



**CRIMINAL PROSECUTION
FOR POLITICAL REASONS**

BELARUS 2021-2022

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**HRC VIASNA
SPRING96.ORG**

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INTRODUCTION

Since the fall of 2020, the Human Rights Center Viasna has been monitoring politically motivated criminal trials, collecting information about this category of cases in order to analyze them from the point of view of compliance with international human rights standards and inform the Belarusian public and the international community about the state of human rights in the country. More than 1,200 court hearings and rulings in criminal cases have become the subject of monitoring. This report is yet another text in a series of reviews¹ designed to raise awareness of the public, national and international institutions, and government bodies about human rights violations in 2021-2022 in Belarus during the acute human rights crisis triggered by the presidential election, in the context of the total destruction and suppression of civil society institutions. The review mainly covers the period from April 2021 to April 2022 and retains the structure of the previous thematic report.

The following abbreviations are used in the report:

Covenant - International Covenant on Civil and Political Rights (Adopted by General Assembly resolution 2200 A (XXI) of December 16, 1966);

HRC - United Nations Human Rights Committee;

CAO - Code of Administrative Offenses of the Republic of Belarus of 2021;

CC - Criminal Code of the Republic of Belarus of 1999;

CCP - Code of Criminal Procedure of the Republic of Belarus of 1999;

¹ Belarus. August 2020: "Justice" for Protesters,

https://spring96.org/files/book/en/2020_belarus_august_justice_for_protesters_en.pdf

Politically Motivated Administrative Proceedings: Standards and Reality in Contemporary Belarus,

https://spring96.org/files/book/en/2021_politically_motivated_administrative_proceedings_en.pdf

Criminal Prosecution for Political Reasons: Belarus 2020-2021,

https://spring96.org/files/book/en/criminal_prosecution_for_political_reason_20-21.pdf

CONTEXT



The Belarusian presidential election of 2020 was the main factor that determined the further development of the domestic political situation to date and led to the current acute human rights crisis.

The government resorted to harsh repression, including against direct participants in the election, immediately after the announcement of the election in May 2020, which continues to this day, showing no tendency to fading. The repression during the election was triggered by active campaigning events, the unprecedented proactive approaches by its participants, and, above all, the unseen mobilization of voters who publicly defended their political and civil rights.

The response of the authorities to this political and social activity was repression, one of the widespread and devastating mechanisms of which was criminal prosecution.

The legal assessment of the events of 2021-2022 is based on research made by lawyers and experts of the Human Rights Center Viasna, as well as by other actors of the country's human rights community, aimed to analyze the events of the election and of the early post-election period.

It should be recalled that by the day the election was officially launched, there had been four political prisoners in Belarus. On the day voting started on August 9, 2020, there were already 24 political prisoners, according to the Belarusian human rights community: bloggers, members of nomination groups and opposition figures.

The nationwide protests that began in the summer of 2020 continued in the following months, until the end of 2020. Despite the generally peaceful nature of the protests, the demonstrators, as well as random people who found themselves in contact with security forces, on August 9-12 and in some days of the following months of 2020, were met with disproportionate violence, riot control equipment and weapons: stun grenades, non-lethal traumatic firearms, anti-riot vehicles, and in some cases, combat weapons. This led to a large number of victims who were injured and maimed, as well as several deaths (Aliaksandr Taraikouski, Henadz Shutau, Aliaksandr Vikhor).

During 2020-2022, indisputable evidence was documented that in August 2020 peaceful demonstrators, supporters of democratic changes and bystanders were subjected to acts of cruelty, unprecedented in scope and inhumanity, some amounting to torture: police officers and special forces beat people after arrest in police vehicles, in the premises and on the territory of police departments, in other premises belonging to the Ministry of Internal Affairs, which were used for the accumulation and detention of protesters, as well as in places where detainees and arrested persons were kept, most notably detention centers, prisons and pre-trial detention facilities. Nevertheless, the leadership of the Ministry of Internal Affairs and the state failed to condemn the cruelty and use of torture by law enforcement officers, and subsequently justified them by protecting the interests of the state. As of April 1, 2022, the prosecution authorities and the Investigative Committee have not initiated a single criminal case to investigate the deaths of protesters and the use of torture and ill-treatment against them. At the same time, at least 4,644 statements (reports) were submitted to complain about the "use of physical force and special equipment by employees of the internal affairs

bodies in the course of suppressing unauthorized protests”² as of February 2021, and about 5,000 as of August of the same year, some of which were rejected, while the consideration of others is being delayed. The use of torture and ill-treatment against detainees continues at the moment, and impunity leads to new tragedies and deaths, such as the murder of protester Raman Bandarenka and the death of Vitold Ashurak in the punishment cell of a penal colony.

The unwillingness of the authorities to take adequate measures to investigate the crimes allegedly committed by the security forces and bring them to justice gave rise to numerous cases of harsh critical statements, often negatively colored or obscene, as well as discussions about possible ways to bring the perpetrators to justice.

The statistics of the procedural decisions made and the number of counts of illegal, according to the authorities, activities in 2021-2022 were sporadically announced by representatives of the Investigative Committee, the prosecutor’s offices and the courts, giving an idea of the dynamics and scale of repression.

In particular, at the beginning of this monitoring phase, according [to the data](#) provided by the Chairperson of the Investigative Committee (as of March 4, 2021), since “the moment of the post-electoral events of 2020, 2,407 extremist criminal cases have been initiated in Belarus.” On April 15, 2021, Deputy Prosecutor General reported “more than 3 thousand crimes related to the organization and holding of illegal mass events and protests.” On July 26, 2021, Prosecutor General Andrei Shved [announced](#) that more than 4,200 criminal cases related to “extremism and terrorism” had been opened in Belarus. On July 30, 2021, the Investigative Committee clarified this information and, summing up the results for the first half of 2021, [reported](#) the initiation of 4,691 criminal cases related to the 2020 post-election protests, which covered 4,196 facts of such manifestations:

“Since August 2020, the main efforts of the Investigative Committee have been focused on identifying, suppressing and investigating the circumstances of criminal manifestations associated with illegal mass events, riots, protests, encroachment on state sovereignty and public security, deliberate destruction and damage to property, violence and threats against officials and their families. Investigative units initiated 4,691 criminal cases in response to 4,196 facts of such manifestations.”

At the same time, the Investigative Committee reported that “the largest share is made up of crimes under Art. 341 (vandalizing buildings and damage to property) and Art. 369 (insulting a representative of the authorities) of the Criminal Code of the Republic of Belarus”.

On September 30, 2021, Aleh Shandarovich, First Deputy Chairperson of the Investigative Committee, said there were more than 5,000 registered crimes related to the protests, 2,000 of which were slander and insults, mainly online.

Meanwhile, when summing up the results of 2021, neither the Prosecutor General’s Office nor the Investigative Committee voiced any quantitative indicators of “the fight against extremist crimes”, and at the time of writing this report, these data are unknown.

The human rights crisis has led to a sharp increase in the [number](#) of political prisoners, which has risen from 325 at the beginning of April 2021 to 1,120 by mid-April 2022, and this number is growing steadily. In total, human rights activists of *Viasna* [know](#) the names of about

² Annex to the note verbale dated 10 February 2021 from the Permanent Mission of Belarus to the United Nations Office at Geneva addressed to the secretariat of the Human Rights Council

2,600 people involved in criminal cases since the announcement of the presidential election in May 2020 until mid-April 2022, and more than 1,600 people convicted in connection with political and public activities.

According to [data](#) announced on February 15, 2022 by First Deputy Chairperson of the Supreme Court Valery Kalinkovich, *“between August 2020 and the beginning of February of this year, 1,832 people were convicted of crimes in one way or another related to the protests. Of these, 168 were convicted of organizing or participating in mass riots, 396 of group actions that violate public order, 468 of insulting government officials, and 29 of slander. Another 126 citizens were sentenced for committing hooliganism. 86 people were convicted of desecration of state symbols. 27 sentences were handed down for inciting social hatred. 7 people were convicted of committing acts of terrorism.”*

Thus, repressions against citizens in 2021-2022 continued to be massive and widespread. Again, it should be stated that the authorities of Belarus commit widespread and systemic violations of human rights, and the legal system of the country is unable to provide adequate legal protection of violated rights and is completely reoriented towards repression.

OBSERVATION CONDITIONS



General Comment No. 32

Art. 14: Right to equality before courts and tribunals and to a fair trial

Art. 28. All trials in criminal matters [...] must in principle be conducted orally and publicly. The publicity of hearings ensures the transparency of proceedings and thus provides an important safeguard for the interest of the individual and of society at large. Courts must make information regarding the time and venue of the oral hearings available to the public and provide for adequate facilities for the attendance of interested members of the public, within reasonable limits, taking into account, inter alia, the potential interest in the case and the duration of the oral hearing.

In order to carry out public monitoring of politically motivated court cases in 2020, the Human Rights Center Viasna openly and publicly invited volunteers who, after studying the basic principles of monitoring: non-interference, impartiality, professionalism, confidentiality, and guarantees for all persons when considering any criminal case against them (Article 14 and others of the Covenant), began monitoring in various cities of Belarus. In addition, human rights activists established and used other methods of obtaining objective information about court cases.

Due to the peculiarities of the socio-political situation, contacts and interviews with representatives of the Investigative Committee, representatives of the state prosecution and judges were excluded from the monitoring, while interviews of lawyers were limited. Procedural documents, sentences and appeal rulings were studied in a number of cases.

Since September 2020, human rights defenders of Viasna have been regularly detained, searched and interrogated; seven members and volunteers are currently imprisoned. In early December 2021, more than twenty volunteers of the organization were searched, followed by detentions and interrogations; the volunteers were forced to sign non-disclosure agreements. In the past, numerous volunteers were persecuted for their work to monitor compliance with the right to a fair trial, and one of the volunteers was subjected to arbitrary detention, administrative imprisonment and cruel, inhuman treatment, which was reported by Viasna lawyers to the UN special procedures.

On November 15, 2021, police officers detained Tatsiana Batura in the building of the Minsk City Court, after she arrived to observe the trial of political prisoner Volha Zalatar. However, Batura was arrested by people in civilian clothes even before she managed to enter the courtroom. For a long time, Tatsiana's relatives could not find her, as the Frunzienski district police department said that she was not there. The following day, the Frunzienski District Court heard an administrative case against the woman on charges of "disorderly conduct" (Article 19.1 of the CAO. During the trial, Batura said that she had been beaten in the Frunzienski District Department of Internal Affairs. She was reportedly hit with her head against a closet, and diagnosed with a head bruise after she was taken to hospital. However, judge Maryia Yarokhina said that the act of violence was "not relevant to the case" and ordered 15 days of imprisonment.

All this was regarded by human rights defenders as an arbitrary repressive reaction of the authorities to exclusively legitimate, peaceful and open activities to protect and promote human rights, in particular to volunteer support for human rights activities and monitoring compliance with fair justice standards.

During the observation period, there were generally no problems with the courts providing the parties and the public with information about the time and place of the consideration of criminal cases. All basic information was, as a rule, communicated to the participants in the trials, posted on bulletin boards in the court buildings, announced to the parties and those present during the consideration of cases, and published online.

In court, the observers often encountered arbitrary bans. During the consideration of a criminal case on charges of possession of ammunition and insulting the head of the local police department at the Pastavy District Court, a representative of the state prosecution ensured that no audio recording of the trial was made. During the consideration of the criminal case on "rioting" charges at the court of the Maskoŭski district of Brest, the guards forced all those present to turn off their phones, thereby creating obstacles to collecting information about the course of the trial. On the first day of the trial of Brest activist **Palina Sharenda-Panasiuk**, police officers searched everyone who came to the trial and ordered those present to turn off their mobile devices. During the court session on charges of insulting an official involving **Mikalai Liohki**, the representative of the state prosecution insisted that audio recording could only be carried out with the permission of the judge. Only twenty people from among the relatives of the accused were allowed to attend the trial of twelve defendants in the case of "mass riots" and "destruction of property" during a session of the Zavodski District Court of Minsk in the building of the House of Justice.

In the Horki District Court, before the hearing of the case of **Natallia Zubarava** on charges of insulting a representative of the authorities, the secretary of the court session demanded that the observer removed all recording devices.

In the court of the Biaroza district, during the consideration of the case of **Volha Sizova** on charges of insulting an official in connection with the performance of his duties, the alleged victim, a police officer, turned to the judge with a remark that the observer was recording the meeting. In response, the judge informed the victim that any motions requesting a closed hearing should have been filed at the very beginning of the trial. After that, the public prosecutor turned to the observer and warned of responsibility in the event of the appearance of an audio recording of the meeting on the Internet.



General Comment No. 32

Art. 14: Right to equality before courts and tribunals and to a fair trial

Art. 29. 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. Even in cases in which the public is excluded from the trial, the judgment, including the essential findings, evidence and legal reasoning must be made public, except where the interest of juvenile persons otherwise requires, or the proceedings concern matrimonial disputes or the guardianship of children.

The period of observation was marked by a sharp increase in the number of criminal cases against protesters and other politically motivated cases considered behind closed doors in the absence of the grounds provided for by the Covenant. In addition, the verdicts in these closed trials lacked key conclusions, references to evidence or any legal reasoning. Instead, they only mentioned guilt or innocence, the type and duration of the sentence imposed, the decision to recover funds, confiscate items, orders concerning physical evidence and other seized property, some other similar information, which efficiently concealed the facts and circumstances established by the court, together with other important components of the verdict.

The different practices of conducting criminal trials of the same category in different courts highlight the arbitrary nature of these restrictions.

In particular:

From May 12 to May 25, 2021, the Mahilioŭ Regional Court, under the presidency of judge Iryna Lanchava, heard a criminal case against seven political prisoners: co-chairman of the BCD organizing committee **Pavel Seviarynets**, blogger **Dzmitry Kazlou**, opposition activist **Iryna Shchasnaya**, activists of the European Belarus group **Yauhen Afnahel**, **Pavel Yukhnevich**, **Maksim Viniarski** and **Andrei Voinich**. It was known that they were accused under several parts of Article 293 of the Criminal Code. The observers present in the courtroom were told

at the beginning of the trial that the hearings would be held behind closed doors, since the “materials under consideration are classified as secrets protected by law.” In this regard, Belarusian human rights defenders issued a joint statement to demand an end to the practice of violating the political prisoners’ right to a public trial.

At the beginning of the investigation and, accordingly, in court, all of the defense lawyers were under non-disclosure bans, which deprived them of any possibility to disclose the essence of the accusation and the position of their clients. At the same time, even before the start of the trial, first deputy head of the Main Investigative Directorate of the Investigative Committee, Aliaksandr Ahafonau, said in an interview with the SB. Belarus Segodnya daily that since October 2019, Seviarynets, Statkevich and Tsikhanouski were spreading calls for “radical actions” and preparing “riots” on the Internet, while Dzmitry Kazlou incited Belarusians to protest: “*made and published the necessary videos that unreasonably discredit power*”. Afnahel, Voinich, Viniarski and Yukhnevich allegedly called for protests and strikes, and also engaged in deanonymizing the security forces by making their personal data public “including by making leaflets with their photographs and posting them next to a person’s house.” According to the Investigative Committee, it was a “criminal information dissemination system.” Excerpts from the materials of operative and search activities against the activists were also published.

As a result, the court convicted the defendants under Part 1 of Art. 13 and Part 2 of Art. 293 of the Criminal Code (Afnahel and Voinich also under Part 3 of Art. 293 of the Criminal Code) and sentenced: Seviarynets, Afnahel and Voinich to seven years in prison, Yukhnevich, Kazlou and Viniarski – to five years, and Shchasnaya – to four years in prison.

From July 24 to December 14, 2021, in Homieĺ, on the territory of the pre-trial detention center, in a closed meeting chaired by judge Mikalai Bakunou of the Homieĺ Regional Court, and later by judge Mikalai Dolia, a criminal case was considered involving well-known opposition politician **Mikalai Statkevich**, blogger and head of Sviatlana Tsikhanouskaya’s nomination group **Siarhei Tsikhanouski**, members of the team of his blog “A Country for Living” **Artsiom Sakau** and **Dmitry Popov**, and bloggers **Ihar Losik** and **Uladzimir Tsyhanovich**. The scope of charges for each defendant was different and included organizing actions that grossly violated public order, organizing mass riots, inciting social hatred, and obstructing the work of the Central Election Commission.

The court imposed the following sentences: Tsikhanouski – 18 years, Statkevich – 14 years, Losik – 15 years, Popov – 16 years, Sakau – 16 years, and Tsyhanovich – 15 years in prison.

From August 4 to September 6, 2021, the Minsk Regional Court, chaired by judge Siarhei Yepikhau, heard in a closed court session the criminal charges against **Maryia Kalesnikava** and **Maksim Znak**. The two representatives of Viktor Babaryka’s presidential campaign and members of the Presidium of the Coordination Council were charged under Part 3 of Art. 361 (calls for action against national security), Part 1 of Art. 357 (conspiracy to seize state power by unconstitutional means) and Part 1 of Art. 361-1 of the Criminal Code (creation of an extremist formation and its management). The sentence was 11 and 10 years in prison, respectively. The counsels could not comment on the course of the trial, as they were under non-disclosure agreements.

From September 3 to November 8, 2021, the Centralny District Court of Homieĺ, under the chairmanship of judge Siarhei Salouski, heard the case of **Viasna human rights defender Leanid Sudalenka** and the organization’s volunteers **Tatsiana Lasitsa** and **Maryia Tarasenska**. They were accused of organizing and preparing actions that grossly violated public order

(Part 1 of Art. 342 of the Criminal Code) and of training and preparing persons to participate in such actions, as well as financing or other material support (Part 2 of Art. 342 of the Criminal Code). The judge ordered that the trial be held behind closed doors throughout the proceedings. As a result, Sudalenka was sentenced to three years, and Lasitsa to two and a half years in prison. Tarasenko left Belarus before the sentence was announced.

From December 6 to 17, 2021, the Minsk City Court, chaired by judge Piotr Arlou, considered the criminal case of **Eduard Palchys** charged under Part 1 of Art. 293 (organization of riots), Part 1 of Art. 342 (organization of actions that grossly violate public order), Part 3 of Art. 130 (deliberate actions aimed at inciting racial, national, religious or other social hatred or discord on the basis of racial, national, religious, linguistic or other social affiliation), and Part 3 of Art. 361 of the Criminal Code (calls for actions aimed at causing damage to the national security of the Republic of Belarus). The trial was held behind closed doors “in order to prevent the spread of extremist materials.” The eventual sentence was imprisonment for a period of 13 years.

From December 14 to 22, 2021, the Minsk Regional Court, chaired by judge Viachaslau Tuleika, heard the criminal charges against anarchists **Dzmitry Dubouski**, **Dzmitry Rezanovich**, **Ihar Alinevich** and **Siarhei Ramanau**. They were charged with a number of crimes: acts of arson on police vehicles, buildings of the traffic police and the state forensic committee, while Dubouski and Alinevich were also charged with the illegal transportation of prohibited substances, firearms and explosive devices across the border. Their actions were qualified under Part 2 of Art. 289 – act of terrorism; Parts 2 and 4 of Art. 295 – illegal actions in relation to firearms, ammunition and explosives; and Dubouski and Alinevich also under Part 1 of Art. 333-1 – illegal transportation of prohibited substances, firearms and explosive devices across the border. From the first session, the trial was held behind closed doors to “protect the personal data” of the three victims. In response, Alinevich, Rezanovich and Ramanau refused to take part in the trial. Alinevich and Ramanau were eventually sentenced to 20 years, Rezanovich – to 19 years and Dubouski – to 18 years in prison.

From December 20 to 27, 2021, the Minsk City Court, chaired by judge Siarhei Khrypach, considered a criminal case against **Yegor Dudnikov**, who was initially charged under Part 1 of Art. 342 of the Criminal Code for voicing several videos and audio messages disseminated in a Telegram channel called “OGSB”. The final accusation, including under the sentence, was Part 3 of Art. 130 (deliberate actions aimed at inciting racial, national, religious or other social hatred or discord on the basis of racial, national, religious, linguistic or other social affiliation) and Part 3 of Art. 361 (calls for action aimed at harming the national security of Belarus). Dudnikov’s trial was held behind closed doors to “preclude the spread of extremist products” and “protect expert Kniazeu.” The man was sentenced to 11 years in prison.

