that on 9 September 2020 at 8.30 a.m., Mr. Znak was arrested by members of the main investigative department of the Investigative Committee of Belarus at Viktor Babaryka’s election headquarters, located at vulica Very Charuzaj, 25/1 in Minsk.
8. The members of the Investigative Committee reportedly did not show a warrant for his arrest, but they informed Mr. Znak that they were arresting him as a suspect indicted in a criminal case that had been initiated under the provisions of article 361 (3) of the Criminal Code of Belarus, on inciting actions aimed at inflicting harm to the national security of Belarus. Mr. Znak’s apartment and his car were subsequently searched by investigators. At the same time, investigators searched Mr. Babaryka’s election headquarters.
9. After the search, Mr. Znak was reportedly taken to the offices of the Investigative Committee, where investigators showed him a detention order issued on 8 September 2020, approved by the Deputy Prosecutor General of Belarus. The investigator then interrogated Mr. Znak as a suspect. Afterwards, Mr. Znak’s apartment was searched for the second time.
10. On the evening of 9 September 2020, Mr. Znak was placed in pretrial detention facility No. 1 in Minsk.
11. On 18 September 2020, an investigator charged him with a crime under article 361 (3) of the Criminal Code. The source also refers to various articles of the Criminal Procedure Code, notably article 116, on the concept and types of measures of restraint; article 117, on grounds for the application of measures of restraint; and article 126, on placement in custody (detention).
12. According to the source, the authorities imputed the following reasons for Mr. Znak’s detention: he was suspected of committing a crime punishable by imprisonment for a term exceeding two years; he could abscond from the prosecuting authority and the court; and he could obstruct the preliminary investigation of a criminal case or its consideration by a court, including by failing to appear without valid reasons at the summons of the body conducting the criminal proceedings.
13. Later, during Mr. Znak’s detention, two new charges were reportedly brought against him, with regard to the creation of an extremist formation and conspiracy for the purposes of seizing State power (art. 361-1 (1) and art. 357 (1), respectively, of the Criminal Code). The source notes that these new charges were based on the same circumstances of Mr. Znak’s professional public activities and were used by the investigator to prolong his detention until the trial.
14. The trial against Mr. Znak was reportedly held in August 2021, behind closed doors. The facts and evidence on which the actions of Mr. Znak were recognized as a crime were

not made public. On 6 September 2021, Mr. Znak was sentenced to 10 years' imprisonment in a correctional colony under a high-security regime. At the same time, the defence claims that the criminal prosecution should be terminated and Mr. Znak should be released, because the prosecution failed to identify specific statements or other actions of Mr. Znak that constitute acts under the specified articles of the Criminal Code. At the time of its submission, the source notes that Mr. Znak continues to be detained, awaiting the hearing of his appeal in the Supreme Court, which was scheduled for 24 December 2021.

Domestic remedies

15. The source reports that on 10 September 2020, Mr. Znak's lawyers complained to the court about the detention of their client. On 18 September 2020, the Partyzanski District Court of Minsk rejected the complaints. On that same day, Mr. Znak's lawyers appealed to the Minsk City Court against the decision by the Partyzanski District Court of Minsk to grant the complaint. On 23 September 2020, the appeal was rejected.

16. Furthermore, on 14 September 2020, Mr. Znak's lawyers petitioned the Investigative Committee to cease the criminal prosecution of Mr. Znak. On 17 September 2020, the request was rejected.

Recent developments and conditions of detention

17. The source alleges that the conditions of Mr. Znak's detention in pretrial detention facility No. 1 amount to cruel and inhuman treatment.

18. The source notes that when detained, Mr. Znak was first placed in a prison cell with six beds, in which at first three and then later four people were kept. After being indicted on 18 September 2020, in protest against the alleged illegal criminal prosecution and arbitrary detention, Mr. Znak announced that he would refuse food indefinitely and would start a hunger strike. After that statement, he was reportedly moved for no apparent reason to another prison cell in the basement of the pretrial detention facility with 12 other people. A few days later, he was again moved to a new prison cell holding 14 people, also without an explanation. The source notes that from 9 September to 12 October 2020, the prison administration relocated Mr. Znak to four different cells, which demonstrates the psychological pressure put on him. In each cell, as in a closed community, prisoners establish their own rules of behaviour and hierarchy. Every relocation to another cell creates stress and psychological discomfort for a person such as Mr. Znak, who has no experience of communication with prisoners and does not know the internal rules of prison life.

19. From 20 to 24 November 2020, Mr. Znak was reportedly punished for three insignificant circumstances that did not objectively violate the internal regulations of the pretrial detention facility, and he was placed in a punishment cell, that is, a small concrete cell for solitary confinement. The source asserts that placing Mr. Znak in a punishment cell without the commission of unlawful actions on his part and keeping him in conditions that diminish human dignity can be viewed as a method of placing pressure on him. It also indicates indirectly that his imprisonment is not related to legal goals.

20. According to the source, prison cells in pretrial detention facility No. 1 are practically without ventilation, especially the prison cells in the basement, where Mr. Znak was placed after announcing his hunger strike. In mid-November 2020, Mr. Znak was relocated to a cell in the basement with six people in it. The cell had previously been used as a laundry room and was therefore very humid, had wet walls and also had fungus and mold in the corners of the room and on the ceiling. Mr. Znak repeatedly appealed to the prison administration to provide normal sanitary conditions. By the end of December 2020, he was relocated to another cell in the basement. The cell is very narrow which excludes the free movement of people and the possibility of any physical activity inside the cell. The detainees are allowed to go for a walk once a day, for a maximum of one hour, in the courtyard, which is no larger than a prison cell. The lack of physical exercise reportedly results in stress and a deterioration of his physical condition.

