



**CRIMINAL PROSECUTION
FOR POLITICAL REASONS**

BELARUS 2020-2021

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INTRODUCTION

With the help of its volunteers, the Human Rights Center *Viasna* monitored politically motivated criminal trials, collecting information about this category of cases in order to analyze them in terms 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 150 court hearings in criminal trials were monitored. This report is another effort in a series of reports¹ designed to raise awareness of the public, national and international institutions, and government bodies about human rights violations observed in Belarus during the presidential elections and in the post-election period in 2020 and 2021.

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 – UN Human Rights Committee;

CC – Criminal Code of the Republic of Belarus;

CCP – Code of Criminal Procedure of the Republic of Belarus;

Guidelines – Guidelines on the Definition of Political Prisoners;

PECAO – Procedural and Executive Code on Administrative Offenses.

¹ [Belarus. August 2020: "Justice" for Protesters; Politically Motivated Administrative Proceedings: Standards and Reality in Contemporary Belarus](#)

CONTEXT

The election of the President of the Republic of Belarus was the main factor that determined the further development of the domestic political situation in 2020 and 2021, resulting in a profound crisis of human rights.

The holding of similar nationwide electoral campaigns earlier repeatedly led to increased repression against the political opponents of the current political regime and representatives of civil society. The only exception was the 2015 presidential election.

In 2020, harsh repression, including against direct participants in the electoral campaign, was observed from the very start of the elections in May, in contrast to 2006 and 2010, when it was not significant until after Election Day.

The repression during the election campaign was due to its nature, associated with the emergence of new active participants, previously unknown and not involved in political processes in the country, most notably **Sviatlana Tsikhanouskaya**, former Belgazprombank CEO **Viktar Babaryka** and former government official **Valery Tsapkala**. Significant and unprecedented involvement of voters lining up to sign for alternative candidates' nominations and subsequent meetings of thousands of voters with presidential candidate Tsikhanouskaya and members of the joint opposition headquarters **Maryia Kalesnikava** and **Veranika Tsapkala** clearly demonstrated the demand for political change among the majority of the Belarusian public.

The government's response to this unexpected political activity was repression.

Before the start of voting on August 9, there were already 24 political prisoners, according to the Belarusian human rights community: bloggers, members of nomination groups and opposition figures. Since mid-summer, the authorities had detained **Siarhei Tsikhanouski** and **Viktar Babaryka**, together with several veteran opposition politicians (**Mikalai Statkevich**, **Pavel Seviarynets**) and popular bloggers (**Siarhei Piatrukhin**, **Aliaksandr Kabanau**).

The election campaign itself was rather traditional for Belarus, and the results of its first phases demonstrated the authorities' desire to maintain full control over the election process.

Voting, and especially the counting of votes, demonstrated that the election results were falsified, and the figures announced by the CEC head had nothing to do with the actual will of the voters. Representatives of the domestic observation initiative "Human Rights Defenders for Free Elections" came to such conclusions based on the results of a nationwide non-partisan observation.

It was the disagreement with the official election results that prompted the nationwide protests in the post-election period, which, in turn, led to an even greater increase in repression.

After the polling stations closed on August 9, in many cities of the country, people took to the streets to protest against election fraud, demanding an honest vote count.

The protests continued in the following days to gradually fade away by late 2020. Despite the generally peaceful nature of the protests, on August 9-12, the demonstrators and

ordinary passersby encountered disproportionate violence from security forces, who used riot control gear and, for the first time in the history of Belarus, weapons: stun grenades, less-lethal weapons, armored vehicles, and in some cases – combat weapons. This led to a large number of victims, including injuries, mutilations and even deaths (**Aliaksandr Taraikouski, Henadz Shutau, and Aliaksandr Vikhor**).

On August 11, the media obtained evidence of unprecedented violent punitive measures used against protesters: police officers and special forces beat detainees in police vehicles, on the premises of police departments, in other facilities run by the Ministry of Internal Affairs, which were used for the accumulation and detention of protesters, as well as in places of detention and imprisonment, e.g. detention centers, prisons and pre-trial detention centers. This information led to an even greater intensification of protests. Belarusian public opposed the violence en masse.

Nevertheless, neither the leadership of the Ministry of Internal Affairs nor the top government officials condemned the use of torture by officers of the law enforcement agencies. To date, the prosecuting authorities and the Investigative Committee have not opened a single criminal case to investigate deaths of protesters and the use of torture and ill-treatment against them. Meanwhile, it is known about at least 4,644 statements filed by the alleged victims to report use of “physical force and riot control equipment by officers of the Ministry of Internal Affairs in the course of suppressing unauthorized protests”², the investigation of which is being protracted. *Viasna* has documented more than 1,000 cases of torture. The use of torture and ill-treatment of detainees continues to this day, and impunity leads to new tragedies and deaths, in particular that of protester **Raman Bandarenka**.

Criminal prosecution has become one of the main types of repression used by the Belarusian authorities. [According](#) to the chairperson of the Investigative Committee, as of March 4, 2021, 2,407 criminal cases have been opened to investigate protest-related “extremism”.

In addition, numerous criminal cases were opened on charges of insulting the president and government officials, damage to property and hooliganism (vandalism, or protest graffiti), resistance or violence against police officers, and economic crimes.

The profound human rights crisis has led to a sharp increase in [the number](#) of political prisoners, which has grown to over 350, as of the time of writing, and the number is far from being final. In total, human rights defenders [know](#) the names of more than 1,000 people prosecuted in criminal proceedings related to the 2020 elections and the subsequent protests.

For the first time in the country’s modern history, a criminal case was opened under Art. 357 of the CC, “conspiracy and other actions committed with the aim of seizing power.”

The repression has become widespread. The Belarusian authorities continue to commit routine and systemic violations of human rights, and the country’s legal system is unable to provide adequate protection for violated rights and is completely reoriented towards repression.

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

OBSERVATION CONDITIONS



General comment No. 32

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

28. All trials in criminal matters or related to a suit at law 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 citizen observation, *Viasna* openly and publicly recruited volunteers, including lawyers, who, after being briefed on the basic principles of observation [non-interference, impartiality, professionalism, confidentiality, and guarantees for all persons when considering any criminal charge brought against them (article 14 and others of the Covenant)], observed hearings in 59 courts located in 46 cities of Belarus.

Due to the peculiarities of the current socio-political situation, contacts and interviews with representatives of the Investigative Committee, the state prosecution and judges were excluded from the monitoring, and interviews with lawyers were also limited. In a number of cases, procedural documents and court rulings were studied.

During the observation period, there were basically no problems with the provision of information by the courts to the parties and the public about the time and place of court hearings. As a rule, the information was communicated to the participants in the trials, put up on bulleting boards in the court buildings, and communicated during the consideration of cases to the parties and those present.

General comment No. 32

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

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.

During the observation, there were cases of court hearings in protest-related criminal cases held behind closed doors in the absence of any of the grounds provided for by the Covenant. In addition, following these closed hearings, the announced verdicts usually lacked key conclusions, references to evidence and legal reasoning. The rulings only contained the operative part, which stated guilt or innocence, the type and duration of the sentence imposed, the decision to recover funds, confiscation of items, orders about material evidence and other seized property, some other similar information, which was insufficient for conclusions about the facts and circumstances established by the court, together with other important components of the sentence.

In particular, closed court hearings were ordered in the criminal trials of **Vitold Ashurak** (Lida) on charges under Articles 342 and 364 of the CC, **Yauhen Vinchy** (Lida) on charges under Article 364 of the CC, **Aliaksei Melnikau** (Mahilioŭ) on charges under Article 13, Part 2 of Article 293, Part 3 of Article 295, and Part 1 of Article 295-3 of the CC, which inadmissibly restricted the constitutional and internationally recognized rights of the accused and constituted violations of the principles of a fair trial and the rights guaranteed by the Covenant. These facts, together with the lack of reliable data on the committing of any violent actions by these people, give grounds for recognizing them as political prisoners. The orders to classify court hearings in the trials of Ashurak and Vinchy were made by judge Maksim Filatau: in Ashurak's case, as the observer explained, it referred to a threat to national

security. The retrials of these convicts should ensure their right to a fair trial and eliminate the factors that influenced the issuance of politically motivated verdicts.

In some cases, the judges cited measures to combat the spread of the coronavirus as an excuse to restrict access to the courtroom.

In many cases, the procedure and seating of the audience members in the courtroom were determined by the escort officers, police officers or unknown persons.

On the first day of the trial in the case of **Dzmitry Dubkou** held at the Saviecki District Court of Minsk, court press secretary Viktoryia Mazheika demanded that audience members who were not relatives of the accused left the courtroom to accommodate representatives of the media accredited with the court. These actions, according to *Viasna* lawyers, violate the principle of openness and publicity of court proceedings (Part 1 of Article 114 of the Constitution and Part 1 of Article 11 of the Code on the Judicial System and the Status of Judges). Moreover, escort officers often restricted the movement of both audience members and other people present in the court building, forcing them to leave while the accused were escorted along the court hallways. This approach demonstrates the authorities' double standards in the context of combating the spread of the coronavirus infection: small courtrooms were often chosen to consider cases with considerable public attention and the number of seats for audience members was limited, while the rooms were not ventilated in most cases.

In the same trial, judge Alena Zhukovich announced a short break, but repeatedly failed to appear at the appointed time for the resumption of the hearings, which violated the established procedures. For example, on January 26, the judge announced a break for five minutes, but did not appear at the appointed time. An hour later, the escort officers ordered those present to leave the courtroom, while the judge and the secretary refused to provide the observer with information about the time of the resumption of the trial.

The criminal case of known bloggers **Aliaksandr Kabanau** and **Siarhei Piatrukhin** was heard at the Kastychnicki District Court of Mahilioŭ. The seemingly open session proved to be a closed one, after two police officers prevented people to enter the courtroom, saying that the room was already full. As it turned out later, the small courtroom was filled with students.

At the same time, the observers witnessed several positive practices. On the first day of the criminal trial of **Pavel Piaskou** and **Uladzislau Yeustsihneyeu** at the Maladziečna District Court, the court clerks did not prevent the public from attending the hearing, despite the limited capacity of the courtroom. Judge Viktoryia Paliashchuk announced a break for 20 minutes to resolve the issue, so that all those present could be seated in the room. There were no obstacles to understanding the essence of the actions of the court and the participants in the trial, the audibility was satisfactory, the court sessions began on time, and the time of the resumption of the session was announced clearly and loudly. The order in the courtroom was determined by the judge. The court did not obstruct audio recording of the hearings, but prohibited video broadcasting and taking photos. The verdict was announced publicly.

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

ARREST. TORTURE OF DETAINEES



International Covenant on Civil and Political Rights

Article 9

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

Article 9: Liberty and security of the 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 (Art. 40), a suspect has the right to know what they are suspected of and receive a copy of the order initiating a criminal case against them or calling them a suspect; immediately upon arrest or announcement of a decision on the application of a measure of restraint, to receive from the authority of criminal prosecution a copy of the decision or the arrest report, a copy of the decision on the application of a measure of restraint, as well as a copy of the decision initiating a criminal case. An exception is cases when the case contains state secrets: then copies of documents are not handed over to the suspects. As a rule, these formalities were followed.

TORTURE, PROHIBITED TREATMENT

International organizations have repeatedly called on the Belarusian authorities to take effective measures to prevent torture, investigate all cases of torture and punish the perpetrators:

“The Committee, while observing the note added to article 128 of the CC in 2015 that specifically defines torture, is concerned that shortcomings in the definition and its applicability remain, as not all acts that constitute torture are covered by the definition and the penalties for torture are not commensurate with the gravity of the crime.

The Committee is also concerned at continued allegations that:

- a) law enforcement officers resort to the use of torture and ill-treatment in order to extract confessions from suspects and that such confessions are used as evidence in court;
- b) allegations of torture and ill-treatment are often not investigated, and the Investigative Committee lacks the required independence to conduct effective investigations into such allegations; and
- c) medical units called to document injuries inflicted on prisoners are structurally part of the prison system.

The Committee notes with concern the State party’s statement that no convictions under articles 128 and 394 of the CC took place until 2016, and regrets that no updated information was provided in that regard.”³.

The current position of the Belarusian authorities on this issue is as follows:

“The Supreme Court collects statistical data and analyses and monitors judicial practice for the purpose of preventing torture and ill-treatment” (these data were never published by the Supreme Court). “A review of the statistics on complaints and reports from accused persons about the use of unlawful pretrial investigation methods in 2018 showed that such complaints are isolated. [...] It was not necessary to interrupt the criminal proceedings in order to look into the allegations made in the complaints that had been received; this was done by the competent authorities in parallel with the proceedings. [...] From the checks carried out, it can be concluded that the prosecution authorities generally used legal means of exerting influence on accused persons and adopted pretrial investigation tactics developed in the fields of criminal psychology and forensics.”⁴.

The data obtained during the monitoring of court sessions and the study of procedural documents evidence the opposite.

Dzmitry Dubkou, a defendant in a protest-related criminal trial held at the Saviiecki District Court of Minsk, said that immediately after his arrest he was subjected to pressure from

³ UN Human Rights Committee. Concluding observations on the fifth periodic report of Belarus

⁴ UN Human Rights Council. Working Group on the Universal Periodic Review. Thirty-sixth session. 4–15 May 2020. National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21*. Belarus.

officers of the State Security Committee (KGB), who forced him to sign a confession in the presence of a government-appointed lawyer. During the oral arguments in court, the defense attorney called to disqualify the evidence obtained through pressure as inadmissible. Neither the judge nor the public prosecutor paid attention to the defendant's account of the circumstances under which he was forced to sign the confession.

Clear evidence of the use of torture during detention [was a video posted](#) on the official website of the National State TV and Radio Company, which confirms earlier statements by **Mikalai Dziadok**, an anarchist detained by GUBAZIK officers, alleging the use of torture against him in order to obtain access to his electronic devices and social media accounts, as well as initial testimony as a suspect.

During the consideration of a criminal case against **Yury Siarhei** and **Kiryl Kazei** at the Zavodski District Court of Minsk, Kazei said:



"I was punched twice in the face, thrown to the ground, handcuffed and then beaten with a truncheon in several rounds. At some point, one of the officers brought a gun and they started beating me again. As they were beating me, one of the officers commented, "Hit the kidneys so that they bleed when they piss." Then they tightened the plastic clamps on my hands and said: "Lie still like this and you will be left without your hands." I'm sure that all this was filmed on their body cameras but it did not get into the case file. On the way to the police station, the officers threatened to shoot my legs with that gun. After they brought me to the Zavodski District Police Department, I told an officer that I would not sign any papers with that gun in it, to which the officer replied that there was no need for that."



The day after the arrest, Kazei was taken to court in an administrative case. At the trial, he demanded a lawyer and then was taken back to the police department, where he was threatened and forced to confess to participation in extremist groups.



