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BELARUS PROFESSOR YURY BANDAZHEVSKY - PRISONER OF CONSCIENCE

On 18 June 2001 Professor Yury Bandazhevsky was sentenced to eight years' imprisonment. In addition, the Belarusian authorities confiscated his property and prohibited him from assuming any managerial and political functions for the first five years after his release. Amnesty International believes that his conviction is related to his scientific research into the Chernobyl nuclear reactor catastrophe of 1986 and his open criticism of the state authorities. The organization considers him to be a prisoner of conscience and is calling for his immediate and unconditional release from his current imprisonment in Minsk.

Background

After a trial which took place over the course of four months in the city of Gomel on the Belarusian-Ukrainian border, the Military Board of the Belarusian Supreme Court found 43-year-old Yury Bandazhevsky guilty of allegedly taking bribes from students seeking admission to the Gomel Medical Institute, of which he is the former rector. Yury Bandazhevsky was convicted of allegedly having accepted bribes, amounting to the equivalent of approximately US\$26, 000 in the period 1996 to 1998. Both before, during and after the trial Yury Bandazhevsky vociferously denied the charges against him, and expressed fear that he had been targeted by the state authorities on account of his scientific work.

Over the past four years Amnesty International has adopted a number of individuals as prisoners of conscience, who - like Yury Bandazhevsky - had spoken out against the Belarusian authorities and were subsequently convicted of alleged economic abuses and sentenced to extended periods of imprisonment. International and domestic human rights organizations which monitored these trials cast considerable doubt about their fairness (see *Belarus: Dissent and Impunity*, AI Index: EUR 49/14/00 and *In the Spotlight of the State: Human Rights Defenders in Belarus*, AI Index: EUR 49/005/2001).

Amnesty International expressed concern about the treatment of Yury Bandazhevsky, almost from the outset of his arrest by a group of police officers in the middle of the night in Gomel on 13 July 1999. At that time he was informed that the legal basis for his arrest was the presidential decree "On Urgent Measures for the Combat of Terrorism and Other Especially Dangerous Violent Crimes",

a measure usually only used for the arrest of suspects engaged in violent crimes or "terrorism". Furthermore, in violation of their obligations under the International Convention on Civil and Political Rights¹, which require the Belarusian authorities to promptly notify an arrested person of the charges against them, the Belarusian authorities did not formally charge Yury Bandazhevsky until 5 August 1999, nearly four weeks after his arrest. He was eventually informed that he was charged under Article 169 (3) of the Belarusian Criminal Code for allegedly taking bribes from students seeking admission to his research institute.²

The circumstances surrounding Yury Bandazhevsky's arrest were also a cause of further concern. He was reportedly not given access to a lawyer and had only very limited opportunities to meet his wife, Galina Bandazhevskaya. The requirement that detainees should be given immediate access to a lawyer is a principle supported by international human rights standards, such as Principles 7 and 8 of the United Nations (UN) Basic Principles on the Role of Lawyers³ and Principle 17 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment⁴, and is designed to deter the ill-treatment of detainees and arrested persons by law enforcement officials and allow them to prepare a defence. Amnesty International expressed concern that Yury Bandazhevsky's original lawyer was not given access to his client, as is required by these standards. After the lawyer obtained permission to visit his client in Gomel, Yury Bandazhevsky was transferred to a prison some 140 km away in Mogilov without the lawyer's knowledge. The lawyer then reportedly complained that he was denied access to his client at the prison in Mogilov because his client had been placed in a temporary isolation cell. Yury Bandazhevsky was later transferred to a maximum security prison in the Belarusian capital, Minsk, where he remained until his conditional release on 27 December 1999. The Advisory and Monitoring Group of the Organization for Security and Co-operation in Europe (OSCE) in Belarus, which was alerted to the arrest of Yury Bandazhevsky and later observed his trial (see below), also stated that, due to Yury Bandazhevsky's denial of access to a lawyer during his pre-trial detention, his right to defence was violated.

Motivations Behind Yury Bandazhevsky's Prosecution

A great deal of Yury Bandazhevsky's scientific work examined the effects of the radioactive fall-out of the Chernobyl nuclear reactor disaster of 1986 on people living in the region of Gomel.⁵ As the founder and rector of the Gomel Medical Institute, he had reportedly designed numerous large-scale scientific research projects into the causes of the diseases afflicting the population residing in the contaminated areas, particularly the impact of radioactive emissions on children.⁶ Yury Bandazhevsky had often been outspoken in his criticism of the reaction of Belarusian authorities to the disastrous impact of the Chernobyl catastrophe on the population's health, stressing the need to find innovative solutions to the problem. Prior to his arrest, he had written a report critical of the research being conducted into the Chernobyl incident by the Scientific and Clinical Research Institute for Radiation Medicine in Minsk. He had criticized the research methodology of this institute, which is part of the Belarusian Ministry of Health, and that 17 billion

1Article 9 (2) of the ICCPR states: "Anyone who is arrested shall be informed, at the time of arrest, of the reason of his arrest and shall be promptly informed of any charges against him".