In all of the above cases, the defense lawyers were forced to sign non-disclosure agreements, which prevented them from sharing any details of the preliminary investigation and the closed court sessions. The lawyers were efficiently prohibited to report any information about the case, including the articles of the Criminal Code, the state of their clients’ health, ongoing investigative actions, procedural decisions made, their attitude towards the charges, etc.

Similarly, in closed court sessions, the courts heard the criminal cases of **Eduard Zhdanko** (accused of resisting police officers), **Aleh Korban** (on charges of organizing and preparing actions grossly violating public order, or actively participating in them), **Volha Klimkina**, **Siarhei Skok** and **Maksim Siarheyenka** (accused of hanging effigies of officials), **Uladzimir**

Niapomniashchykh (trial held in a pre-trial detention center, accused of threatening a prosecutor), **Uladzimir Hundar** (on charges of threatening an investigator), **Dzianis Urad** (convicted of treason), **V. Sakalou** (accused under Part 2 of Art. 368 of the Criminal Code of publicly insulting Lukashenka, slander against Lukashenka (Part 2 of Art. 367 of the Criminal Code), insulting an official (Art. 369 of the Criminal Code) and insulting a judge (Art. 391 of the Criminal Code)), **Dzianis Hutsin**, **Hanna Vishniak**, **Viktoryia Kulsha** and **Tatsiana Shkrobot** (administrators of a Telegram channel, accused of organizing and preparing actions that grossly violate public order), **Siarhei Hurlo**, leader of the Babrujsk branch of the Belarusian Independent Trade Union (convicted of insulting police officers), **Volha Kronta** (accused of insulting a police officer with an emoji), **Dzmitry Lukashevich** (accused of making and burning effigies representing senior officials), **Yauhen Talkachou** (accused of insulting Lukashenka), **Tamara Shalupanava** (accused of insulting Lukashenka), **Volha Sineleva** (accused of terminating the lease agreement with Alina Kasiyanchyk, a prosecutor who supported the state prosecution in a number of politically motivated criminal trials), **Yauhen Kharashkevich** (accused of inciting hatred and group actions grossly violating public order and insulting an official), **Aliaksei Korshun** (accused of inciting hatred), **Yury Kavaliou** (accused of insulting Lukashenka), **Siarhei Dumava** (accused of organizing and financing riots and vandalizing buildings and damaging property), **Dzmitry Zalomski** (accused of insulting Lukashenka and a representative of the authorities, threatening a judge), **Artsiom Shalehin** (accused of publicly insulting seven police officers), **Yauhen Piatrou** (accused of insulting Lukashenka), **Alesia Bahun** (accused of insulting a representative of the authorities), **Viktar Prusau** (accused of violence against a police officer), **Raman Marusau** (accused of inciting hatred and discord), **Siarhei Sultanau** (accused of slandering Lukashenka and insulting him), **Dzmitry Adarachkin** (accused of insulting Lukashenka and a representative of the authorities), and a dozen more criminal cases known to the Human Rights Center Viasna.

Separately, one should note the practice of holding “open” court hearings on the territory of correctional institutions: for example, the de facto closed trial of **Viktar Barushka** on the territory of the Mahilioŭ-based penal colony No. 15 (under Art. 411 of the Criminal Code, “malicious disobedience to the requirements of the administration of the correctional institution”). On March 25, in the same colony, political prisoner **Tsikhan Osipau** stood trial on charges under Part 2 of Art. 411 of the Criminal Code. The case was considered by judge **Natallia Krashkina** of the **Kastryčnicki District Court** of Mahilioŭ. **Osipau’s** wife was not allowed to attend the trial.

In some cases, measures to combat the spread of the coronavirus were used as an excuse to restrict people from entering the courtroom. COVID-19 was used as a reason to classify the trial of **Aliaksei Lipen**, and **Anastasiya Mirontsava** and her sister **Viktoryia**. Groundless restrictions on free access to the courtroom were observed in the criminal trial involving several activists affiliated with a Telegram channel called “Army Together with the People”. In particular, one of the smallest courtrooms was allocated for the hearings, as a result of which about thirty people could not attend the trial.

In just one month (May), the observers documented several cases of restrictions on the principle of publicity:

- on the first day of the trial of **Tatsiana Turavets**, only four people were allowed into the courtroom;
- on the first day of the trial in the “case of students”, only the relatives of the accused were able to enter the courtroom. Dozens of supporters had gathered

outside the court building. Representatives of independent media were not able to attend the trial;

- on the first day of the trial in the case of “mass riots” in Pinsk, the relatives of the defendants could not get into the courtroom. About twenty people could not attend the announcement of the verdict in the case;
- on the first day of the trial of “mass riots” in Brest, many members of the defendants’ families were not allowed into the courtroom, which led to the indignation of the accused themselves. The trial was postponed, after which representatives of the independent press were allowed to attend the hearings;
- on the first day of the fourth “dancing protest” trial in Brest, many people were not allowed to attend the hearing, and on the second day, about ten people were banned from the courtroom. Part of the public were not allowed to attend the fifth trial in the case.

Similar situations were repeated in other trials.

In many cases, the seating of the public in the courtroom was determined by the guards, police officers or unknown persons.

These actions, according to the lawyers of the Human Rights Center Viasna, violate the principle of openness and publicity of the trial (Part 1 of Article 114 of the Constitution and Part 1 of Article 11 of the Code on the Judiciary and the Status of Judges).

SECTION 1. VIOLATIONS OF CONSTITUTIONAL AND UNIVERSALLY RECOGNIZED RIGHTS OF DETAINEES AND ACCUSED

ARREST. TORTURE OF DETAINEES



Art. 9 of the Covenant:

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

General comment No. 35

Art. 9 (Liberty and security of person)

25. One major purpose of requiring that all arrested persons be informed of the reasons for the arrest is to enable them to seek release if they believe that the reasons given are invalid or unfounded. The reasons must include not only the general legal basis of the arrest, but also enough factual specifics to indicate the substance of the complaint, such as the wrongful act and the identity of an alleged victim. The “reasons” concern the official basis for the arrest, not the subjective motivations of the arresting officer.

In accordance with the CCP (Article 40), a suspect has the right to know what they are suspected of and to receive a copy of the decision initiating criminal proceedings against them or recognizing them as a suspect; immediately upon arrest or announcement of a decision on the application of a measure of restraint, receive from the criminal prosecution authority a copy of the decision or protocol of arrest, a copy of the decision on the application of the measure of restraint, as well as a copy of the decision on initiating the criminal case. An exception is when the case contains state secrets: then copies of the documents are not handed over to the suspects. As a rule, these formalities were respected.

TORTURE, PROHIBITED TREATMENT

Last year, the main source of information about torture against the accused and the use of prohibited types of treatment against them were public statements in court during the consideration of criminal cases, interviews of released prisoners, as well as reports received in other ways.

The courts still ignore reports of torture voiced by defendants in protest-related criminal trials.

Torture was reportedly used in the temporary detention center located in Zavulak Akrestsina against **Aliaksandra Patrasayeva**, who was convicted of participating in a protest on August 10, 2020.

Yuliya Yakubovich was detained on criminal charges and kept for six days in the temporary detention center in Zavulak Akrestsina. She was subjected to daily interrogations, and on February 2, Yuliya collapsed during questioning, after which she was hospitalized in an emaciated state and had to be on a drip for several days.

After being arrested, torture was used to force **Aliaksei Lipen** unlock his mobile phone. The man was later sentenced to five years of restricted freedom (home confinement).

Violence and use of pepper spray during arrest was reported by **Uladzimir Zhykhar**. However, his statement was not accepted for consideration.

Mikhail Kalishuk, a defendant in a criminal trial of “mass riots” in Brest, said in court that the guards had brought him to the courtroom with his arms twisted. The political prisoner told the judge that one of the guards insulted him, broke his eyebrow, beat him, used an electroshock weapon, and sprayed pepper gas. Several defendants in the trial told their families that on the days of the court hearings they were forced not to take their lunch, as they were escorted handcuffed with their hands being pulled up behind their backs, and that the defendants were not given cutlery during meals.

During the consideration of the criminal case of hanging effigies and disabling railway track circuits in Brest, the public prosecutor stressed that the testimony of the accused, **Natallia Barynava**, at the preliminary investigation differed significantly from the testimony during the trial. Barynava retracted the testimony she gave during the investigation, as the investigators threatened her with a long prison term and the deprivation of her parental rights.

The other defendant in the trial, **Siarhei Silich**, retracted, since he gave the testimony after he suffered a back injury and also after his wife was detained for ten days, but was never prosecuted.

Torture was reported by several persons accused of setting fire to a tobacco kiosk in Babrujsk. The defendants said that they were subjected to violence after their arrest. **Aliaksandr Maryasau** told about the beatings he suffered in the building of a police department:



“They beat me on the night of the arrest. With their hands and rubber sticks, with their body armor, they mocked me. This continued for four hours. They demanded evidence. Some were wearing masks, some were not. I don’t know their names. I can recognize them. The bodily injuries were documented in the Morzon and BSHK hospitals, where the police officers themselves brought me.”

The press service of the Ministry of Internal Affairs published a video showing the defendants being arrested, along with their confessions extracted immediately after. In court, the defendants argued that they were beaten for several hours before appearing in video confessions. The results of a medical examination of one of the accused were added to the case file: **Aliksandr Nazarovich** was diagnosed with periorbital hematomas in both eyes, and also of the ear.

During the criminal trial of several volunteers of Viktor Babaryka's presidential campaign, the relatives of political prisoner **Ihar Yarmolau** said in court that "the accused was arrested at home and severely beaten: doctors reported a punctured lung and a broken rib." At one of the court hearings, Yarmolau's mother said:



"We found him beaten, with a concussion, bruises all over his body. His ribs were broken, his lung was pierced (crying). Those bandits who stormed his apartment, they broke down the door, they did not give their names, he did not resist, but they simply beat him severely. They beat him in the car as they drove him around, and later when they escorted him, beaten, a black sack on his head, around the yard. All this suggests that inhuman violence was committed against my son. All statements, all complaints to the prosecutor's office and other authorities have not yet found any response."

In his last statement in court, political prisoner **Ihar Yarmolau** said he experienced pressure during the investigation:



"I was also under pressure in the KGB pre-trial detention center. I spent the first week before my imprisonment in the hospital. And, apparently, during this week the operatives had become a little softer. When I was brought there on the day of my arrest, with my ribs broken, with pneumothorax and brain concussion, the officers, asking questions and receiving answers that suited them, said that they would now put a rubber stick right in my <obscene language>, and there, right in the KGB yard, they started forcibly ripping off my jeans. After returning from the hospital, the head of the investigation team only threatened me that if I did not tell what I was ordered, I would be sent to a prison, where, according to him, "they would do me from behind from morning till evening." His subordinate said a little later that gypsies would take away my shirt during transfer, and when I'm in prison they would stitch my ass every week. And they also threatened to influence me physically. After that, I stopped wearing my shirt to meetings. Back in August, I told my lawyer about these conversations, but it's only now that this information is appearing. Therefore, I do believe that Karetski could have written his statement under duress and dictation. Well, none of them carried out their threats, thank God."

Political prisoner **Daniil Bandaruk** complained about torture during a "rioting" trial: "On August 22, when the officers detained me and Mark at work, they put us into a minibus and beat us. I have a photo with a swollen cheek and hand injuries. At that moment, they forced us to give that testimony." The judge asked several times whether the investigator beat him or someone else. Daniil explained that the investigator did not take part in the beatings, but "simply told what to say." And before that, "unidentified persons in masks" beat him and **Mark Salonikau**, threatened them and said that the beatings would not end "until they tell everything as it was." Hearing the story about the beatings, the judge asked the accused why it was necessary to beat him, but did not take any measures to organize an investigation into the statement. By

the court's verdict, political prisoner Daniil Bandaruk was sentenced to 5 years in prison.

Another defendant in the trial, political prisoner **Mikhail Kalishuk**, also reported torture. He was not brought to one of the meetings due to "health conditions". When the man was nevertheless brought to court, he said that the guards insulted him and twisted his hands; they also broke his eyebrow, electrocuted him with a stun gun, and sprayed pepper gas into his face. The political prisoner was sentenced to four years in prison.

Political prisoner **Aliaksei Sanchuk** was reportedly tortured after arrest. According to other detainees, during the arrest, GUBAZIK officers beat Aliaksei and demanded the password to his smartphone. Sanchuk himself said at the trial that he was subjected to psychological pressure. The court of the Maskoŭski district of Minsk sentenced the musician to six years in prison for "group actions that grossly violate public order" and for "preparing for mass riots."

Pressure during the investigation was reported by members of Sviatlana Tsikhanouskaya's presidential campaign, whose case was considered by the court of the Čyhunačny district of Homieĺ. **Tatsiana Kaneuskaya**, **Yury Ulasau**, **Dzmitry Ivashkou** and **Aliaksandr Shabalin** said in court that they were subjected to violence by police officers and the investigators. The trial took place behind closed doors, and media representatives and relatives were not allowed into the courtroom. The defendants were sentenced to long terms of imprisonment.

Yauhen Zialkouski said in court that he was dragged by his feet up the stairs in the building of a police department. The man was sentenced to three and a half years for leaving two white-red-white flags with fake bombs on the outskirts of Homieĺ.

During the trial of **Yury Vinichuk**, who was accused of insulting Lukashenka, it was announced that after his arrest he was beaten by police officers, causing damage to his ribs and jaw, while he noted that he had not filed a complaint about a crime against him. Two weeks later, a publication appeared on the website of the Prosecutor General's Office, which argued that an internal investigation did not confirm the bodily harm to Vinichuk, and the information posted on the Viasna/Brest Telegram channel was "unreliable and distorted in order to discredit state bodies." In this regard, it is worth noting that the Human Rights Center Viasna monitors criminal cases, adhering to the principle of objectivity when transmitting information about the progress of their consideration. In addition to objectivity, it seems important to take into account the completeness of information about the course of legal proceedings. Therefore, Viasna published information voiced by the accused, including that the person involved in the criminal case did not seek help from a medical institution and law enforcement agencies. The publication did not aim to provide an assessment of the actions of police officers during arrest and legal proceedings against the suspect. It is important to note that after the arrest, Vinichuk was refused admission to a detention facility due to his health condition.

During the consideration of a criminal case relating to the administration of several protest Telegram chats, the defendant, **Maryia Nestserava**, said that she was beaten during arrest, after which, without a lawyer, they obtained a confession from her, which she retracted in court. The court of the Zavodski district of Minsk sentenced the political prisoner to three years in prison for sharing messages on Telegram.

During her testimony in court, the mother of **Vital Shyshlou**, who was accused of "rioting", said that her son had been tortured. Later, the accused himself said that he was tortured by police officers in order to force him to confess:



“They ordered me to put my hands behind my head, to kneel, I obeyed their demands. They handcuffed me, sprayed pepper gas into my face, after that two or three people hit me on the body with their hands and feet – about five blows in total. I didn’t resist. [...] After that, they took me out into the yard, dipped my face into a barrel of water, then threw me into a minibus, where they continued to beat me on the body. They brought me to a forest next to a cornfield, and they continued to beat me. After that, they demanded that I confess to the crime on camera – they dictated the text, which I repeated under the threat of violence. From the text, I learned that I had sprayed pepper gas in the face of a police officer who was in a police car parked in the Sierabranka district, that I was there with Tsimur and Bolt.”

Vital Shyshlou said during the interrogation that he did not commit the specified crime, everything was dictated by a masked man, whom he would not be able to identify, and asked to check the facts he testified and issue him the findings of a forensic examination.

Tsimur Pipiya, another defendant in the trial, also reported that he was tortured after his arrest in order to force him to confess. After arrest, they put him face down the floor in a minibus. On the way to the Investigative Committee’s building, the officers beat him with their hands and electrocuted him with a stun gun for about two hours, and in between, they said that he had to talk, and if he refused, the next few hours of torture would be repeated.

During the consideration of his criminal case in the court of the Saviecki district of Minsk, political prisoner **Stsiapan Latypau** said that officers of the GUBAZIK tortured him in order to force him confess. After saying this in court, the man pierced a pen into his throat. The court session was postponed, and the consideration of the case resumed ten days later. There is no confirmation that Latypau’s allegations of torture are being investigated. After the suicide attempt, the defendant was handcuffed to the guards with both hands at each of the remaining hearings. On July 29, Latypau complained in court of feeling unwell and high blood pressure due to the poor conditions in his prison cell. In his last speech, Latypau described new facts of beatings after his arrest and pressure on him:



“They twisted my arms behind my back, put a garbage bag on my head and took me away. Then they beat me. People in masks beat me with their hands, feet and rubber sticks. All together and one at a time. They twisted my arms and legs behind my back, did the “swallow” torture, beat me with their fists and palms on the ears so hard it was as if a grenade exploded in my head. They beat me with a stick on the buttocks, beat me so that there was no bruises. I could not lean for another three weeks. I screamed, choking in that black bag, and they laughed. They said: “Learn the alphabet.” There was not a single bruise on me, even the plastic clamps left no marks.”


Anarchist and blogger **Mikalai Dziadok**, who was arrested by GUBAZIK officers, and his lawyer told about torture in order to obtain confession.

In court, defense lawyer Yauhen Maslau read out the documents concerning Mikalai’s arrest on November 11, 2020, which prosecutor Tsiumentsau omitted when examining the written materials of the case, namely an expert opinion of November 24, 2020. According to his findings, Dziadok was examined on the morning of November 20 (nine days after his arrest) in SIZO-1. During it, abrasions and bruises were documented on the left and right eyes,

neck, chest, armpit, spine, shoulders, and thigh. The bruises were yellow and green, and the wounds were covered with exfoliated red-brown crusts. The lawyer also read out excerpts from a decision of January 15, 2021 to refuse to initiate a criminal case against the officers who beat Dziadok:

“On the evening of November 11, in the apartment where Dziadok was, a window frame on the balcony fell out. Five seconds later, about six unmarked people (some in civilian clothes, some in military uniforms) threw him face down on the floor, handcuffed his hands behind his back, somehow he did not resist. While he was lying on the floor, he was kicked, meanwhile they demanded to give passwords to his computer and telephone. Initially he refused, but when they began to choke him with a pillow and he began to feel that he was suffocating, he gave the password. Molotov cocktails, which did not belong to him, were seized during the search. The search was carried out in the presence of attesting witnesses, in whose presence bodily harm was not inflicted. After the search, he was forced to sign documents, which he did not read. Then he was locked in a closet, into which pepper gas was sprayed. Then he was taken by bus to the GUBAZIK building at 3 Revaliucyjnaja Street in Minsk. During his stay there, he was constantly restrained either on his knees or lying on the floor. While in one of the offices, he was repeatedly beaten with rubber sticks, punched and kicked all over his body. At the same time, questions were asked about the circumstances of the crime. Then he was taken to a temporary detention facility, from where he was transferred to SIZO-1, where bodily injuries were documented by an on-duty general practitioner. During his stay at the GUBAZIK office, a confiscated Molotov cocktail bottle was forcibly put into his mouth.”

Mikalai Dziadok himself [described the torture in detail](#) at a court session:



“Most of the threats were made by an officer, who was later identified by me as Ivan Tarasik: “We will take you to the forest, undress you and see how you satisfy women, or you can only use your tongue. Now let’s go to the Gestapo, and there you will cry and hate yourself.” As I understand it, the “Gestapo” is the building at 3 Revaliucyjnaja, what they called it among themselves. At the same time, they constantly insulted and beat me, took a pillow and tortured me. And when [regular] officers arrived, they did not allow me to look at them and beat me if I raised my head. They said that they would bring attesting witnesses and there would be a search. And if I screamed or complained in front of them, they would beat me and mock me. And if I kept quiet, then we’d go home...”

When we entered a room where a girl used to live, Aliaksandr Aleksa took a woman’s dress and T-shirts, holding them against me and asking: “Is this not yours? Isn’t that yours?” [...] Even in the presence of attesting witnesses, Tarasik openly said that he would beat me. The witnesses did not react in any way and pretended that they did not notice it. When they turned away or stood far away, he tried to hit me stealthily...

It was about 12:30 am. I was forced to stand facing the wall; I tried to start a conversation with the officers, asking why they would beat me. Aleksa replied that they no longer needed me, since I was waste material. Tarasik answered: “To get moral satisfaction.” The rest were joking and laughing. They continued to beat me from time to time, inflicting blows of various strength on the head, on the back, on the legs and in the chest. As I understand it, their tactic was to constantly keep me in suspense, so that I would not know when and where the




next blow would be delivered, and I could not relax for a second. [...]