21. The source also notes that a small, barred window in the cell is located close to the ceiling, which practically prevents the flow of fresh air and sunlight into the cell. The electric lighting is constantly on, including at night. Bed linens are changed once a week. There is no

shower in the cell, but access to a shower is provided once a week. There are four to seven people in the cell, most of whom are constantly smoking. Thus, in the absence of cell ventilation, unbearable conditions for non-smokers are created. Mr. Znak has never smoked and, accordingly, being kept in an unventilated cell with smokers, he experiences difficulties with breathing and severe headaches.

22. From time to time, people with various medical conditions, including hepatitis C, psoriasis and mental illness, are placed in the cell. There is reportedly no opportunity to maintain proper hygiene or social distancing in the overcrowded cell. In addition, the food in the facility is poor in products containing protein, and there are no fresh vegetables or fruits. Mr. Znak thus relies on food parcels from relatives that are very limited in size. The source notes that all of the above-mentioned factors negatively affect Mr. Znak's health.

23. The source also submits that Mr. Znak's rights as a detainee have been violated, and that these violations can be viewed as human rights violations as well as violations of the right to defence. The source notes, inter alia, that the pretrial detention facility administration has prohibited Mr. Znak from having access to copies of legislative acts, and has taken away those that he had, which violates his right of access to information, including information of his legal status (art. 34 of the Constitution of Belarus). Mr. Znak is not allowed to receive and send a significant portion of his letters, without legal grounds, which violates his right to correspondence. In addition, it sometimes takes more than a month for Mr. Znak to send or receive such letters, although the period established by law is three days. Furthermore, the administration has not allowed him to transfer the literary works he has written during his detention to his relatives, which violates the freedom of artistic creation. Finally, Mr. Znak was denied meetings with his minor child during the preliminary investigation. He was reportedly only granted a meeting with his child after the judgment was issued in September 2021.

24. The source notes that during his detention, Mr. Znak has received several prestigious legal awards for his contribution to the protection of human rights. The source adds that such high assessment of Mr. Znak's activities by the public demonstrates that society does not perceive him as a criminal or a socially dangerous person. The source also notes that on 10 December 2021, the Council of Bars and Law Societies of Europe awarded Mr. Znak the Human Rights Award 2021 for courage, determination and commitment to defending citizens' fundamental rights and the rule of law in Belarus.

Analysis of violations

25. The source submits that the arrest and detention of Mr. Znak are arbitrary under categories II, III and V.

Categories II and V

26. The source reports that on 8 May 2020, the House of Representatives of the National Assembly of the Belarus decided that the upcoming presidential elections in Belarus would be held on 9 August 2020.

27. On 12 May 2020, Viktor Babaryka, the former Chair of the board of Belgazprombank, made a public announcement about his intentions to take part in the elections as a presidential candidate. On 20 May 2020, the Central Commission of Belarus on Elections and Conducting Republican Referenda registered an electoral initiative association that had been created in order to nominate Mr. Babaryka as a presidential candidate.

28. On 28 May 2020, Mr. Znak, on the basis of an agreement between his law office and Mr. Babaryka, joined Mr. Babaryka's election headquarters in order to provide it with legal assistance on electoral legislative issues. Later, Mr. Babaryka entrusted his lawyer, Mr. Znak, with power of attorney, enabling the latter to represent his interests in all courts and State agencies on any legal issues pertaining to the election campaign. The source adds that the decision of Mr. Znak to partake in the campaign was clearly induced by his civil position on the issue of the need for society to hold fair elections with the participation of some alternative candidates, and by the fact that Mr. Babaryka needed the professional assistance of a lawyer in order to protect his right to be elected, due to the fact that participation in

presidential elections in Belarus as an alternative candidate, as a rule, allegedly entails hurdles in the exercising of that very right and is paired with some personal risks.²

29. In the process of gathering signatures for Mr. Babaryka from 21 May to 18 June 2020, his electoral initiative association reportedly managed to collect more than 400,000 signatures from the voters. According to the source, compared with the rest of the alternative candidates, this was the largest number of signatures collected, which demonstrated that Mr. Babaryka was the main arch-rival challenging the incumbent in the presidential elections scheduled for 9 August 2020.

30. On 12 June 2020, after the incumbent President reportedly made public announcements stating that one of his competitors (implying that it was Mr. Babaryka) had “earned his money in a fraudulent way”, the State Control Committee of Belarus opened a criminal case on the grounds of tax evasion in especially large sums of money (art. 243 (2) of the Criminal Code) and the further legalization of proceeds received from criminal activities (art. 235 (2) of the Criminal Code). The source notes that in accordance with this provision, more than 15 employees of Belgazprombank were detained.

31. The source reports that on 18 June 2020, Mr. Babaryka was also detained in conjunction with the case, since he was the former CEO of Belgazprombank. On 20 June 2020, charges were filed against him, and he was taken into custody at the pretrial detention facility of the State Security Committee.

32. The source notes that in accordance with the legislation of Belarus, the fact that someone is being held in detention is in and of itself not considered to be an obstacle to the participation of the said person in the election campaign as a presidential candidate. For that reason, Mr. Babaryka’s electoral headquarters continued its work, and Mr. Znak, as its lawyer, carried out his activities on the legal issues of the electoral campaign on the basis of the power of attorney entrusted to him by Mr. Babaryka.

33. On 20 June 2020, Mr. Znak reportedly submitted an application on behalf of Mr. Babaryka to the Central Commission on Elections and Conducting Republican Referenda for the registration of Mr. Babaryka as a presidential candidate in the upcoming elections.