"They threatened me, saying that they "busted me gently," that they would take me to the forest and force me to dig my own grave. One of the officers said that he was in Afghanistan and he knew how to hurt. They said that they would search my house, my car, the company where I worked, and that during the search they could find anything. They threatened to jail me for a long time. And if I gave the testimony that they needed, then I'd walk away with a fine or several days in prison. But I'm not a criminal, and I had nothing to give them. Finally, they told me that I would regret it."



The court did not take any steps to organize an investigation into these allegations. Moreover, the court's verdict did not reflect or evaluate the testimony of the accused about the use of torture. At the same time, the defendants were detained on October 28, 2020, but had not been remanded in a detention facility until November 6, while the reference to a deliberately unlawful charge under Part 3 of Article 339 of the CC, which was later partially abandoned by the prosecutor in favor of Art. 2 of Article 339 of the CC, allowed the investigation to extend the detention of one of the suspects beyond the 72 hours limit provided for by the general rule, which in fact lasted 16 days.

On February 3, 2021, the Pieršamajski District Court of Minsk (presided by judge Maksim Trusevich) sentenced 30-year-old **Mikita Kharlovich** to 5 years in prison. Before that, in the court session, the defendant said that he was beaten by GUBAZIK officers:



“After talking with the officers, they apparently got angry with something, began to swear and said that I was completely out of line, that I was “the wise guy”. I kept looking down. They punched me in the head. Everything went black, but they continued to beat me. When it was over, they said my drool should be wiped. I was told that if I did not want it repeated [being beaten], then I should say that I wanted to throw bottles on the road in order to obstruct public transport so that they would not get to work and start a strike. I was scared and depressed. I said what they asked me to say. I almost cried when I was saying that. All this was filmed on a mobile phone. In the end, I said what actually happened, but they had already stopped filming. But, apparently, they did not need it. They added that it was a great video for the press service.”



Kharlovich also said that he asked for a lawyer during an interrogation at the GUBAZIK, but received refusals: he was told that he would not need a lawyer now, that he would be useful only during interrogation with an investigator. At the same time, the court substantiated Kharlovich’s guilt, among other things, by the minutes of an “operational questioning” and the transcript of an audio recording.

During the first hearing in the case of **Viktar Barushka** held at the Lieninski District Court of Minsk, the defendant said that he was beaten and abused after being detained by police officers. On October 18, Barushka was pushed into a police car with six other detainees, and his watch and mobile phone were seized. The vehicle soon stopped. It turned out that the police were looking for a man in a blue jacket and mistook Barushka for the wanted man. The security forces marked Barushka’s forehead, hands and clothes with spray paint and brought him to the Lieninski district police department.



“They took me out for interrogation, they said that they had a video of me hitting a policeman. I asked for a lawyer. They turned on a camera and asked what my name was and if I had any questions or complaints about the police officers. I said I had none.”



The defendant further explained that a plastic bag was put on his head. At this point, judge Zapasnik interrupted him, saying that his claims against the OMON officers were not being considered at the trial. However, the man finished his account, [describing](#) what later happened to him in a room that looked like a shower:



“They beat me, put a truncheon in my ass. After that, I spent twelve days in the intensive care unit of the emergency hospital. My legs were so swollen that I couldn’t take off my jeans. When they beat me, I protected my left leg. I had ligaments changed on my left leg, and I could not use it to kick.”



Viktar Barushka also said that he did not file a complaint against the officers, because he saw no point in this, as the authorities have not opened a single similar case since August 2020.

Despite the shocking nature of the allegations, the judge did not organize an investigation and issued a conviction.

The record of the defendant's interrogation read out at the Maskoški District Court of Minsk in the case of **Dzmitry Kulakouski** suggested that he was repeatedly beaten in order to obtain testimonies in several police departments and kept for about four weeks in inhuman conditions on a far-fetched charge in the police department's detention facility.



"When I asked why I was detained and asked for a lawyer, they went out, and officers in balaclavas struck several blows. They pulled my legs under my handcuffed hands, which gave cramps to my thighs. The officers also said that they would not allow a lawyer, and that I should say yes to everything. Because of the severe pain, I do not remember exactly how long it lasted. I screamed in pain."



In the court of the Saviecki district of Minsk, the defendant, **Dzmitry Halko**, said that he was detained on October 21, after which he was in the hospital for two days. During the arrest, he was severely beaten. He was diagnosed with a head injury of moderate severity and about fifty blows in the area of his right thigh. The case file confirms mild TBI, concussion and intermuscular hematoma of the right thigh. According to a physical force log, during the arrest, the forces of a special unit of the Ministry of Internal Affairs were involved. Judge Siarhei Shatsila and the state prosecutor did not respond properly to the statement.

These and other examples clearly demonstrate the indifference of courts and judges to violations of human rights, the CCP and other regulations. Tolerance of judges to the exposed acts of torture and demonstrative disregard for procedural violations contribute to an atmosphere of impunity and disregard for the rules of conducting criminal proceedings.

MEASURES OF RESTRAINT. DETENTION PENDING TRIAL

International Covenant on Civil and Political Rights

Article 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

Article 9: Liberty and security of the 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. Unauthorized confinement of prisoners beyond the length of their sentences is arbitrary as well as unlawful; the same is true for unauthorized extension of other forms of detention. Continued confinement of detainees in defiance of a judicial order for their release is arbitrary as well as unlawful.

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. Retroactive criminal punishment by detention in violation of article 15 amounts to arbitrary detention. [...] 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 general rule is that measures of restraint can be applied by the authority conducting criminal proceedings only if the evidence collected in the criminal case gives sufficient grounds to believe that the suspect or the accused may escape criminal prosecution and trial; hinder the preliminary investigation of a criminal case or its consideration by the court, including by exerting unlawful influence on persons participating in the criminal trial, concealing or falsifying materials relevant to the case, or failing to appear without good reason upon invitation from the authority conducting criminal proceedings; commit a socially dangerous act stipulated by criminal law; oppose the execution of the sentence. When deciding on the need to apply a measure of restraint to a suspect or an accused, the nature of the suspicion or accusation, the identity of the suspect or the accused, their age and health, occupation, family and property status, permanent 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. Custody can also be ordered by decree of the chairperson of the Investigative Committee, chairperson of the State Security Committee or acting chairpersons. The participation of the suspect, the accused and the defense lawyer in the issuance of the decision is optional, unless 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 authorization of the prosecutor for pre-trial detention cannot be considered an equivalent substitute for a corresponding judicial decision, since “first, that 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.”⁵

Pre-trial detention can also be applied to persons suspected or accused of committing a grave or especially grave crime against peace and security of mankind, the state, a war crime, a crime involving an encroachment on human life and health. It applies only to a suspect or accused of committing a crime punishable with imprisonment exceeding two years, except for a less serious crime related to economic activity (except for smuggling, illegal export or transfer for export purposes of objects of export control, legalization (“laundering”) of proceeds of crime).

A peculiarity of post-election criminal prosecution for political reasons is the arbitrary and groundless use of pre-trial detention in the absence of permissible conditions for limiting the right guaranteed by art. 9 of the Covenant. It has become commonplace to order pre-trial detention in relation to suspects and persons accused of committing less serious crimes. In the absence of a stable and fair practice of using measures of restraint as a last resort to ensure the appearance of the accused in court or to prevent unlawful obstruction of the investigation or repetition of crimes, the grounds indicated in the investigators’ orders are usually formal. Even more formal is the process of authorizing these decisions by the prosecutor, which does not provide for a public adversarial procedure and the rationale for the decision taken.

The scale of this phenomenon can be corroborated by the information provided by the Belarusian authorities to the UN:

“In the period from August 9 to November 23, 2020, more than 1,000 criminal investigations were initiated into the facts of criminal manifestations. Taking into account the evidence collected by the investigators in conjunction with representatives of other law enforcement agencies in criminal cases, 97 persons have already been recognized as suspects, 332 of them have been charged, 238 have been taken into custody.”

71.6% of those accused of crimes, many of which belong to the categories of less serious (Part 1 of Article 342, Part 2 of Article 363, Article 364, Part 3 of Article 293 of the CC, etc.) or not posing a great public danger (Part 2 of Art. 342, Art. 341, 369, 370 of the CC, etc.), were taken into custody. For reference: according to the Investigative Committee, in the first nine months of 2019, pre-trial detention for corruption crimes was used in 3% of cases, and in total – in 23.9% of all criminal cases.

Thus, taking into account the variety of crimes of which protesters and dissidents have been convicted after the presidential elections, it can be argued that pre-trial detention is applied to them three times more often than to other accused, which should be assessed as a form of repression and pressure, as well as a restriction on their rights for the period of investigation and trial.

Examples of the above trend include the imprisonment of human rights defender **Leaid Sudalenka** and journalist and media manager **Andrei Aliaksandrau**, both meeting the criteria of integrity and facing charges of less serious non-violent crimes.

These cases are also examples of selecting arbitrary accusations to overcome legislative restrictions: both men are charged with crimes under Part 2 of Article 342 of the CC, “financing or other material support of group actions that grossly violate public order.” However, this crime belongs to the category of offenses that do not pose a great public danger, and the

⁵ UN Human Rights Committee. Communication No. 1100/2002. Yuri Bandajevsky v. Belarus

use of pre-trial detention against those accused in such cases is limited by law. Therefore, they were also charged with committing crimes provided for in Part 1 of this article, which belongs to the category of less serious and allows taking into custody.

Equally doubtful from the point of view of the law are the numerous cases of bringing additional and more serious charges in order to extend the pre-trial detention of defendants in politically motivated cases after the expiration of the initial detention period. Such actions by the investigating authorities also violate the right to defense, in particular the right to know the essence of the accusation and to have time to prepare the defense.

Viasna's observation documented cases of using pre-trial detention as an instrument of pressure on the accused. In particular, during the consideration at the Maladziečna District Court of the criminal charges under Part 2 of Art. 363 of the CC brought against **Pavel Piaskou** and **Uladzislau Yaustsihneyeu**, the state prosecutor read out a letter from the head of the district police department addressed to the district prosecutor, alleging Piaskou's intention to escape from justice by leaving Belarus. Piaskou's defense lawyers were deprived of the opportunity to access the investigation information mentioned in the letter. As a result, it took the judge 20 minutes to rule in favor of the prosecution. The defendant was not allowed to defend himself by all means provided for by law against the deterioration of his legal status, after he was not informed on what exactly the allegation about his intention to escape from criminal prosecution was based. Although this decision did not directly affect the abilities of the defense in general and the eventual verdict, nevertheless, this incident emphasized the prejudice against him on the part of the court, and also strengthened suspicions of the court's bias in favor of the prosecution.

As already mentioned, several examples of using 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 resulted in non-custodial sentences.

For example, **Artsiom Sarokin**, an emergency hospital doctor, who was held in a pre-trial detention center from November 19, 2020 to March 2, 2021 on charges of committing a less serious non-violent crime, was sentenced to a suspended term of two years in prison and a fine of 1,450 Belarusian rubles.

Thus, in general, pre-trial detention was used arbitrarily, in accordance with the policy of state bodies aimed at suppressing protest activity and the repressive procedures for resolving public conflict.

Another type of measure of restraint, house arrest, was applied in one of the cases in violation of national law. For the period of the investigation and trial, **Herman Kuzniatsou** was confined to his apartment under house arrest. In accordance with Part 3 of Art. 125 of the CCP, the grounds and procedure for applying house arrest as a measure of restraint, establishing and extending its period, and canceling house arrest are governed by the corresponding provisions of the CCP relating to pre-trial detention. In accordance with Part 1 of Article 126 of the CCP, pre-trial detention as a measure of restraint against a person suspected or accused of committing a crime under Art. 341 of the CC can be applied in exceptional cases in relation to a suspect or accused, if they do not have a permanent place of residence in the territory of the Republic of Belarus or their identity has not been established, or they fled from the criminal prosecution authorities or the court. According to the judgment, such circumstances did not exist in the present case.

Thus, Kuzniatsou was illegally detained under house arrest from October 7 to December 3. This violation was not eliminated by the court when the trial was ordered.

RIGHT TO TRIAL FOR RELEASE FROM CUSTODY

International Covenant on Civil and Political Rights

Article 9

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

Article 9: Liberty and security of the 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.*

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 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.

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.

34. 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, pre-trial detention is ordered without judicial procedures. However, the Belarusian legislation provides for the possibility of judicial control. The CCP allows appealing to a court against arrest, pre-trial detention and house arrest or extension of detention and house arrest. Is such a norm a sufficient guarantee of law within the meaning of art. 9 of the Covenant?

Appeals against arrest and pre-trial detention cannot be lodged directly with the court. Complaints of persons in custody concerning their pre-trial detention or its extension are filed in court through the administration of the detention facility, while complaints of persons detained under house arrest and other persons shall be submitted to the authority conducting criminal proceedings.

The administration of detention facility is obliged, within 24 hours after the receipt of the complaint, to send it to the respective body conducting the criminal proceedings, about which it should notify the person who filed the complaint, as well as the officials and the court who ordered the pre-trial detention or its extension. The law does not provide for the notification of the defense attorney about the complaint filed.

The body conducting criminal proceedings is obliged, within 24 hours in relation to the person in custody, and within 72 hours in relation to the person held under house arrest, from the moment of receipt of the complaint, to send the complaint to the court, with the attachment of the materials of the criminal case confirming the legality and validity of arrest, pre-trial detention, house arrest or prolongation of detention and house arrest. The court also has the right to demand other materials necessary to resolve the complaint. The body in charge of criminal prosecution, as well as the court that issued an order (ruling) to apply pre-trial detention, house arrest or extended the period of detention and house arrest, have the right to submit their justifications for the legality and validity of the arrest, detention and house arrest or their prolongation.

The judicial review of the legality and justification of the arrest shall be carried out within a period of no more than 24 hours, and in the case of pre-trial detention, house arrest or their extension – within a period of no more than 72 hours from the time the complaint is filed by the judge sitting alone at the place of the preliminary investigation of the criminal case, while court orders (rulings) selecting pre-trial detention, house arrest and their extension – by a judge of a higher court sitting alone with the obligatory participation of a prosecutor.

Thus, the court can start considering a complaint about detention after more than 72 hours (excluding the time for mail delivery), and in practice – more than 5-10 days, taking into account the time of delivery, weekends and holidays and the peculiarities of mail services, receiving and registering correspondence in each of the bodies. The court can begin to consider a complaint about 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.

This timing is incompatible with the state's obligation under article 9, para. 3 of the Covenant (*"Anyone arrested or detained on a criminal charge shall be brought promptly before a judge"*).

The complaint is considered in a closed court session, in which the victim, their representative, a defense lawyer (if one is involved in the case), legal representatives of the suspect, and the accused have the right to participate. The failure of the indicated persons to appear does not preclude the consideration of the complaint. Thus, the law does not provide for the right of the suspect and the accused to participate in the examination of their own complaint; the judge enjoys the right to summon the detainee or the person held in custody or under house arrest to the court session. According to the established practice, the participation of these persons in the court sessions is rather an exception (several cases were observed of their participation through video communication systems), which is incompatible with the obligations of the state under para. 3 of article 9 of the Covenant.