2Yury Bandazhevsky was eventually convicted under Article 430 (2) of the Belarusian Criminal Code for accepting bribes in large denominations with others with prior agreement.

3Principles 7 and 8 respectively state: "Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention" and "All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality".

4Principle 17 (1) states: "A detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it".

5The main city in the region, Gomel, has a population of approximately 500,000 people and is situated around 120 km from Chernobyl.

6In the course of his career Yury Bandazhevsky is reported to have published around 200 scientific papers and articles and supervised numerous undergraduate and postgraduate research papers.

Belarusian roubles had been spent on research in 1998 which he considered had not produced any important scientific findings. He proposed in his report: "[a]n immediate revision of scientific programs, related to the alleviation of the consequences of the Chernobyl accident, in such directions able to produce actual results with economic value". At the time of his arrest police officers reportedly searched his home and confiscated Yury Bandazhevsky's computer, books and files relating to his scientific work.

Yury Bandazhevsky has not been the only scientist working on the effects of the Chernobyl disaster to have fallen foul of the Belarusian authorities. In 2000 Amnesty International learned of the harassment of 68-year-old Professor Vasily Nesterenko, the head of the independent Institute of Radiation Safety (Belrad), based in Minsk. Like Yury Bandazhevsky, Vasily Nesterenko is a well respected academic, who has reportedly authored over 300 scientific publications. He was reportedly one of the first scientists to be present at the site of the Chernobyl reactor after it exploded on 26 April 1986. Through its research work Belrad has sought to develop ways of assisting people living in contaminated areas, and reduce the related health risks. Vasily Nesterenko has repeatedly criticized the Belarusian Ministry of Health for the inadequate measures it has allegedly taken to counteract the negative effects of radioactive contamination on the population's health. He has also stated that the levels of radiation among the Belarusian population in the contaminated areas are significantly higher than those levels to which the Ministry of Health admit. Amnesty International learned that at the end of June 2000 the Belarusian Ministry of Health attempted to prevent Vasily Nesterenko from undertaking further research into the levels of radiation in people, arguing that Belrad did not have the required licences to carry out such work. Vasily Nesterenko has stated that - like in the case of Yury Bandazhevsky - he believes the Belarusian authorities wish to hide the truth about the full extent to which radiation has harmed the health of the population.⁷

Fair Trial Concerns

To international and domestic trial observers the evidence supporting Yury Bandazhevsky's

⁷It is worth noting, that after being released from six months' pre-trial detention in December 1999 and despite concerns about his health, Yury Bandazhevsky resumed his scientific work at Belrad before returning to Gomel to prepare for his trial, which began in February 2001. In this period he completed a number of scientific works, including a book in June 2000, which addressed the impact of the radioisotope, cesium 137, on human beings in the contaminated areas of Belarus, and the measures which can be taken to ameliorate its impact.

conviction not only appeared extremely weak, but they also considered that his right to a fair trial had been repeatedly violated. Shortly after the conviction of Yury Bandazhevsky, the well-known human rights lawyer and Vice-President of the Belarusian Helsinki Committee, Gary Pogonyailo, who had closely followed the trial, stated that many violations of the right to a fair trial were committed in the course of the trial, including Yury Bandazhevsky's right to defence. The Advisory and Monitoring Group of the OSCE in Belarus, which had observed the trial, noted eight different infringements of the Belarusian Criminal Code during the pre-trial investigation and trial, including: (1) the violation of Yury Bandazhevsky's right to defence, after being denied access to counsel during the entirety of his six months in pre-trial detention; (2) evidence was taken in a manner contrary to the law; (3) evidence was not adequately reliable in that it was based on the unsubstantiated statements of one person, unconfirmed by any other evidence and no physical evidence was provided to substantiate the accused's guilt (see below); (4) there was no confirmation of the evidence; and (5) the time, place and conditions of the alleged crime were not named.