34. On 14 July 2020, Mr. Znak represented Mr. Babaryka at a meeting at the Central Commission on Elections and Conducting Republican Referenda, where the issue of registering the latter as a presidential candidate was being considered. The source notes that the Central Commission refused to register the candidate on the basis of a letter from the State Control Committee that contained claims of the crimes that he had allegedly committed, in the absence of any specific evidence of the criminal activities and without any court verdict in place. On 15 July 2020, Mr. Znak filed a petition on behalf of Mr. Babaryka at the Supreme Court of Belarus, appealing against the decision of the Central Commission. On 16 July 2020, the Supreme Court reportedly refused to hold a hearing on that complaint.

35. The source notes that throughout the course of Mr. Babaryka’s electoral campaign, Mr. Znak not only represented Mr. Babaryka’s interests at the Central Commission on Elections and Conducting Republican Referenda, the State agencies and the Supreme Court, he also lent his legal assistance in the preparation of documents and provided legal counselling. He also publicly provided explanations of legislative norms on electoral law to the members of the election initiative association and to the public.

36. On 14 July 2020, Sviatlana Tsikhanouskaya was reportedly registered by the Central Commission on Elections and Conducting Republican Referenda as a presidential candidate. On 16 July 2020, Ms. Tsikhanouskaya, Maria Kalesnikava (a representative of the headquarters of the unregistered candidate Mr. Babaryka) and the representative of the headquarters of another unregistered candidate announced that their headquarters would be consolidated.

37. According to the source, Mr. Znak has continued to carry out his work within the framework of the electoral campaign as a lawyer on the grounds of his valid agreement with

² In this respect, the source refers to opinion No. 13/2011 and to communications of the Human Rights Committee: [CCPR/C/122/D/2212/2012](#) and [CCPR/C/123/D/2424/2014](#).

Mr. Babaryka and the power of attorney entrusted to him by the latter on 12 June 2020. The source notes that the arrangement continued later on the basis of the agreement for the provision of legal assistance services dated 6 August 2020, an arrangement that was also in place with Ms. Tsikhanouskaya. In the case of Ms. Tsikhanouskaya, Mr. Znak's legal assistance comprised preparing some legal documents, providing legal counselling and providing explanations of legislation to the public.

38. On 9 August 2020, the presidential elections were held. According to the official results, the incumbent received 80.1 per cent of the votes, and Ms. Tsikhanouskaya received 10.1 per cent. At the same time, it was alleged that members of the opposition tried to interfere with the work of the independent observers, and the election was held in an atmosphere that lacked transparency.³ The source adds that numerous violations of the electoral legislation were recorded. For that reason, the election results reportedly caused a disagreement between the joint headquarters and a great many citizens of the country, and it led to large-scale protests that began occurring throughout Belarus, with initiatives aimed at exposing the falsifications of the election results and calls to hold a recount of the votes.

39. On 10 August 2020, Ms. Tsikhanouskaya, along with Mr. Znak, reportedly filed a complaint about the election results with the Central Commission on Elections and Conducting Republican Referenda. The source notes that Ms. Tsikhanouskaya was interviewed by law enforcement officers at the Central Commission building. After that, she reportedly left the Central Commission without her lawyer, and until 11 August 2020, her whereabouts were unknown. On the morning of 11 August 2020, the Foreign Minister of Lithuania announced that Ms. Tsikhanouskaya was in Lithuania. This was reportedly followed by statements made both by Ms. Tsikhanouskaya and the joint headquarters, stating that she had been subjected to an unprecedented amount of pressure and had been forced to leave Belarus.

40. The source reports that on 14 August 2020, the first mass protests against the election results broke out, resulting in a harsh reaction on the part of the authorities, who reportedly used special riot control weapons, including police batons, flashbangs, firearms with rubber bullets and tear gas, against the protestors. Some individuals were allegedly tortured, arrested and held in detention facilities.⁴ After these events, Ms. Tsikhanouskaya made an announcement in which she stated that she and her staff were ready for a dialogue with the authorities and that she was initiating the creation of a Coordination Council comprising representatives of civil society. Ms. Tsikhanouskaya reportedly instructed her electoral campaign association's scrutineers – namely, one of her entrusted employees and her lawyer, Mr. Znak, who had been entrusted with power of attorney issued on 20 August 2020 – to accept the applications for the nomination of the council members from organizations and associations of citizens.

41. On 18 August 2020, the Coordination Council reportedly commenced its work. In a resolution approved at the meeting of the Council on 19 August 2020, the Council stated that it identifies its goal in finding the paths to overcome the political crisis in Belarus and in ensuring harmonious consensus in society on the basis of the Constitution. It further stated that the Council does not pursue the goal of changing the constitutional order and foreign policy. The source notes that the enlarged composition of the joint Council comprised 4,691 citizens. Mr. Znak was elected as one of the members of the Presidium of the Coordination Council.

42. The source notes that throughout the course of the Council's activities, Mr. Znak has provided legal support. He has prepared drafts of some of the legal documents and documents for the regulation of the work of the Council, provided legal counselling and provided explanations of the legislative norms to the public.

³ The source refers to:
<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26023&LangID=E>.

⁴ The source refers to:
<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26164&LangID=E> and
<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26162&LangID=E>.

43. On 21 August 2020, Mr. Znak, on behalf of Ms. Tsikhanouskaya, reportedly filed a complaint with the Supreme Court asking it to declare the elections held on 9 August 2020 invalid. The petition was substantiated with some 25 attached folders containing documents proving the legitimate grounds for the complaint. The source notes that the complaint was rejected by the Supreme Court.

