

AMNESTY INTERNATIONAL PUBLIC STATEMENT

14 April 2021 EUR 49/3984/2021

Belarus: Release minor sentenced to five years' imprisonment after unfair trial

On 22 February 2021, 17-year-old Mikita Zalatarou was sentenced to five years in a correctional colony after a trial marred with irregularities, for allegedly “organizing mass disorder” and having thrown a molotov cocktail at the feet of two riot policemen. He was convicted and sentenced alongside two adults. The appeal hearing is on 23 April 2021.

During the investigation and trial, the Belarusian authorities have disregarded his right not to be subjected to torture and other ill-treatment, and his fair trial rights. He was beaten on arrest and during detention with an electric shock baton, and police officers interrogated him in the absence of a lawyer or a responsible adult. Furthermore, he has been held in pre-trial detention for over six months and is currently in solitary confinement - a violation of human rights standards regarding the treatment of children in detention. Mikita Zalatarou was 16 years old at the time of the alleged offence and has epilepsy. Amnesty International is calling on the Belarusian authorities to release him immediately pending his appeal.

Sequence of events

Mikita's father told Amnesty International that on 10 August 2020 Mikita was standing on the main square of the city in which he lives, Homel, in south-eastern Belarus. He was waiting for a friend at a bus stop as a demonstration against the contested election results was being dispersed. When the crowd started to run somebody shouted at him to run too, and so he joined the running crowds.

Mikita Zalatarou was arrested at his home on 11 August. He is accused of having thrown a molotov cocktail in the direction of two riot police officers on the same night. He denies the allegation and refused to give testimony in court, relying on his constitutional right not to bear witness against himself. His father reported that video evidence used to convict Mikita Zalatarou, showing individuals throwing molotov cocktails, did not identify him. During the trial, the taxi driver who drove him home on the night of 10 August and who was called as a witness, testified that he saw Mikita Zalatarou throw a bottle into a rubbish bin on the street before getting into the taxi. His lawyer is appealing against the verdict on the basis that the court failed to prove Mikita Zalatarou's guilt. The lawyers of all three defendants claim that their actions do not constitute “mass disorder” as defined in Article 293 of the Criminal Code: “mass disorder accompanied by violence against the person, attacks, arson, destruction of property or armed resistance to a representative of the government.”

On 10 August 2020, the day of the alleged crime, there were mass protests in Homel around contested presidential elections of the day previous. The protests were overwhelmingly peaceful, and according to media reports there was no mass disorder. Mikita Zalatarou's lawyer has commented that the judge has taken an accusatorial position and supported the prosecutor throughout the trial proceedings. Both Mikita Zalatarou and his father have been asked to provide names of other potential perpetrators and promised that if they provide names Mikita Zalatarou can go free. Furthermore, his lawyer has been forced to sign a non-disclosure agreement preventing him from revealing any details of the case, as happens with most ongoing criminal cases in Belarus connected to the 9 August 2020 post-election demonstrations.

On 22 February 2021, Mikita Zalatarou was sentenced to five years in an educational colony under Article 293 Part 1 of the Criminal Code (‘organization of mass disorder’), and Article 295 of the Criminal Code (‘illegal activities involving munitions, armaments or explosives’). His two co-defendants, 29-year-old Leanid Kavalyou and 26-year-old Dzmitry Karneyeu, were sentenced to six and eight years hard labour respectively. When the verdict was pronounced Mikita became hysterical and threw himself against the bars shouting: “Let me out of here!”.

On 24 March 2021, his father attended an interrogation of his son concerning a second potential allegation of having attacked a guard in the detention centre (where he has been held since 11 August 2020).

Lack of Independence of the judiciary and failure to protect children

The independence of the judiciary in Belarus is seriously compromised by the fact that the president appoints and removes judges, and the UN Special Rapporteur on the independence of judges and lawyers has stressed that the “independence and integrity of the procuracy is ... undermined by excessive executive control”.¹ Furthermore, Belarus has been criticized for its failure to adequately protect children within the criminal justice system. In 2020, the UN Committee for the Rights of the Child expressed concern about the punitive approach used towards children in the criminal justice system, the lack of a “restorative child justice system”, high detention rates and inappropriate conditions of detention, as well as lack of access to education and health care.² Against this background Amnesty International is very concerned that Mikita Zalatarou has not had a fair trial, and that the Belarusian authorities have failed to protect his rights in accordance with the Convention on the Rights of the Child.

Deprivation of liberty

Mikita Zalatarou was 16 when he was arrested at his home in Homel on 11 August 2020. He was held in pre-trial detention throughout the period of his trial and continues to be held in detention pending his appeal. Ten days after his arrest Mikita was moved from police detention to the Pre-Trial Detention Centre No. 3 in Homel where he remains at the time of writing. He has been sentenced to a five-year custodial sentence. There was no attempt at any point in the proceedings to find alternatives to detention for Mikita Zalatarou and all appeals by his lawyer for release pending trial were rejected by the courts. Throughout his detention he has been held in an adult pre-trial detention centre. For most of the time he has been in a cell with one other minor and one adult. Mikita has had no access to education for the past seven months.