Aleksa said that I had to tell in a video what they wanted me to say. He added: "We will record this video, with or without pain," after which he punched me in the chest. I hit the wall with the back of my head and fell. They asked if I would speak on the video. I was silent. Then a young officer took me to the closet – a room measuring 1 by 0.5 meters, sprayed tear gas in there, and closed the door, leaning on it with his body. I felt that I could not breathe, and said that I would say on the video whatever I had to say. Then the same officer took me out into the street together with a SOBR officer. [...] When I was taken out to the yard, the SOBR officer was holding me by the handcuffs from behind, and the young officer took out a Shock pepper gas and sprayed it in my face, trying to get into my eyes. He did this four times. [...]

[...] The building of the GUBAZIK at 3 Revaliucyjnaja, where they brought me, bending my head and putting a hood on it. It was about 1:30 at night. They took me to an office, which was located in the right corridor, if you stand with your back to the main entrance, the fourth office from the beginning of the corridor on its right side. They put me on my knees facing the wall, and again began to ask for the password from the hard drive. I gave the password from the operating system. They said it didn't fit. An officer employee said: "Kolya, now it will hurt." Some time later, I asked to go to the bathroom, and SOBR officers took me there. After that, they returned to another office: the third from the beginning of the corridor, also on its right side. Probably Tarasik's office, as I deduced from the location of his desk. There were, besides Tarasik, three more officers, all at their desks. The officer with my laptop was sitting in the same place as in the previous office, later he gave commands when to beat me and when to stop. The GUBAZIK officers let the SOBR officers go home. Everyone present was wearing a mask and tried very hard not to let me see their faces, even with masks on. They laid me face down on the floor, someone walked by, an officer all in black and with a rubber stick. I was asked for the hard drive password, I said I didn't remember. Then they started beating me with their sticks. The officer in black, among themselves they called him Hena, most likely a fictitious name. They beat me on the calves, thighs, buttocks, back and sides. After several refusals, Tarasik said that he would beat me on the genitals and rape me with a stick. They threatened to electrocute me with a stun gun and said they would urinate on me. In the intervals between approaches, a third officer periodically beat me. After four or five beatings, I gave the hard drive password. They wrote it down on a piece of paper, but the computer engineer entered it incorrectly, and they started beating me again. Since one of my arms was unfastened, I tried to cover myself with it, and several fingers were injured. The officer in black lifted my leg and began to beat me with a truncheon on my heels. And he did so several times, until the programmer entered the password correctly.

At some point, from the dialogue of the officers, I realized that someone from the outside looked into the office with claims or questions about the screams. I believe that it was a sentry, since I did not see anyone else in the building. Tarasik sent him off with an obscene word and said, quote: "If this good-natured man comes again, I myself will tear him up [obscene]." After they gained access to the laptop, they began to demand the password for double authentication to the



Telegram account. I didn't remember it by heart, so I had to tell them the path to the file where it was written. During this time, I was beaten several more times.

I noticed that they changed their tactics: first they beat me, and then immediately asked a question. When they beat me, I tried to dodge, so at some point Tarasik started stepping on my face with his foot. [...] In between, I was beaten just for nothing. For example, Tarasik, after they brought him hot noodles, said: "Now I'll finish with my Rollton and I'll beat you [obscene]." They tried to hit the same place many times to make it more painful. After another beating, Tarasik said that he was already tired, and with the words "Aging is no fun," he sat down at his desk. The rest of the staff laughed. They also threatened me that if I did not say what was required, then by 6 in the morning other GUBAZIK officers would start coming and they would beat me all one by one. I again asked why they beat me, if I gave the required information, to which Tarasik replied: "Because you exist." After that, Tarasik brought the bottles that they had planted in my apartment and started putting the necks of the bottles into my mouth. At first, I did not understand what he was doing, and then he said to spit in the neck and put the bottles to my palms, saying to squeeze them. Then I realized that this was done for a fingerprint examination. So he did it obviously with every bottle, I no longer resisted. Then he packed each bottle in a separate black bag. [...]

They asked why I published the addresses of police officers. I said to provoke public condemnation. Then they started beating me all together. Then they lift me up and told me to sign the papers that one of the officers had printed out. I signed everything without looking. Meanwhile, others continued to scoff: "Let's piss on him!" [...] Tarasik suggested: "I'll sit on him, and you take a picture." But the rest did not support his proposal. Then they put me in front of a red-green flag and told me to apologize to the officers for posting their data and advise others not to do so. Tarasik said: "If you say everything correctly, I won't beat you anymore." The officer in black said: "But I'm not responsible for myself." Immediately, Tarasik began to demand that <unintelligible> I told on camera that I was a schmuck and a piece of shit.

I didn't say it. I was filmed on camera by the same young officer who was there during my arrest. Tarasik also wanted me to cry on the video. He said: "Let a tear, otherwise we will make you do it." But I didn't cry. [...]

Tarasik said: "There are convicts in prison who cooperate with us, you yourself were imprisoned, you know everything. If you open your mouth again about police officers, I will come to the prison and personally finish you with a rubber stick, and then drown you in the toilet. You chose the wrong ones for enemies, there is no point in fighting us."

They clarified what I was expected to talk about the signs of beatings in the temporary detention center. I replied that I would say that I had fallen. Then I was taken out and brought to Zavulak Akrestsina. [...] The officer who was driving the car once again reminded me to keep quiet about everything that had happened. He said: "If you write complaints, if you tell your lawyer or in court, you will never come out." The GUBAZIK officer left the temporary detention facility only after my admission, to make sure that I would not complain."

Ill-treatment was reported in court by another political prisoner, **Mikita Zalatarou**:



“Due to the fact that I was tried on “political” charges, I’ve been subjected to poor, inhumane attitude in the pre-trial detention center. For a long time, almost two months, I had been alone and could not stand it anymore: I was simply going crazy in such a situation. I repeatedly asked to put someone in my cell. I’m afraid to be alone there. I have epilepsy. I receive pills irregularly: sometimes only after I specifically address this issue to a physician. If I have a seizure in solitary, who will help me?”

At the end of December 2021, during a meeting with his sister **Yuliya**, political prisoner **Dzmitry Dubouski** told her about the torture he suffered after arrest, which was used against the anarchists detained last fall. Yuliya told the details to the Right to Revolt Telegram channel:



“I can still hear this, that my brother was being strangled with a bag on his head, he repeatedly lost consciousness... He tried to describe how, with his hands tied behind his back, he seemed to be torn off the ground. He even tried to remember the name of this torture... He said that his hands were all swollen and bleeding from the clamps... For several days in the KGB pre-trial detention center, he could not move because of damaged ribs...

*He said that they cut off the skin on Ihar’s [Alinevich] heels... He started talking about Siarhei [Ramanau], that he had to cut his wrist... I stopped him. The decision to start testifying and cooperating with the investigation was made by Dzima. He said that he felt sorry for the guys and it was necessary to somehow stop these tortures,” says Yuliya and adds that **Ihar Alinevich**, according to her brother, supported him in this decision.*

Yuliya clarified that she remembered everything “as if in fragments” and might be inaccurate in some details:



“Did the riot police or border guards do this to our guys... My brother told me, but I don’t remember... Whether they were tortured together or in separate rooms...”

Dzmitry Dubouski told his sister that **Siarhei Ramanau** filed a statement with the Supreme Court about torture and, when he was at court hearings, he wanted to see and remember those who tortured them, but only one of them appeared in court.

Siarhei Ramanau, one of the defendants in the anarchists’ trial, told some details of his arrest to his mother during his trial in Homiel. He noted that the interrogation was carried out by border guards. Right at the frontier post, they started beating Siarhei, and they sprayed tear gas into the room where he was placed. Then, when the border guard left, since he himself could no longer be in this room, Siarhei cut his veins with a folding knife. And when the officer returned, he saw that the whole room and Siarhei were covered in blood. After that, the guys were taken in handcuffs and, in addition, with weights attached, as a result, their hands did not heal.

Volha Zalatar, political prisoner and mother of five children, was arrested for “protest activity” on March 18. On the day of her arrest, physical violence was used against the woman in the GUBAZIK building. The lawyer found bruises on Zalatar’s arms and neck, and on the buttocks.



“During interrogations by the investigator, Volha three times mentioned facts of torture. While at the GUBAZIK building, she was told to unlock the devices and hand over all the information regarding her. She decided to exercise her right not to incriminate herself. After that, my client said, they beat her on the back of her head and buttocks, twisted her arms, pressed her head to the floor. When we met, she had a lot of bodily injuries, bruises on her arms and neck, bruises on her buttocks,” said Volha’s former lawyer Andrei Machalau, for which he was deprived of his license.

Zalatar and her lawyer Machalau filed a statement demanding a criminal case against senior detective officer of the GUBAZIK Tveratsinau for abuse of power or official authority (Articles 424 and 426 of the Criminal Code) when applying physical violence against Volha. However, the request was rejected on the basis of reported absence of elements of a crime in his actions. The Investigative Committee ruled that “Zalatar’s statements about suffering bodily harm are not true, since it took place before her arrest.”

Artsiom Bayarski was beaten after his arrest in order to force him record a video confession for the propagandist Azaronak. The youth was beaten with rubber sticks on his back and buttocks. During interrogation on April 19, he told his lawyer about this. Bayarski himself explained that he was beaten in the GUBAZIK building at 3 Revaliucyjnaja Street, when they asked if he was involved in the Strike of the Chemistry Faculty Telegram channel. According to Bayarski, a GUBAZIK officer hit him twice with a stick on the back between the shoulder blades, once with a stick on the buttocks. Then he ordered the guy to lie on the floor and then hit him on the buttocks about three more times.

Bayarski, together with his lawyer, filed a statement requesting a criminal investigation into the beating. Despite the fact that an examination established bruises on Bayarski’s buttocks, shins and shoulder, the Centralny District Department of the Investigative Committee refused to initiate a criminal case against a GUBAZIK officer, senior detective for especially important cases of the 1st department of the 3rd directorate of the GUBAZIK, police lieutenant colonel Valery Vysotski. *“When Bayarski was lying on the floor, the officer stepped on the lower part of Bayarski’s feet with his feet. From his actions, Bayarski suffered bruises in the buttocks,”* says the decision to refuse to initiate proceedings against the GUBAZIK officer.

Yahor Martsinovich, editor-in-chief of the Nasha Niva newspaper, was arrested on July 8, 2021. It is known that he was beaten during arrest, because of which an ambulance was called to the Investigative Committee’s building.



“They put a boxing helmet on his head and punched him on the head. During the search, he was also beaten. Even when he wanted to go from one room to the room where the search was being carried out, he was beaten. He takes a step, he receives a blow. He felt unwell, and [at first] they didn’t want to let the ambulance doctors to the investigator [who interrogated him after the search].”

Rastsislau Stefanovich told the court:



“After the arrest, they took me into a minibus, put me face down on the floor and hit me with a truncheon in the area of my legs and buttocks. They beat me and asked questions at the same time... In total, they delivered at least twenty blows. Someone said that they would take off my pants in order to rape me: they pulled my pants, but did not take them off. Then they put a finger on the phone by force, and it unlocked.



In the building of the police department, they forced me stand facing the wall, legs apart, hands up on the wall... So I stood like this for three hours. When I tried to change my position at least a little, I was hit with a stick on my legs or commanded to stand even further from the wall. My condition was on the verge of losing consciousness. I felt pain in the temporal region. After that, my bumps did not go away for three weeks, it was painful for me to open my mouth... Medical assistance was partially provided to me.”

Yauhen Prapolski, a defendant in the same trial, said in court that he was arrested as he was leaving the dormitory to meet with his girlfriend. During his arrest, they found a stun gun, which he wore for self-defense.



“I was forced to write a confession addressed to the head of the Investigative Committee,” he said. “I was threatened, tortured, beaten with my stun gun. I did not voluntarily write a statement. Then I had health problems: I felt unwell and dizzy, my leg was injured.”

The lawyer asked for an examination of the handwriting to determine the condition of her client, whether he experienced pressure, stress, whether he wrote the statement in an unusual position. The request was denied. The lawyer also filed a motion to invalidate evidence obtained in violation of the law, i.e. testimony given under duress. The judge noted that the motion would be considered later.

After his release, **Uladzislau Pshanko** told about torture and the inhuman conditions of his detention in the Mahilioŭ-based prison No. 4:



“The guards said that if I moved three meters away from them, they will shoot to kill. Leaving me in my shorts, they put me near the wall so that I almost did the splits. They twisted my arms with the back of the palms to the wall, forced me to stand like this. I cried and begged to stop. And they laughed and said that only recently they wiped the blood from the floor.”

Uladzimir Zhuk, who was beaten by his former colleagues, officers of the Žlobin district police department, told about inhuman treatment during arrest. He was hit in the head, after which the suspect had to go to the hospital, where several stitches were put on his open wound.

During his testimony about the facts of severe beating, political prisoner **Andrei Kandrasjuk** said:



“These people started pulling women out and hit me with a truncheon. Then people from the crowd (from people in black outfit) attacked me and knocked me to the ground. I don’t remember what happened next. I only remember blood on my clothes and how I was dragged towards the police station on Savieckaja Street. Then they dragged me into a truck, put me on the floor with my stomach down. They started giving various commands, and if I did not follow them or hesitated, they beat me. After that, I was taken out from this truck and taken to the police department, where I was given first aid, an ambulance was called, where my head was stitched (the back of the head, a cut in the back of the head). And they kept me in the hospital for five days, until I felt a little better.”

It is worth noting that Kandrasjuk wrote to the Investigative Committee asking to conduct an

investigation into his beating by police officers and received an answer that those involved in beatings and ill-treatment were not found.

Maryia Kalesnikava told about threats of imprisonment and an attempted arbitrary expulsion from the country. In particular, the political prisoner said that law enforcement officers put a bag over her head, and she perceived threats from police officers as real. Kalesnikava's lawyer filed a statement with the Investigative Committee, but there was no effective response from the department.

Aliaksei Shchytnikau, who was sentenced to five years in prison for hitting a traffic police car during the August 2020 protests, complained about being beaten immediately after arrest on the territory of the Maskoŭski district police department of Minsk.

During the trial, **Mikhail Ferenets**, who was sentenced to three years in prison, spoke about psychological and physical violence by security forces.

Dzmitry Kubarau, who was sentenced in September 2021 to three years in prison for "illegal actions in relation to objects whose damaging effect is based on the use of combustible substances," and in total with the previous sentence for organizing mass riots – to eight years in prison, said in court that he was tortured immediately after arrest.

Dzmitry Liukovich, who was sentenced to two years of restricted freedom for insulting a representative of the authorities in connection with the performance of his official duties, said that he was beaten during arrest. According to the convict, "two officers knocked" him to the ground, "twisted his arms, and one of them began kicking him on the head with particular cruelty."

Artsiom Sakovich, 20, who was sentenced to four years in prison for participating in the August 2020 protests, reported arbitrary use of physical violence during arrest. According to the convict, when arrested, he was "slightly beaten and taken to a minibus."

Pavel Yaitski, who was sentenced to two years of restricted freedom for preparing and participating in actions grossly violating public order, told about torture during arrest in order to extract confession:




"On the way to the car, they beat me in the stomach, twisting my hands, although I did not resist. In the GUBAZIK department, they beat me on the buttocks, forced me to sign documents, and beat me with truncheons all the time. In the pre-trial detention center, hematomas on the body were documented."

In court, **Aleh Nichyporka** retracted his earlier testimony and, in response to the judge's request to clarify the statement, said:



"When they came to me [...] about the CCTV cameras, I said that I didn't do it. I was at home with my girlfriend at the time. I had a photo with the date and time when it was... They came and asked: "Can you climb the pole?" – I said that I could not. One of them said: "What if I shoot?" I said, "Shoot". Then they took me away... Then my girlfriend and I almost broke up, I don't know when, I don't remember... After that, the next morning, they took me away again. They started asking me what I did and what I didn't do. Well, I only told them about Kot [Ivan Kot, another defendant in the trial] and me... and the theft. Then they took me to the Investigative Committee at about eight or nine o'clock, where I told them in detail how it all happened, they wrote it all down. Then we went



to the police department in the morning. Then they let me go home on my own responsibility... And then they took me away again, they said: "Sit down, we'll talk later." In the morning, the head of the criminal investigation department started talking to me. He said things that scared me. He punched me twice in the head. Then he grabbed me by the jacket and hit me against the wall. After that, I wrote a statement, they put me in a cell. I was in the cell, the investigator came and started asking questions. I decided it was best to confess. Then I changed my mind. Again, I said he didn't do it. After that, they began to take away my mattresses, to take away food... They did not give me hot water. I had a ban on it. I wasn't given any outdoor time. They pressed me. [...] I couldn't file a complaint because most of my statements were simply not sent anywhere."

The court failed to investigate the above report.

These and other examples clearly demonstrate the indifference of investigators, courts and judges to violations of human rights, the CCP and other normative acts. The tolerance of judges to the identified acts of torture and defiant disregard for procedural violations create an atmosphere of impunity and disregard for the rules of criminal procedure.

MEASURES OF RESTRAINT. DETENTION PENDING TRIAL

Art. 9 of the Covenant

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

General Comment No. 35

Art. 9 (Liberty and security of person)

11. The second sentence of paragraph 1 prohibits arbitrary arrest and detention, while the third sentence prohibits unlawful deprivation of liberty, i.e., deprivation of liberty that is not imposed on such grounds and in accordance with such procedure as are established by law. The two prohibitions overlap, in that arrests or detentions may be in violation of the applicable law but not arbitrary, or legally permitted but arbitrary, or both arbitrary and unlawful. Arrest or detention that lacks any legal basis is also arbitrary.

12. An arrest or detention may be authorized by domestic law and nonetheless be arbitrary. The notion of “arbitrariness” is not to be equated with “against the law”, but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality. For example, remand in custody on criminal charges must be reasonable and necessary in all the circumstances. Aside from judicially imposed sentences for a fixed period of time, the decision to keep a person in any form of detention is arbitrary if it is not subject to periodic re-evaluation of the justification for continuing the detention.



17. Arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant is arbitrary, including freedom of opinion and expression (art. 19), freedom of assembly (art. 21), freedom of association (art. 22), freedom of religion (art. 18) and the right to privacy (art. 17). Arrest or detention on discriminatory grounds in violation of article 2, paragraph 1, article 3 or article 26 is also in principle arbitrary. [...] Imprisonment after a manifestly unfair trial is arbitrary, but not every violation of the specific procedural guarantees for criminal defendants in article 14 results in arbitrary detention.

38. The second sentence of paragraph 3 of article 9 requires that detention in custody of persons awaiting trial shall be the exception rather than the rule. It also specifies that release from such custody may be subject to guarantees of appearance, including appearance for trial, appearance at any other stage of the judicial proceedings and (should occasion arise) appearance for execution of the judgment. That sentence applies to persons awaiting trial on criminal charges, that is, after the defendant has been charged, but a similar requirement prior to charging results from the prohibition of arbitrary detention in paragraph 1. It should not be the general practice to subject defendants to pretrial detention. Detention pending trial must be based on an individualized determination that it is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime. The relevant factors should be specified in law and should not include vague and expansive standards such as “public security”. Pretrial detention should not be mandatory for all defendants charged with a particular crime, without regard to individual circumstances. Neither should pretrial detention be ordered for a period based on the potential sentence for the crime charged, rather than on a determination of necessity. Courts must examine whether alternatives to pretrial detention, such as bail, electronic bracelets or other conditions, would render detention unnecessary in the particular case. If the defendant is a foreigner, that fact must not be treated as sufficient to establish that the defendant may flee the jurisdiction. After an initial determination has been made that pretrial detention is necessary, there should be periodic re-examination of whether it continues to be reasonable and necessary in the light of possible alternatives. If the length of time that the defendant has been detained reaches the length of the longest sentence that could be imposed for the crimes charged, the defendant should be released. Pretrial detention of juveniles should be avoided to the fullest extent possible.



The grounds and procedure for applying measures of restraint remained the same as compared to the situation in 2021. At the same time, amendments were made to the Criminal Code regarding the rules for reducing the term of imprisonment by the period of pre-trial detention. In particular, one day in a pre-trial detention center is equated to 1.5 days of imprisonment in a general or enhanced security penal colony. Thus, the authorities acknowledged that the conditions of detention in the temporary detention centers and pre-trial detention centers are much worse than those in the penal colonies. This fact underscores the issue of lawfulness and expediency of detaining the accused in the absence of legitimate purposes.