44. The activities of the Coordination Council as that of an association of the citizens were reportedly confronted with opposition on behalf of the State. On 18 August 2020, the incumbent President, at a meeting with the members of the Security Council, reportedly made an assessment of the creation of the Coordination Council, calling it an attempt to seize State power with all the ensuing consequences that were bound to come with it.

45. On 19 August 2020, the Prosecutor General of Belarus reportedly opened a criminal investigation as a result of the establishment of the Coordination Council, under article 361 (3) of the Criminal Code.

46. The source reports that on 21 August 2020, Mr. Znak was summoned to the Investigative Committee for an interrogation as a witness in that case.

47. The source also reports that within a short period of time in August and September 2020, several members of the Presidium of the Coordination Council were targeted for arrest, detention and prosecution.

48. According to the source, on 7 September 2020, Mr. Znak held an online meeting, during which he expressed his professional opinion on the treatment of several members of the Presidium of the Coordination Council and on the abuse of power by law enforcement officers during the dispersal of peaceful assemblies. He also spoke about the legal opportunities for the emerging civil initiatives – for example, for holding local meetings.

49. On the morning of 9 September 2020, some searches were reportedly carried out at the headquarters of the joint association and in the apartment of Mr. Znak. The source recalls that Mr. Znak was arrested and taken to the Investigative Committee facility for interrogation as a suspect indicted in a criminal case that had been initiated under the provisions of article 361 (3) of the Criminal Code. He was taken into custody on the basis of a decision made by the investigator and approved by the Deputy Prosecutor General of Belarus. He was subsequently kept in pretrial detention facility No. 1 in Minsk.

50. The source notes that on 9 September 2020, Belarusian attorneys-at-law and lawyers issued a public statement during the detention of their colleagues. The following day, human rights organizations in Belarus recognized Mr. Znak as a political prisoner.⁵ On 11 September 2020, all detained members of the Coordination Council, including Mr. Znak, and their associates were recognized as prisoners of conscience.

51. The source submits that the above circumstances indicate that the arrest and detention of Mr. Znak were conditioned by his professional activities, which consisted of publicly explaining the legislation on electoral law and other legal procedures, as well as expressing his professional opinion about events in the social and political life of Belarus as a lawyer. In addition, Mr. Znak, as a lawyer, provided legal support for the creation and activities of the Coordination Council, created as a civil society organization, and his work in that regard also included providing public clarifications about legislation.

52. The source thus submits that Mr. Znak has been deprived of his personal freedom as a form of punishment for carrying out his professional work duties and for the legitimate exercise of his rights, which are ensured in accordance with the Covenant: the right to freedom of expression (art. 19); the right to freedom of association (art. 22); and, in connection with the legal assistance he provided to persons exercising their rights, the right to be elected at genuine periodic elections (art. 25 (b)).

53. The source adds that the confinement of Mr. Znak under guard cannot be recognized as a permissible restriction of these rights, due to the fact that nothing in the circumstances of his case indicated that the restriction was applied in order to prevent a real plausible threat to the values protected by the Constitution of Belarus and those of the Covenant, but rather

⁵ The source refers to: <http://spring96.org/en/news/99494>.

that it was applied in order to forcefully impose silence upon the lawyer, who is a defender of democratic principles and human rights.

54. The source submits that the above circumstances indicate that Mr. Znak has been deprived of liberty as a result of the exercise of his rights and freedoms guaranteed by articles 19, 22 and 25 of the Covenant.

55. The source further submits that the fact that Mr. Znak is being persecuted and deprived of his personal freedom as a lawyer of Mr. Babaryka and Ms. Tsikhanouskaya, who are both political opponents of the incumbent President of Belarus, and of their electoral campaigns, and in his role as a member of the Presidium of the Coordination Council, established on the initiative of Ms. Tsikhanouskaya, indicates that Mr. Znak has been deprived of liberty for reasons of discrimination based on political opinion.

Category III

56. The source reports that until 8 September 2020, when a decision was made on the application of a measure of restraint in the form of detention, Mr. Znak did not have the status of a suspect. The source recalls that earlier, on 21 August 2020, Mr. Znak was interrogated as a witness in a criminal case initiated upon the fact of the establishment of the Coordination Council. For that interrogation, Mr. Znak appeared at the first request of the investigator and at the appointed time.

57. According to the source, suspicions against Mr. Znak were raised for the first time only in a decision on the application of a preventive measure in the form of detention. Accordingly, he was not interrogated as a suspect until the moment of his arrest and was thus deprived of the opportunity to argue against the suspicions raised against him, and against the decision to place him in custody.

58. The source notes that there were no factual grounds for taking Mr. Znak into custody, namely, grounds to believe that he could abscond from the prosecuting authority or obstruct the investigation.

59. The source adds that after the public statement by the Prosecutor General on 19 August 2020 about the initiation of a criminal case on the fact of the establishment of the Coordination Council and Mr. Znak's interrogation as a witness on 21 August 2020, Mr. Znak did not leave Belarus and did not make any attempts to do so. At all times until the moment of his arrest, Mr. Znak was present at known addresses, mainly at the headquarters of Mr. Babaryka or at home. The source notes that Mr. Znak did not refuse to appear when summoned by the body conducting the criminal proceedings. He also did not resist law enforcement agencies in the context of his arrest.

60. According to the source, the charges brought against Mr. Znak concern his public statements on the Internet and in the media. Accordingly, these statements are publicly available, which excludes the possibility of obstructing the investigation by destroying the evidence of such statements.

61. The source also notes that Mr. Znak's public statements, which the prosecuting authority considers to be calling for actions against national security, are not included in the charges brought against him. Thus, he does not know which of his statements are considered criminal, and he is therefore deprived of the opportunity to argue against the charges, which violates his right to defence.