Based on the results of the judicial review, the judge makes one of the following decisions:

- to release the arrested person, to reverse pre-trial detention or house arrest and release them from custody or house arrest in the event of a violation by the investigating authority, the prosecutor or the court of the provisions of Articles 108, 110, 114, 125-127 of the CCP or of the right of a suspect or an accused to defense, unreasonable use of arrest, pre-trial detention or house arrest, or inconsistency of the charges brought with the content of the ruling ordering pre-trial detention and house arrest or their extension. If any of these occurs, the judge is obliged to select for 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 restraining conditions applied by the court, the person may be re-taken into custody or re-detained under house arrest;

- to dismiss the complaint.

A judge's ruling ordering the release of an arrested person or a person held in custody and under house arrest takes legal effect 24 hours after its issuance. During this period, it can be challenged by the prosecutor, as well as appealed by the victim or their representative to a higher court. Challenging the ruling or filing an appeal suspends the execution of the judge's order.

In case a complaint is rejected, an appeal may be filed in a higher court within 24 hours by the person who appealed against arrest, detention or house arrest and their extension. If the appeal is granted, the higher court is obliged to apply another measure of restraint against the person released from custody or house arrest.

Challenges and appeals against a judge's ruling are considered by a judge of a higher court sitting alone within three days from the date of their receipt.

A controversial rule is that it is not allowed to file a repeated appeal against the legality of arrest, detention or house arrest. If an appeal is rejected, it is allowed to file another appeal only after each new ruling ordering extension of the period of detention or house arrest. This limits the right of the defense to go to court even with newly emerging reasons and arguments about the illegality or unreasonableness of arrest, detention or house arrest.

Thus, the rules for appealing against arrest, detention or house arrest (their extension), enshrined in the law, are not a guarantee of the right to liberty and security of person.

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

International Covenant on Civil and Political Rights

Article 14

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.*



Within the meaning of art. 14 of the Covenant, the courts in Belarus do not meet the principles 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 to “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 Article 139, Article 289, Part 1 of Article 293, Article 362 of the CC, etc.), as well as juvenile crimes, are heard by a panel consisting of a judge and two lay judges. In case of collegial consideration of cases, all issues are resolved by a majority vote. At the same time, the process of appointing lay judges is non-public, non-transparent, and for the most part is under the jurisdiction of the executive branch.

The candidates and the final lists of lay judges are appointed for a period of five years by the corresponding district (city), regional (Minsk city) executive committee (in case of the Supreme Court – by the Minsk city executive committee). The lists of lay judges are sent for approval to the prosecuting authorities and bar associations and are authorized 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 noticeable role in the consideration of criminal cases and the sentencing. In our opinion, this is due to the existing approaches to the selection of lay judges, which predetermines the absence of their active and principled participation in the process of administering justice.

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.*

The implications of the HRC's position are as follows: the Committee rarely speaks about whether a national court has correctly assessed the evidence presented to it; of greater importance for the experts is the content of procedural guarantees and their observance in each specific case. An exception is a situation where a misjudgment of evidence or misapplication of the law is so obvious that it amounts to a denial of justice. *Viasna's* observers have witnessed a number of situations in which the assessment of the prosecution's evidence was deliberately incorrect in favor of the prosecution.

Kiryl Kazei and Yury Siarhei were found guilty of committing crimes under Part 1 of Article 13, Part 2 of Article 339, and Part 3 of Article 295 of the CC. Judge Anzhela Kastsiukevich of the Zavodski District Court sentenced them to 7 and 6 years in prison, respectively, and a fine of 4,350 Belarusian rubles. The defendants pleaded not guilty. Siarhei refused to testify. Kazei said that he had no intention of damaging the victim's property, and that the ammunition did not belong to him, as it was not found in his car. The court concluded, however, that the preparation for malicious hooliganism and illegal actions with ammunition was proven by the testimony of the police officers who arrested them after observing their "suspicious behavior", by their confession to intending to damage the victim's car, the protocol of crime scene inspection (the defendant's car), during which the ammunition was found, and an expert's conclusion alleging that the body tissue found on the grenade could have belonged to Kazei, as well as the explanations of Siarhei given in the course of separate administrative

proceedings, and a video interrogation for [a government-owned TV channel](#).

At the same time, all 59 items of ammunition found in the vehicle are free of any body tissue or fingerprints belonging to the defendants. In such a situation, the probabilistic conclusion about the belonging of the biological traces on the grenade has a low evidentiary value. Moreover, the objects, the ownership of which is not denied by the accused, had traces of their fingers.

In accordance with Art. 40, 41, 108, and 110, the suspect is a natural person arrested on suspicion of committing a crime; suspects have the right to a defense lawyer or several defense lawyers from the moment the criminal prosecution authority announces its decision to initiate a criminal case against them, to recognize them as suspects, or to arrest them, and to communicate freely with their defense lawyer, in private and confidentially, without limiting the number and duration of conversations. After the arrested person is brought to the criminal prosecution authority by the official who carried out the actual arrest, a protocol shall be prepared to specify the grounds, place and time of the actual arrest (indicating the hour and minutes), the results of the personal search, as well as the time of the preparation of the protocol. The protocol shall be announced to the arrested person, together with the rights provided for in Article 41 of the CCP, including the right to invite a defense lawyer and testify in their presence, which shall be specified in the protocol. The protocol shall be signed by the person who prepared it and by the person under arrest. A suspect may waive defense only in the presence of a defense lawyer. The persons under arrest must be questioned on the circumstances of the arrest in the manner prescribed by Articles 215-219, 434 and 435 of the CCP.

Violations of these rules gravely breach the rights of suspects and are incompatible either with the provisions of national legislation or with the provisions of articles 9 and 14 of the Covenant.

The qualification of the actions of the accused under Article 339 of the CC does not take into account the reasons established by the same verdict, for which the accused, according to the court, wanted to harm the property of the victim. Shortly before the arrest, a video was widely circulated on social media in which the victim brutally hits one of the protesters with his hand and foot. The incident caused a wave of indignation and condemnation of the victim's behavior. Thus, the court did not have a single legitimate basis in order to impute hooliganism motives and intentions to the accused, and therefore such a qualification is far-fetched. If the damage to the wheels of a car had exceeded 1,080 rubles, the actions of the accused would have been qualified under Part 1 of Article 218 of the CC. With a smaller amount of damage, criminal prosecution under this article is ruled out. Moreover, the actions of the accused could have been qualified under Article 341 of the CC. However, by force of Article 13 of the CC, preparation for crimes that do not pose a great public danger does not entail criminal liability.

The court's presentation of the arguments of the defense in the judgment was fragmentary, haphazard and incomplete, as they failed to receive a detailed assessment. Kazei's statement about the use of torture against him was not reflected in the verdict and was not evaluated. The court did not resolve any of the contradictions between the testimonies, or it was extremely formal. The testimonies of the police witnesses were evaluated formally, without taking into account the social tension that developed after August 2020 and open confrontation between public groups and the authorities, between the ideologies of advocates and opponents of the existing regime, between victims and perpetrators of torture and other

acts of cruel treatment. Under such circumstances, riot police officers cannot be described as disinterested witnesses.

It should also be noted that the plans of the accused established by the court are solely assumptions, as they are not substantiated in the verdict by any of the evidence provided by law.

The court refused to approve a request for the fingerprint examination of an air gun, the ownership of which was denied by the defendant. A defense witness claimed that the search of the car, in which the ammunition was found, started after the investigator opened the car with the key he had. The witness was not allowed to observe the search, which, however, was filmed by a state TV crew.

All of the above suggests that there is no reliable evidence of the guilt of Kazei and Siarhei in the crimes they were accused of, but on the contrary, there are certain grounds to suspect that the evidence on the basis of which the court concluded that they were guilty was falsified and planted. Therefore, this sentence must be reviewed in accordance with the right to a fair trial.

Two more clear examples of de facto denial of justice are the criminal cases against **Aliaksandr Trotski** and **Aliaksandr Kardziukou**.

One of the negative practices in the criminal trials held after the events of the summer of 2020 is the participation of witnesses with protected identities and disguised faces, which excludes the possibility for the defense to verify whether these people were the participants in the events investigated and examined in court. In addition, the authorities often arbitrarily alter the registration plates of police vehicles, which appear in criminal cases as damaged, attacked, blocked, etc.

Indeed, the criminal procedure legislation allows the application of protection measures in criminal proceedings. In the presence of sufficient data indicating that there is a real threat of murder, use of violence, destruction or damage to property, the commission of other unlawful actions against a participant in the criminal process defending their rights or their represented rights and interests, as well as other participants in a criminal proceeding, their family members and relatives in connection with his participation in a criminal proceeding, the body conducting the criminal proceedings is obliged to take measures provided by law to ensure the safety of these persons and their property. Decisions on the application of protection measures shall be taken after the authority conducting the criminal proceedings establishes the circumstances indicating the existence of grounds for applying protection measures; if the authority conducting the criminal proceedings receives other information about the circumstances indicating the existence of grounds for applying protection measures; at the request of a participant in the criminal proceedings.

These measures must be taken and implemented legally and reasonably, without violating the procedural rights of the defense.

The application of protection measures to police officers and servicemen of the internal troops, as a rule, is not justified by the presence of a real danger for these persons, but is used to conceal the personal information of those of them involved in torture and other acts of prohibited treatment after August 9, 2020, as well as in order to prevent the defense from establishing the circumstances of the case.

PRESUMPTION OF INNOCENCE

International Covenant on Civil and Political Rights

Article 14

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.

In some publications by law enforcement agencies, the names and faces of the suspects and the defendants are not disclosed, which does not, however, constitute a trend. More often, in publications on behalf of the Ministry of Internal Affairs or information provided to the Ministry, the defendants can be identified before they are finally convicted by the court.

On September 21, 2020, the official Telegram channel of the press secretary of the Ministry of Internal Affairs, Volha Chamadanava, published a message:

“Criminal cases have been opened against two men from Žlobin who insulted a police officer on a social media application.”

The publication did not indicate the name of the person involved in the criminal case. However, the post contained a video showing **Yan Rymarau**, in which a man outside the camera’s view asks him if he “regretted painting the slogan,” “repented of what he did” and was “ready

to apologize.” Analysis of the title of this publication suggests an unambiguous conclusion that its content forms in the public consciousness a stable perception of Rymarau’s act as a criminal offense, in which he admits guilt and repents.

The website of the Investigative Committee posted a publication on the completion of the investigation of the criminal case of **Hleb Hatouka**, indicating the age, the charges brought, and a photograph of the accused, which constitutes a premature assessment of his actions before the start of the trial. Moreover, the title of the publication refers to the commission of the actions that were not imputed to him: the term “unrest” indicated in the title refers to a more serious crime (Article 293 of the CC). Subsequently, the accused was kept in a cage while in the courtroom and escorted around the courthouse in handcuffs, which makes it fair to conclude that the standard of the presumption of innocence was flagrantly violated.

In the Lieninski District Court of Mahilioŭ, the defendants, **Sairhei Piatrukhin** and **Aliaksandr Kabanau**, were kept in a cage surrounded by four guards in bulletproof vests. Several more police officers were on duty outside the courtroom, and the exits to the stairs were locked. This environment created the impression that the accused were dangerous criminals.

In the Saviecki District Court of Minsk, the defendant, **Natallia Hersche**, was kept in a cage, wearing shoes without laces, and escorted in handcuffs by special officers.

The official Telegram channel of the press secretary of the Ministry of Internal Affairs, Volha Chamadanava, published information about the “arrest of a 43-year-old resident of Minsk who knocked the camera out of the hands of a police officer”. The message contained a video clip. During the trial of **Dzmitry Halko**, it was established that the defendant did not knock out the camera, but only closed the lid, while the alleged victim, police officer Pavel Matskevich, told the court that he had lowered the video camera to his chest and never quit hold of it, continuing to shoot. Moreover, neither the video of the incident nor the course of the court session resulted in a conclusion that the video was filmed by a police officer. In particular, when asked about who was filming, the victim said that it was an “amateur video”, and confirmed the same in court. The confession of the accused on the video that he was aware that there was a police officer in front of him was extorted under torture, which was not investigated, and the consideration of the case was not suspended in connection with the statement about unacceptable forms of investigation. The standard of the presumption of innocence in relation to Dzmitry Halko was also violated in connection with his transportation to the courthouse of the Saviecki District handcuffed behind his back.

It should be noted that the above circumstances were documented by the observers, in one combination or another, in relation to a much larger circle of defendants.

THE RIGHT TO PREPARE FOR TRIAL

International Covenant on Civil and Political Rights

Article 14

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.

During the trial against **Dzmitry Dubkou** at the Saviiecki District Court of Minsk, the right to defense, namely, to confidential communication with the defense lawyer, was violated. On the first day of the hearing in the case, the defense lawyer petitioned for a break of one hour due to the fact that the defendant had been held for three weeks in a pretrial detention center, which was quarantined in connection with COVID-19, which, in turn, prevented the counsel from seeing his client and providing him with legal assistance. *Viasna* notes with concern that the granting of a 20-minute break by the judge in such circumstances indicates a disregard for the most important right of the accused – right to legal assistance – reducing the provision of legal aid to a formality and devaluing the notion of protection in general.

THE RIGHT TO DEFENSE

International Covenant on Civil and Political Rights

Article 14

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

24. 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.

When monitoring trials, human rights defenders obtained numerous reports of the defendants and their counsels regularly obstructed in private communication. The situation in the places intended for the meetings made it difficult to efficiently communicate and work with documents.

Three lawyers have been detained in connection with their professional and political activities during the period of arbitrary use of criminal prosecution against political opponents of the authorities in 2020-2021: **Illia Salei** on September 9 (lawyer of the detained Maryia Kalesnikava), **Maksim Znak** on September 9 (Viktar Babaryka's lawyer) and **Liliya Ulasava** on August 31 (she and Salei were subsequently released).

Lawyers **Kazak, Zikratski, Pylchanka, Sazanchuk**, who defended repressed politicians and activists, as well as **Bartashevich, Yotka, Shynkarevich, Levanchuk, Mikhel, Kiryliuk, Konan, Baranchyk, Liaskouski, Filipovich**, and **Pichukha** were deprived of their licenses on far-fetched grounds, which is unacceptable in a democratic society.

These measures jeopardize the free, conscientious and independent provision of assistance to all who need it. The situation of persons involved in politically motivated criminal cases looks especially threatening, since they may be deprived of the opportunity to receive qualified legal assistance, both as a result of the deprivation of the license of their counsels and as a result of the fear of lawyers to take on the defense of such persons and actively implement it.

See other sections of the report for more trends and some specific cases of violations of the right to defense combined with other violations of the rights of defendants in politically motivated cases.

International Covenant on Civil and Political Rights

Article 14

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.*



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

It should be noted with regret that Belarus has not implemented the repeated recommendation⁶ 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;
- 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.