The national legislation provides that, as a general rule, measures of restraint may be applied by the authority conducting the criminal proceedings only if the evidence collected in the criminal case gives sufficient grounds to believe that the suspect or the accused can hide from the criminal prosecution authority and the court; impede the preliminary investigation of a criminal case or its consideration by a court, including by exerting unlawful influence on persons participating in the criminal proceedings, concealing or falsifying materials relevant to the case, failing to appear without good reason when called by the authority conducting the criminal proceedings; commit a socially dangerous act provided for by criminal law; oppose the execution of the sentence. When deciding whether it is necessary to apply a measure of restraint to a suspect or accused, the nature of the suspicion or charge, the identity of the suspect or accused, their age and state of health, occupation, family and property status, permanent place of residence and other circumstances must be taken into account (Article 117 of the CCP).

In accordance with the CCP, the right to authorize pre-trial detention belongs to the Prosecutor General, prosecutors of regions, the city of Minsk, districts, districts in cities, cities, inter-district and equivalent transport prosecutors and their deputies. Detention may also be applied by decision of the chairman of the Investigative Committee, the chairman of the KGB, or persons acting in their capacity. The participation of the suspect, the accused and the defense counsel is not obligatory when issuing the decision, except in cases where the prosecutor wishes to interrogate the suspect or the accused.

In this regard, it is necessary to recall the position of the HRC that the prosecutor's authorization for detention cannot be considered an equivalent substitute for a judicial decision, since, "it is inherent to the proper exercise of judicial power, that it be exercised by an authority which is independent, objective and impartial in relation to the issues dealt with. It further considers that the public prosecutor cannot be characterized as having the institutional objectivity and impartiality to be considered as an "officer authorized to exercise judicial power" within the meaning of article 9, paragraph 3."³

Pre-trial detention may be used on the grounds of gravity alone against persons suspected or accused of committing a grave or especially grave crime against the peace and security of mankind, the state, a war crime, a crime involving an encroachment on human life and health. Detention is applicable only to those suspected or accused of committing a crime for which the law provides for a penalty of imprisonment of more than two years, except for a less serious crime against the conduct of economic activity (with the exception of smuggling, illegal export or transfer for export purposes of objects of export control, legalization ("laundering") of proceeds from crime).

A characteristic feature of politically motivated post-election criminal cases, including in 2021-2022, was the arbitrary and unreasonable application of pre-trial detention in the absence of admissible conditions for restricting the right guaranteed by article 9 of the Covenant. It has become commonplace to select detention in cases of less serious crimes. In the absence of

³ UN Human Rights Committee. Communication No. 1100/2002. Yuri Bandajevsky v. Belarus, para. 10.3

a stable fair practice of applying detention as a last resort to ensure the appearance of the accused in court, unlawful obstruction of the investigation or repetition of crimes, the grounds that are indicated in the decisions of the investigators, as a rule, are formal. Even more formal is the process of authorizing these decisions by the prosecutor, which does not provide for a public competitive procedure and substantiation of the decision.

As already mentioned, several examples of the application of pre-trial detention were documented, both without sufficient grounds and without taking into account the personality of the accused and the nature of the charges, which as a result were sentenced by the court to non-custodial sentences.

In particular, on November 2, 2021, the court of the Maskoŭski district of Minsk sentenced political prisoner **Maksim Klimovich** to three years of restricted freedom (home confinement) under Part 1 of Article 342 of the Criminal Code. On March 29, 2022, political prisoner **Mikalai Siarheyenka** was sentenced by the court of the Frunzienski district of Minsk under Part 1 of Art. 342 of the Criminal Code to three years of restricted freedom (home confinement). On September 22, 2021, **Rastsislau Shavel** and **Vadzim Shashura** were sentenced by the Zavodski District Court of Minsk under Part 2 of Art. 342 of the Criminal Code to three and two and a half years of restricted freedom (home confinement), respectively. The above defendants were taken into custody and spent several months in pre-trial detention. There were no acceptable grounds for applying the most severe measure of restraint, which was confirmed by the court's conclusion that it was possible to achieve the goal of criminal liability without deprivation of liberty.

Of particular attention is the practice of selecting pre-trial detention in respect of elderly defendants, people with disabilities and/or serious illnesses. In connection with this, the specified category of the accused experiences additional suffering, which not due to the very nature of the measure of restraint. At the same time, the prosecution is not obliged by law to present and does not present evidence that the accused may abscond from the investigation and court or interfere with the investigation.

In particular, **Uladzimir Hundar**, **Aliaksandr Fiaduta**, **Halina Dzerbysh**, **Ryhor Kastusiou**, and **Liudmila Hraznova** were taken into custody at different times and held in pre-trial detention for more than a year. During this time, they were only involved in sporadic investigative activities, the ability of the accused to influence the investigation decreased in inverse proportion to the scope of the investigation, and after their cases were sent to court, it became insignificant. The appearance of the accused in court could have been ensured by other measures of restraint.

Thus, in general, detention was used, as a rule, arbitrarily, in accordance with the policy of state authorities aimed at suppressing protest activity and a repressive approach to resolving social conflict.

RIGHT TO PROCEEDINGS FOR RELEASE FROM CUSTODY

Article 9 of the Covenant

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.


General Comment No. 35

Art. 9 (Liberty and security of person)

12. An arrest or detention may be authorized by domestic law and nonetheless be arbitrary. The notion of “arbitrariness” is not to be equated with “against the law”, but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality. For example, remand in custody on criminal charges must be reasonable and necessary in all the circumstances. Aside from judicially imposed sentences for a fixed period of time, the decision to keep a person in any form of detention is arbitrary if it is not subject to periodic re-evaluation of the justification for continuing the detention.

14. The Covenant does not provide an enumeration of the permissible reasons for depriving a person of liberty. Article 9 expressly recognizes that individuals may be detained on criminal charges, and article 11 expressly prohibits imprisonment on ground of inability to fulfil a contractual obligation. Other regimes involving deprivation of liberty must also be established by law



The United Nations emblem, featuring a world map surrounded by a laurel wreath, is positioned on the left side of the page. The map shows the continents of Asia, Australia, and parts of Europe and Africa. The laurel wreath is a symbol of peace and justice.

and must be accompanied by procedures that prevent arbitrary detention. The grounds and procedures prescribed by law must not be destructive of the right to liberty of person. The regime must not amount to an evasion of the limits on the criminal justice system by providing the equivalent of criminal punishment without the applicable protections. Although conditions of detention are addressed primarily by articles 7 and 10, detention may be arbitrary if the manner in which the detainees are treated does not relate to the purpose for which they are ostensibly being detained. The imposition of a draconian penalty of imprisonment for contempt of court without adequate explanation and without independent procedural safeguards is arbitrary.

17. Arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant is arbitrary, including freedom of opinion and expression (art. 19), freedom of assembly (art. 21), freedom of association (art. 22), freedom of religion (art. 18) [...].

32. Paragraph 3 requires, firstly, that any person arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power. [...] The right is intended to bring the detention of a person in a criminal investigation or prosecution under judicial control. The individual must be brought to appear physically before the judge or other officer authorized by law to exercise judicial power. The physical presence of detainees at the hearing gives the opportunity for inquiry into the treatment that they received in custody and facilitates immediate transfer to a remand detention centre if continued detention is ordered. It thus serves as a safeguard for the right to security of person and the prohibition against torture and cruel, inhuman or degrading treatment. In the hearing that ensues, and in subsequent hearings at which the judge assesses the legality or necessity of the detention, the individual is entitled to legal assistance, which should in principle be by counsel of choice.

As already noted, the choice of pre-trial detention takes place out of court. At the same time, the legislation provides for the possibility of judicial control: under the CCP, arrest and detention, house arrest or extension of the period of detention or house arrest may be appealed to a court.

Meanwhile, such a rule cannot be recognized as a sufficient guarantee of the right within the meaning of article 9 of the Covenant.

Appeals contesting arrest and pre-trial detention are not filed directly in the court, but

through the administrations of detention facilities or the authority conducting the criminal proceedings.

The administration of the pretrial detention facility is obliged, within 24 hours after receiving the appeal, to send it to the competent authority conducting the criminal proceedings, of which it should notify the person who filed the appeal, together with the officials and the court who decided to apply pre-trial detention or extend the period of detention. Notification of the counsel is not provided by law.

The authority conducting the criminal proceedings is obliged, in relation to the detainee, within 24 hours, and in relation to the person taken into custody under house arrest, within 72 hours from the moment of receipt of the appeal, to send it to the court with the attachment of the materials of the criminal case, confirming the legality and validity of arrest, application of a measure of restraint in the form of pre-trial detention, house arrest or extension of the period of detention or house arrest. The court also has the right to request other materials necessary to resolve the appeal. The authority conducting the criminal prosecution, as well as the court that issued the decision to apply a measure of restraint in the form of detention or house arrest or extend the period of detention or house arrest, have the right to present their justifications for the legality and validity of the arrest, detention or house arrest or extension of detention or house arrest.

Judicial verification of the lawfulness and validity of arrest shall be carried out within a period of not more than 24 hours, and of pre-trial detention or house arrest or extension of the term of detention or house arrest – within a period of not more than 72 hours from the time the appeal was received by the judge at the place of preliminary investigation of the criminal case, and of rulings of the court on the application of a measure of restraint in the form of detention or house arrest or on the extension of the period of detention or house arrest – by a judge of a higher court with the obligatory participation of a prosecutor.

Thus, the court may start hearing an appeal against arrest after more than 72 hours (excluding the time for the delivery of mail), and in practice – from 5 to 10 days, taking into account the time of delivery, weekends and holidays and the peculiarities of sending, receiving and registering correspondence in each of the authorities involved. The court may start considering an appeal against a measure of restraint and house arrest after more than 7 days, and in practice – much later, taking into account the time for sending and registering correspondence.

These time limits are incompatible with the state's obligation under article 9 (3) of the Covenant (*"Anyone arrested or detained on a criminal charge shall be brought promptly before a judge"*).

Appeals are considered in closed court sessions, which can be attended by the victim, their representative, defense counsel (if one is involved in the case), together with legal representatives of the suspect or the accused. The absence of these persons does not prevent the consideration of the appeal. Thus, the right of the suspect and the accused to participate in the consideration of their own appeal is not secured by law; the judge has the right to summon the detainee or the person held in custody or under house arrest to a court session. According to established practice, the participation of these persons in a court session is rather an exception (at the previous stage of monitoring, several cases of participation through video communication systems were documented), which is incompatible with the obligations of the state under para. 3 of article 9 of the Covenant.

Following the judicial review, the judge issues one of the following decisions:

- to release the detainee by reversing the measure of restraint in the form of detention or house arrest in the event of a violation by the investigating authority, prosecutor or court of the provisions of Articles 108, 110, 114, 125-127 of the CCP or of the right of the suspect or the accused to defense; in the event of groundless arrest, detention or house arrest, or the inconsistency of the charges against the content of the decision to apply a measure of restraint in the form of detention or house arrest or to extend the period of detention or house arrest. At the same time, the judge is obliged to apply to the person released from custody or house arrest another measure of restraint provided for by the Code, and explain that in case of violation of the restraining conditions the person may be again taken into custody or placed under house arrest;
- to dismiss the appeal.

The decision of the judge ordering the release of a detainee or a person held in custody under house arrest shall enter into force upon expiration of 24 hours from the moment of its issuance. During this period, it may be challenged by the prosecutor, as well as appealed by the victim or their representative to a higher court. The filing of a challenge or the filing of an appeal suspend the execution of the decision of the judge.

The decision of the judge to dismiss the appeal may be appealed to a higher court within 24 hours by the person who filed the initial appeal against arrest, detention or house arrest or extension of the period of detention or house arrest. If the appeal is allowed, the higher court is obliged to apply another measure of restraint to the person released from custody or house arrest.

Challenges and appeals against the decision of the judge are considered solely by the judge of the higher court within three days from the date of their receipt.

If the appeal against the extension of the period of detention or house arrest is not allowed, it is possible to file an appeal again after each new extension of the period of detention or house arrest. This limits the right of the defense to apply to the court even with the emergence of new reasons and arguments supporting the illegality or groundlessness of arrest, detention or house arrest.

Thus, the statutory rules for appealing against arrest, detention and house arrest (prolongation of their terms) do not guarantee the right to liberty and personal security. During the monitoring period, there were no cases of commuting pre-trial measures of restraint in relation to those detained for political reasons.

In general, the effectiveness of this mechanism can be assessed as insufficient: for example, in 2011-2015, the courts of the Republic of Belarus considered 3,297 appeals⁴ against the application of a measure of restraint in the form of detention or house arrest or extension of the period of detention or house arrest (in 2011 – 675 appeals, in 2012 – 485, in 2013 – 582, in 2014 – 716, in 2015 – 839 appeals). As few as 158 (4.97%) appeals were allowed (in 2011 – 44 appeals, in 2012 – 22, in 2013 – 32, in 2014 – 29, in 2015 – 31 appeals). Latest statistics are not available.

⁴ UN Committee on the Elimination of Discrimination Against Women (CEDAW), Consideration of reports submitted by States parties under article 18 of the Convention pursuant to the simplified reporting procedure, Eighth periodic report of States parties due in 2016: Belarus

THE RIGHT TO A FAIR AND PUBLIC HEARING BY A COMPETENT, INDEPENDENT AND IMPARTIAL TRIBUNAL

Article 14 of the Covenant

...In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law...

General comment No. 32

Article 14: Right to equality before courts and tribunals and to a fair trial

19. The requirement of competence, independence and impartiality of a tribunal in the sense of article 14, paragraph 1, is an absolute right that is not subject to any exception. The requirement of independence refers, in particular, to the procedure and qualifications for the appointment of judges, and guarantees relating to their security of tenure until a mandatory retirement age or the expiry of their term of office, where such exist, the conditions governing promotion, transfer, suspension and cessation of their functions, and the actual independence of the judiciary from political interference by the executive branch and legislature. States should take specific measures guaranteeing the independence of the judiciary, protecting judges from any form of political influence in their decision-making through the constitution or adoption of laws establishing clear procedures and objective criteria for the appointment, remuneration, tenure, promotion, suspension and dismissal of the members of the judiciary and disciplinary sanctions taken against them. A situation where the functions and competencies of the judiciary and the executive are not clearly distinguishable or where the latter is able to control or direct the former is incompatible with the notion of an independent tribunal...

A number of reports, expert assessments and scientific works are devoted to the issue of the independence of the judiciary in Belarus, however, some of them are clearly outdated, as they were published before the significant changes made to the legislation by Decree of the President of November 29, 2013 No. 6 “On improving the judicial system of the Republic of Belarus” and Decree of the President of November 29, 2013 No. 529 “On some issues of the

activities of the courts”, subsequently enshrined in the Code on the Judiciary and the Status of Judges. At the same time, most of the final conclusions of these reports and works remain relevant, since the eliminated formal signs of the dependence of the courts on the executive authorities had little effect on the actual state of affairs.

Under article 14 of the Covenant, courts in Belarus do not meet the criteria of independence, which, in particular, was pointed out by the HRC in its concluding observations on the fifth periodic report of Belarus (2018):

“39. While noting the measures taken as part of judicial reform, such as the 2016 amendments to the Code on the Judicial System and the Status of Judges, the Committee remains concerned that the independence of the judiciary continues to be undermined by the President’s role in, and control over, the selection, appointment, reappointment, promotion and dismissal of judges and prosecutors and by the lack of security of tenure of judges, who are appointed initially for a term of five years with the possibility of reappointment for a further term or for indefinite terms. It is also concerned that the salaries of judges are determined by presidential decree rather than by law.”

The HRC recommended, “40. ... take all measures necessary to safeguard, in law and in practice, the full independence of the judiciary, including by:

- (a) reviewing the role of the President in the selection, appointment, reappointment, promotion and dismissal of judges;
- (b) considering establishing an independent body to govern the judicial selection process;
- (c) guaranteeing judges’ security of tenure.”

Criminal cases on charges of crimes for which the criminal law provides for punishment of more than ten years in prison or the death penalty (Part 2 of Art. 139, Art. 289, Part 1 of Art. 293, Art. 362, etc.) and juvenile crimes are heard by a board consisting of a judge and two lay judges. All issues are resolved by a majority vote of the composition of the court. At the same time, the process of appointing lay judges is non-public, non-transparent, and for the most part is in the hands of the executive branch.

The selection of candidates and the compilation of lists of lay judges are carried out for a period of five years by the corresponding district (city), regional (Minsk City) executive committee (lay judges of the Supreme Court – by the Minsk City Executive Committee). Lists of lay judges are sent for approval to the prosecutor’s office and the bar and approved by the corresponding regional (Minsk City) Councils of Deputies (lay judges of the Supreme Court – by the President).

It is worth clarifying that at present lay judges, as a rule, do not play a significant role in the consideration of criminal cases and sentencing. In our opinion, this is due to the existing approaches in the selection of lay judges, which predetermines the absence among them of active and principled full-fledged participants in the process of administration of justice.

The results of the referendum held on February 27, 2022 on amending the Constitution laid the groundwork for a further change in the position of courts in the system of constitutional bodies, since the adopted changes also relate to the judiciary. No relevant laws have yet been adopted at the time of writing.

General comment No. 32

Article 14: Right to equality before courts and tribunals and to a fair trial

21. *The requirement of impartiality has two aspects. First, judges must not allow their judgement to be influenced by personal bias or prejudice, nor harbour preconceptions about the particular case before them, nor act in ways that improperly promote the interests of one of the parties to the detriment of the other. Second, the tribunal must also appear to a reasonable observer to be impartial. For instance, a trial substantially affected by the participation of a judge who, under domestic statutes, should have been disqualified cannot normally be considered to be impartial.*

26. *Article 14 guarantees procedural equality and fairness only and cannot be interpreted as ensuring the absence of error on the part of the competent tribunal. It is generally for the courts of States parties to the Covenant to review facts and evidence, or the application of domestic legislation, in a particular case, unless it can be shown that such evaluation or application was clearly arbitrary or amounted to a manifest error or denial of justice, or that the court otherwise violated its obligation of independence and impartiality. The same standard applies to specific instructions to the jury by the judge in a trial by jury.*



According to established practice, it is extremely rare for the Committee to comment on whether a domestic court correctly assessed the evidence presented to it; for the experts, of greater importance is the content of procedural guarantees and their observance in each specific case. An exception is when the misjudgment of evidence or the misapplication of the law is so obvious as to amount to a denial of justice. The observers witnessed a number of situations when the assessment of the evidence of the prosecution was made deliberately incorrectly in favor of the prosecution.

In particular, the court of the Maskoŭski district of Minsk passed a sentence against defendants B. and S. under Part 2 of Art. 339 of the Criminal Code.

“As established by the verdict, the defendants, having the intent to commit hooliganism based on political and ideological hostility, grossly violating public order and expressing clear disrespect for society, opposing their personality to public interests and others, moral standards that determine respectable behavior, demonstrating the ability to outrage, showing demonstrative disrespect in relation to someone else’s property, without

an apparent reason, out of hooligan motives, deliberately committed hooligan actions, accompanied by damage to someone else's property and characterized by exceptional cynicism, namely: demonstrating an extremely contemptuous attitude towards the moral values of society and the requirements of respectable behavior, expressing unbridled desire to assert themselves with the help of brazen acts, showing their impunity, from November 14 to 15, 2020 painted obscene, cynical and offensive inscriptions on a bridge, which offended the feelings of citizens, showing mockery and disrespect for state bodies, which damaged and significantly reduced the aesthetic characteristics of this bridge, causing damage in the amount of 153.65 rubles, to three kiosks "Tabakerka", causing damage of 367 rubles, the arch of a house, causing damage in the amount of 26.46 rubles, to a fountain. The judge did not indicate the content of all the inscriptions, but the testimonies of witnesses reflected in the verdict suggest that these were "insulting inscriptions against the employees of the GUBAZIK and the current President", "We will not forget, we will not forgive", "of a political nature, as well as in relation to law enforcement agencies", "Basta! 97", "Sasha, go away", "offensive inscriptions in white against OMON and GUBAZIK", "anti-political inscriptions".

The circumstances suggest that the actions of the accused have no signs of malicious hooliganism, and the various signs of such are imputed to them arbitrarily.