62. The source adds that when deciding on the detention, the criminal prosecution authority did not seek out information about Mr. Znak and did not give him the opportunity to present such information, since Mr. Znak was detained before he was notified of the suspicions raised. While considering the defence complaints against Mr. Znak's detention, the court reportedly did not take into account that he has an impeccable reputation and a permanent residence in Minsk and that he is raising a minor child. The courts also did not take into account the nature of the suspicions raised, the subject of which is not violent actions or calls for such actions, but statements on legal issues. The source adds that the possibility of applying non-isolation measures of restraint to Mr. Znak, in particular, personal surety, was not considered, despite the fact that more than 70 Belarusian lawyers and attorneys, business and sports representatives sent applications to the court stating that they were ready

to act as guarantors and to provide written commitments that Mr. Znak would not abscond from the investigation and would not obstruct it. At the same time, more than 50 lawyers reportedly appeared at the court session to personally address the court with such applications, but the court refused to hear them.

63. According to the source, the decision to detain Mr. Znak was taken by the investigator with the approval of the Deputy Prosecutor General. When that decision was made, Mr. Znak did not appear before a court or other body authorized by law to exercise judicial power. The source notes that the prosecuting authority did not take into account or even seek out information about Mr. Znak's personality, his occupation and other circumstances established by law.

64. The source reports that when the Partyzanski District Court of Minsk considered the complaint from Mr. Znak's lawyers about his detention, which took place nine days after the actual arrest (see para. 15 above), Mr. Znak was not brought to court. Instead, a video conference was organized with Mr. Znak, who remained in pretrial detention facility No. 1, and the court hearing was held behind closed doors.

65. According to the source, Mr. Znak was not brought to the Minsk City Court to the hearing to consider the appeal against his detention. The source adds that no video conference was organized with him, despite the availability of technical capabilities that would have made such a conference possible.

66. The source thus submits that the circumstances of Mr. Znak's arrest indicate that it was devoid of factual grounds and that it was unpredictable, inexpedient and unnecessary. The source notes that Mr. Znak did not refuse to appear at the request of the Investigation Committee to give evidence, did not hide and did not resist arrest.

67. The source adds that the decision on Mr. Znak's detention was not made by the court, but by the prosecutor, who does not have judicial powers. Reportedly, the subsequent court hearings in connection with the detention complaints did not meet fair trial standards.

68. The source thus submits that the above facts indicate that in relation to Mr. Znak's arrest and detention, the international norms relating to the right to a fair trial have not been observed, specifically article 9 (1), (3) and (4) of the Covenant.

69. In addition, the source submits that the conditions of Mr. Znak's confinement in pretrial detention facility No. 1 do not meet the requirements of humane treatment and respect for human dignity.

70. The source reports that for Mr. Znak's communication with his lawyers, the same office, No. 24, is always provided, which is equipped with bars separating Mr. Znak and his lawyers. At the same time, there are reportedly several unoccupied rooms in pretrial detention facility No. 1 in which bars are not installed. The source notes that the lawyers' request to provide an office without bars for meetings was refused.

71. The source adds that the conditions for such meetings have subsequently been worsened by the prison administration. In November 2020, panels were installed on the bars, forming a blank wall, and communication began to take place through a rectangular window in this wall, covered with a transparent plastic sheet. The source notes that the discussion of defence documents is extremely difficult. Since it is impossible to transfer any documents from the lawyers to Mr. Znak and vice versa, the lawyers or Mr. Znak have to attach a document to the window in order to show it. The source adds that it is very difficult for Mr. Znak and the lawyers to hear each other because of the wall and plastic separation. As a result, they have to speak very loudly. At the same time, there is an open window above the door from the room to the common corridor. In this regard, on the one hand, everything that happens in the corridor is clearly audible inside the room, which interferes with communication, and on the other hand, Mr. Znak's conversations with the lawyers can be heard in the common corridor. The source thus submits that communication confidentiality between Mr. Znak and his lawyers is not possible. The source adds that there is practically no ventilation and air flow in the room for the meetings with lawyers. In summer, the temperature in this room was above 38 degrees Celsius, and it was extremely hard and exhausting for the lawyers and Mr. Znak to communicate and work.

Response from the Government

72. On 22 December 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 21 February 2021, detailed information about the current situation of Mr. Znak 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.

73. The Working Group regrets that it received no reply from the Government, nor did the Government seek an extension in accordance with paragraph 16 of the Working Group's methods of work.

Discussion

74. 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.

75. In determining whether Mr. Znak's detention was arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has 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.⁶ In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

76. The source has argued that Mr. Znak's detention is arbitrary and falls under categories II, III and V. While the Government had an opportunity to address these allegations, it has chosen not to do so. The Working Group shall proceed to examine the submissions under each category in turn.

Category I

77. The Working Group recalls that a detention is considered arbitrary under category I if it lacks legal basis. As it has previously stated, for a deprivation of liberty to have a legal basis, it is not sufficient for there to be a law that may authorize the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case through an arrest warrant.⁷

78. Indeed, the international law on deprivation of liberty includes the right to be presented with an arrest warrant, which is procedurally inherent in the right to liberty and security of person and the prohibition of arbitrary deprivation, under articles 3 and 9, respectively, of the Universal Declaration of Human Rights; article 9 of the Covenant; and principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.⁸ Any form of detention or imprisonment should be ordered by, or be subjected to the effective control of, a judicial or other authority under the law, whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence, in accordance with principle 4 of the Body of Principles.