The judicial observation revealed an instance of the appointment by a court of a sentence of imprisonment to a 15-year-old child, who was eventually confined to a closed educational institution for publishing the personal information of police officers on the Telegram messaging application and misappropriating the donations received to support the account and the victims of police-related violence. Human rights defenders noted the political nature of the case, as it was marred by violations of the principles of a fair trial and the unacceptable use of criminal punishment against a child under the age of criminal responsibility.

16-year-old M.Z., recognized by the human rights community as a political prisoner, was deprived of liberty on charges of preparing for mass riots and illegal actions in relation to objects, the damaging properties of which are based on the effect of flammable substances. Another defendant in the same trial, K., was convicted of involving a minor in the commission of a crime. We believe that the sentencing to a long term of imprisonment (5 years) grossly violated the rights of the child. Of particular concern were reports of torture and lack of adequate medical treatment.

It should be borne in mind that children are considered by criminology as specific perpetrators of crimes, as they 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

⁶ UN Committee on the Rights of the Child. Concluding observations on the combined fifth and sixth periodic reports of Belarus

very understanding of permissible and unlawful behavior is distorted.”⁷.

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.

In addition to these cases, at least two minors are known to have been sentenced to imprisonment together with adults accused under Article 293 of the CC. The Maskoški District Court of Brest, chaired by Vera Filonik, sentenced **17-year-olds S.H. and D.K.** to three years' imprisonment each. Both committed the imputed actions at the age of 16.

The Žlobin District Court sentenced **17-year-old V.P.** to two years in prison. The court concluded that while participating in the protests, the defendant threw a stone at a police bus. V.P. was tortured and eventually convicted under Articles 342 and 364 of the CC. The accusation of using violence against police officers (throwing a stone at a vehicle) was based on the minor's publication on his social media account, where he claimed to have broken the glass of a car with a stone. The minor himself denied such actions in court and insisted that the publication was a way to attract attention.

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

⁷ 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.

RIGHT TO APPEAL (REVIEW) A JUDGMENT



International Covenant on Civil and Political Rights

Article 14

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 original jurisdiction are not subject to appeal in accordance with the CCP. This significant violation of the rights of the accused has been repeatedly pointed out by international⁸ and treaty bodies⁹. At the time of writing, the Supreme Court was considering a criminal case against **Viktar Babaryka** and others accused of committing crimes of an economic and corruption nature.

In addition, human rights defenders are concerned about the procedural possibility of considering appeals without the participation of defendants, which significantly limits their rights.

Experts also note the inadmissibility of restricting access by defendants and convicts to the materials of the criminal case, especially to the texts of sentences and the minutes of court sessions, together with other procedural decisions. In particular, the responses to appeals filed as part of the supervision procedure are only announced to the convicts, while these documents are kept in their personal files, which makes it difficult to further appeal against the sentence.

A significant obstacle to appealing against sentences in terms of resolving civil claims is the mandatory advance payment of a state fee in the amount of 4% of the sum contested.

⁸ UN Human Rights Committee. Concluding observations on the fifth periodic report of Belarus, para. 27

⁹ Communication No. 2120/2011. Views adopted by the Committee in the case of Lyubov Kovaleva and Tatyana Kozyar, para. 11.6

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

THE CONCEPT OF “POLITICAL PRISONER”

Observation results, analysis of public information and procedural and other court documents are used as the basis for recognizing certain persons involved in politically motivated criminal cases as political prisoners. The decisions are made public in statements issued by the national coalition of human rights organizations of Belarus based on the [Guidelines on the Definition of Political Prisoners](#).

In these cases, “**deprivation of liberty**” means detention or imprisonment of a person at any place if he/she is unable to leave it: a) due to any kind of coercion applied by a public officer, or with the knowledge and connivance of a public officer, or a public authority, or b) due to the enforcement of a decision taken by a judicial, administrative or other public authority or public officer.

Political motives are understood as 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 political prisoner is a person deprived of liberty 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 defenders demand immediate and unconditional release, full rehabilitation and compensation for the harm caused.

A political prisoner is also a person who has been deprived of liberty if, together with political motives for persecution, 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 defenders demand an immediate review of restraining measures and court decisions taken against them, while respecting the right to a fair trial and eliminating the above factors a-d.

An important circumstance: even in the presence of the listed factors, a person is not recognized as a political prisoner if they have 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 CRIMINAL PROSECUTION OF HUMAN RIGHTS DEFENDERS AND JOURNALISTS

Journalists and human rights activists became one of the categories subjected to unprecedented repressions during the human rights crisis of 2020-2021. In this report, we have combined these categories into one section, since journalists and human rights defenders are not direct participants in politics and do not represent movements pursuing political goals, but carry out professional activities and act in the public interest.

The persecution of journalists and human rights defenders began almost immediately after the announcement of the presidential elections in May 2020, and as the internal political situation in the country further deteriorated, it became systematic.

The Belarusian Association of Journalists [documented](#) 480 cases of arrests of journalists and 97 cases of their administrative imprisonment in 2020 and 2021. After Election Day, August 9, 2020, at least 62 cases of violence against journalists were reported. However, the most severe form of repression used by the Belarusian authorities against journalists was their criminal prosecution.

At the time of writing, according to the BAJ, twelve journalists were held in detention, three of whom (**Katsiaryna Barysevich**, **Katsiaryna Andreyeva (Bakhvalava)** and **Darya Chultsova**) were serving sentences of imprisonment imposed for their professional journalistic activities. The rest are in custody in pre-trial detention facilities. Among them are head of Press Club Belarus **Yulia Slutskaya**, Press Club employees **Ala Sharko**, **Siarhei Alsheuski**, and **Piotr Slutski**, as well as a former employee of the Belteleradio state television and radio broadcasting company **Kseniya Lutskina**, journalist of the Novy Chas newspaper **Dzianis Ivashyn**, and journalist **Andrzej Poczobut**.

As for the persecution of human rights defenders, the first victims of repression were those detained in September and October 2020, including **Marfa (Maryia) Rabkova**, coordinator of *Viasna's* network of volunteers, and **Andrei Chapiuk**, a *Viasna* volunteer. In total, since May 2020, eighteen *Viasna* members have been subjected to various forms of repression for their human rights activities. **Leanid Sudalenka** and **Tatsiana Lasitsa**, *Viasna* members in Homiel and Rečyca, respectively, were taken into custody on charges of “financing group actions that breach public order”. In February 2021, a criminal case was opened to target the activities of *Viasna* as a whole. The police raided *Viasna's* offices across the country, together with the offices of the Belarusian Association of Journalists and the Belarusian Helsinki Committee. At the time of writing, the investigation was still underway.

On February 3, 2021, officers of the State Control Committee's Department for Financial Investigations [arrested](#) **Siarhei Drazdouski**, director of the Office for the Rights of Persons with Disabilities, and **Aleh Hrableuski**, the organization's legal advisor. Both were accused in a criminal case under Part 4 of Art. 209 of the CC (fraud committed by a group of persons or on an especially large scale). Drazdouski was remanded under house arrest, and Hrableuski was in custody in a pre-trial detention center.

On April 5, 2021, **Tatsiana Hatsura-Yavorskaya**, head of the human rights organization Zveno, [was arrested](#) and taken into custody as part of a criminal investigation. Ten days later,

she was released without a charge, but remained a suspect in the case.

In this report, we will cite examples of criminal prosecution of journalists who have been already convicted, as well as several examples of criminal cases opened against human rights defenders.

CRIMINAL CASE AGAINST JOURNALISTS OF THE BELSAT TV CHANNEL KATSIARYNA ANDREYEVA AND DARYA CHULTSOVA

Katsiaryna Andreyeva and Darya Chultsova are journalists of Belsat TV, a Polish satellite channel broadcasting to the territory of Belarus in the Belarusian language. Despite numerous attempts to obtain accreditation in the Republic of Belarus, the channel's repeated requests were denied by the authorities. For more than 13 years, Belsat journalists have been reporting on events in Belarus without accreditation, which repeatedly served as formal grounds for administrative responsibility for illegal cooperation with foreign media.

Reporter Katsiaryna Andreyeva and videographer Darya Chultsova were arrested by police officers on November 15, 2020 in a private apartment in Minsk, from which they had been reporting live on the events in the neighborhood, where a rally was held to commemorate the death of protester Raman Bandarenka, who died as a result of injuries inflicted on him by unknown persons believed to be linked to the country's law enforcement.

On November 15, a series of protests took place in Minsk in connection with Bandarenka's death. After security forces dispersed a protest near the Puškinskaja metro station, arresting numerous participants, some of the demonstrators gathered near an apartment building where Bandarenka had been beaten to death. People brought flowers and laid them at a grassroots memorial set up the day before. The assembly was of an exceptional peaceful nature and did not pose a threat to national or public security, the lives and health of the public. Despite this, the place was surrounded by reinforced and fully equipped police officers. To disperse the demonstrators, riot control equipment and flash-noise grenades were used. Numerous protesters and passersby were arrested, as a result. All these events were covered live by Belsat journalists Katsiaryna Andreyeva and Darya Chultsova.

After the arrest, the journalists were placed in a temporary detention facility, and later in pre-trial detention center No. 1 in Minsk. They were charged under Part 1 of Art. 342 of the CC (organization or active participation in group actions that grossly violate public order). The Belarusian journalistic and human rights communities, as well as the international community, demanded their immediate release.

Nevertheless, on February 9, 2021, the court of the Frunzienski district of Minsk [started](#) hearing criminal charges against the journalists, which lasted until February 17. As a result, the court sentenced Andreyeva and Chultsova to two years in prison each, which caused outrage and a particular public outcry, both in Belarus and abroad.

Viasna experts condemned the verdict as illegal and politically motivated, since it was related to the professional journalistic activities of Andreyeva and Chultsova and their exercise of freedom of information and freedom of expression guaranteed by the Constitution of Belarus and the Covenant.

The live broadcasts (livestreams) by journalists of various independent media from the venues of mass events caused strong backlash from the authorities after the beginning of the

election campaign in May 2020. As a result, numerous reporters were groundlessly arrested by the police while covering on the protests. The top officials of the Ministry of Internal Affairs have repeatedly said that they regard these reports as coordination of illegal protests.

In this context, the detention and subsequent conviction of the two Belsat journalists for reporting on the rally in memory of Raman Bandarenka constitute undisguised reprisal for their legitimate journalistic activities. It also serves to intimidate journalists from other independent media outlets.

The Belarusian Law on the Media No. 427-3 of July 17, 2008 (with amendments and additions), in force at the time of Andreyeva and Chultsova's reporting, provided for the right of a media representative to attend protests and other socially important events and report from there (para. 2.2 of Article 34). The journalists were visually marked with blue vests with the inscription PRESS, had appropriate badges and carried out their professional activities on the instructions of their editorial offices. Thus, they were not direct participants in the protest and did not function as organizers.

In addition, the court's conclusions about the alleged coordination of group actions that grossly violated public order are incorrect and were refuted by numerous evidence, in particular, by a linguistic examination of Andreyeva's report. The experts did not find any calls for any action in her words, as they were simply statements and comments on the events that took place that day.

Moreover, the trial did not reveal any evidence to confirm that it were the reporter's comments that prompted someone to commit specific illegal actions. It should also be noted that on that day and on that location, the protesters did not have access to the Internet at all and it was technically impossible to coordinate their actions in this way.

Besides, *Viasna* experts disagreed with the qualification of the protest as "group actions that grossly violated public order." The demonstrators did not commit any actions posing a threat to national or public security, public order, lives and health of others. The protesters peacefully exercised their rights to freedom of peaceful assembly and expression related to a socially important event, the murder of Raman Bandarenka. Given the large number of people gathered in the location, they could not physically fit on the sidewalks and went out onto the adjacent streets. This circumstance per se is not a sign that the demonstration ceased to be peaceful and that its forcible termination by the Ministry of Internal Affairs was required. Moreover, this cannot be qualified as a gross violation of public order.

Thus, the actions of the accused do not possess any elements of the crime they were convicted of. *Viasna* experts believe that the sentences of imprisonment imposed on Andreyeva and Chultsova were related to their legitimate journalistic activities and violated their rights guaranteed by art. 19 of the Covenant. The country's human rights community demands the immediate release of both journalists.

It is emblematic that after this verdict, the authorities took measures at the legislative level to prohibit live reporting (livestreaming) on unauthorized (illegal) events. The amendments to the Law on the Media [were adopted](#) by the House of Representatives of the National Assembly of Belarus in the first reading on April 2, 2021.

CRIMINAL CASE AGAINST JOURNALIST OF THE INTERNET PORTAL TUT.BY KATSIARYNA BARYSEVICH

Another criminal case that caused a significant public outcry was the prosecution of **Katsiaryna Barysevich**, a journalist of the Internet portal TUT.BY.

Barysevich was arrested on November 19, 2020 on suspicion of committing a crime under Part 3 of Art. 178 of the CC (disclosure of a medical secret that entailed grave consequences). On the same day, medical doctor **Artsiom Sarokin** was arrested. Sarokin provided the journalist with information, supported by medical documents, that on the day Raman Bandarenka was beaten and detained by unknown persons (he later died in hospital), he was not drunk and alcohol was not found in his blood. This information refuted an earlier statement by Lukashenka, alleging that during the fatal incident Bandarenka was drunk. It was this circumstance that triggered the criminal prosecution of Katsiaryna Barysevich and Artsiom Sarokin, which clearly demonstrates the presence of a political motive in this case.

After both faced formal charges, they were remanded in custody in a pre-trial detention center.

On February 19, a trial in the criminal case opened at the court of the Maskoŭski district of Minsk.

On March 2, 2021, the verdict [was passed](#), which found the defendants guilty of committing a crime under Part 3 of Art. 178 of the CC. Katsiaryna Barysevich was sentenced to six months in prison and fined 2,900 rubles, and Artsiom Sarokin to two years of suspended imprisonment and a fine of 1,450 rubles.

On April 20, the Minsk City Court considered an appeal filed by the prosecutor's office, which argued that the sentence was lenient, but upheld the verdict against Barysevich.

The arrest of Barysevich and Sarokin was condemned by both the Belarusian and international communities as incompatible with the country's international human rights obligations, including in the field of ensuring the activities of the media, voluntarily assumed by the Republic of Belarus. On November 24, in their [joint statement](#), Belarusian human rights organizations demanded the immediate release of the journalist, and on December 18, a similar [statement](#) was adopted to list Artsiom Sarokin as a political prisoner and to demand his immediate release. Amnesty International called both convicts prisoners of conscience.

Viasna experts believe that the verdicts against Barysevich and Sarokin were politically motivated, not based on the law and subject to unconditional cancellation due to the absence of corpus delicti in the actions of both defendants.

It should be noted that, taking into account the circumstances of the death of Raman Bandarenka, the authorities' attempts to hide from the public the truth and the desire to shift the blame for what happened to the deceased, journalist Katsiaryna Barysevich and her source, Artsiom Sarokin, acted in the public interest. The information they leaked was aimed at preventing abuse of power and disclosing from the public the essence of the crime committed against Bandarenka. Further development of events in this case underscores the social importance of this information.

In accordance with international human rights law and standards, whistleblowers who

disclose information indicating wrongdoing, including human rights violations and abuses, must be protected from retaliation.