During the trial, the prosecution failed to produce any material evidence supporting the claim that Yury Bandazhevsky had accepted an amount equivalent to nearly US\$26, 000, even though his home, garage and workplace were repeatedly searched. Like most other academics in Belarus whose salary is derived from a diminishing state budget, Yury Bandazhevsky reportedly led a modest lifestyle and he had no material possessions to suggest otherwise. In addition, the prosecution failed to produce testimony from any of the individuals alleged to have paid bribes. Instead, his conviction was based on testimony of a single witness, a former colleague Nina Shamychek, who herself admitted accepting bribes from potential students and their families. She testified that in doing so she had acted on Yury Bandazhevsky's behalf. During the trial witnesses testified that they had paid bribes to Nina Shamychek, but not Yury Bandazhevsky.

The vice-rector of Gomel Medical Institute, Vladimir Ravkov, who was a co-defendant in the trial, had initially stated during police questioning in June 1999 that Yury Bandazhevsky had been involved in taking payments from students. However, he retracted his statement shortly afterwards, during further police questioning and during the trial. According to the news agency *BelaPAN*, in early August 2000 Vladimir Ravkov sent an open letter to President Alyaksandr Lukashenka stating that he had made the initial statements against Yury Bandazhevsky as a result of duress, after investigating officials had "interrogated him 14 - 16 hours a day, denied him food and sleep and threatened to harm his wife and daughter".⁸ He also alleged that he was exposed to some form of psychotropic substance, which caused feelings of severe disorientation. Despite international standards which require the exclusion of evidence extracted as a result of ill-treatment or duress, such as Article 15 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) or Principle 21 of the UN Body of Principles for the Protection of all Persons Under Any Form of Detention or Imprisonment, the court ignored the retraction and included his original statement.

With regard to the basis of the conviction a legal expert of the Advisory and Monitoring Group of the OSCE in Belarus stated: "... the verdict of guilt based only on the evidence of one of the accused in the case, without any additional proof, causes well-founded concern ... This all testifies to the higher standing of 'expediency' rather than the rule of law". In recent years concern has been expressed, both internationally and domestically, about the independence of the judiciary in Belarus. Amnesty International has learned of a number of instances when the lack of independence of the judiciary from the executive branch of state has laid it open to considerable criticism, calling into question the overall fairness of the judicial system.

In the course of the past year concern has been expressed by two influential international mechanisms, the Special Rapporteur on the independence of judges and lawyers and the Committee against Torture. In February 2001, Dato' Param Cumaraswamy, the UN Special Rapporteur on the independence of judges and lawyers, characterized Belarus' political context in the following terms: "... the pervasive manner in which executive power has been accumulated and concentrated in the President has turned the system of government from parliamentary democracy to one of authoritarian

⁸*BelaPAN* 4 August 2000.

rule. As a result, the administration of justice, together with all its institutions, namely the judiciary, the prosecutorial service and the legal profession, are undermined and not perceived as separate and independent. The rule of law is therefore thwarted".⁹ During its examination of Belarus' implementation of its obligations under the Convention against Torture in November 2000, the expert body which monitors states parties' implementation of that convention, the Committee against Torture, also expressed concern about the lack of independence of the judiciary. It recommended that "[m]easures be taken, including the review of the Constitution, laws and decrees, to establish and ensure the independence of the judiciary ... in conformity with international standards".¹⁰ Under such circumstances, the likelihood that individuals who speak out against the interests of the Belarusian authorities will receive a fair trial in Belarus is greatly diminished.

The Conditions of Yury Bandazhevsky's Imprisonment

During Yury Bandazhevsky's six months in pre-trial detention in 1999 his health deteriorated drastically, resulting in his hospitalization. He suffered from stomach ulcers, a condition which was reportedly exacerbated by the conditions of his imprisonment, and depression as a result of his predicament. Amnesty International fears that his health may once again deteriorate during his current term of imprisonment at the UZ 15/1 penal colony in Minsk. His wife, Galina Bandazhevskaya, who visited him in mid-July 2001 stated that he was being held in a dormitory-type prison cell with around 150 other prisoners, sleeping in three-tiered bunk beds. She has expressed concern that the adverse conditions of detention, particularly his poor diet, the lack of stimuli and possibilities for Yury Bandazhevsky to continue his scientific work, will adversely affect her husband's longer-term health. Galina Bandazhevskaya is only allowed to see her husband three times a year, when she is permitted to bring him a 30 kg food parcel.

Amnesty International considers Yury Bandazhevsky to be a prisoner of conscience, imprisoned for exercising his right to freedom of expression, and is calling for his immediate and unconditional release.

⁹UN Doc. E/CN.4/2001/65/Add.1, 8 February 2001 - page 2.

¹⁰UN Doc. CAT/C/XXV/Concl.2/Rev.1, 20 November 2000 - paragraph 7d.