In the same way, the right to a fair trial was violated in relation to the defendants T. and K, who were found guilty of malicious hooliganism by the Partyzanski District Court of Minsk under Part 2 of Art. 339 of the Criminal Code:

"T., acting in a group with K. during the period from 00:00 to 00:20 on February 6, 2021, being in a public place in Minsk, having the intent to commit hooligan actions, expressing a contemptuous attitude towards the basic moral values of society and the requirements of respectable behavior, acting impudently and boldly, opposing themselves to the interests of society, committed deliberate actions that grossly violated public order and expressed clear disrespect for society, accompanied by damage to other people's property, expressed in the fact that they deliberately, without reason, out of hooligan motives, by applying images with red coloring substance on the facade of the building of a transformer substation, damaged the property, namely the facade of the said building, causing property damage in the total amount of 32 rubles 94 kopecks."

The accused did not plead guilty to the crime, while T. testified that he had painted, together with K., images of a heart, a hand clenched into a fist and a hand with two raised fingers, using a can of spray paint and stencils on the walls at the transformer substation. According to the court, "the hooligan actions of the defendants were expressed in the fact that they were in a public place for a certain time, next to residential buildings and other objects of urban infrastructure, deliberately applied an image to a transformer substation, which openly demonstrated their contempt for moral values to the requirements of respectable behavior, opposing themselves to the interests of society. By applying images to the transformer substation, the defendants wanted to oppose their personality to the interests of society, to show defiant disregard for the generally accepted culture of behavior, demonstrating their permissiveness, since by applying the drawings in a public place they realized that visual images would be available to an indefinite circle of people."

On November 17, 2020, the Lieninski District Court of Brest passed a verdict by which K. was found guilty of desecrating the state flag of the Republic of Belarus, i.e. of a crime under Article 370 of the Criminal Code.

“K., who, being a citizen of the Republic of Belarus, is obliged to respectfully treat the symbols of the Republic of Belarus, [...] seeing on the facade of a building [...] the state flag of the Republic of Belarus, publicly, in the presence of strangers, in order to demonstrate to other citizens his insulting, blasphemous and dismissive attitude towards the symbols of the Republic of Belarus, in a rude manner, openly tore off the State Flag of the Republic of Belarus, which fell on the sidewalk, as a result damaged it, breaking the flagpole,” while the flag itself was not damaged. The cost of the flagpole was 18 Belarusian rubles. The testimony of the defendant arguing that he did not commit acts of desecration of the flag, since the flag was not trampled on, nor set on fire, was not taken into account by the court, together with the corresponding position of the defense counsel, because “according to the provisions of the Law “On State Symbols of the Republic of Belarus”, the state flag is mounted on a pole (flagpole); thus the accused damaged the state flag fixed on a flagpole.”

It should be noted that in the legislation of the Republic of Belarus there is no legal definition of the concept of “desecration” (Rus., “nadrugatelstvo”). Researchers have different approaches regarding what exactly a desecration of the state symbol is. The literal interpretation of the term (“rough mockery, combined with insult” – Dmitry Ushakov. Dictionary of the Russian Language (Толковый словарь русского языка); “offensive, gross mockery, blasphemy” – Sergey Ozhegov. Dictionary of the Russian Language (Словарь русского языка)) excludes the possibility of qualifying the mere removal of a flag under Art. 370 of the Criminal Code. And damage to the pole is certainly not damage to the flag.

PRESUMPTION OF INNOCENCE



Article 14 of the Covenant

2. *Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.*

General Comment No. 32

Article 14: Right to equality before courts and tribunals and to a fair trial

30. [...] *The presumption of innocence, which is fundamental to the protection of human rights, imposes on the prosecution the burden of proving the charge, guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt, ensures that the accused has the benefit of doubt, and requires that persons accused of a criminal act must be treated in accordance with this principle. It is a duty for all public authorities to refrain from prejudging the outcome of a trial, e.g. by abstaining from making public statements affirming the guilt of the accused. Defendants should normally not be shackled or kept in cages during trials or otherwise presented to the court in a manner indicating that they may be dangerous criminals. The media should avoid news coverage undermining the presumption of innocence. Furthermore, the length of pre-trial detention should never be taken as an indication of guilt and its degree.*

State-controlled media routinely call defendants in criminal cases guilty even before the verdict is announced, and sometimes officials voice their premature assessments of the actions of the accused and unambiguous conclusions about their guilt before the case goes to court.

On May 12, 2021, the first day of the trial of **Pavel Seviarynets** and activists of the European Belarus opposition group, a news presenter of the state-owned TV channel “Belarus 1” called the defendants “an extremist group organizing Belmaidan and preparing a coup in Belarus.” It is worth noting that a press release of the Prosecutor General’s Office shared on the day of the sentencing suggested that the actions providing for responsibility for the seizure of state power were not even imputed to the defendants.

On May 4, 2021, Belarus 1 aired a news report showing defendants **Tatsiana Kaneuskaya**, **Yury Ulasau**, **Dzmitry Ivashkou** and **Aliaksandr Shabalin** in a metal cage. All the four defendants were recognized by the human rights community as political prisoners.

On May 12 of the same year, Belarus 1 aired a report from a court hearing in the trial of **Miya Mitkevich** charged with inciting social hatred in messages on the social network V Kontakte. The footage showed the woman in a metal cage.

The standard of the presumption of innocence was violated in relation to political prisoner **Dzianis Urad**. Belarus 1 news presenter Katsiaryna Tsikhamirava, speaking about the circumstances of the criminal case against the political prisoner, a month and a half before the verdict was passed by the Supreme Court, prematurely determined the outcome of the trial by saying that “he will face a charge of treason and prison dungeons.”

At the time of the sentencing of **Tsikhan Osipau**, who was sentenced by the Minsk City Court to 11 years in prison on charges of rioting, a false report of a car theft and attempted murder of a police officer, the accused listened to the verdict being handcuffed behind his back. At the time of the announcement of the verdict, the guards took away the defendant’s glasses, which he had been wearing during the entire trial. Based on the results of judicial monitoring, analysts of the Human Rights Center Viasna came to the unequivocal conclusion that there was a political motive on the part of the authorities in the criminal prosecution of Tsikhan Osipau.

Unprecedented media and public attention was triggered by the landing of a Ryanair aircraft flying over the territory of Belarus, with opposition activist **Raman Pratasevich** on board the plane. Viasna is highly concerned about the hate speech that accompanied the public appearances of top officials commenting on the criminal prosecution of the blogger. In particular, on May 26, during an address to the members of the House of Representatives and the Council of the Republic, Aliaksandr Lukashenka told about the circumstances of Pratasevich’s arrest, calling him an “extremist”, after which he said: “*He has great experience as a mercenary – the bastard killed people in southeastern Ukraine.*” “*He and his accomplices were also going to arrange a massacre and a bloody rebellion,*” Lukashenka said of Pratasevich. Motivating the forced landing of the Ryanair plane and the subsequent arrest of the blogger, Lukashenka explained this by the fact that “*there was a terrorist on the plane.*” During the same event, KGB chairperson Ivan Tsertsel, commenting on the situation with the arrest of Raman Pratasevich, said:

“It is undeniable that this person fully meets the definition of a terrorist militant mercenary, a participant in bloody events as part of the infamous Azov battalion, associated with outrages and deaths of the civilian population in the south-east of Ukraine.”

On May 26, the state TV channel “ONT” aired a program called “What happened on the Ryanair plane? / Is Protasevich a journalist? / Western sanctions against Belarus.” During the discussion, a member of the House of Representatives, Aleh Haidukevich spoke about Raman Pratasevich, defiantly belittling the presumption of innocence in relation to the political prisoner:

“Pratasevich, who was allegedly called a journalist and blogger, but in fact he is a terrorist who fought in the Azov battalion, killing people.”

On September 19, 2020, nine months before the trial of **Stsiapan Latypau** opened in Minsk, a story was aired on Belarus 1 TV channel, where a news presenter commented on the charges against the political prisoner: “*One more character, Stsiapan Latypau, intended to use*

poisonous substances against the police.” In the same video, an employee of the GUBAZIK anonymously commented on the accusation against Latypau:

“It was revealed that the main character of this unclean story is one of the coordinators and active participants in the riots in the city of Minsk. Through Internet messengers, social networks and personally, he was raising money for subversive activities to discredit government and administration, against police officers. He organized unauthorized actions in the capital to place prohibited symbols on the facades of buildings – murals. With the help of special technical means, information was recorded about Stsiapan’s intentions to use chemicals of the first hazard class containing the Diphosphine poison against police officers and other persons, information about which is posted in one of the destructive Telegram channels. Stsiapan hatched plans to treat their land plots and dachas with poisonous substances and spray these substances near the combat formations of the OMON and internal troops during protests. As he mentioned it himself, he wanted them to vomit their guts out.”

The monitoring of the criminal case against political prisoner Stsiapan Latypau proved that he was not even charged with illegal actions related to the handling of hazardous chemicals. In addition, the official website of the Investigative Committee, two months before the start of the trial, published information about his alleged involvement in fraud on an especially large scale.

On July 6, 2021, a verdict was passed in the criminal case of **Viktar Babaryka** and other defendants in the “Belgazprombank trial”. After the former CEO of Belgazprombank was arrested on criminal charges, officials and state media regularly described Babaryka’s actions as criminal and relating to his presidential campaign. On February 17, on the first day of the trial and eighteen weeks before the sentencing, Prosecutor General Andrei Shved commented on the start of the hearings:

“A fairly large array of evidence has been collected, indicating that this is an absolutely corruption case, this is pure criminality.”

More than three months before the start of the trial of political prisoner Siarhei Tsikhanouski, the official website of the Investigative Committee published an article entitled “How hatred was fomented: Investigative Committee reveals details of S. Tsikhanouski’s case.” The publication alleges that Tsikhanouski developed and prepared a plan to organize street riots in Minsk during the presidential election of 2020. As Aliaksandr Ahafonau, first deputy head of the Main Investigative Directorate of the Investigative Committee, said, “for about a year, the defendants were actively engaged in preparing and organizing street riots in Belarus.” **The official also argued that** “the ideology of organizing the riots was the incitement by Tsikhanouski and his accomplices [...] of social hostility and discord in the country. It has been established that Tsikhanouski, on the A Country for Living YouTube channel and the Telegram channel of the same name, openly called for violence against government officials and law enforcement agencies, and with his statements incited social enmity and discord in society on the basis of social affiliation.”

“However, this is not all. It is known that in May last year, Tsikhanouski obstructed the work of the Central Commission for Elections and Referendums, threatening the Chairperson of the Commission, Lidziya Yarmoshyna, and also publicly calling to break into her house.”

On June 24, the state-owned television channel Belarus 1 aired a report commenting on the beginning of the closed-door consideration of the criminal case against **Siarhei Tsikhanouski, Mikalai Statkevich, Ihar Losik, Artsiom Sakau, Uladzimir Tsyhanovich and Dmitry Popov:**

“This is a real crime, but even in this situation, some are trying to turn everything upside down and present ordinary criminals as victims of the regime, but the court will figure it out.”

On July 21, Belarus 1 aired a propaganda documentary called “A Country for Extremism” (Rus., “Strana dlya zhesti”, a pun alluding to the name of Tsikhanouski’s project “A Country for Living”, Rus., “Strana dlya zhizni”) telling about “Tsikhanouski’s gang” and the preparation for terror in Belarus. Throughout the film, a narrator tells about the background of A Country for Living supporters, with separate facts commented on by former Minister of Internal Affairs Yury Karayeu:

“Criminals striving for politics are really a new phenomenon. We, our society, the state, law enforcement, are used to them sitting as quiet as a mouse. They would never show up in public.”

After the segment with Siarhei Tsikhanouski announcing his intention to run for president, Karayeu, who now holds the position of presidential aide in the Hrodna region, assesses the personality and actions of the political prisoner:

“This thug, such a scumbag from the 90s, what Tsikhanouski is, attracted his kind to him, people for whom breaking the law, spitting on the rules generally accepted in society or the state, this is the norm. His cheeky demeanor, his conversational style, he draws similar people to him, and he thought he was all cutting edge, stuffed with technology, a mixture of a criminal with a blogger, as he calls himself. Although what he has the most are the hooligan traits, as I see, the punk ones, as they say in prison, it sticks out from all corners.”

On August 4, the STV channel aired a film called “How did the situation in Belarus escalate before the elections? Film One. Conspiracy.” First, the narrator says: “Tsikhanouski gathered the suitable people around him: murderers, thieves, counterfeiters, those who hate the state in their gut.” Then Mikalai Karpiankou, deputy Interior Minister, commander of the internal troops, former head of the GUBAZIK, the agency that earned ill fame for conducting political investigations and torturing detainees, comments on the personality of the political prisoner:

“Tsikhanouski is a scum, this is a real bandit, according to our concepts, this is a real thug, the bandits are in many ways more noble than he is... An absolute scum, there are no such bandits.”

On August 13, 2021, when commenting on the accusation of **Siarhei Tsikhanouski** to the RT channel, Karpiankou called the prisoner “a mad bull, a bandit, [...] a real scum, a thug.”

In this regard, it is worth recalling that the consideration of the case involving Tsikhanouski and others lasted from July 24 to December 14, 2021 and was held in Homiel on the territory of the pre-trial detention center in a closed session; the lawyers defending the accused could not speak about any circumstances of the case under the threat of criminal prosecution.

On August 17, several state-owned media reported the initiation of a criminal case against **Bazhena Zholudz**. The texts alleged the girl’s involvement in calls for riots, accompanied by violence against the person and armed resistance to government officials, which state journalists regarded as illegal actions. This wording is contrary to the standards of the presumption of innocence, since the actions of Zholudz were prematurely assessed even before the preliminary investigation started.

On July 5, before the start of the investigation, the Prosecutor General’s Office, issued a press

release on the criminal prosecution of **Anzhalika Ahurbash**. The text contained information about the performer's alleged involvement in several counts of illegal activity. The criticism was triggered by Ahurbash's public statements condemning the violence in August 2020, which amounted to "insulting Lukashenka" and "inciting social hatred on professional grounds."

On August 25, 2021, the Hrodna Regional Court convicted a resident of Smarhoń, political prisoner **Aliaksandr Nahela**, on charges of inciting hatred. On June 5, in a report on Nahela's arrest, the press service of the Ministry of Internal Affairs described his actions as criminal:

"since last December, in an extremist Telegram channel, the man has insulted and called for physical violence against law enforcement officers."

On September 14, Belarus 1 TV aired a report called "This is different – Human Rights Center Viasna: Bialiatski's financial frauds." The presenter, Kseniya Lebedzeva, imposed on the viewer a negative assessment of **Ales Bialiatski's** activities:

"[...] To them, Mr. Bialiatski, who effectively "siphons off" foreign money, is a political prisoner. Although, as even our journalistic investigation shows, he's just a swindler, but this is different."

State propaganda has mastered and is actively developing a new format of information support for repressions – through anonymous information resources, including Telegram channels, which do not directly recognize their affiliation with government or law enforcement structures, but actively use original information, photo and video materials created by police officers and the KGB.

A separate genre of publications on these resources are videos with detainees confessing to committing crimes, which usually end with "repentance" and a promise not to participate in protests, to unsubscribe from Telegram channels, not to comment on social and political news on social media, etc. Often, these people look beaten. Numerous defendants in court hearings said that these videos were filmed under threat or torture.

Many of the publications by the official Telegram channel of the Ministry of Internal Affairs are also often openly aggressive, offering peremptory statements about the guilt of those described in the posts and stories:

"An analysis of the operational situation in the republic shows that at present we are actually in a state of information war. [...] On the night of March 1-2, local residents, a husband and wife, were detained in Stoŭbcy, who set logs on fire on the railway tracks in order to impede the movement of trains. Both were intoxicated. The man filmed everything with his mobile phone, expressing in his comments his openly terrorist intentions. He faces up to 20 years in prison. [...] We warn everyone who even thinks of committing any illegal actions on the Belarusian Railway: all of them will be qualified as an act of terrorism and the reaction will be as harsh as possible. We don't negotiate with terrorists, they are destroyed."

In some publications by the official resources of the Ministry of Internal Affairs, the names and / or faces of suspects and accused are shown (for example, the faces of those suspected of damaging the railway infrastructure). In general, the Ministry's own publications or information provided to other resources often allow to identify the persons involved even before they are finally found guilty by the court.

THE RIGHT TO PREPARE FOR TRIAL

Article 14 of the Covenant

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing.

General Comment No. 32

Article 14: Right to equality before courts and tribunals and to a fair trial

33. "Adequate facilities" must include access to documents and other evidence; this access must include all materials that the prosecution plans to offer in court against the accused or that are exculpatory. Exculpatory material should be understood as including not only material establishing innocence but also other evidence that could assist the defence (e.g. indications that a confession was not voluntary). In cases of a claim that evidence was obtained in violation of article 7 of the Covenant, information about the circumstances in which such evidence was obtained must be made available to allow an assessment of such a claim.

According to lawyers and experts of the Human Rights Center Viasna, in the current conditions, of higher relevance is the problem of opportunities for preparing a defense, while in most cases the period provided for preparing a defense in a criminal case is sufficient, but is often delayed at the initiative of the investigation or the court.

When speaking in court, defendants rarely mention problems with preparation for the trial, which is most likely due to the low level of expectations from justice and the possibilities of protection.

The objective possibilities for the preparation of a defense are low: the case file is only accessible to the accused after the investigation has been completed, with the exception of expert opinions, which are presented to the participants in the criminal proceedings before the end of the investigation. Copying case materials is generally prohibited by the investigators.

In the absence of independent experts in many branches of science in Belarus, and also with the inability of experts involved in some cases to access examinees directly, independent experts are deprived of the opportunity to obtain and present to the court an alternative opinion on debatable cases.

The defense, both the accused and their lawyer(s), are deprived of free access to sources of evidence available to investigators and prosecutors: medical, banking, billing, registration and other information and documents.

The defense does not have the same powers as the investigation to summon and interrogate witnesses.

Finally, regular violations of the right to confidential communication between the accused and the defense counsel, both by restricting the lawyer's access to the client and by violating confidentiality, also make it difficult to fully prepare for the trial.

All this significantly complicates the defense and puts the prosecution and the defense in unequal positions.

There are reports of defendants being restricted in timely and full access to the case file, e.g. **Siarhei Tratsiuk**, who was charged under Part 2 of Art. 293 of the Criminal Code in the case of the Brest "riots", was only allowed to read his case file at the trial, as he was not given an opportunity to do so during his time in the pre-trial detention center.

RIGHT TO DEFENSE



Article 14 of the Covenant

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing.

General Comment No. 32

Article 14: Right to equality before courts and tribunals and to a fair trial

34. The right to communicate with counsel requires that the accused is granted prompt access to counsel. Counsel should be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications. Furthermore, lawyers should be able to advise and to represent persons charged with a criminal offence in accordance with generally recognised professional ethics without restrictions, influence, pressure or undue interference from any quarter.

Observance of the right to defense is inextricably linked with the state of affairs in the bar, which is expected to ensure the protection of the rights, freedoms and interests of citizens on a professional basis. The bar should operate on the basis of the principles of the rule of law, legality, independence, self-government, corporatism (according Belarusian laws, based on the principles of: ensuring the right to legal assistance guaranteed by the Constitution of the Republic of Belarus; legality; accessibility of legal assistance; independence of lawyers in the exercise of their professional activities; attorney-client secrecy; the use of all means and methods not prohibited by law to protect the rights, freedoms and interests of the client; ensuring the quality of legal assistance; inadmissibility of interference in the professional activities of lawyers by bodies conducting criminal proceedings, other state bodies, other organizations and officials; compliance with the Rules of lawyers' professional ethics; self-management and self-financing; compliance of payment for legal assistance with its volume).

The principle of the independence of the bar is an important guarantee for the protection of the rights and freedoms of citizens, as well as lawyers themselves and lawyer associations; the independence of a lawyer means freedom from any external influence, pressure or interference in their activities, including those related to the defense in criminal cases.

The principles of the rule of law and the independence of the legal profession are not recognized in Belarus, either at the legislative level or in practice. The bar has abandoned the role of an institution that upholds these principles, and the bodies of lawyers' self-government, along with the Qualification Commission for Lawyers established by the Ministry of Justice, have become effective instruments of repression against lawyers who openly and conscientiously exercise their civil and professional rights.