The disclosure of medical information was aimed at protecting the reputation of the deceased and refuting inaccurate information about the actions of government officials.

In addition, the sentence goes beyond the permissible restrictions established by art. 19 of the Covenant, since, in the light of the above events, references to legally protected medical secrets are irrelevant.

Finally, it should be borne in mind that in accordance with Part 3 of Article 178 of the CC, the disclosure of medical secrets should have grave consequences for those in respect of whom they were disseminated, or in relation to their relatives. In addition, this information should be disseminated without the consent (besides the will) of the person in respect of whom it is disseminated, or their relatives and legal representatives.

The testimony of Raman Bandarenka's mother suggests that she personally gave permission to publish this information and was interested in its dissemination, since in this way she sought to restore justice and protect the memory of her son from lies. Accordingly, no grave consequences from the dissemination of such information occurred for her and could not have occurred. This is especially important, since the corpus delicti provided for in Part 3 of Article 178 of the CC is material and requires the onset of grave consequences (suicide, mental disorders, dismissal from work, etc.).

The mother was officially called a victim in a criminal case, after the authorities launched an investigation into Bandarenka's death three months after the incident.

It should also be borne in mind that Art. 178 of the CC indicates the presence of a special subject of this corpus delicti – a medical, pharmaceutical or other employee, to whom this information became known due to their professional or official activities. At the time of the crime, Katsiaryna Barysevich was not a medical or pharmaceutical worker and had no access to any such information.

Thus, taking into account these circumstances, *Viasna* experts come to the conclusion that there is no corpus delicti in the actions of Barysevich and Sarokin.

CRIMINAL CASE AGAINST JOURNALIST OF THE NEWSPAPER NOVY CHAS DZIANIS IVASHYN

On March 12, KGB officers arrested Dzianis Ivashyn, an investigative journalist based in Hrodna. Ivashyn wrote for the Novy Chas newspaper. His latest series of stories was about how former Ukrainian Berkut officers [were](#) successfully employed by the Belarusian police. He is also a journalist and editor of the Belarusian service of the InformNapalm website.

On March 20, Ivashyn was charged under Art. 365 of the CC, allegedly for influencing a police officer in order to “change the nature of his legal activities” by “disclosing information that he wished to keep secret.”

After the journalist was remanded in a pre-trial detention facility, representatives of the Belarusian human rights community issued a statement to stress that Dzianis Ivashyn's activities as an investigative journalist pursued the legitimate aim of communicating to the attention of the public of information of social importance related to former Ukrainian police

officers. All information for the journalistic investigation was taken from open sources.

In accordance with paragraph 30 of the UN Human Rights Committee's [General comment No. 34](#) "Article 19: Freedoms of opinion and expression", "extreme care must be taken by States parties to ensure that treason laws and similar provisions relating to national security, whether described as official secrets or sedition laws or otherwise, are crafted and applied in a manner that conforms to the strict requirements of paragraph 3. It is not compatible with paragraph 3, for instance, to invoke such laws to suppress or withhold from the public information of legitimate public interest that does not harm national security or to prosecute journalists, researchers, environmental activists, human rights defenders, or others, for having disseminated such information."

Thus, these actions are a non-violent exercise of the freedom to search and disseminate information, falling under the protection of art. 19 of the Covenant, and they cannot be qualified as "influencing a police officer in order to change the nature of his legal activities."

At the moment, Dzianis Ivashyn continues to be held in custody in a pre-trial detention center in Hrodna. The human rights and journalistic communities [demand](#) his immediate release and the termination of criminal prosecution.

CRIMINAL CASE AGAINST VIASNA HUMAN RIGHTS ACTIVIST MARFA RABKOVA

Marfa Rabkova, coordinator of *Viasna's* network of volunteers, and her husband Vadzim Zharomski [were arrested](#) by GUBAZIK officers on September 17, 2020. After a search and an interrogation, Vadzim was released, while Marfa was remanded in custody. On September 25, Rabkova [was charged](#) under Part 3 of Art. 293 of the CC (training or other preparation of persons to participate in mass riots, or financing of such activities) and placed in a pre-trial detention center in Minsk.

The Observatory for the Protection of Human Rights Defenders, Front Line Defenders, Amnesty International and Belarusian human rights organizations supported Marfa Rabkova and demanded her immediate release. She was called a political prisoner and a prisoner of conscience.

On February 11, 2021, the Investigative Committee charged Rabkova with new, more serious crimes: under Part 2 of Art. 285 (participation in a criminal organization) and Part 3 of Art. 130 (incitement to hostility against another social group, committed by a group of persons). Under the new charges, Marfa Rabkova faces up to 12 years in prison.

The new charges were brought against Rabkova shortly after the national television broadcaster aired a film titled "TNT of Protest", which alleged the involvement of *Viasna* as a whole and Marfa Rabkova, in particular, in terrorist activity. In response, *Viasna* issued a [statement](#) to stress the important role of Marfa Rabkova as a human rights defender of *Viasna*, condemning the criminal charges as retaliation for her non-violent activities to protect human rights, together with attempts to manipulate public opinion and the violation of the principle of the presumption of innocence, and once again demanded her immediate release.

At the time of writing, Marfa Rabkova continues to be held in pre-trial prison No. 1 in Minsk.

CRIMINAL CASE AGAINST VIASNA HUMAN RIGHTS ACTIVIST LEANID SUDALENKA

Leanid Sudalenka, head of *Viasna's* Homiel branch, [was arrested](#) by GUBAZIK officers on January 18, 2020. These events were preceded by an hours-long search conducted on January 6 at *Viasna's* office in Homiel and at Leanid Sudalenka's house, after which he was detained but later released.

On January 28, 2021, Leanid Sudalenka [was charged](#) under Part 1 and Part 2 of Art. 342 of the CC (organization of group actions that grossly violate public order). On the same day, a *Viasna* volunteer, **Tatsiana Lasitsa** was arrested on a similar charge at the Minsk airport.

According to the investigating authorities, Sudalenka carried out "illegal activities" by paying fines for protesters. This new approach to the issue of assistance to administrative convicts [was announced](#) on January 5, 2020 by head of the Investigative Committee's Minsk office Siarhei Pasko. In his opinion, the payment of a fine for another person "negates the principle of individuality of responsibility." He also stated that "the investigation revealed a significant number of facts of payment of fines by third-party organizations and individuals for the perpetrators. These funds were frozen by the Investigative Committee, with the approval of the prosecutor. A number of departments concerned were urged to launch procedural actions to collect funds directly from the offenders."

It should be noted that neither the provisions of the PECAO nor of other legislative acts regulating enforcement procedures to collect fines imposed on individuals convicted in administrative proceedings contain any restrictions and prohibitions regarding the subjects of payment of these fines. Moreover, the law does not provide for the procedure of recollection of the fine after its initial payment and termination of enforcement proceedings against the debtor.

Likewise, the provision of financial assistance by any individual or group of persons to another individual in paying a fine is not a violation of tax legislation, since an amount not exceeding seven thousand rubles received as a gift by an individual during 12 months is not taxable. In case this amount is exceeded, the individual must pay income tax at the end of the fiscal year.

This new policy was prompted by the activities of a number of initiatives that provided assistance to individuals sentenced to fines, primarily BY_Help and BYSOL, both located outside Belarus. In order to obstruct their humanitarian activities aimed at providing assistance to victims of political repression, the investigating authorities continued to expand their illegal approaches.

On January 12, 2021, journalist and media manager **Andrei Aliaksandrau** and **Iryna Zlobina** were arrested on suspicion of assisting the BY_Help initiative in paying administrative fines. According to the Ministry of Internal Affairs, this activity constituted "financing of protest activities."

Later, Aliaksandrau and Zlobina were charged under Part 1 and Part 2 of Art. 342 of the CC and continue to be held in custody at pre-trial detention center No. 1 in Minsk. The Belarusian human rights community [called](#) both political prisoners, demanding their immediate release.

As noted by Belarusian human rights activists, the payment of fines for persons who were convicted under Art. 23.34 of the Administrative Code, together with the costs of their

imprisonment in detention facilities, has nothing to do with the financing of riots or other group actions that grossly violate public order. The suspects did not pay for any criminal acts and did not knowingly promise reward for the commission of actions covered by Art. 342 or 293 of the CC. Nor did they take part in their preparation (training or other material support). As for the founders of the BY_Help and BY_SOL initiatives, the authorities took things to a step further by opening a criminal case against **Aliaksei Liavonchyk** and **Andrei Stryzhak** under Art. 362-1 (financing of an extremist group) and under Part 2 of Art. 342 of the CC (financing of group actions that grossly violate public order).

According to the investigators, Liavonchyk and Stryzhak, “with the help of other persons,” transferred money to media manager Andrei Aliaksandrau and Iryna Zlobina, who paid the protesters’ fines and covered the damage caused by “their illegal actions”.

Returning to the issue of criminal prosecution of human rights defenders, including Leanid Sudalenka, it should be noted that their prosecution is directly related to providing financial and other assistance to victims of political repression, i.e. in connection with their peaceful activities to protect the rights of others, and in connection with their human rights activities.

CRIMINAL PROSECUTION FOR EXERCISING POLITICAL RIGHTS

Criminal prosecution in connection with the exercise of political rights, including the right to participate in governing the country through elections, began almost immediately after the announcement of the presidential elections in May 2020.

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

Later, as the election campaign advanced, members of nomination groups and the candidates themselves (**Viktar Babaryka** and members of his presidential campaign) were subjected to repression.

A separate group of criminal cases related to the implementation of public political activity is made up of cases opened in connection with the creation of the Coordination Council, which included members of presidential campaigns, as well as representatives of wide circles of the country's civil society.

Below we provide examples of some of the criminal cases initiated during and after the elections in connection with the implementation of public political activity.

CRIMINAL CASE AGAINST BLOGGER SIARHEI TSIKHANOUSKI AND OTHER DEFENDANTS IN THE SO-CALLED "TSIKHANOUSKI TRIAL"

Long before the start of the presidential elections, **Siarhei Tsikhanouski** created a YouTube channel called "A Country for Living", which was rapidly gaining popularity among the country's Internet users. On his channel, the blogger criticized both the actions of local authorities and the policy of the country's leadership in general. Many political observers assumed that in this way Tsikhanouski increased his popularity, acquiring a certain image and reputation of a "people's fighter" in order to further participate in the elections. Later, Tsikhanouski announced his political ambitions.

It should be noted that the use of this kind of political technologies is not extraordinary or illegal. Freedom of expression is guaranteed to the citizens of the country by the Constitution, together with their participation in elections held on a regular basis. However, in the Belarusian conditions, this kind of activity on the eve of the upcoming elections could not fail to attract the attention of security forces.

Almost immediately after the start of the election campaign, **Siarhei Tsikhanouski**, who had been actively traveling around the country, was arrested by the police in the city of Homiel and subjected to a short term of administrative imprisonment for organizing an unauthorized mass event. It is for this reason that he was unable to register his own nomination group and qualify as a presidential candidate. Instead, his wife **Sviatlana Tsikhanouskaya** registered a nomination group, with **Siarhei Tsikhanouski** as its head. It was in this capacity that after his

release he continued his political activity, organizing pickets to collect support signatures, in accordance with the procedures provided for by the Electoral Code.

These pickets, held in various cities of Belarus, attracted considerable public attention. Thousands of voters lined up to offer their signatures in support of the nomination of alternative presidential candidates (Viktar Babaryka, Sviatlana Tsikhanouskaya, and Valery Tsapkala). Some analysts called this phenomenon a “signature revolution.” These queues clearly demonstrated the demand for change in the country from the majority of representatives of the Belarusian society. This became obvious for representatives of the ruling regime, who realized that the electoral campaign was gaining momentum and was clearly not proceeding in accordance with the scenario of low key, and most importantly, controlled elections.

Siarhei Tsikhanouski was arrested on May 29, 2020 during an election picket in Hrodna, which was held in an authorized location.

The arrest of Tsikhanouski was the result of a poorly organized provocation by security forces, which was caught on numerous videos and demonstrated that the politician did not commit any illegal actions.

In December 2020, the BYPOL initiative [published](#) materials confirming the version about the provocation organized against Tsikhanouski by the police and his groundless arrest.

On June 8, 2020, Siarhei Tsikhanouski and a dozen persons arrested along with him [were charged](#) under Part 1 of Art. 342 of the CC (organization or active participation in group actions that grossly violate public order). Later, Tsikhanouski was also [charged](#) under Art. 191 of the CC (obstruction of the conduct of elections and the work of the Central Election Commission) after a complaint by head of the CEC Lidziya Yarmoshyna, as well as under Art. 130 (inciting hatred against another social group, i.e. police officers) and under Part 1 of Art. 293 of the CC (organization of mass riots). As a result, Tsikhanouski is facing many years in prison.

The events in Hrodna of May 29, 2020 served as a formal reason for the isolation of a number of well-known bloggers and activists on charges under Art. 342 of the CC.

In particular, bloggers **Siarhei Piatrukhin**, **Aliaksandr Kabanau**, **Dzmitry Kazlou**, **Uladzimir Tsyhanovich**, and **Ihar Losik**, politician **Mikalai Statkevich** and others were arrested to become defendants in the so-called “Tsikhanouski case”. All of them were accused of involvement in the same events in Hrodna on May 29 and all their charges were absolutely identical.

Later, new, more serious charges [were brought](#) against some of the defendants in this case. For example, politician Mikalai Statkevich and blogger Ihar Losik, together with an activist of Tsikhanouski’s initiative “A Country for Living” **Aliaksandr Aranovich**, were charged under para. 13, Part 2 of Art. 293 of the CC (preparation for participation in riots).

On January 18, 2021, the Kastychnicki District Court of Hrodna opened the trial of three of the persons arrested at the election picket of May 29, 2020, **Dzmitry Furmanau**, **Yauhen Raznichenka**, and **Uladzimir Kniha**.

During 2021, a number of other side-trials took place as part of the bigger [“Tsikhanouski case”](#).

In particular, on February 2, 2021, the Lahojsk District Court [sentenced](#) **Uladzimir Niaronski**, blogger and author of the YouTube channel “Sluck for Living”, to three years in prison under Part 1 of Art. 342 (group actions grossly violating public order) and Art. 369 of the CC (insult to a government official).

The political prisoner was accused of calling in his videos to actions that “grossly violated public order” in Sluck, Mazyr, Brest, Babrujsk, and Mahilioŭ. The court found that he did it in collusion with blogger Siarhei Tsikhanouski and politician Mikalai Statkevich. In addition, Niaronski was found guilty of publicly insulting chairperson of the Sluck district executive committee Andrei Yancheuski in a video posted on his YouTube channel.

On February 26, 2021, the court of the Lieninski district of Hrodna opened the trial of another activist of “A Country for Living”, **Aliaksandr Aranovich**. According to the investigators, from May 4, 2020, inspired by the calls of Statkevich and Seviarynets, Aranovich joined the activists of “A Country for Living” and subsequently from May 20 to 29, by prior agreement with Siarhei and Sviatlana Tsikhanouskis and other persons, took part in actions that grossly violated public order in Mahilioŭ and Hrodna.