Article 37 of the Convention on the Rights of the Child requires that the deprivation of a child’s liberty is considered only as a last resort and for the shortest appropriate period of time and must be in a facility especially suited to their needs. The UN Committee on the Rights of the Child calls for states parties to ensure that there is a “child justice system” that guarantees fair and just trials for all children. Furthermore, it must provide alternatives to detention: “The child justice system should provide ample opportunities to apply social and educational measures, and to strictly limit the use of deprivation of liberty, from the moment of arrest, throughout the proceedings and in sentencing. States parties should have in place a probation service or similar agency with well-trained staff to ensure the maximum and effective use of measures such as guidance and supervision orders, probation, community monitoring or day reporting centres, and the possibility of early release from detention.”³ The Committee has called on states parties to embark immediately on a process to reduce reliance on detention to a minimum.

Lack of access to a lawyer, or responsible adult

When Mikita was detained on 11 August 2020, he was taken to the local police station where he was held in police detention from 10.30am until 5pm without access to a lawyer, a social worker or his parents. His mother finally saw him at 5pm during police questioning. This is a violation of Belarus’ obligations under the Convention on the Rights of the Child and the International Convention on Civil and Political Rights.

Obligations under the Convention of the Rights of the Child require that children accused of having infringed the law are treated with dignity and respect for their human rights, in accordance with Article 40. In particular, states must ensure that children in conflict with the law have access to their parents or legal guardians and to legal assistance from the moment of arrest. Parents or legal guardians should be present throughout the proceedings, and their presence can only be limited by a judge or competent authority at the request of the child, and when it is not in the child’s best interest.

¹ Report of the Special Rapporteur on the independence of judges and lawyers, Dato’ Param Cumaraswamy on his mission to Belarus, E/CN.4/2001/65/Add.1, 8 February 2001, [http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/571f50b9b848e6e8c1256a2300526b5c/\\$FILE/G011_1054.pdf](http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/571f50b9b848e6e8c1256a2300526b5c/$FILE/G011_1054.pdf).

² Committee on the Rights of the Child, Concluding observations on the combined fifth and sixth periodic reports of Belarus, 28 February 2020 https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fBLR%2fCO%2f5-6&Lang=en

³ As above

Torture and other ill-treatment

Mikita Zalatarou was subjected to torture and other ill-treatment at various times during his detention. When he saw his mother after police questioning on the day of his arrest, he told her that he had been beaten, and he lost consciousness in her presence. The police officers called an ambulance and he was taken to the accident and emergency department of the local children's hospital. At the hospital he told doctors that he had been beaten at the police station in efforts to force him to give them the password to his mobile telephone, however, he was returned to police detention within hours. Mikita's 18-year-old brother, who was detained on the same day for taking part in the demonstration, was in the police station on 11 August 2020 and reported hearing his screams. During a court hearing on 19 January 2021, Mikita Zalatarou told his father that he had been beaten on 29 December 2020 by law enforcement officers with an electric shock baton. Mikita has been under pressure to give the police names of other people, and the prosecutor told his lawyer that if Mikita gave the police a name he could go free. Anonymous individuals have also passed on this message to his father.

In court on 22 February 2021, he repeated his allegations of torture, and also informed the court that he was not receiving his epilepsy medication and that guards had told him: "You are a political [prisoner]. You will die!" He has lodged a complaint about the torture, but the authorities have refused to open an investigation claiming that there was no evidence.

Article 37 of the Convention on the Rights of the Child states that the use of torture and other ill-treatment to compel a child to confess or give other information is a grave violation of the child's rights. Any such admission or confession is inadmissible as evidence. Furthermore, the Committee on the Rights of the Child has explained that the term "compelled" should be interpreted broadly and not be limited to physical force: "The risk of false confession is increased by the child's age and development, lack of understanding, and fear of unknown consequences, including a suggested possibility of imprisonment, as well as by the length and circumstances of the questioning."⁴

Solitary Confinement

Mikita is currently being held in solitary confinement. International human rights standards are unequivocal that the use of solitary confinement in cases of minors amounts to torture or other cruel, inhuman and degrading treatment. The UN Committee on the Rights of the Child has stated that solitary confinement for minors should be strictly forbidden because it is a violation of Article 37 of the CRC and compromises the physical and mental well-being of the child.

Background

The Belarusian authorities are continuing the clampdown on dissent with a blatant disregard for human rights. Over 30,000 people have been detained under administrative legislation for taking part in peaceful demonstrations and an increasing number of peaceful protestors, journalists and human rights activists are being prosecuted under criminal charges and sentenced to lengthy prison terms for their work.

Amnesty International recommendations to the Belarusian authorities

In view of the grave human rights violations that have been committed in this case and the failure to take into account the fact that Mikita Zalatarou is a minor, Amnesty International calls on the Belarusian authorities:

- to release him immediately pending the outcome of the appeal hearing;
- to ensure a prompt, independent, impartial and effective investigation into the allegations of torture and other ill-treatment;
- to comply with the recommendations of the UN Committee on the Rights of the Child in its Concluding Observations in 2020 and establish a comprehensive system of child justice with specialized courts, procedures and trained judges, lawyers and law enforcement professionals.

⁴ Committee on the Rights of the Child, General comment No. 24 (2019) on children's rights in the child justice system <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsqlkirKQZLK2M58RF%2F5F0vEnG3QGKUXFivhToQfjGxYjVO5tUAlgpOwHQJsFPdJXCiixFSrDRwow8HeKLLh8cgOw1SN6vJ%2BfORPR9UMtGkA4>