During the monitoring process, human rights defenders received ample information of both the defendants and their lawyers regularly prevented from communicating in private; the conditions in the places intended for such meetings were not conducive to efficient communication or working with documents. At the end of April 2021, in an act of blatant disregard of fundamental rules, the government-controlled ONT TV channel aired a documentary entitled "To Kill the President" featuring a fragment of Siarhei Tsikhanouski's private conversation with his lawyer, where the political prisoner spoke about Lukashenka's youngest son Kolya. There was no proper response to the lawyer's complaints about the incident, which confirmed earlier allegations of breach of confidentiality in communication between the defense lawyers and their clients held in pre-trial detention. The very fact of eavesdropping the defendant's conversation with the lawyer, let alone making it public, violates the right to confidential communication with a counsel, and in fact the right to defense, which cannot be limited under any circumstances.

According to a domestic project called "Right to Defense", at least 49 lawyers lost their licenses after August 2020 and the repression that followed. One lawyer (**Maksim Znak**) was sentenced to imprisonment; his persecution was connected, among other things, to his involvement in the defense of Viktor Babaryka

Since April 2021, the following lawyers have been disbarred or deprived of their licenses:

- **Andrei Machalau**, expelled from the bar; the reason was a comment that he gave to the media on the case of his client Volha Zalatar, who reported use of torture; the disciplinary commission of the Minsk City Bar Association viewed the lawyer's comment as a violation of professional ethics. In 2020 and 2021, Machalau represented several independent media journalists and opposition activists;
- **Dzmitry Layeuski**, expelled from the bar; the disciplinary commission of the Minsk City Bar Association ruled to disbar the lawyer for his speech during the debates in the criminal trial of Viktor Babaryka (the defense, among other things, insisted on the innocence of other defendants involved in the trial). This allegation, in the opinion of the disciplinary commission, was unacceptable and violated the rules of professional ethics. Dzmitry Layeuski also represented Maksim Znak and actively criticized the changes to the legislation on the legal profession introduced in 2021;
- On October 20, the Minister of Justice ordered to initiate disciplinary proceedings against another lawyer for Viktor Babaryka and Maksim Znak, **Yauhen Pylchanka**. By the same order, Pylchanka was prohibited to practice law. On October 28, the disciplinary commission of the Minsk City Bar Association ruled to expel Pylchanka from the bar for "systematic violations of the law on the bar";
- **Natallia Matskevich** was expelled from the bar on far-fetched grounds, namely for "systematic violations of the requirements and conditions of the legal profession." Matskevich is a lawyer with an impeccable reputation, known for her high professionalism. She defended Babaryka, Tsikhanouski and a number of other well-known politicians, activists and human rights defenders;

- **Aliaksei Kerol** was expelled from the Minsk City Bar Association on November 4, 2021 for allegedly committing a disciplinary offense in violation of the requirements of the legislation on administrative offenses, incompatible with the title of a lawyer: he was brought to administrative responsibility under Art. 24.23 of the CAO (for violating the procedure for holding mass events);
- In February 2022, lawyer **Yuliya Yurhilevich** was expelled from the Hrodna Bar Association. She defended several political prisoners, including artist Ales Pushkin, student activist Artsiom Bayarski, musician Ihar Bantsar, and Andrei Ausiyevich. The lawyer was disbarred after a complaint by Deputy Prosecutor of the Hrodna region Andrei Skurat.
- In addition, several lawyers were not attested and, as a result, they were expelled from the bar or deprived of their licenses. In particular, lawyer **Aliaksei Nestsiarenka** was arrested together with the press secretary of the telecommunications company A1 Mikalai Bredzeleu. During the arrest, the lawyer was severely beaten. His license was revoked on February 24, 2022 by the qualification commission of the Ministry of Justice.

The amendments to the procedure for the activities of lawyers adopted in 2021 (Law of May 27, 2021 No. 113-Z “On amendments to laws on the legal profession” and Presidential Decree of May 27, 2021 No. 200 “On the organization of the legal profession”) significantly reduced independence of the bodies of lawyers’ self-government, eliminated other forms of legal activities, except as part of legal consultations, expanded the powers of the Ministry of Justice in relation to influence on the bar and lawyers.

These measures have led to a total lack of access to independent and professional legal assistance. The situation of defendants in politically motivated criminal cases looks especially threatening, who at any moment may lose the opportunity to receive qualified legal assistance, both as a result of the deprivation of the license of their lawyer, and because of the fear of lawyers to be involved in the defense of such persons and actively work on the case.

MINORS

Article 14 of the Covenant

4. *In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.*

General Comment No. 32

Article 14: Right to equality before courts and tribunals and to a fair trial

42. *Article 14, paragraph 4, provides that in the case of juvenile persons, procedures should take account of their age and the desirability of promoting their rehabilitation. Juveniles are to enjoy at least the same guarantees and protection as are accorded to adults under article 14 of the Covenant. In addition, juveniles need special protection. [...]*

43. *States should take measures to establish an appropriate juvenile criminal justice system, in order to ensure that juveniles are treated in a manner commensurate with their age. It is important to establish a minimum age below which children and juveniles shall not be put on trial for criminal offences; that age should take into account their physical and mental immaturity.*

44. *Whenever appropriate, in particular where the rehabilitation of juveniles alleged to have committed acts prohibited under penal law would be fostered, measures other than criminal proceedings, such as mediation between the perpetrator and the victim, conferences with the family of the perpetrator, counselling or community service or educational programmes, should be considered, provided they are compatible with the requirements of this Covenant and other relevant human rights standards.*

Belarus has not assumed obligations under the procedure for consideration of individual complaints under the Optional Protocol to the Convention on the Rights of the Child.

Nor has the state implemented the recommendation⁵ of the Committee on the Rights of the Child to “establish a comprehensive system of child justice with specialized courts, procedures and trained judges, lawyers and law enforcement professionals.”

The Committee also called on Belarus to:

- (a) Ensure, in law and in practice, the provision of independent and quality legal aid to children alleged or accused of, or recognized as, having infringed criminal law, from the beginning of the investigation;

⁵ UN Committee on the Rights of the Child. Concluding observations on the combined fifth and sixth periodic reports of Belarus

- (c) Maintain the single minimum age of criminal responsibility for all offences and ensure that children below that age are not treated as offenders and are never placed in closed institutions;
- (e) Promote non-judicial measures, such as diversion, mediation and counselling, for children accused of criminal offences and, as a priority, the use of non-custodial sentences, such as probation or community service;
- (f) Ensure that deprivation of liberty is used as a measure of last resort and for the shortest possible period of time and that it is regularly reviewed with a view to its withdrawal.

Mikita Zalatarou, a 16-year-old political prisoner sentenced to 5 years in prison on charges of “preparing for mass riots” and “illegal actions in relation to objects whose effect is based on the actions of combustible substances,” was again convicted under Art. 364 of the Criminal Code (“violence or threat of violence against a police officer”) for allegedly attacking an employee of the pre-trial prison and threatening the relatives of another employee. On the eve of the incident in question, the plumbing equipment broke down in Mikita’s cell. He was taken to the office of the prison psychologist where he spent the whole night.

“In the morning, they wanted to return me to the cell, but I found out that it had not been cleaned. I refused to return to the dirty cell. In response, I heard: “If you do not go on your own, then we will carry you in.” Then they began twisting my arm, it hurt me a lot. I tried to free myself, and in the middle of this chaos it so happened that I tripped one of the employees,” said Mikita. **The teenager claims that he did not inflict any blows on the guard; he did not grab his clothes or body parts: “I only touched the mask.”**

One of the alleged victims confirmed that the reason for the conflict was Zalatarou’s refusal to return to the uncleaned cell.

“The cells in the pre-trial detention center must be cleaned by those who are kept in them. There are no special personnel for cleaning the cells in our institution. So Mikita’s demands were illegal,” the victim said.

He also said that he was following a verbal order from the head of the institution when he used violence to take Mikita out of the office and to take him to the cell. It were also the orders of the chief that reportedly forced him to use handcuffs.

“Zalatarou grabbed my hair, my ear, tore off the mask,” said the victim. *“Lying on the floor, he shouted threats at the SIZO staff, constantly swearing.”*

The other alleged victim from among the pre-trial detention center staff put forward her version of what happened on March 20-21. In her opinion, Mikita was angry that on that day he did not receive the parcel he was waiting for. According to the employee, in a rage, he vandalized the cell and flooded the floor with water. In the psychologist’s office, Mikita, according to the victim, showed signs of hysterical behavior. He was examined by a psychiatrist, who, however, found nothing pathological. When Mikita was forcibly removed from the psychologist’s office, he threatened the victim and her family: “When I’m out, I’ll burn you!”. According to Zalatarou, he did not harbor any plans of revenge against the staff of the pre-trial detention center. All of the above is explained by the state in which he was then: the teenager suffers from epilepsy, received medication irregularly, was kept in solitary confinement and was worried about his life.

By partially adding the previously awarded term of punishment (5 years in prison) to the new sentence, taking into account the period of pre-trial detention, the total remaining sentence for Mikita amounted to 4 years and 6 months of imprisonment in a juvenile penitentiary.

It is essential that children (persons under the age of 18) are considered by criminology as specific perpetrators of crimes, which are characterized by features that significantly mitigate their responsibility: “Minors are characterized by a curtailed mechanism of criminal behavior (without deliberating their decisions or weighing the pros and cons of achieving a goal), since, due to their age, they cannot make fully balanced decisions and predict the consequences of a criminal act. [...] A decision is made instantly or under the influence of a situation or accomplices, and often adults. Due to the lack of internal assimilation by the adolescent of external regulators of behavior (morality, law), the latter do not work in this case. The very understanding of permissible and unlawful behavior is distorted.”⁶ Thus, the experts are confident that it is inadmissible to consider these criminal cases according to the same procedures as in relation to adults; all the more, it is inadmissible to impose harsh punishments on minors for acts committed for the first time, especially when they did not entail serious consequences.

On July 19, 2021, **Maksim Sh.** was sentenced to three years in a juvenile prison under Part 2 of Article 293 of the Criminal Code on charges of “participating in mass riots” (at the age of 16).

On January 14, 2022, **Maksim K.** was sentenced to 1 year and 6 months in a juvenile prison under Part 1 of Art. 342 (“organization and preparation of actions grossly violating public order, or active participation in them”) and Art. 364 of the Criminal Code (“violence or the threat of violence against an employee of the internal affairs bodies”). A 18-year-old Mikita S. was sentenced in the same case to 1 year and 6 months in prison. Both defendants were minors at the time they were charged. The case was linked to a protest in Mazyr in August 2020.

David Z., who was 17 years old at the time of his arrest, was convicted of participating in “mass riots” in Brest. On July 12, 2021, the court of the Lieninski district of Brest sentenced the teenager to three years in prison.

Ivan P. and **Maksim I.**, both defendants in a “rioting” trial in Brest, were charged under Part 2 of Art. 293 of the Criminal Code (participation in mass riots). On July 12, the court of the Lieninski district of Brest sentenced each to three years in a juvenile penitentiary.

Aliaksandr V. and **Eduard K.** were sentenced on May 21, 2021 to three years in a juvenile penitentiary for participating in “mass riots” (Part 2 of Art. 293 of the Criminal Code). At the time of their arrest and sentencing, both were underage.

Daniil K. was sentenced on June 28, 2021 to one year and three months in a juvenile penitentiary on charges of “group actions that grossly violate public order.” On 9, 2020, Daniil, together with his father, participated in a peaceful meeting in the center of Žlobin.

In all of the above cases, the courts did not take advantage of the opportunity provided by the Criminal Code to impose other measures of criminal liability, namely suspended or conditional sentencing (Articles 77, 78 of the Criminal Code).

⁶ Kriminologiya: Uchebnik dlya vuzov. [Criminology: A Textbook for high schools]. Pod obshch. red. A.I. Dolgovoy. 3-e izd., pererab. i dop. M.: Norma, 2005.

THE RIGHT TO APPEAL (REVIEW) THE VERDICT

Article 14 of the Covenant

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

General Comment No. 32

Article 14: Right to equality before courts and tribunals and to a fair trial

49. The right to have one's conviction reviewed can only be exercised effectively if the convicted person is entitled to have access to a duly reasoned, written judgement of the trial court, and, at least in the court of first appeal where domestic law provides for several instances of appeal, also to other documents, such as trial transcripts, necessary to enjoy the effective exercise of the right to appeal.

Criminal cases considered by the Supreme Court as a court of the first instance are not subject to review in accordance with the CCP. This fundamental violation of the rights of the accused has been repeatedly pointed out by international⁷ and treaty bodies⁸.

The Supreme Court issued a verdict against **Viktar Babaryka** and others, by which the former presidential candidate was sentenced to 14 years in prison. Under existing legislation, he is deprived of the right to review the sentence and was therefore sent to a correctional institution. A supervisory appeal, the procedure of which provides for appealing to judicial and prosecuting officials as a means of challenging a sentence passed in violation of the law, is not recognized as an effective substitute for the possibility of an appeal, since the outcome depends on the discretion of these officials.

In addition, human rights defenders criticize the procedural possibility and practice of courts considering criminal appeals without the participation of the accused, which significantly limits their rights.

⁷ UN Human Rights Committee. Concluding observations on the fifth periodic report of Belarus, para. 27

⁸ Communication No. 2120/2011. Views adopted by the Committee in the case of Lyubov Kovaleva and Tatyana Kozyar, para. 11.6

Also, experts note the inadmissibility of restricting defendants' and convicts' access to the case files, especially to the texts of sentences and minutes of the court sessions, and other procedural decisions. In particular, responses to appeals filed under supervisory procedures are only announced to convicts, while the documents themselves are kept in their personal files, which makes it difficult to further appeal the verdict.

A significant obstacle to appealing against sentences in terms of resolving a civil claim is the requirement for the advance payment by the accused, convicted person or their defense counsel of a court fee in the amount of 4% of the sum being appealed.

SECTION 2. CRIMINAL PROSECUTION AS AN INSTRUMENT FOR VIOLATING HUMAN RIGHTS AND FUNDAMENTAL FREEDOM

THE CONCEPT OF “POLITICAL PRISONER”

At the time of writing, there were over 1,130 political prisoners in Belarus, according to the country's human rights community. The recognition of certain defendants in politically motivated criminal trials as political prisoners is based on observation of court sessions, analysis of information from open sources, together with procedural and other documents. The national coalition of human rights organizations adopts statements based on the [Guidelines for the Definition of Political Prisoners](#).

Meanwhile, “**deprivation of liberty**” means keeping a person in any place if the person cannot leave it due to any type of coercion applied by a state official or with the knowledge and connivance of a state official or authority, or under a decision of a judicial, administrative or other authority or official of the state. Thus, not only the deprivation of liberty in a correctional or juvenile penitentiary proper, or detention in a temporary detention center and a pre-trial detention center, but also restricted freedom in an open correctional institution, house arrest and confinement to closed educational and medical institutions are regarded as imprisonment.

Political motivation are the actual reasons for action or inaction, unacceptable in a democratic society, performed by the law enforcement bodies and judiciary and others with authority to achieve at least one of the following purposes:

- a) *consolidation or retention of power by those with authority;*
- b) *involuntary termination or change in the nature of one's public activities.*

A person deprived of liberty is to be regarded as a **political prisoner**, if at least one of the following criteria is observed:

- a) *the detention has been imposed solely because of their political, religious or other beliefs, as well as non-violent exercise of freedom of thought, conscience and religion, freedom of expression and information, freedom of peaceful assembly and association, and other rights and freedoms guaranteed by the International Covenant on Civil and Political Rights (ICCPR) or the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR);*
- b) *the detention has been imposed solely for activities aimed at defending human rights and fundamental freedoms;*
- c) *the detention has been imposed solely on the basis of gender, race, colour, language, religion; national, ethnic, social or class origin; birth, nationality, sexual orientation and gender identity, property or other status, or on other basis, or due to their firm links with communities united on this basis.*

For this category of political prisoners, human rights defender insist on the immediate and

unconditional release and full rehabilitation, with compensation for the harm inflicted.

A person deprived of liberty is also to be regarded as a political prisoner, if, as well as political reasons for their prosecution, at least one of the following criteria is observed:

a) the detention has been imposed in violation of the right to a fair trial, other rights and freedoms guaranteed by the International Covenant on Civil and Political Rights or the European Convention for the Protection of Human Rights and Fundamental Freedoms;

b) the detention was based on falsification of evidence of the alleged offence, or imposed in the absence of the event or elements of the offence, or imposed in connection with an offence committed by another person;

c) the length of the detention or its conditions are clearly disproportionate (incommensurate) to the offence the person is suspected, accused or has been found guilty of;

d) the person has been detained in a discriminatory manner as compared to other persons.


For this group of political prisoners, human rights activists demand an immediate review of the measures taken against them and judicial decisions, while respecting the right to a fair trial and eliminating factors a-d.

An important circumstance: even in the presence of the above factors, a person cannot be regarded as a political prisoner if they committed:

a) a violent offence against persons, except in cases of self-defence or necessity;

b) a hate crime against a person or property; or the person has called for violent action on national, ethnic, racial, religious or other grounds.

ARBITRARY PROSECUTION OF HUMAN RIGHTS DEFENDERS



Human rights defenders have been separately targeted by the repressive government amid the profound human rights crisis of 2020-2022. The persecution of human rights defenders intensified in September 2020, and as the domestic political situation in the country deteriorated further, it became systematic.

The first victims of persecution were Marfa (Maryia) Rabkova (September 17, 2020), coordinator of Viasna's network of volunteers, and **Andrei Chapiuk** (October 2, 2020), whose case has not yet been considered in court.

Later, on January 18, 2021, **Leanid Sudalenka** and **Tatsiana Lasitsa**, members of Viasna, were taken into custody on charges of "financing group actions that violate public order". Sudalenka was accused of "organizing and financing group actions that grossly violate public order." According to the prosecution, he paid fines to persons prosecuted on administrative charges for participating in protests. Sudalenka's assistant, **Maryia Tarasenska**, was released, but remained under travel restrictions.

The trial of the Homiel human rights activists was held from September 3 to November 3, 2021 behind closed doors. Judge Siarhei Salouski sentenced Sudalenka to three years, and Lasitsa to two and a half years in prison. Tarasenska was able to leave the country, but the charges against her have not been dropped.

Two nation-wide attacks on Viasna members were carried out on February 16 and July 14. As a result of police raids throughout the country, a total of more than 30 activists of the organization, including their family members and former activists, were detained, and more than 50 searches were conducted. After that, **Ales Bialiatski**, **Valiantsin Stefanovich** and **Uladzimir Labkovich** remained in custody on criminal charges. At least seven more people were called suspects in what is now known as the "case of Viasna".

CRIMINAL PROSECUTION FOR EXERCISING POLITICAL RIGHTS

The criminal prosecution of citizens in connection with the exercise of their political rights, including the right to participate in governing the country by participating in elections, started almost immediately after the launch of the presidential election in May 2020.

The first victims of political persecution were persons who announced their intention to run in the election (Siarhei Tsikhanouski), as well as bloggers (Siarhei Piatrukhn, Aliaksandr Kabanau, Dzmitry Kazlou, etc.), and well-known opposition figures (Pavel Seviarynets, Mikalai Statkevich).

Later, as the election campaign progressed, members of nomination groups and presidential nominees themselves (Viktar Babaryka and members of his campaign) were repressed.

A separate group of criminal cases related to the implementation of public political activities are criminal charges brought after the creation of the Coordination Council, which united members of the campaigns of several candidates, as well as representatives of wide circles of civil society in the country.

During the period considered in the report, most of the criminal cases against iconic figures among politicians and activists were considered in court. In particular:

From May 12 to May 25, 2021, in a closed session chaired by judge Iryna Lanchava of the Mahilioŭ Regional Court, a criminal case was considered against seven political prisoners: co-chairman of the BCD organizing committee **Pavel Seviarynets**, blogger **Dzmitry Kazlou**, social activist **Iryna Shchasnaya**, activists of the European Belarus opposition group **Yauhen Afnahel**, **Pavel Yukhnevich**, **Maksim Viniarski** and **Andrei Voinich**. It is known that they were accused under several parts of Article 293 of the Criminal Code.

As a result, the court convicted the defendants under Part 1 of Art. 13 and Part 2 of Art. 293 of the Criminal Code (Afnahel and Voinich also under Part 3 of Art. 293 of the Criminal Code) and sentenced: Seviarynets, Afnahel and Voinich to seven years in a penal colony, Yukhnevich, Kazlou and Viniarski – to five years, and Shchasnaya – to four years in a penal colony.