On April 14, 2021, the Kastychnicki District Court of Mahilioŭ [sentenced](#) well-known Brest-based bloggers **Siarhei Piatrukhin** and **Aliaksandr Kabanau** to three years in prison each, finding them guilty of committing a crime under Part 1 of Art. 342 (group actions grossly violating public order) and under Art. 369 of the CC (insult to a government official). Piatrukhin was also found guilty under Art. 391 of the CC (insulting a judge).

According to the court, Piatrukhin and Kabanau, in collusion with Siarhei Tsikhanouski and Mikalai Statkevich, carried out “coordinated and purposeful activities to create socio-political tension on the eve of the 2020 elections,” implemented plans to organize a protest movement under the guise of pickets and collecting support signatures for the nomination of presidential candidates.

Despite the fact that the charges relate to actions committed by prior conspiracy with Siarhei Tsikhanouski and Mikalai Statkevich or with their direct participation, Tsikhanouski and Statkevich themselves were not interrogated at these trials, which resulted in a legal collision with the data established in the earlier court sessions not to be admitted as information subject to proof in the trial over Tsikhanouski and Statkevich, but to be merely mentioned as evidence in the case, instead. However, it should be recalled that the court in any case must establish all the circumstances related to the essence of the charge brought, and failure to take measures for a comprehensive and impartial examination of the case will be regarded as a violation of the principles of a fair trial.

In addition, the rights of the accused bloggers were violated by their removal from the courtroom for the entire period of the trial. According to *Viasna* experts, such a measure could be applied only “in case of persons substantially and persistently obstructing the proper conduct of trial.”¹⁰ The defendants were expelled from the courtroom on the very first day of the trial, and subsequently repeatedly announced their desire to participate in the hearings. Considering that the violation of the rules in the court session by the defendants was isolated and formal, the court should have reconsidered its decision in the interests of administering justice: in particular, Piatrukhin did not testify during the investigation, and could not do this at the court sessions. Thus, the right of the accused to defend themselves in person was violated, as provided for in paragraph 3 of article 14 of the Covenant.

¹⁰ General Comment No. 32. Article 14: Right to equality before courts and tribunals and to a fair trial

CRIMINAL CASE AGAINST CO-CHAIRPERSON OF THE BCD PARTY PAVEL SEVIARYNETS

Pavel Seviarynets, opposition politician, co-founder of the Belarusian Christian Democracy Party and author, was arrested by police officers on June 7, 2020. Subsequently, he was sentenced to at least three short terms of administrative imprisonment for participating in election pickets and calling to joint protests.

On August 20, 2020, after 75 days of administrative imprisonment, Pavel Seviarynets was not released, but transferred to pre-trial detention center No. 1 as a suspect in a case under Part 2 of Art. 293 of the CC (rioting). On September 1, 2020, he was formally charged.

In April 2021, the case of Pavel Seviarynets was submitted for consideration at the Mahilioŭ Regional Court.

The human rights community [condemned](#) the use of disproportionate force in the violent dispersal of demonstrations on August 9-11, 2020, placing full responsibility for what happened on the Belarusian authorities.

In addition, human rights activists have repeatedly [expressed](#) disagreement with the legal qualification of the demonstrations of 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 CC, and, accordingly, cannot qualify as riots. The protesters did not commit arson, did not destroy property and did not put up armed resistance to law enforcement agencies. Certain cases of violent actions against police officers by demonstrators require separate legal qualifications, taking into account the context and circumstances of the use of violence, including in the context of self-defense against knowingly disproportionate actions of police officers.

It should be noted that Pavel Seviarynets was isolated on June 7, 2020, at the earliest phase of the elections. Given the largely spontaneous and unpredictable nature of the presidential elections, he not only could not personally take part in any events in the post-electoral period, but also could not plan and organize them.

In this regard, *Viasna* experts believe that Seviarynets’s actions had no elements of the crime he was accused of, while the authorities’ claim that it were the politician’s calls that made the public take to the streets on election night, August 9, and in the following days, are clearly far-fetched and groundless.

CRIMINAL CASE AGAINST PRESIDENTIAL CANDIDATE VIKTAR BABARYKA AND MEMBERS OF HIS PRESIDENTIAL CAMPAIGN

Viktar Babaryka, former CEO of Belgazprombank, was arrested and taken into custody on June 18, 2020, during the registration of support signatures collected for his nomination as a presidential candidate.

His arrest was preceded by a number of public threats from the incumbent head of state, as well as allegations of Babaryka’s ties with “Kremlin puppeteers”. Together with Babaryka, the authorities arrested several members of his campaign, including its head **Eduard Babaryka**.

The country’s human rights defenders have repeatedly stressed that their persecution is

politically motivated beyond any doubts. The persons arrested in the case were eventually charged with economic crimes.

In particular, Viktor Babaryka was charged under Part 3 of Art. 430 (taking a bribe on an especially large scale, either by an organized group or by a person in a responsible position), as well as under Part 2 of Art. 430 of the CC (giving a bribe repeatedly, or on a large scale).

Babaryka's defense repeatedly said that the rights of their client had been violated, and pressure was put on the lawyers themselves, including by depriving some of them of their licenses. Representatives of independent media and members of the public were not allowed to attend the trial. The hearings were clearly marred by violations of the principles of a fair trial.

It is necessary to mention the so-called "dialogue" organized by Aliaksandr Lukashenka in the KGB pre-trial detention center involving a number of political prisoners held there at that moment, including Viktor Babaryka. According to the major government-owned TV channels, Lukashenka talked with those present for four hours, and the purpose of the visit was "to hear the opinion of everyone." Viktor Babaryka himself later said that the meeting could in no way be called a dialogue and no agreements were reached between him and Lukashenka during the meeting.

It should be noted that economic charges were actively used by the authorities to persecute businesspersons who in one way or another participated in Viktor Babaryka's presidential campaign or supported other public initiatives (**Aliaksandr Vasilevich, Liliya Ulasava, Yuliya Shardyka, Dzmitry Rabtsevich, Viktor Kuushynau, Uladzislau Mikhalap**, etc.).

CRIMINAL CASES AGAINST MEMBERS OF THE COORDINATION COUNCIL

Separately, we should note the criminal prosecution of members of the Coordination Council or criminal cases opened to investigate its establishment and activities. The Coordination Council described itself as a body representing the Belarusian society, [created](#) on the initiative of Sviatlana Tsikhanouskaya "with the aim of organizing the process of overcoming the political crisis and ensuring harmony in society, as well as to protect the sovereignty and independence of the Republic of Belarus."

Shortly after the Council was established, it triggered an acute backlash from the country's leadership, including Aliaksandr Lukashenka, who, on August 18, 2020, said that the Council was illegal, describing it as an attempt to seize power. Two days after his speech, on August 20, 2020, the General Prosecutor's Office launched a criminal investigation under Art. 361 of the CC. On September 9, a member of the Presidium of the Coordination Council, lawyer **Maksim Znak**, was arrested together with Maryia Kalesnikava's lawyer **Illia Salei**.

These arrests were preceded by the abduction in the center of Minsk on September 7, 2020 by unknown persons of a member of the Presidium of the Coordination Council **Maryia Kalesnikava**. As it later became known, she, along with two other members of the Coordination Council, **Anton Radniankou** and **Ivan Krautsou**, was forcibly brought to the Ukrainian border to be expelled from the country. However, having ripped up her passport at the border crossing and jumping out of the car, Kalesnikava prevented the deportation operation organized by the Belarusian security forces.

After that, Kalesnikava was held incommunicado for 24 hours. On September 9, the Investigative Committee officially announced that it was investigating a criminal case opened

by the General Prosecutor's Office under Part 3 of Art. 361 of the CC (calls for actions aimed at causing harm to the national security of the Republic of Belarus).

The suspects in the case, Maryia Kalesnikava and Maksim Znak, were remanded in custody at a pre-trial detention center by order of the prosecutor. Illia Salei was also arrested on suspicion of committing a crime (Part 3 of Article 361 of the CC). He was later released from pre-trial detention and placed under house arrest, and in April 2021, released on bail.

On December 21, 2020, the General Prosecutor's Office announced the launching of criminal cases against members of the Coordination Council **Sviatlana Tsikhanouskaya**, **Maryia Kalesnikava**, **Maksim Znak**, **Pavel Latushka**, **Volha Kavalkova**, **Siarhei Dyleuski** and others under Part 1 of Art. 361-1 of the CC (creation of an extremist group), and against the founder of the BY_help fund, **Aliaksei Liavonchyk**, under Art. 361-2 of the CC (financing the activities of an extremist formation). In addition, the Investigative Committee, on the instructions of the Prosecutor General's Office, initiated a criminal case under Part 1 of Art. 357 of the CC (conspiracy or other actions committed with the aim of seizing state power) to target the activities of the Coordination Council.

Later, the authorities opened a criminal case under Art. 289 of the CC (act of terrorism) after Sviatlana Tsikhanouskaya's office arranged an online vote to initiate negotiations between the opposition and the authorities to overcome the political crisis. The investigation referred to clearly far-fetched grounds and, apart from Tsikhanouskaya, targeted members of the BYPOL initiative.

As the crisis with human rights deepened, the authorities increasingly began to resort to all sorts of manipulations with the help of state propaganda. More and more often, government-controlled television channels announced an external military threat to Belarus from NATO countries, Poland's territorial claims, the infiltration of weapons and groups of nationalist militants from the territory of neighboring Ukraine, a conspiracy of Western countries against Belarus and attempts by the authorities and organizations of these states to destabilize the internal political situation in Belarus, including with the help of terrorist attacks and even the assassination of the country's leaders.

During the entire period of the crisis, several cases were opened to target numerous persons for alleged preparation of terrorist attacks, creation of criminal organizations and conspiracy to overthrow the government.

The leading role in exposing the alleged conspiracies by foreign special services belongs to the head of the KGB, Ivan Tsertsel.

The actual goal of all these information and legal steps is fighting the political opposition, preventing the intensification of street protests, and intimidating and controlling the Belarusian society. All this activity once again clearly demonstrates the lack of confidence of Lukashenka's political regime in its strength and the awareness of the lack of support from the majority of the country's citizens.

CRIMINAL PROSECUTION OF PARTICIPANTS IN PEACEFUL ASSEMBLIES

On March 24, 2021, the government-owned news agency BelTA [reported](#) with reference to the public relations department of the General Prosecutor's Office:

"At the moment, 89 criminal cases have been sent to courts against 154 persons who are charged with crimes under Article 342 of the CC. As of today, 87 persons have been convicted under this article. As punishments, as a rule, imprisonment and restricted freedom were ordered, including in open correctional institutions. In one case, a person who committed a socially dangerous act was declared insane and the court applied coercive security and treatment measures to the convict."

Art. 342 of the CC provides for responsibility, including for the lawful exercise of rights and freedoms by citizens. It penalizes the organization of group actions that grossly violate public order and are associated with clear disobedience to the legal requirements of government officials or entail disruption of the work of transport, enterprises, institutions or organizations, or active participation in such actions in the absence of signs of a more serious crime. These actions are punishable by a fine, or restricted freedom for up to three years, or imprisonment for the same period. Thus, the presence of at least one of the listed circumstances is sufficient for participation in a peaceful assembly to entail criminal liability.

Practice shows that there is a systemic problem of state interference in the freedom of assembly, including spontaneous meetings, in the context of gross violations of the standards of free, democratic, open and competitive presidential elections. *Viasna* notes that the courts did not assess the actions of the accused and victims in accordance with a number of crucial provisions of the law:

- Decision by the Constitutional Court of May 07, 2018 No. R-1123/2018 "On the 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"", clarifies the application of international legal acts and generally recognized principles of international law in the national legal system;
- Articles 33 and 35 of the Belarusian Constitution, which guarantee freedom of expression and assembly;
- Article 137, describing the role of the Constitution in the hierarchy of 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 assembly;
- Article 40, paragraph 4, of the Covenant, 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 assembly in such a way that it hinders the exercise of this right and the prohibition of spontaneous assemblies.

Since January 30, 1992, the Republic of Belarus has been a full member of the Organization for Security and Cooperation in Europe. The Panel 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 Guidelines on Freedom of Peaceful Assembly, which provided legislative support to OSCE participating States, helping to ensure compliance of their legislation on freedom of peaceful assembly with international standards and OSCE commitments.

According to the Guidelines, **“an assembly should be deemed peaceful if its organizers have peaceful intentions. The term “peaceful” should be interpreted to include conduct that may annoy or give offence to persons opposed to the ideas or claims that a particular assembly is promoting, and even conduct that deliberately impedes or obstructs the activities of third parties.”**¹¹.

In this regard, *Viasna* notes with concern that the courts never assess the actions of the accused in the context, when the state violently suppressed an assembly, which is incompatible with the presumption in favor of holding assemblies; a positive obligation on the part of the state to facilitate and protect peaceful assemblies; the duty of the state to ensure the protection and promotion of any assembly at all times, provided that it is peaceful and proportionate, with the least interference. In particular, a spontaneous meeting is seen as a reaction to an event. Its organizer (if there is one) is unable to meet the requirement for the advance notice. Such gatherings are often close in time to the events that triggered them, and the possibility of such gatherings is important, as the delay would weaken the effect of the message conveyed by such a gathering. Meanwhile, the Law on Mass Events does not provide for the possibility of holding a spontaneous meeting.

ABSENCE OF RIOTS

There is no definition of “riots” in the CC 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].”*¹².

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.”**¹³.

¹¹ [Guidelines on Freedom of Peaceful Assembly](#)

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.

¹³ 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)

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 resulted in corresponding miscarriages of justice. In particular, when announcing the verdict under Part 2 of Article 293 of the CC **against S.**, the Frunzienski District Court of Minsk, presided by judge Yuliya Blizniuk, after listing the abstract signs of riots, indicated what specific actions the defendant performed: between 10 pm on August 10 and 1 am on August 11, 2020, in the area between the intersection of Prytycki Street and Pushkin Avenue and between the intersection of Prytycki Street and Biélski Street, actively grossly violating public order, disobeying the legal requirements of government officials, the consequence of which was the disruption of transport and enterprises, he took part in the riots, which was expressed by the direct commission of destruction of property in a group of unidentified persons through looting and dismantling a parking box for storing metal shopping carts:

“seized the carts stored in the box, moved them to the place where the barricades were being erected at the intersection of Prytycki Street and Biélski Street in Minsk, which by their location blocked the passage and advance of police officers, created an opportunity and favorable conditions for armed resistance to the authorities by other participants in the riots.”