79. In the present case, it is not contested that Mr. Znak was arrested on 9 September 2020 and that no arrest warrant was presented at the time of his arrest. While the officers at the time verbally indicated the reasons for the arrest, it was only following the search of Mr. Znak's apartment and car, which appear to have been conducted without a warrant, that the arrest warrant, dated 8 September 2020, was presented. The Working Group is mindful that while the Government had an opportunity to explain this delay, it has chosen not to do so. Moreover, the said arrest warrant was issued by the Deputy Prosecutor General, and it was not until some 10 days later that Mr. Znak was charged by an investigator (see para. 11 above).

⁶ A/HRC/19/57, para. 68.

⁷ See e.g. opinions No. 89/2020, No. 79/2018, No. 35/2018, No. 93/2017, No. 75/2017, No. 66/2017 and No. 46/2017.

⁸ Opinions No. 30/2018, para. 39; No. 3/2018, para. 43; and No. 88/2017, para. 27.

The Government has presented no explanation for this delay in the presentation of charges. Also, 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.⁹ The Working Group therefore concludes that Mr. Znak's rights under article 9 (3) of the Covenant were violated.

80. Furthermore, to establish that a detention is indeed legal, anyone detained has the right to challenge the legality of his or her detention before a court, as envisaged by article 9 (4) of the Covenant. The Working Group recalls that according to the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, the right to challenge the lawfulness of detention before a court is a self-standing human right, which is essential to preserve legality in a democratic society.¹⁰ This right, which is in fact a peremptory norm of international law, applies to all forms of deprivation of liberty,¹¹ applies to all situations of deprivation of liberty, including not only to detention for purposes of criminal proceedings but also to situations of detention under administrative and other fields of law, including military detention, security detention, detention under counter-terrorism measures.¹²

81. The individual must also be given the possibility to exercise the right to take proceedings before a court in order that that court decides upon the lawfulness of detention in person. In other words, Mr. Znak was entitled to appear in person before the judicial authority, especially for the first hearing.¹³ This was denied him and the Government has presented no explanation as to why this was not possible. In these circumstances, the Working Group finds a breach of article 9 (4) of the Covenant.

82. The Working Group further recalls that it is a well-established norm of international law that pretrial detention is to be the exception and not the rule, and that it should be ordered for as short a time as possible.¹⁴ Article 9 (3) of the Covenant provides that it is not to be the general rule that persons awaiting trial are to be detained, but release may be subject to guarantees to appear for trial and at any other stage of the judicial proceedings. It follows that liberty is recognized as a principle and detention as an exception in the interests of justice.¹⁵

83. To give effect to this principle, pretrial detention must be based on an individualized determination that it is reasonable and necessary, for such purposes as to prevent flight, interference with evidence or the recurrence of crime.¹⁶ The courts must examine whether alternatives to detention, such as bail, would render custodial measures unnecessary.¹⁷

84. In the present case, the source has submitted that the court did indeed cite prevention of flight as well as obstruction of investigation among the reasons for the imposition of pretrial detention. However, the Working Group is mindful of the uncontested allegations that no alternatives to remanding Mr. Znak in custody were considered by the court, and that the court refused to hear testimony on behalf of Mr. Znak presented by some 50 lawyers (see para. 62 above). The Working Group is also mindful of the absence of any explanation on behalf of the Government in this regard. The Working Group therefore finds a further breach of article 9 (3) of the Covenant.

85. Noting all the above, the Working Group concludes that the arrest of Mr. Znak was carried out in breach of article 9 (3) (4) of the Covenant and as a result, his detention was lacking in legal basis and falls under category I.

⁹ Human Rights Committee, general comment No. 35 (2014), para. 32. See also opinions No. 41/2020, para. 60; No. 5/2020, para. 72; and No. 14/2015, para. 28. See further [A/HRC/45/16/Add.1](#), para. 35.

¹⁰ [A/HRC/30/37](#), paras. 2–3.

¹¹ *Ibid.*, para. 11.

¹² *Ibid.*, annex, guideline 1, para. 47 (a).

¹³ *Ibid.*, annex, principle 11. See also Human Rights Committee, general comment No. 35, para. 34.

¹⁴ Opinions No. 8/2020, para. 54; No. 1/2020, para. 53; No. 57/2014, para. 26; No. 49/2014, para. 23; and No. 28/2014, para. 43. See also Human Rights Committee, general comment No. 35, para. 38; and [A/HRC/19/57](#), paras. 48–58.

¹⁵ [A/HRC/19/57](#), para. 54.

¹⁶ Human Rights Committee, general comment No. 35, para. 38.

¹⁷ *Ibid.* See also opinion No. 83/2019, para. 68; [A/HRC/30/37](#), annex, guideline 15.

Category II

86. The source has further submitted that Mr. Znak was arrested and subsequently detained due to his peaceful exercise of rights protected by articles 19, 22 and 25 (b) of the Covenant. While the Government had an opportunity to address these allegations, it has chosen not to do so.

87. The Working Group initially notes that freedom of opinion and freedom of expression as expressed in article 19 of the Covenant are indispensable conditions for the full development of the person; they are essential for any society and in fact constitute the foundation stone for every free and democratic society.¹⁸ In the case of Mr. Znak, a lawyer working for the opposition candidates, he was clearly engaging in the active exercise of his freedom of expression, peaceful assembly, association and participation in public affairs.

88. The freedom of expression includes the right to seek, receive and impart information and ideas of all kinds regardless of frontiers, and this right includes the expression and receipt of communications of every form of idea and opinion capable of transmission to others, including political opinions.¹⁹ 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 article 19 (3), even if such grounds would justify restrictions to other rights protected in the Covenant. Restrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.²⁰ It should be noted that article 22 of the Covenant permits restrictions to the right of assembly on the same three grounds.