On July 6, 2021, the Supreme Court, chaired by Ihar Liubavitski, passed a verdict in the “Belgazprombank trial”, in which political prisoner **Viktar Babaryka**, a contender for the presidency of Belarus, was a defendant. Babaryka was found guilty of accepting a bribe on an especially large scale (Part 3 of Art. 430 of the Criminal Code) and of laundering proceeds from crime (Part 2 of Art. 235 of the Criminal Code). He was sentenced to 14 years in prison. In addition, the political prisoner was fined 145,000 rubles, and he will also have to pay more than 46 million rubles to compensate for the damage allegedly caused by the offense. Babaryka was also temporarily deprived of the right to hold managerial positions. The former presidential nominee pleaded not guilty.

From July 24 to December 14, 2021, in Homieŭ, on the territory of the pre-trial detention center, in a closed meeting chaired by judge Mikalai Bakunou of the Homieŭ Regional Court, and later by judge Mikalai Dolia, a criminal case was considered involving well-known

opposition politician **Mikalai Statkevich**, blogger and head of Sviatlana Tsikhanouskaya's nomination group **Siarhei Tsikhanouski**, members of the team of his blog "A Country for Living" **Artsiom Sakau** and **Dmitry Popov**, and bloggers Ihar Losik and **Uladzimir Tsyhanovich**. The scope of charges for each defendant was different and included organizing actions that grossly violated public order, organizing mass riots, inciting social hatred, and obstructing the work of the Central Election Commission.

The court imposed the following sentences: Tsikhanouski – 18 years, Statkevich – 14 years, Losik – 15 years, Popov – 16 years, Sakau – 16 years, and Tsyhanovich – 15 years.

From August 4 to September 6, 2021, the Minsk Regional Court, chaired by judge Siarhei Yepikhau, heard in a closed court session the criminal charges against **Maryia Kalesnikava** and **Maksim Znak**. The two representatives of Viktor Babaryka's presidential campaign and members of the Presidium of the Coordination Council were charged under Part 3 of Art. 361 (calls for action against national security), Part 1 of Art. 357 (conspiracy to seize state power by unconstitutional means) and Part 1 of Art. 361-1 of the Criminal Code (creation of an extremist formation and its management). The sentences were 11 and 10 years in prison, respectively.

It should be noted that the qualification of the actions of many of the above defendants was based on the assumption that there were "mass riots" in August 2020. Human rights defenders have repeatedly expressed [disagreement](#) with the legal qualification of the mass protests that took place in August 2020 as "mass riots". In particular, it was noted that the demonstrators did not carry out actions that are covered by Art. 293 of the Criminal Code, and accordingly cannot be qualified as riots. The protesters did not carry out arson, did not destroy property and did not offer armed resistance to law enforcement agencies. Separate cases of violent actions against police officers by demonstrators require a separate legal qualification, taking into account the context and circumstances of violence, including in the context of self-defense against deliberately disproportionate actions of police officers.

CRIMINAL PROSECUTION OF PARTICIPANTS IN PEACEFUL ASSEMBLIES

According to the Supreme Court, from August 2020 to early February 2022, out of 1,832 people convicted of crimes in one way or another related to protests, 168 were convicted under Art. 293 of the Criminal Code for “organizing or participating in mass riots”, and 396 – under Art. 342 for “group actions that violate public order”.

Law No. 112-Z of May 26, 2021 “On amending the codes on criminal liability”, the Code was supplemented by Article 342-2 (repeated violation of the procedure for organizing or holding mass events), according to which violation of the established procedure for organizing or holding a meeting, rally, street procession, demonstration, picket, or other mass event, including public calls to organize or hold a meeting, rally, street procession, demonstration, picket, or other mass event in violation of the established procedure for their organization or holding (violation of the procedure for organizing or holding mass events), if this act is committed repeatedly, shall be punished by restricted freedom of up to three years or imprisonment for the same period. The novelty entered into force on June 18, 2021. In accordance with the note, for the purposes of Article 342-2, an act is recognized as committed by a person repeatedly if this person was subjected to an administrative penalty twice within one year for committing administrative offenses provided for in Article 24.23 of the CAO, and within a year after the imposition of the second administrative penalty for such acts, again violated the procedure for organizing or holding mass events. Criminalization of the peaceful exercise of the right to peaceful assembly and freedom of expression is an apparent violation of these rights and freedoms. Contrary to expectations, the practice of conviction for this offense has not become widespread.

Art. 342 of the Criminal Code provides for responsibility, among other things, for the lawful exercise of rights and freedoms: it criminalizes the organization of “group actions that grossly violate public order” and are associated with a “clear disobedience to the legitimate demands of government officials” or acts that have caused disruption of the operation of transport, enterprises, institutions or organizations, or active participation in such activities in the absence of signs of a more serious crime. These actions are punishable by a fine, or short imprisonment, or restricted freedom for up to three years, or imprisonment for the same period. Thus, the presence of one or more of the listed circumstances is sufficient for participation in a peaceful assembly to entail criminal liability.

Practice testifies to the presence of a systemic problem of state interference with freedom of peaceful assemblies, including spontaneous protests, in the context of gross violations of the standards of free, democratic, open and competitive presidential elections. *Viasna* notes that when hearing such cases, the courts did not evaluate the actions of the accused and the victims in accordance with a number of legal provisions:

- decision of the Constitutional Court of May 07, 2018 “On compliance of the Constitution of the Republic of Belarus with the Law of the Republic of Belarus “On Amendments and Additions to the Law of the Republic of Belarus “On International Treaties of the Republic of Belarus””, which interprets the application of international legal acts and generally recognized principles of

international law in the national legal system;

- Articles 33 and 35 of the Constitution of the Republic of Belarus on state guarantees of freedoms of expression and assembly;
- Article 137 of the Constitution of the Republic of Belarus on the place of the Constitution in the hierarchy of normative legal acts;
- Articles 19 and 21 of the International Covenant on Civil and Political Rights on the obligations of the state to ensure freedom of expression and freedom of assembly;
- Article 40, paragraph 4, of the International Covenant on Civil and Political Rights, according to which “the Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties”;
- paragraph 51 of the Concluding Observations on the fifth periodic report of Belarus, where the UN Human Rights Committee expressed concern about the regulation of peaceful assemblies in such a way that it hinders the exercise of this right and the ban on spontaneous assemblies.

The Republic of Belarus has been a full member of the Organization for Security and Cooperation in Europe since January 30, 1992. The Council of Experts of the OSCE Office for Democratic Institutions and Human Rights and the European Commission for Democracy through Law (Venice Commission) of the Council of Europe prepared the Guidelines on Freedom of Peaceful Assembly to support the OSCE participating States in the field of legislative activities, helping to ensure that their legislation on freedom of peaceful assembly is in line with international standards and OSCE commitments.

Under to the Guidelines, the **“term ‘peaceful’ includes conduct that may annoy or give offence to individuals or groups opposed to the ideas or claims that the assembly is seeking to promote. It also includes conduct that temporarily hinders, impedes or obstructs the activities of third parties.”**⁹

In this regard, the Human Rights Center Viasna once again notes that the courts still do not assess the actions of the accused in accordance with the context that took place, when the state forcibly suppressed the assembly, which is incompatible with the presumption in favor of holding the assemblies; the positive obligation of the state to promote and protect peaceful assemblies; the obligation of the state to ensure the protection of any assembly and to facilitate it at all times, provided it preserves its peaceful character, and the principle of proportionality of measures providing for the least level of interference. In particular, a spontaneous assembly is seen as a reaction to some event. Its organizer (if any) is not in a position to comply with the notification-based procedure. Such meetings are often close in time to the events that triggered them, and the availability of such meetings is important, as a delay would weaken the effect of the message conveyed by such a meeting. The Law “On Mass Events” does not provide for the possibility to hold a spontaneous assembly.

Viasna is aware of 201 persons convicted under Art. 293 of the Criminal Code and 525 convicted under Art. 342 of the Criminal Code, including in conjunction with other offenses; at least one person was convicted of repeated violation of the procedure for organizing or

⁹ European Commission for Democracy through Law (Venice Commission), OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR): [Guidelines On Freedom Of Peaceful Assembly](#) (3rd Edition)

holding mass events under Article 342-2 of the Criminal Code. This totals 44.2% of all 1,645 convicts in politically motivated cases.

ABSENCE OF RIOTS

There is no definition of “riots” in the Criminal Code and other legal acts; there is also no official interpretation of this notion. The doctrinal interpretation is as follows:

“Riots in the meaning of Article 293 must be accompanied by violence against the individual, arson, destruction of property, armed resistance to representatives of the authorities. Other actions by members of the crowd, expressed in violation of public order, entail administrative responsibility, and in case of gross violation and public order may entail liability under Article 339 or 342 [of the CC].”¹⁰

According to the HRC, **“the provisions of article 293 of the CC are too vague and broad to be able to foresee the legal consequences of one’s actions and there is no definition of what constitutes “mass disorder” in domestic law.”**¹¹ In this regard, the Committee recalls that the right to peaceful assembly, guaranteed by article 21 of the Covenant, is one of the fundamental human rights inherent in a democratic society. This right presupposes the possibility of organizing and participating in a peaceful, including spontaneous, assembly in a public place.

Such deficiencies in legislation led to corresponding miscarriages of justice, which resulted in numerous persons being sentenced to imprisonment under various parts of Article 293 of the Criminal Code for peacefully expressing their protest or committing separate spontaneous violent acts, which often did not entail consequences in the form of bodily harm or damage to property, but were caused by violations of the right to peaceful assembly with the disproportionate use of weapons, riot-control equipment and violence by security forces.

In particular, at least 27 political prisoners were sentenced to terms ranging between three and six and a half years in prison in a series of trials in Pinsk related to the protest of August 9, 2020. The convicts were ordered to pay a total of more than 200 thousand rubles in compensation to security forces and officials. All of them are already serving their sentences in prisons.

The nature of the accusations brought against each of the defendants is reflected by the case of Aleh Ardziuk, one of the last protesters convicted in Pinsk; his actions were qualified under Part 2 of Art. 293 of the Criminal Code. He was accused of breaking the stake supporting a tree and throwing part of it towards a police officer, “in order to inflict damage” and “deliberately threatening with violence”. He also threw a handful of soil towards the police officers. The man was arrested on September 15, 2021, when he was doing military service. The sentence was three and a half years in prison.

At least 66 people have been convicted of participating in “mass riots” in Brest.

In particular, on November 8, judge Aliaksandr Semianchuk of the Lieninski District Court

¹⁰ Nauchno-prakticheskiy kommentariy k Ugolovnomu kodeksu Respubliki Belarus'. [Scientific and Practical Commentary on the CC of the Republic of Belarus]. N.F. Akhramenka [i dr.]; pod redaktsiyey A.V. Barkova, V.M. Khomicha. – 2-ye izd., s izm. i dop. – Minsk: GIUST BGU, 2010.

¹¹ UN Human Rights Committee. Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2212/2012 * , ** (Andrei Sannikov v Belarus)

of Brest announced the verdicts to 19 political prisoners: **Yakau Shafarenka** – five and a half years and a fine; **Stanislau Filimonau** – five years in prison and a fine; **Yauhen Pekach** – four years and 11 months in prison; **Aliaksandr Tseleshman** – four and a half years in prison; **Mark Antonau, Illia Veramei, Ruslan Volkau, Ihar Harchaniuk, Pilip Kantsevich, Ivan Soupel, Siarhei Tratsiuk** – four years in prison each; **Artsiom Klimchuk, Viktor Kazlouski, Hleb Ramanau, Raman Sidziuk, Leu Tsialipka, Aliaksandr Tsimafeyeu, Daniil Khabavets, Pavel Mazko** – three and a half years in prison.

The specific actions by the defendants are varied. On August 10, Soupel bought two burgers in a paper bag at a KFC restaurant. When a stun grenade was thrown from the side of the riot police, he threw the paper bag towards the security forces. It was also imputed that Soupel picked up a paving slab and put it next to him. He did not admit his guilt. Tratsiuk threw a plastic bottle towards the officers and picked up a piece of asphalt.

On January 13, 2022, one of the last convicts in this case, **Stanislau Nestsiaruk**, was sentenced to three years in prison under Part 2 of Art. 293 of the Criminal Code.

Nestsiaruk was found guilty of allegedly participating, along with other people, in a “mass riot” on August 9, 2020, because he did not agree with the election results. Nestsiaruk and others “hit police officers with their hands, feet, sticks, rubbish bins, fragments of benches, paving slabs and asphalt, bottles and stones, metal bolts, paint cans, firecrackers, smoke bombs, fireworks, lit torches.” They “grabbed employees by their uniforms, sprayed them with irritating substances from unidentified tools.” They also “deliberately destroyed paving slabs, gratings of surface inlets, trees, stakes for trees.” When using violence against the police officers, “shields, helmets, body armor, as well as police vehicles and other property were damaged.”

It was Nestsiaruk who was accused of deliberately breaking paving slabs, making “instruments of crime”. Also, according to the prosecution, he caused physical harm “in the form of two wounds in the area of the first finger of the right hand” to Ihar Kaliahin, and beat other victims. The accused denied committing violent acts, as there was no evidence of the relationship between his actions and any of the consequences.

On September 3, 2020, during a post-election protest in central Brest, the demonstrators danced and sang protest songs. People were dispersed with a water cannon, and dozens later faced criminal charges. This is one of the biggest political cases in the history of Belarus. On March 16, 2022, judge Maryna Skalkovich of the Maskoŭski District Court of Brest convicted two more defendants in the series of trials, sentencing **Aliaksandr Antaniuk** to one and a half year in prison and **Ruslan Hachynski** to two years of restricted freedom (home confinement) under Part 1 of Art. 342 of the Criminal Code. 116 people have already been convicted in the “dancing protest case”. The prosecutor’s office reports that the criminal case against six more defendants in the case has been sent to court.

CONVICTION FOR RESISTANCE, THREATS AND VIOLENCE AGAINST POLICE OFFICERS, OTHER GOVERNMENT OFFICIALS, DAMAGE AND DESTRUCTION OF PROPERTY, INCLUDING DURING PROTESTS

When evaluating cases involving allegations of resistance and violence against government officials, the human rights community is guided by the following considerations:

Articles 363, 364, 365 of the CC protect only the legal official activities of police officers.

In cases where an officer commits actions that are clearly illegal, for example, abuse of power, citizens have the right to resort to protection up to forceful opposition to illegal manifestations.¹²

In accordance with Part 2 of Article 34 of the CC, it is not a crime to commit an act in a state of necessary defense, that is, while protecting the life, health, **rights of the defender or another person, the interests of society** or the state from a socially dangerous encroachment by causing harm to the infringer, if, at the same time, the limits of necessary defense were not exceeded.

Taking into account the above legal reasoning about the need to apply the international standard of freedom of assembly and the obligation of the state to assist in their conduct, along with the lack of legal regulation of spontaneous assemblies in the national law, one cannot agree with the courts' assessments of the nature of the actions of police officers to forcibly suppress a peaceful assembly. In this regard, as a rule, an unambiguous conclusion follows about the absence in the actions of the accused of such a necessary sign of corpus delicti as an object. Thus, in the actions of the accused there is no corpus delicti provided for by the corresponding articles of the CC (Art. 363, 364, etc.). Criminal prosecution of participants in peaceful assemblies who used retaliatory violence is thus, as a rule, impossible due to the insignificance of bodily harm inflicted on police officers (often through negligence, in a state of extreme necessity) in defense of their rights or in self-defense.

¹² Nauchno-prakticheskiy kommentariy k Ugolovnomu kodeksu Respubliki Belarus'. [Scientific and Practical Commentary on the CC of the Republic of Belarus]. N.F. Akhramenka [i dr.]; pod redaktsiyey A.V. Barkova, V.M. Khomicha. – 2-ye izd., s izm. i dop. – Minsk: GIUST BGU, 2010.

CRIMINAL PROSECUTION FOR EXERCISING FREEDOM OF EXPRESSION

As public protest activity declined in 2021, the persecution of citizens for public expression of opinion came to the fore.

As of March 26, 2021, prosecutors [submitted](#) to the courts 102 criminal cases on charges of “publicly insulting government officials in connection with the performance of their official duties” involving 103 defendants, of which 65 were convicted at that time.

The Supreme Court released data as of the beginning of February 2022 reporting on 468 persons convicted of insulting government officials, and 29 of libel.

By mid-April 2022, according to Viasna:

- under Art. 369 of the Criminal Code, at least 414 persons¹³ were convicted of publicly insulting government officials, of which at least three were sentenced to brief imprisonment, about 60 to imprisonment¹⁴, 146 to restricted freedom in open penitentiaries and 206 – to home confinement.

On May 25, 2021, judge Khaladtsova of the Mahilioŭ District Court convicted Siarhei Bankou under Art. 369 of the Criminal Code. “Having criminal intent aimed at publicly insulting government officials in connection with the performance of their official duties as employees of internal affairs bodies,” [...] “in order to humiliate their honor and dignity, out of base motives” he “deliberately and publicly insulted S.V. Shramau and A.L. Shlupakou.” [...] “On the Odnoklassniki website, under a published photo depicting Shramau and Shlupakou, on which there is a phrase “Risking their lives, these officers seized balloons”, [he] posted a comment about Shramau and Shlupakou, which had an obscene form of speech expression “P... e...”, the use of which in a certain context to a specific person expresses a negative assessment of the addressee and is offensive to him in terms of meaning, contains social intolerance towards representatives of the authorities, is expressed in an indecent form, humiliating the honor and dignity of the personality of police officers.” Bankou was found guilty of publicly insulting representatives of the authorities in connection with the performance of their official duties and, on the basis of Art. 369 of the Criminal Code, sentenced to a term of restricted freedom in an open correctional institution.

- under Art. 367 of the Criminal Code, at least 22 persons were convicted of “slandering Lukashenka”, 16 people were sentenced to imprisonment, 4 to restricted freedom in open penitentiaries, and 2 – to home confinement.

Siarhei Vasiliyev was arrested displaying in a public place a sign reading “Usurper”. Before the trial, the political prisoner was kept in a pre-trial detention center in Žodzina and was eventually sentenced to three years of restricted freedom in an open penitentiary.

Iryna Vikholm was arrested on May 28, 2021 for a tweet posted on May 23. The tweet referred to a publication on LiveJournal with a repost of a BBC Russian Service publication about the incident with the Ryanair plane. Vikholm added her headline to the repost: “Lukashenka’s next crime: an act of state air piracy”, while the phrase “act of state air piracy” was cited as a reaction of the Greek

¹³ Sometimes in conjunction with other charges

¹⁴ In conjunction with more serious offenses

Foreign Ministry. On September 20, 2021, judge Yauhen Brehan of the Maskoŭski District Court of Brest sentenced Vikholm to one and a half years in prison under Part 2 of Art. 367 of the Criminal Code.

- under Art. 368 of the Criminal Code, at least 155 people were convicted of “insulting Lukashenka”, of which 94 were imprisoned, one was awarded a suspended sentence, 6 were sentenced to brief terms of imprisonment, 38 were sentenced to restricted freedom in open penitentiaries, and 16 – to home confinement.

On May 7, 2021, judge Mikhnevich of the Smarhoń District Court convicted Aliaksei Bayarovich who posted a comment in a group on the social media VKontakte using words that “contained a negative assessment of the President of the Republic of Belarus A. Lukashenka” and used as an “offensive form of speech”, as a result of which the specified offensive comment was repeatedly viewed by at least 8,900 unidentified users. The comment itself was never mentioned in the verdict. According to a court-appointed expert, the text contains “words and expressions with a negative evaluative meaning, which have a non-normative form of speech expression.” Bayarovich was found guilty of publicly insulting the president (Part 1 of Art. 368 of the Criminal Code) and sentenced one and a half years of restricted freedom in an open correctional institution.

On April 1, 2022, the Bychaŭ District Court considered the criminal case of Aliaksandr Audzeyuk. He was accused under Part 1 of Art. 367 and Part 1 of Art. 368. The case was heard by judge Aliaksandr Marozau.

According to the case file, no later than August 2021, Audzeyuk “liked” a post in the public group “My Country – Free European Belarus” on the Odnoklassniki social media. The publication contained a photograph of Lukashenka and an offensive caption related to the accusation of fascism. It is worth emphasizing that Audzeyuk himself did not post anything – he only reacted to the publication. However, a linguistic examination pointed to a “negative assessment of Lukashenka,” and the state prosecutor announced the manifestation of “social intolerance towards government officials.” Moreover, he stressed that Audzeyuk liked the post out of revenge. The defendant was eventually sentenced to two years in prison.