In support of the defendant’s guilt, the court referred to the protocols of inspection of various parts of the terrain of different (including more than a kilometer) degrees of remoteness from the place of the directly imputed action, i.e. the seizure and transportation of the carts. These protocols do not directly prove the fact of riots, and references to them in the verdict are replete with vague terms, definitions and groundless conclusions, as well as contradictions. In particular, in the photographs examined, the court saw barricades on the site in Prytycki Street, and in the protocol of inspection of the same area of the terrain – only the remnants of the barricades. It is worth noting that the term “barricades” in itself reflects the situation in an extremely vague way: in court sentences, the structures described as “barricades” are rather symbolic structures that consist of a few elements (garbage cans, carts, flowerpots, and other items). The court, without examining and evaluating the evidence confirming the event and circumstances of the unlawful actions of other persons, in the verdict against S., makes an unconfirmed conclusion that “mass riots took place on the territory of Minsk on August 08, 2020 and in the following days,” which is unacceptable, since the verdict of the court must be justified. The verdict shall be deemed justified if it is rendered on the basis of only those evidence presented to the court that have been comprehensively, fully and objectively examined in the court session. The court’s verdict must be motivated. The verdict is considered motivated if it contains evidence on which the conclusions of the court and the reasons for the decisions made by it are based (Article 350 of the CCP). In addition to this conclusion, the court also found that riots actually took place, “that is, the actions of an outrageous crowd, expressed in the destruction of property,” taking into account the number of protesters, “the aggressiveness of the participants, the erection of barricades, damage to property, the commission of violent actions against law enforcement officers, the use of various objects as instruments of committing a crime.” The last two circumstances were also not the subject of examination in this court session.

A similar approach was demonstrated by the court of the Maskoŭski district of Minsk, chaired by Tatsiana Pirozhnikava. The subject of examination in the court session was the

events in a separate district of Minsk, but at the same time, the court set out in the verdict, not supported by evidence, conclusions alleging that pre-planned riots took place on the territory of the entire city of Minsk.

The Saviiecki District Court of Minsk, presided by judge Alena Zhukovich, substantiated the fact of riots by damage to municipal property and the presence of a large number of protesters on the street in a certain place. This was also allegedly evidenced by “the presence of obscene language against the police officers of the current government on the surface of the asphalt on the road and the sidewalk, as well as offensive inscriptions addressed to the president of the Republic of Belarus.”

In the city of Brest, criminal cases against protesters on charges under Article 293 of the CC are submitted to court as collective lawsuits involving several defendants at a time. In the descriptive and reasoning part of the verdict, the Maskoŭski District Court of Brest, composed of judge Vera Filonik and lay judges Hrytsuk and Dauhaliuk, pointed to specific streets of the city where, according to the court, riots took place: Saviieckaja Street, Naftavaya Street, Shevchenko Boulevard, Kasmanaŭtaŭ Boulevard, and Mašeraŭ Avenue. However, the court examined only the circumstances of what happened on Mašeraŭ Avenue near building No. 55 – with the participation of the accused. At the same time, the verdict did not establish a specific time for the commission of unlawful acts by the defendant. Besides, the defendant was accused of being responsible for the entire material damage and physical harm to the police officers, which was reportedly caused during the protests in the city of Brest at different times and in different parts of the city.

Thus, there is no reason to believe that mass riots actually took place in Belarus in the post-election period, and accordingly, bringing the participants of peaceful assemblies to account under Article 293 is often an arbitrary act of repression for the exercise of their rights and freedoms. The actions of individuals who used violence not in self-defense or in a state of extreme necessity, not in connection with attempts to violate their legal right to peaceful protest, should be individually qualified according to the corresponding articles of the CC, which provide for liability for crimes against public order and order of government.

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

The prosecuting authorities [reported](#) that as of March 26, 2021, 109 criminal cases against 147 persons were submitted to courts for resistance, threats and violence against police officers, other government officials, as well as damage and destruction of property. More than 100 individuals were convicted, of whom 67 were sentenced to imprisonment, 33 to restricted freedom, including in open correctional institutions.

In this regard, human rights activists note that it is fundamentally important to establish whether the actions of participants in protests contain elements of the crimes under Articles 364, 364 and 365 of the CC. The main direct object of a crime in the form of violence against a police officer is public relations that ensure the lawful official activity of the officer as a representative of the authorities, i.e. the exercise of power over an indefinite circle of persons not subordinate to them, in the performance of official duties related to the solution of the tasks at hand.

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.¹⁴.

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.

USE OF PHYSICAL FORCE AND POLICE EQUIPMENT WITHOUT WARNING

Many seemingly unlawful actions of the accused are based on the unlawful actions of police officers.

In particular, **V.R.**, the defendant in a trial accused under Article 364, explained at a court hearing:



"[...] One of the men running past [some wearing green uniforms, others – unmarked civilian clothes] punched him in the face, which made him feel pain in the area of the mouth and realized that his dental bridge was damaged."



THE PROBLEM OF IDENTIFICATION OF POLICE OFFICERS

Paragraph 153 of the OSCE Guidelines on Freedom of Peaceful Assembly states:

"Law-enforcement personnel should be clearly and individually identifiable: When in uniform, law-enforcement personnel must wear or display some form of identification (such as a nameplate or number) on their uniform and/or headgear and not remove or cover this identifying information or prevent persons from reading it during an assembly."

¹⁴ 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.

Thus, when policing a peaceful assembly, law enforcement officers should wear uniforms and be clearly identified, so that demonstrators could see them in case of need for protection.

Identification marks on police officers (as a way to identify them) give civilians minimal guarantees that arrest will not be followed by disappearance or acts of prohibited treatment. Although in the context of a legal crisis and an atmosphere of impunity for any misuse of police officers, such minimum guarantees are certainly not enough.

V.R., accused under Article 364, explained at the hearing:



"[...] At this point, several men ran into the courtyard from the side of the avenue, some of whom were wearing green uniforms and others – civilian clothes. Their clothes were missing any identification, by which he could have determined that they were police officers."



Police officer B., who was interrogated in the same trial, said that "by order from superior officers, he was dressed in a dark green uniform without identification marks, black ankle boots, and a black balaclava on his head." They travelled in a "Ford Transit without license plates." Witness F. was "on duty in civilian clothes."

A verdict of the court of the Saviecki district of Minsk found that the victims in the criminal case under Article 364 of the CC, M., P. and N. (fake initials) were on duty in civilian clothes and only verbally notified the accused about their belonging to the police only after the conflict started, travelling in a car with regular (civilian) license plates from another region; at the end of the conflict, one of them (M.) demonstrated a gun and threatened to use it as a weapon. These circumstances were pointed out by the accused to substantiate their doubts about the legality of the demands of the said officers and their actions. The court, in support of its conviction that the accused were aware of the victims' belonging to the police, pointed to "publicly known facts of unauthorized mass events in the Republic of Belarus, as covered in the media, which always involve law enforcement officers to protect public order, including in civilian clothes."

ASSESSMENT OF THE LEGALITY OF THE ACTIONS BY POLICE OFFICERS

V.R., who, according to him, was punched in the face by a police officer without warning, approached him immediately after the incident to say that "this man had no right to beat him, after which he hit the victim B. once in the face." The victim B. argued that after these actions he "lowered the accused to the ground and immobilized him." According to an expert's conclusion, a forensic medical examination revealed that V.R. suffered bodily injuries of "hemorrhage on the inner surface of the lip, which could have formed from a single traumatic effect of a blunt hard object in a period that does not contradict the one specified; localization is not typical for the formation when falling on a surface." However, in the verdict, the court refrained from assessing the impact of this evidence both on the assessment of the testimony of the police officers and on the conclusion about the legality of their actions in the period preceding the arrest.

Police officers K., P. and E., the victims in a trial held at the Pieršamajski District Court of Viciebsk, presided by judge T. Rodzina, testified that on the day and time indicated in the indictment, a group of citizens who took an active part in an unauthorized mass event,

expressed their disagreement with the result of the presidential elections in the Republic of Belarus, moved along Budaŭnikoŭ Avenue in Viciebsk, and then intended to move in the direction of Victory Square along Čarniachoŭski Avenue.

“In order to suppress illegal activities – an unauthorized mass event – to prevent the movement of a column of citizens who were loudly shouting public and political slogans and were not responding to the remarks of police officers [...] it was decided to set up a blocking line from among the police officers,” – said witness K., an police officer.

The testimony of a police officer, witness S., formed the basis of the verdict in another trial held at the Pieršamajski District Court of Viciebsk, which was heard by judge N. Karablina.

It were the actions to suppress the peaceful march that entailed acts of disobedience on the part of the protesters, as well as attempts to rip off masks from the police officers, to break through police cordons and walk on the road. Thus, formal violations of the law by the protesters were provoked by the actions of police officers who violated the right to participate in a peaceful assembly and freedom of expression in the absence of grounds for restricting these rights under the Covenant.

The accused S.V., S.Yu., Z.Zh. and S.N. were charged with the fact that they, knowing about the planned holding of an unauthorized group event, “realizing the illegality of this event and their actions, inspiring others with their behavior, in order to induce them to feel the need to participate in this unauthorized event,” took an active part in the “mass meeting of citizens”, and, along with other protesters, moved down the street, where they were blocked by police officers. S.N. faced an additional charge of hitting a police officer. The interrogated victims (police officers) argued that they were blocking the way of the demonstrators, preventing them from participating in the protest. As a result, the officers heard threats and were attacked with various objects. The protesters also opposed the attempts of the police to “split the crowd and clear the roadway.” Thus, in this case, violence by the protesters was a response to violations by the police officers of the rights of participants in a peaceful assembly.

QUESTIONABLE EVIDENCE OF BODILY HARM

Analysis of findings by the courts and their assessment of evidence cast doubt on the impartiality of the judiciary. Cases have been documented of sentences substantiated by dubious evidence of injuries suffered by police officers.

In particular, B.F., a victim in a criminal trial, told the court that the accused had inflicted one blow on his right cheek, one blow on his left cheek, and a kick in the face, which caused a cut in the lip. According to the Ministry of Internal Affairs’ hospital, the reported victim was diagnosed with a bruise of the lower lip after suffering a kick from the attacker. The same circumstances and consequences were documented in the patient’s log. According to an expert’s opinion, B.F. had a bruise in the area of the right superciliary arch, a bruise on the upper eyelid of the right eye in the area of the inner corner, an abrasion in the projection of the lower edge of the right orbit, a graze wound against the background of hemorrhage of the mucous membrane of the lower lip on the right, a bruise of the transitional border of the lower lip on the right. The patient reportedly suffered at least one traumatic impact. The Saviiecki District Court of Minsk (judge Zhukovich) did not give a proper assessment of this contradiction and did not resolve it.

When ruling in the trial of **Dzmitry Karatkevich**, the Saviiecki District Court of Minsk, without sufficient grounds, rejected an expert's opinion, who insisted on the absence in the provided medical documents of sufficient and definite data confirming the infliction of bodily harm on the alleged victim, an officer of the Ministry of Internal Affairs. "It is not possible to reliably allege the presence of a chemical burn of the face, neck, and the eyes, according to the data available in the medical documents," the expert said. Thus, the court sided with the prosecution, violating the principle of impartiality. In the absence of evidence of harm to the victim, Karatkevich's conviction under Art. 364 of the CC is illegal.

DOMESTIC INTELLIGENCE OPERATIONS TARGETING DEFENDANTS IN CRIMINAL TRIALS, USE OF INADMISSIBLE EVIDENCE

Judicial observation revealed cases of conducting law enforcement intelligence operations against defendants targeted in politically motivated criminal cases. Meanwhile, domestic intelligence is expected to pursue the objectives of prevention, detection and suppression of crimes, together with identification of individuals preparing for them, committing or having committed them, as well as others provided for by Article 3 of the Law On Law Enforcement Intelligence Activities. Investigation of crimes and collection of evidence, on the other hand, are regulated by the laws of criminal procedure. Often, the results of these illegal intelligence-gathering activities are used by the courts as the basis for convictions.

In particular, on November 4, 2020, **A., I. and T.**, arrested on charges under Article 364 of the CC, were targeted in an intelligence-gathering operation described as "auditory control", the record of which was used by the court as the basis for the eventual conviction. At the same time, **A., I. and T.** were detained on October 15, September 23 and October 27, 2020, respectively, and at those times could not have been the objects of intelligence-gathering activities.

The court of the Frunzienski district of Minsk substantiated a conviction by the results of another "auditory control" recorded in a cell of pre-trial detention center No. 1, where the accused **S.** was held before the trial.

Justifying the guilt of the defendants **Kazei** and **Siarhei**, the court based the verdict on the latter's explanations given in the course of administrative proceedings and a video interrogation filmed by one of the major nationwide TV channels.

Similarly, a video of an interrogation, i.e. an interview unlawfully conducted in the absence of a defense lawyer before reading the suspect their rights, was used by judge Katser of the Maskoŭski district court of Minsk to substantiate the guilt of defendant **E.S.**

JUSTIFICATION OF THE USE OF IMPRISONMENT IN THE PRESENCE OF ALTERNATIVE TYPES OF PUNISHMENT AND MEASURES OF RESPONSIBILITY

Paradoxically, the courts tend to impose sentences of imprisonment despite generally positive characteristics of the defendants involved in protest-related trials. These references suggest the absence of any social danger and propensity to commit crimes. In these circumstances, the courts should have selected other types of criminal punishment, not related to imprisonment, or other measures of criminal liability. Moreover, the courts, as a rule, do not give specific arguments in favor of the use of imprisonment, without elaborating

beyond general references to the nature of the crime, which has already been taken into account when criminalizing the act.

In particular, the court of the Saviecki district of Minsk (judge A. Volk) explained the use of imprisonment by the fact that “the crime committed by the accused infringes both on the established procedure for performing the lawful activities of the police officers and on their physical integrity, and also causes obvious damage to public interests and relations that ensure law and order, the functioning of the system of internal affairs, creating an atmosphere of permissiveness.” It should be noted that all these arguments have already been taken into account by the legislator in the separate criminalization of acts against police officers, and for such acts an increased responsibility has already been established in comparison with violation of the physical integrity (also guaranteed by law) of civilians.

When justifying the selection of restricted freedom in an open penitentiary as a sentence imposed on defendant **Z.V.** (Part 1 of Article 342 of the CC), the Lieninski District Court of Minsk (judge M. Zapasnik) said that the *“objectives of criminal responsibility aiming at the correction of the person who committed the crime and the prevention of the commission of new crimes by both convicted persons and other persons, as well as designed to contribute to the restoration of social justice, can be achieved by sentencing the accused to a term of restricted freedom in an open penitentiary, without apparent grounds for the application of other types of punishment and invoking Articles 77 and 78 of the CC.”* **The italicized fragment is a quote from Parts 2 and 3 of Article 44 of the CC.** Thus, this conclusion is not substantiated by the circumstances of the case and the personality of the accused.

The court of the Pieršamajski district of Viciebsk (judge T. Rodzina) justified the imposition of a sentence of imprisonment in the trial of **M.A.** on charges under Art. 364 of the CC, in whose actions mitigating circumstances and no aggravating circumstances had been established, by stating that the **“goals of criminal liability in relation to the accused M. can be achieved when sentencing him to imprisonment, since this type of punishment will contribute to the achievement of the goals of criminal liability, and in this case it is fair”** (emphasized by the author).