89. In the present case, the Government of Belarus has failed to present any explanation for the arrest and detention of Mr. Znak, nor has it addressed any allegations in this regard as presented by the source. The Working Group wishes to take particular note of the recent report of the United Nations High Commissioner for Human Rights on the situation of human rights in Belarus in the run-up to the 2020 presidential election and in its aftermath, in which the High Commissioner noted the following:

After the election, the Government continued to persecute those seeking to exercise their rights to freedom of expression, peaceful assembly, association and to participate in public affairs. Between September and December 2020, peaceful protests continued, despite the fact that they were systematically and often violently dispersed, ending in arrests and detentions.²¹

90. The Working Group notes that in the same report, the High Commissioner further details how in September 2020, the authorities also began to press charges against members of the opposition Coordination Council, human rights defenders, journalists, lawyers and ordinary citizens who had participated in peaceful protests or expressed criticism.²² The High Commissioner concludes that the massive number of arrests and cases of detention in reaction to the peaceful protests reached a scale unprecedented in Belarus.²³ The Working Group also notes that the charges against Mr. Znak were brought under article 361 of the Criminal Code and in this regard, it recalls that in the same report, the High Commissioner recorded the way that provision had been used against those seeking to exercise their rights to freedom of expression, peaceful assembly and association and the right to participate in public affairs.²⁴

91. It is quite clear to the Working Group that the basis for the arrest and subsequent detention of Mr. Znak was in fact his exercise of freedom of expression and freedom of assembly as well as the right to take part in public affairs of Belarus. There is no evidence whatsoever that any of his actions have been violent, that he incited violence or that his

¹⁸ Human Rights Committee, general comment No. 34 (2011), para. 2.

¹⁹ *Ibid.*, para. 11.

²⁰ *Ibid.*, para. 22.

²¹ [A/HRC/49/71](#), para. 62.

²² *Ibid.*, para. 63.

²³ *Ibid.*, para. 38.

²⁴ *Ibid.*, para. 68.

actions have indeed led to violence perpetrated by others. While the freedom of expression and freedom of assembly are not absolute rights, when a State party imposes restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself.²⁵ Moreover, article 19 (3) may never be invoked as a justification for the muzzling of any advocacy of multi-party democracy, democratic tenets and human rights.²⁶ It appears to the Working Group, however, that this is exactly what happened in the present case.

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

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

94. The Working Group considers that the arrest and detention of Mr. Znak took place due to his peaceful exercise of his rights under articles 19, 22 and 25 of the Covenant. The Working Group consequently finds that the arrest and detention of Mr. Znak is arbitrary and falls under category II. The Working Group refers the case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the rights to freedom of peaceful assembly and of association, for appropriate action.

Category III

95. Given its finding that the deprivation of liberty of Mr. Znak is arbitrary under category II, the Working Group wishes to emphasize that no trial of Mr. Znak should have taken place. However, the trial did take place and the source has submitted that Mr. Znak's rights to a fair trial were denied and that his detention is therefore arbitrary.

96. The Working Group notes that all these allegations were detailed to the Government; however, it has chosen not to address any of them. The Working Group reiterates that even when the detention of a person is carried out in conformity with national legislation, it must ensure that the detention is also consistent with the relevant provisions of international law.²⁷

97. The Working Group notes a number of procedural irregularities as submitted by the source, including allegations that Mr. Znak was not interrogated as a suspect until the moment of his arrest, which allegedly violated the norms stipulated by national law. In this regard, the Working Group, however, recalls 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 domestic law by the judiciary.²⁸ It is outside of the mandate of the Working Group to reassess the sufficiency of the evidence or to deal with errors of law allegedly committed by the domestic authorities.²⁹

98. However, the source has also submitted that the court refused to hear the appeals on behalf of Mr. Znak, and the source further contests the legitimacy of the imposition of pretrial detention upon Mr. Znak, arguing that the court failed to consider alternatives to detention. The Working Group also notes the uncontested allegations that Mr. Znak was prohibited from having copies of legislative acts, that those acts he had have were confiscated and that his trial proceedings were conducted behind closed doors. The source has also provided detailed

²⁵ Human Rights Committee, general comment No. 34, para. 21.

²⁶ *Ibid.*, para. 23.

²⁷ See e.g. opinions No. 17/2021, No. 86/2020, No. 50/2018, No. 37/2018, No. 20/2018, No. 1/2018, No. 79/2017, No. 50/2017, No. 42/2012 and No. 46/2011.

²⁸ Opinion No. 40/2005.

²⁹ See e.g. opinions No. 5/2021, No. 60/2019, No. 58/2019, No. 49/2019, No. 16/2017 and No. 15/2017.

information on reported interference with Mr. Znak's contact with his lawyers and the ability to prepare for his defence (see para. 71 above).

99. Turning to the pretrial detention imposed upon Mr. Znak, the Working Group notes that he spent nearly a year in pretrial detention. The Working Group recalls that not every period of pretrial detention from the moment of arrest to the time of trial is automatically a breach of article 14 (3) (c) of the Covenant, as there can be legitimate reasons justifying a delay. In the present case, however, the Working Group notes that Mr. Znak was arrested and placed in pretrial detention purely for exercising his rights protected by the Covenant. The Working Group therefore finds that the delay between the arrest and trial of Mr. Znak constituted a breach of article 14 (3) of the Covenant.³⁰

100. The source has also argued that Mr. Znak's right to fair trial was violated since his trial was conducted behind closed doors. In this regard, the Working Group recalls its jurisprudence³¹ and notes that the Human Rights Committee has stated that:

Article 14, paragraph 1, acknowledges that courts have the power to exclude all or part of the public for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would be prejudicial to the interests of justice. Apart from such exceptional circumstances, a hearing must be open to the general public, including members of the media, and must not, for instance, be limited to a particular category of persons.³²

101. The Working Group notes that while the Government had an opportunity to explain the reasons for holding the trial behind closed doors, it has failed to do so. Moreover, the Working Group observes that it has not been presented with any information that might indicate that any of the restrictions permissible under article 14 (1) of the Covenant would be applicable in the present case. It therefore concludes that Mr. Znak's rights under article 14 (1) of the Covenant were violated.