- under Art. 391 of the Criminal Code, at least 28 sentences were passed for insulting a judge.

Dzmitry Yurkoits was sentenced by the court of the Navahrudak district to 1 year and 6 months of restricted freedom and sent to an open correctional facility for insulting a judge (Art. 391 of the Criminal Code). Yurkoits was found guilty of insulting judge Filatau when seeing him in the street. The judge is known for convicting numerous defendants in politically motivated trials.

As one can see, the majority of cases of “insulting officials” (Art. 369 of the Criminal Code) resulted in terms of restricted freedom, including confinement to an open correctional institution, while most of those convicted for insulting and slandering Lukashenka were deprived of their liberty.

Many of those convicted under these articles were found guilty of committing crimes under several defamatory offenses (Articles 367, 368, 369) in various combinations.

Ruslan Linnik is a YouTube blogger who has been making videos on socially significant and political topics since 2020. As of February 2021, his channel had over 90 thousand subscribers. According to the indictment, he posted a video with insults to representatives of the police department. On September 17, the court of the Maskoŭski district of Minsk found the political prisoner guilty under

four articles of the Criminal Code: Part 1 and Part 2 of Art. 367 for slander against Lukashenka, Part 1 of Art. 368 for insulting Lukashenka, Art. 369 for insulting a government representative, and Art. 188 of the Criminal Code for slander. According to the prosecution, all these were the contents of the videos the blogger posted on his YouTube channel to target Aliaksandr Lukashenka, former KGB chairperson Valery Vakulchyk, former Interior Minister Yury Karayeu and his deputy Henadz Kazakevich, and Defense Minister Viktor Khrenin. Judge Yury Mashketau punished Linnik with four years in prison. At the trial, Ruslan Linnik did not admit his guilt, refused to testify, and in his last statement, he spoke about the psychological and physical pressure from the security forces.

A separate category of cases related to the exercise of freedom of expression are cases related to accusations of “desecration of state symbols” (in some cases, the actions are qualified as “malicious hooliganism”).

At least 77 people were convicted under Art. 370 of the Criminal Code: at least 11 sentenced to brief imprisonment, at least 24 to longer terms in prison, at least 29 to restricted freedom in open penitentiaries and at least 11 – to home confinement.

For example, on December 10, 2021, judge Siarhei Salouski of the Centralny District Court of Homiel considered a criminal case against three persons accused of committing a crime under Art. 370 of the Criminal Code (desecration of state symbols).

During their stay in Homiel on August 29, 2021, the accused, Maksim Mychko, Yana Mileuskaya and Aliaksandr Bendz, “acting in a group of persons by prior agreement, expressing a disdainful attitude towards the state flag of the Republic of Belarus”, tore it off, then the accused Mychko threw it on the sidewalk. By the court’s verdict, all the accused were found guilty of desecrating the state flag of the Republic of Belarus and on the basis of Art. 370 of the Criminal Code, they were sentenced to imprisonment for a period of one year each.

Ihar Buzuk was sentenced to two years in prison for hanging a white-red-white flag on the memorial complex “Mound of Glory”, which the court regarded as desecration of state symbols (Art. 370 of the Criminal Code).

Viachaslau Savichau was sentenced to one year in prison under Art. 370 of the Criminal Code (desecration of the state flag) for removing a flag from a government building and breaking the flagpole.

On June 28, 2021, Hanna Vazhnik was found guilty under Art. 370 of the Criminal Code and sentenced to one year of restricted freedom (home confinement). The case was considered by judge Alena Zhyvitsa. Vazhnik was found guilty of reworking one verse of the national anthem on her personal Twitter account, starting it with the phrase “We are extremists, peaceful people...”. According to the prosecution, she committed a desecration of the state symbol, namely the anthem.

In response to an increase in the number of convictions and terms of imprisonment on charges of defamation and in connection with the desecration of the state symbols, representatives of the Belarusian human rights community issued a joint statement to underscore their position on this category of criminal cases and once again confirm their repeated calls to decriminalize defamation and refrain from imprisoning individuals for insulting officials, the state, state bodies and symbols.

The statement, in particular, noted that article 19 of the Covenant guarantees the right to freedom of opinion and expression. At the same time, in order to protect the rights and reputation of others, permissible restrictions on this right are established.

Decriminalization of defamation offenses is a standard formulated and justified in the decisions of a number of international organizations. International bodies, the UN and the OSCE, recommended repealing the laws that criminalize defamation, or at least abstaining from imprisoning individuals for committing defamatory offenses, selecting civil prosecution as the standard. The OSCE Parliamentary Assembly called for the repeal of all laws that criminalize defamation of public persons, the state or its organs. The UN and OSCE Special Rapporteurs on freedom of expression stated that “criminal defamation is not a justifiable restriction on freedom of expression; all defamation laws are to be repealed and replaced, where necessary, with civil liability.”

In accordance with the Johannesburg Principles (principles 15 and 16), the peaceful exercise of freedom of expression should not be viewed as a threat to national security or subject to restrictions or punishment. Expression of opinions that do not constitute a threat to national security include, but are not limited to, statements that criticize or insult a nation, state or its symbols, government, government departments, or government and public figures.

No one may be punished for criticizing or insulting the nation, the state or its symbols, the government, its agencies, or public officials, or a foreign nation, state or its symbols, government, agency or public official unless the criticism or insult was intended and likely to incite imminent violence.

Restrictions on freedom of expression should not be linked to the official status of those individuals about whom information or data are disseminated.

In its General comment No. 34 of September 12, 2011, the HRC expresses concern about laws on such matters as, insulting a high official, contempt of court, disrespect for government officials, disrespect for the flag and symbols, defamation of the head of state and protecting the dignity of government officials. The Committee also notes that laws should not provide for more severe penalties solely on the basis of the status of the individual whose reputation was allegedly questioned.

Thus, the level of protection against defamatory forms of expression (attacks on the honor, dignity and reputation of an individual by disseminating derogatory information or offensive statements) among state officials, including the president, prosecutors or judges, should not exceed that enjoyed by any other citizens.

Officials who have been recognized as victims in criminal cases on charges of insult or defamation should be provided with other measures of legal protection of their honor and dignity, including in civil law, on equal terms with other persons.

The above statement by the Belarusian human rights defenders once again calls on the Belarusian authorities to take measures aimed at decriminalizing defamatory offenses and repealing articles of the CC providing for liability for insulting (discrediting) the state, state symbols and government officials, including the president, namely, Art. 188, 189, 367, 368, 369, 369-1, and 370 of the CC of the Republic of Belarus, and terminate all previously initiated criminal cases under these articles.

ANTI-EXTREMIST LEGISLATION. PERSECUTION FOR “INCITING SOCIAL DISCORD”



In accordance with art. 19 of the Covenant, “everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.” The exercise of these rights carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: for respect of the rights or reputations of others; for the protection of national security or of public order (ordre public), or of public health or morals.

The current political and legal crisis has been marked by increased practice of applying Art. 130 of the Criminal Code (inciting racial, national, religious hatred or discord), namely, inciting hatred against police officers, civil servants or representatives of public authorities (government officials).

Since late 2020, Art. 130 has been increasingly used to criminalize expression of opinions about certain historical events during World War II and assessments of the post-war anti-Soviet resistance in Belarus, which differ from the views adopted by Soviet historiography and shared by the current authorities of Belarus as the only true dogmatic norms. This practice coincided with the launch of active anti-Polish rhetoric and propaganda on the part of the official Minsk, as well as the actions of the authorities aimed at combating the national insignia (former state symbols in 1991-95) that have become the symbols of the post-election protests: the white-red-white flag and the Pahonia coat-of-arms.

It is in this context that significant changes were made to the law on countering extremism and the law on countering the “glorification of Nazism” was adopted.

The Law “On Amendments to Laws on Countering Extremism” was adopted on May 14, 2021 and entered into force on June 16, 2021. This law reworded the “Law on Countering Extremism” of 2007. But, in fact, this is a new act that retained the general structure and many provisions from the previous piece of legislation.

The new law was developed and adopted within a few months and no public discussion was organized to assess the bill. Deputy Chairperson of the Standing Commission on Human Rights, Ethnic Relations and the Mass Media of the House of Representatives of the National Assembly Liliya Ananich commented on this: “We saw new phenomena that spilled onto our streets. What is it if not extremism when we see gatherings of people, attempts to counteract the work of enterprises, calls for strikes. This is nothing more than an encroachment on the independence, sovereignty, constitutional system of the state.”

The law defines extremism (extremist activity) as the activity of citizens of the Republic of Belarus, foreign citizens or stateless persons (hereinafter, unless otherwise indicated, citizens) or political parties, trade unions, other public associations, religious and other organizations, including

foreign or international organizations or their representative offices (hereinafter, unless otherwise indicated, organizations), formations and individual entrepreneurs aimed at planning, organizing, preparing and committing encroachments on independence, territorial integrity, sovereignty, the foundations of the constitutional order, public security by:

- violent change of the constitutional order and (or) territorial integrity of the Republic of Belarus;
- seizing or retaining state power in an unconstitutional way;
- creation of an extremist formation or participation in an extremist formation;
- facilitating the implementation of extremist activities, receiving education or other training to participate in such activities;
- distribution for these purposes of deliberately false information about the political, economic, social, military or international situation of the Republic of Belarus, the legal status of citizens in the Republic of Belarus, discrediting the Republic of Belarus;
- insulting for these purposes a representative of the authorities in connection with the performance of their official duties, discrediting public authorities and administration;
- creation for these purposes of an illegal armed formation;
- carrying out terrorist activities;
- incitement of racial, national, religious or other social enmity or discord, political or ideological enmity or discord against any social group, including the commission of unlawful acts against public order and public morality, the order of government, life and health, personal freedom, honor and dignity of the person, property;
- organizing and carrying out mass riots, acts of vandalism involving damage or destruction of property, seizure of buildings and structures, other actions grossly violating public order, or active participation in them based on racial, national, religious or other social hostility or discord, political or ideological enmity or discord in relation to any social group;
- committing for these purposes illegal actions in relation to weapons, ammunition, explosives;
- propaganda of exclusivity, superiority or inferiority of citizens on the basis of their social, racial, national, religious or linguistic affiliation;
- distribution of extremist materials, as well as the production, publication, storage or transportation of such materials for the purpose of distribution;
- rehabilitation of Nazism, propaganda or public demonstration, production, distribution of Nazi symbols and paraphernalia, as well as the storage or acquisition of such symbols or paraphernalia for the purpose of distribution;
- obstruction of the lawful activities of state bodies, including the Central Commission of the Republic of Belarus for elections and holding republican referendums, election commissions, referendum commissions, commissions for conducting voting on the recall of a deputy, as well as the lawful activities of officials of these bodies, commissions, committed with the use of violence, threats of its use, deceit, bribery, as well as the use of violence or the threat of violence against relatives of these officials in order to obstruct their lawful activities or to force them to change the nature of such activities, or out of revenge for the performance of their official duties;

- *financing of extremist activities;*
- *public calls to organize or conduct for these purposes an illegal assembly, rally, street procession, demonstration or picket in violation of the established procedure for organizing or holding them, or involving persons in participation in such mass events through violence, threat of violence, deceit or payment of remuneration, or any other organization or holding of such mass events, if their conduct caused by negligence the death of people, the infliction of grievous bodily injury to one or more persons, or the infliction of damage on a large scale;*
- *public calls for the listed actions, as well as public justification of such actions.*

Prior to the amendments, extremism was defined as possessing the obligatory element of planning, organizing, preparing and committing attacks on independence, territorial integrity, sovereignty, and the foundations of the constitutional order. This separated crimes committed without the specified goals – for example, insulting police officers and resisting them. At present, this distinction is blurred, as an attack on public safety has been added to extremist goals, while all crimes in one way or another encroach on public safety.

Art. 130 punishes deliberate actions aimed at “inciting racial, national, religious or other social hatred or discord on the basis of racial, national, religious, linguistic or other social affiliation.” The Criminal Code is supplemented with a note to Article 130, according to which “other social affiliation in this article means belonging of a person to a certain social group on the basis of gender, age, profession, occupation, place of residence and other social group identification.”

From August 2020 to mid-April 2022, at least 57 people were convicted under Article 130 of the Criminal Code, 55 of them were sentenced to terms of imprisonment. In almost all known verdicts, representatives of the authorities were identified as the object of encroachment.

On March 20, 2021, judge Alena Shylko of the Minsk City Court announced a sentence to **Miya Mitkevich**, establishing in the verdict that the accused,

having the intent to deliberate actions aimed at inciting other social enmity and discord on the basis of a different social affiliation, adhering to and sharing the ideas of creating hostility, intolerance and negative attitudes of an indefinite wide range of people living on the territory of the Republic of Belarus towards law enforcement officers and their supporters, expressed in intentional, substantiating and affirming statements and inciting to commit violent and aggressive actions by justifying and approving them against representatives of groups united on the basis of professional affiliation: “Ministry of Internal Affairs employees who are representatives of the special police detachment of the police department of public security of the Central Internal Affairs Directorate of the Minsk City Executive Committee and the special counter-terrorism unit “Almaz” of the criminal police” and “civil servants who, taking advantage of lack of control, can profit from unseemly illegal ways” (hereinafter – representatives of the group united on the basis of professional affiliation), wishing to disseminate these ideas in relation to representatives of the groups, that is, acting on the motives of inciting other social enmity and discord on the basis of a different social affiliation, forming a generalized (any Internet user) and a specific addressee (persons who share the views and attitudes of the addresser) hostile attitude towards specific officials (former Minister of Internal Affairs Yu. Karayeu) and towards representatives of groups united on the basis of professional affiliation, acting deliberately and purposefully, realizing publicly the nature of her actions and wishing to commit them, [...] for reasons of political and ideological hostility associated with the electoral campaign

in the Republic of Belarus and different political views, as well as for reasons of hostility and discord in relation to a social group, placed one by one in free access on the Internet on a personal page in the social network VKontakte three public text articles with threats and calls for the use of physical violence and murder against groups identified on the grounds of professional affiliation, humiliating their honor and dignity, aimed at inciting other social enmity and hatred, in which, according to the conclusion of the linguistic examination, there are statements containing a negative assessment of the groups of persons united on the basis of professional affiliation and statements of a motivating nature calling for violent actions (actions aimed at causing harm), as a result of which the first text was viewed 336 times and “liked” at least 5 times, the second – 155 and 4 times, respectively, the third – 129 and 3 times.

This verdict, as many others before, failed to quote the publications or the allegedly motivating statements. Mitkevich was sentenced to three years in prison.

On July 20, 2021, judge Ihar Stefanouski of the Viciebsk Regional Court passed a sentence against A. Korshun under Part 1 of Art. 130 of the Criminal Code:

On September 5, 2020, Korshun, sharing and adhering to the ideas of social intolerance towards representatives of the authorities and other social groups, showing open hostility towards persons representing the system of authorities, the government of the country and related to the activities and functioning of the state in the Republic of Belarus, that is, acting on the motives of other social hostility on the basis of a different social affiliation, guided by personal convictions, having a single criminal intent, intention, goal and desire aimed at inciting a different social enmity among an indefinitely wide range of people on the basis of a different social affiliation and wishing this, [...] using a page created by him on the social network VKontakte, under the publication titled “The doctor who told the truth about the situation with the coronavirus was detained in Lida” posted three texts (comments) that were aimed at inciting other social hatred and after posting, continued to store and distribute them, not taking measures to limit the possibility to view them.

These texts have a socio-psychological orientation associated with the formation of a hostile socio-psychological attitude in the addressee (including a negative attitude and a motivated inclination to commit violent and aggressive actions) towards a group of people united on the basis of belonging to the system of authorities, the government of the country, as well as towards a group of persons associated with the activities and functioning of the state. The content of the comments is aimed at inciting social hostility in a generalized and specific addressee, undermining trust and the emergence of hostility towards them, increasing intolerance, forming a negative stereotype, negative image, antipathy, disgust and hatred towards these social groups of citizens.

The comments that were subject to expertise represented negatively a group of people representing the system of authorities and the government: “Beasts!!!”, “They can do nothing but hide the truth!!!”, “Ostentatiously show hospitals where everything is fine, everything is beautiful – but actually what is going on???” “We are all cattle for the state and they treat us like pigs, but we all tolerate it”, “Because they intimidated us, law enforcement agencies, if you say something, they will attack you and your life is over”, as well as a group of people associated with the activities and functioning of the state: “These beasts don’t understand anything when you’re nice!!”; motivating character: “Since they don’t understand it the good way, under the law, it turns out that they have to be intimidated by brute physical force, as in Ukraine in 2014!!”, “Max, why not knock this machine over???” calling for violent action.

Korshun was eventually sentenced to two and a half years in prison.

On June 7, 2021, judge Mikalai Sianko of the Brest Regional Court passed a sentence against Uladzislau Buryń under Art. 130 of the Criminal Code.

In the period from September 20 to September 27, 2020, Buryń, having a single intent to incite other social hostility and discord among the population of the Republic of Belarus on the basis of a different social affiliation in relation to law enforcement officers, military personnel, employees of state bodies and institutions of the Republic of Belarus, members of their families, [...] created and distributed on the Internet in the Telegram messenger text messages that negatively assess persons united on the basis of belonging in the Republic of Belarus to the groups of “employees of internal affairs bodies and members of their families”, “military personnel and members of their families”, “employees of state bodies and members of their families”, contain statements of a stimulating nature, forming hostile socio-psychological attitudes calling for violent and aggressive actions aimed at causing harm by a group of other persons (population of the Republic of Belarus) in relation to other persons from the listed groups. Buryń, through the distribution of his messages, addressed the information contained in them to the public information space, sent it to an indefinitely wide circle of people and offered his point of view as the only true, correct and corresponding to the needs of the addressees of these messages, formed the addressees of the messages, including the population of the Republic of Belarus groups listed above, encouraged addressees to illegal group actions that could provoke conflict situations and incite social hatred and enmity on the basis of a different social affiliation between the indicated groups of persons, or their representatives on the territory of the Republic of Belarus.

The verdict did not quote the statements; some of them, according to an expert, contain a negative assessment of the groups listed above, statements of a motivating nature that form hostile socio-psychological attitudes. Some of the statements allegedly form a negative attitude towards representatives of the groups united on the grounds of being “employees of the internal affairs bodies” and “military personnel”, or “applying harsh measures of influence against participants in protest movements” and those “who support the “anti-people regime””, which is identified with their poor performance of their professional duties. The socio-psychological orientation of one of the messages was assessed by the expert as related to the motivation of the addressee to commit violent and aggressive actions against members of the group united on the basis of belonging to “employees of the internal affairs bodies resorting to harsh measures to influence the participants in the protest movements of “peaceful protesters””, as well as to the group of “parasites”. The messages also contain criticism of the group called “Belarusians with a passive civic position”.

Buryń was sentenced to three years in prison.

Assessing the results of monitoring the investigation and consideration by the courts of cases of this category, the experts also came to the conclusion that a significant drawback of the sentences under Articles 130, 367-369, etc. is the lack of indication of specific expressions that are imputed to the accused, which makes it difficult or even impossible to draw a conclusion, on the basis of the verdict, the most important act of justice in a criminal case, about the validity of criminal prosecution in each specific case.

CONCLUSION AND RECOMMENDATIONS

The process of criminal proceedings, including in courts, was marred by widespread violations of national legal norms, constitutional and internationally recognized standards of a fair trial. Trampling on human rights and ignoring their flagrant violations has fundamentally undermined trust in law enforcement agencies, as well as trust and respect for the justice system.

The Belarusian authorities should:

- respect and observe the rights and freedoms enshrined in the Covenant and other universal and regional instruments;
- abandon repressive legislation that arbitrarily restricts human rights and freedoms;
- take all necessary measures to respect fundamental human rights in criminal proceedings, including by ensuring that all detainees and those brought before the courts have the right to a defense, the right not to be subjected to torture, the presumption of innocence, as well as other rights and guarantees provided for by the Covenant;
- ensure a wide-ranging supervisory review of cases considered in violation of national law and human rights, with a view to rehabilitating all victims and compensating for the harm caused to them;
- take measures to restore the constitutional role of the courts in the system of state building;
- release all political prisoners and take measures to review all illegally issued politically motivated sentences.