102. The Working Group also notes the uncontested allegation that the court refused to hear the testimony of over 50 lawyers on behalf of Mr. Znak, when the court was deciding upon his pre-trial detention (see para. 62 above). The Working Group finds that this violated Mr. Znak's rights under article 14 (3) (e) of the Covenant.

103. Finally, the Working Group notes the uncontested allegations concerning the interference with Mr. Znak's contact with his lawyers, his ability to prepare for defence and the denial of providing copies of legislative acts to Mr. Znak while he was detained. The Working Group notes that Mr. Znak's ability to communicate confidentially with his lawyers was not ensured and that no explanation has been provided as to why the meetings could not have been conducted in unoccupied rooms without bars (see para. 71 above). Furthermore, the Working Group notes that Mr. Znak himself is a lawyer and therefore accepts that his request to be allowed to consult legislation was an essential part of his preparations for his own defence. The Working Group has been presented with no reasonable explanation justifying the denial of access to publicly available legal acts. Given all the above, the Working Group considers that the treatment of Mr. Znak amounted to interference with his right to defence, in breach of article 14 (3) (b) of the Covenant.

104. Noting all the above, the Working Group concludes that the violations of Mr. Znak's fair trial rights were of such gravity as to give his detention an arbitrary character, falling under category III.

³⁰ See also Human Rights Committee, general comment No. 35, para. 37; and Human Rights Committee, general comment No. 32 (2007), para. 35.

³¹ See e.g. opinions No. 2/2018 and No. 29/2017.

³² Human Rights Committee, general comment No. 32, para. 29.

Category V

105. Finally, the source has also submitted that Mr. Znak is being prosecuted and imprisoned as a member of the political opposition movement of the incumbent President, as a result of his role as the lawyer of that movement, which shows that he has been deprived of his liberty for reasons of discrimination based on political opinion. The Government has chosen not to address these allegations.

106. The Working Group observes that this is already the third case that has been brought to its attention concerning the arrest and detention of those who have been part of the political opposition or who have exercised their right to speak against the incumbent President.³³ It also notes that these opinions reflect the very recent findings of the report of the High Commissioner for Human Rights on the situation of human rights in Belarus in the run-up to the 2020 presidential election and in its aftermath.³⁴

107. The Working Group also recalls the 2021 report of the Special Rapporteur on the situation of human rights in Belarus, and specifically the following:

The Special Rapporteur regrets that the already existing degree of pressure and harassment of lawyers – an issue addressed by the mandate holder in her recent report to the General Assembly and also by the Human Rights Committee – intensified in 2020 and persists in 2021. Interference with the professional activities of lawyers is systemic in Belarus. The Ministry of Justice reportedly put pressure on lawyers for doing their job, when they defended persons expressing dissenting views, supporters of the opposition, victims of police violence or human rights defenders; lawyers were indeed often denied access to their clients, and faced re-licensing or disbarment, or even detention or arrest.³⁵

108. Similarly, in her report on the situation of human rights in Belarus in the context of the 2020 presidential election, the High Commissioner for Human Rights noted the following:

In Belarus, lawyers defending politically sensitive cases or cases involving human rights violations have been under pressure, harassed and intimidated for exercising their professional activities. They face disbarment or disciplinary sanctions by the Bar Association, which lacks independence and over which the Ministry of Justice exercises broad control.³⁶

109. The Working Group thus observes a clear pattern of attitude displayed by the Belarusian authorities towards Mr. Znak on the basis of his political opinion. He was a prominent figure in the presidential campaign of the opposition candidate, acting as the party lawyer. Noting all the above and especially its findings under category II, the Working Group finds that the arrest and detention of Mr. Znak was based on discrimination resulting from his political opinion and his status as a lawyer of the political opposition party, in violation of article 26 of the Covenant. His detention is therefore arbitrary under category V. The Working Group refers the present case to the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the situation of human rights in Belarus, for appropriate action.

Concluding remarks

110. The Working Group is disturbed by the uncontested allegations concerning the conditions of Mr. Znak's detention. The Working Group considers that the treatment that Mr. Znak was subjected to appears to be an act of retaliation for his activism and is incompatible with the obligations that Belarus has undertaken under article 10 of the Covenant.

111. The Working Group also notes the uncontested allegation that Mr. Znak has been prevented from receiving from and sending letters to his family. The Working Group

³³ See opinions No. 50/2021 and No. 23/2021.

³⁴ [A/HRC/49/71](#), para. 62.

³⁵ [A/HRC/47/49](#), para. 57.

³⁶ [A/HRC/46/4](#), para. 59.

therefore finds a violation of principle 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

Disposition

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

The deprivation of liberty of Maksim Znak, being in contravention of articles 7, 9, 10, 11, 19, 20 and 21 of the Universal Declaration of Human Rights and articles 9, 14, 19, 22, 25 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

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

114. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Znak 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 his immediate unconditional release.

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

116. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the situation of human rights in Belarus, for appropriate action.

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

Follow-up procedure

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

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

119. 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.

120. 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.

121. 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.³⁷

[Adopted on 4 April 2022]

³⁷ Human Rights Council resolution 42/22, paras. 3 and 7.