The same court (judge N. Karablina) justified the imposition of a sentence of imprisonment in the trial of **E.A.** on charges under Art. 364 of the CC, in whose actions mitigating circumstances and no aggravating circumstances had been established, by saying that he had committed crimes in 2003 and 2007, the convictions for which had already been expunged, which, according to the court, characterized the personality of the accused as a person prone to violence and testified to his persistent antisocial behavior.

SELECTIVE APPOINTMENT OF HARSH PUNISHMENT

Among other things, the monitoring aimed to determine whether the defendants in politically motivated trials were deprived of their freedom selectively in comparison with other persons.

Referring to the practice of applying punishment under Articles 363 and 364 of the CC, we can conclude that, as a rule, disproportionate, excessively harsh and prolonged punishments were applied to these accused. In particular, having analyzed a number of media publications, observers and experts came to the conclusion that these punishments differed significantly from the previous general practice.

For example, in the absence of a political motive for persecution, a 33-year-old citizen was sentenced to three years of restricted freedom (home confinement) for several blows inflicted on a traffic police officer while intoxicated.

In the Lojeŭ district, a local resident, when he was arrested for violating public order in a state of alcoholic intoxication, struck a police officer and was punished with three and a half years of restricted freedom (home confinement).

In Minsk, in order to obstruct the legal activities of a senior inspector of the department of law, order and prevention of the Internal Affairs Directorate of the administration of the Maskoŭski district of Minsk, a man poured boiling water in his face, and then gassed him with a pepper spray, causing thermal and phytochemical burns. For committing a crime provided for in Part 2 of Article 363 of the CC, the defendant was sentenced to two years of restricted freedom in an open penitentiary.

Over the first eight months of 2019, the courts of Minsk [considered](#) 13 criminal cases involving charges of resisting police officers and using physical force against them. Three of the defendants were sentenced to short terms in prison, the rest – to terms of restricted freedom (home confinement).

To substantiate their findings, the experts selected other similar examples from judicial practice prior to August 2020.

With regard to the contents of this section, it will be important to assess the announced changes in the country's criminal legislation. A draft law provides for a sharp increase in penalties for committing a number of crimes against public safety and public morality, against the state and the procedure for exercising power and administration. In addition, some protest activities will also be criminalized.

CRIMINAL PROSECUTION FOR EXERCISING FREEDOM OF EXPRESSION

Throughout the entire period of the human rights crisis in 2020 and 2021, the Belarusian authorities have been actively persecuting individuals in connection with their exercise of freedom of expression. As of March 26, 2021, prosecutors [submitted](#) 102 criminal cases to the courts for publicly insulting government officials in connection with the performance of their official duties. The cases involve 103 defendants, of whom 65 have already been convicted.

Terms of restricted freedom were most often selected as punishments, including custodial sentences in open penitentiaries.

At the same time, with the aggravation of the crisis, these forms of persecution acquired more and more grotesque forms: from criminal prosecution for spraying “We Will Not Forget” on the sidewalk near the place of the police-related death of protester Aliaksandr Taraikouski to short terms of administrative imprisonment for displaying red and white curtains and blinds on the windows of private apartments or wearing garments of these colors.

A separate category of cases related to the exercise of freedom of expression are made up of defamation cases involving accusations of insulting government officials (usually employees of the Ministry of Internal Affairs), insulting or slandering the president, as well as cases involving so-called “desecration of state symbols.”

In response to the increase in the number of cases of conviction and imprisonment of individuals under a number of defamatory articles of the CC, as well as in connection with insulting the state symbols of the Republic of Belarus, representatives of the Belarusian human rights community made a joint statement in which they formulated their position on this category of criminal cases and once again reaffirmed the previously repeatedly expressed demands to decriminalize defamation and the inadmissibility of imprisonment 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.

The post-election crisis was characterized by the practice of applying Art. 130 of the CC (incitement of racial, ethnic, religious hatred or enmity), namely incitement of hatred to the “social groups” of police officers, civil servants or representatives of the authorities (government officials). In particular, bloggers **Pavel Spiryn** and **Siarhei Tsikhanouski**, human rights activist **Marfa Rabkova** and others were accused of inciting hatred against police officers or government officials.

Moreover, Art. 130 began to be applied in connection with expressing opinions about certain historical events of World War II and assessments of the post-war anti-Soviet resistance in Belarus, which differ from the views of Soviet historiography, enshrined by the current authorities of Belarus as the only true dogmatic norms.

This practice coincided with the beginning of active anti-Polish rhetoric and propaganda by the official Minsk, as well as the actions of the authorities aimed at combating the national emblems (state symbols in the period of 1991-1995), which became the symbols of protest – the white-red-white flag and the Pahonia coat of arms.

It is for these purposes that the authorities developed and sent to parliament bills on countering extremism and on countering the “glorification of Nazism.” The purpose of these

bills is to label the protest symbols as extremist and prohibit them from public display. All these processes are accompanied by various manipulations and distortions of historical facts, together with heinous Soviet-style propaganda attacks.

The first victims of such approaches were representatives of organizations of the Polish national minority – head of the Union of Poles in Belarus, Andželika Borys, and the organization’s activists, journalist **Andrzej Poczobut**, **Irena Biernacka**, **Maria Tiszowska** and **Anna Paniszewa**. All of them faced charges under Part 3 of Art. 130 of the CC and were remanded in custody. Later, the same charges were used to arrest **Ales Pushkin**, a known Belarusian artist.

Below we provide some examples of criminal cases related to the exercise of freedom of expression. Many of them caused significant response from the Belarusian public.

CRIMINAL CASE ON CHARGES OF HOOLIGANISM FOR PAINTING “WE WILL NOT FORGET” AT THE SITE OF THE DEATH OF PROTESTER ALIAKSANDR TARAİKOUSKI

The case was opened to investigate the painting of the slogan “We Will Not Forget” on the sidewalk near the Puškinskaja metro station in Minsk, where on August 10, 2020, a law enforcement officer shot and killed protester **Aliaksandr Taraikouski**.

In total, five people were convicted of painting the slogan by the court of the Frunzienski district of Minsk. Two of the convicts, **Uladzislau Hulis** and **Maksim Pauliushchyk**, were imprisoned for two years. Two more, **Dzianis Hrakhanau** and **Ihar Samusenka**, were sentenced to one and a half years of restricted freedom in open penitentiaries. The fifth defendant, **Maryia Babovich**, was sentenced to 18 months of non-custodial restricted freedom (home confinement).

The actions of the accused were qualified under Part 2 of Art. 339 (hooliganism committed by a group of persons) and Part 2 of Art. 218 of the CC (deliberate damage or destruction of property, committed in a generally dangerous way or entailing damage on a large scale), which carried up to 10 years in prison. Before the trial, all the defendants were in custody in pre-trial detention center No. 1 in Minsk.

After the government-owned enterprise “Gorremavtodor Mingorispolkoma”, which was recognized as the victim in the case, reduced the amount of damage allegedly caused by the slogan by almost 40 times, a representative of the prosecutor’s office dropped the charges under Part 2 of Art. 218 of the CC.

Nevertheless, the court found all the defendants guilty of committing hooliganism by a group of persons and handed them various punishments, including terms of imprisonment.

Viasna experts categorically disagree with the verdict passed by the court, and consider it a politically motivated punishment of the accused for exercising their freedom of expression, running counter to the law and subject to cancellation.

The painting of the slogan “We Will Not Forget” on the sidewalk can in no way be qualified as hooliganism, since the act does not contain corpus delicti provided for by Art. 339 of the CC.

In accordance with Resolution No. 1 “On judicial practice in criminal cases of hooliganism” by the Plenum of the Supreme Court of the Republic of Belarus of March 24, 2005, the

courts should take into account that hooliganism entailing criminal liability under Art. 339 of the CC should constitute such deliberate actions that not only grossly violate public order and express clear disrespect for society, but are also accompanied by the use of violence or the threat of its use, or the destruction or damage of other people's property, or are characterized by exceptional cynicism. Thus, in order to recognize the actions of the accused as hooliganism, the court had to prove that they had intent to commit actions that would grossly violate public order and express obvious disrespect for society and be associated with the destruction or damage of other people's property. However, the testimonies of the accused and the witnesses suggest that they had no intention of committing such actions and did not commit them.

In accordance with the above Resolution, hooliganism combined with the threat of destruction or destruction of someone else's property may be accompanied by actions that grossly violate public order and express obvious disrespect for society, and act as an independent form of gross violation of public order and a manifestation of clear disrespect for society. At the same time, the destruction or damage of someone else's property when committing hooliganism means the loss by this property of its consumer qualities, resulting in its complete or partial unusability.

The slogan on the sidewalk could not and did not lead to significant damage or destruction of the road surface, and the material damage from such an inscription was symbolic and was fully compensated by the defendants.

Thus, even if we assume that the slogan led to its damage or destruction, then the accused, when they painted the inscription, had to have intentions to commit a gross violation of public order and a manifestation of disrespect for society.

A gross violation of public order can be expressed by the commission of such actions that have entailed disruptions in the normal operation of transport, institutions, and enterprises, or led to the disruption of mass events, or result in a long and persistently incessant violation of public order and damage or destruction of other people's property. Explicit disrespect for society is characterized by a deliberate disregard for the generally accepted norms of behavior in society, an active opposition of one's personality to the interests of society or individuals.

The content of the slogan and the place in which it was painted (the scene of the murder of demonstrator Aliaksandr Taraikouski), in the context of the socio-political events, public discussions and political protests taking place in the country over the past months, indicate that the motive of the accused was an expression of opinion on these socially significant topics.

This form of expression falls under the protection of the Covenant and has nothing to do with the charges brought against the defendants.

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 defendants did not encroach on sacred or historical and cultural values, did not destroy them, and the slogan did not cause irreversible damage to the surface on which it was painted. The accused did not use obscene language or hate speech on the basis of national, racial, religious or social origin or other characteristics.

Thus, the actions of the accused do not contain any elements of the crime under Art. 339 of the CC.

CRIMINAL CASE OF “INCITING HATRED” AND “GLORIFICATION OF NAZISM” AGAINST ARTIST ALES PUSHKIN

One of the striking examples of persecution for expressing opinions, including through art, is a criminal case initiated under Part 3 of Art. 130 of the CC (incitement to racial, national, religious hatred or enmity) against the artist **Ales Pushkin**.

Ales Pushkin was arrested by police officers on March 30, 2021.

This arrest was preceded by a criminal case opened on March 26 by the Prosecutor’s Office of Hrodna against Ales Pushkin, head of the private institution “Center for Urban Life” Pavel Mazheika and other persons for “committing deliberate actions aimed at the rehabilitation and justification of Nazism”, under Part 3 Art. 130 of the CC (incitement to hostility). Mazheika was arrested, but later released without any charges.

According to the Prosecutor’s Office, the case was opened after the Center for Urban Life exhibited a portrait of Yauhen Zhykhar, a member of the anti-Soviet post-war guerrilla underground, with a gun on his shoulder. The Prosecutor’s Office said that during the exhibition, the artist, Ales Pushkin, “characterized Zhykhar as a person from the Belarusian resistance, a fighter against the Bolsheviks, and thus glorified and approved his actions.”

Viasna experts believe that Ales Pushkin’s actions lack the elements of the crime he is charged with and his prosecution is therefore politically motivated, as it is connected with the exercise of freedom of expression guaranteed by both the Constitution of the Republic of Belarus and international human rights standards.

The objective side of the corpus delicti under Art. 130 of the CC is formed by actions aimed at inciting racial, ethnic, religious hatred or enmity, at humiliation of national honor and dignity. These are various actions that result in the formation of hostility, feelings of disgust or hatred towards representatives of a certain race, nationality, ethnic or religious group: propaganda of the exclusivity and superiority of one human group over the others, humiliation of representatives of a certain race, spreading false information about the essence of a certain religious belief, which generates distrust of representatives of this church, etc.

By describing the portrayed personality, Ales Pushkin did not incite enmity on national, racial, religious or other grounds, did not carry out propaganda for war, did not make calls for any violent actions, did not commit other actions that constitute the objective side of the above crime.

In addition, the commission of a crime under Art. 130 is characterized by an express purpose and guilt in the form of direct intent.

The direct intent is to incite racial, national, religious enmity or hatred, humiliate national honor and dignity. The content of intent is predetermined by this goal and includes an

awareness of the actual nature and social danger of the actions committed by the defendant, their focus on achieving the said goal, and the desire to commit these actions.

The artist's portrait of Yauhen Zhykhar is in no way a justification for the ideology and practice of Nazism, approval of the crimes committed by the Nazis against the peace and security of mankind, including war crimes, or approval or justification of the activities of organizations and persons that were recognized as criminal by the judgments of the International Military Tribunal at Nuremberg or judgments of other courts based on the judgment of the International Military Tribunal.

Expressing opinions on historical facts, including the events of the post-war anti-Soviet resistance, according to *Viasna* experts, falls under the protection of art. 19 of the Covenant.

Laws that penalize the expression of opinions about historical facts are incompatible with the obligations of States Parties to the Covenant to respect freedom of opinion and expression. The Covenant does not broadly prohibit the expression of erroneous opinions or misinterpretations of past events. Restrictions on freedom of opinion should not be imposed under any circumstances, and restrictions on the right to freedom of expression must not go beyond the requirements of article 19, paragraph 3, or article 20 (paragraph 49 of HRC General comment No. 34).

CRIMINAL CASE ON CHARGES OF INSULTING THE PRESIDENT AGAINST ALIAKSANDR KULAHA

This criminal case clearly demonstrates that any person can be sentenced to imprisonment in Belarus for publicly insulting Aliaksandr Lukashenka, even if this insult was committed in informal conditions, which brings this situation as close as possible to the classic cases of the Stalinist period of the USSR, except for the difference in the duration and types of punishment for such actions.

The incident in question occurred on August 16, 2020 in the Brahin district of the Homiel region. Being in a state of alcoholic intoxication, **Aliaksandr Kulaha** was brought to a local hospital for a medical examination. While in the admission department, he publicly, in the presence of police officers and doctors, expressed insults to Lukashenka, using rude and obscene words. A criminal case was initiated against Kulaha under Part 1 of Art. 368 of the CC (insult to the president).

On December 9, 2020, judge Maryia Haurylenka of the Brahin District Court sentenced Kulaha, in a closed court hearing, to 2 years of imprisonment in a general-security penal colony.

Assessing the results of monitoring the investigations and the trials of this category, the experts also came to the conclusion that a significant drawback of sentences under Articles 367-369 is the absence of references to the specific phrases imputed to the accused, which makes it difficult or impossible – on the basis of the verdict as the most important act of justice in a criminal case – to draw a conclusion about the validity of the criminal prosecution in each specific case. It can be assumed that in this way the courts form a certain practice and protect the public and victims from repeating statements that are indecent in form, however, the fact that in some sentences the courts cite such statements verbatim testifies

to the legality and admissibility of such techniques.

In particular, the verdict of the Lida District Court (judge A. Haurylau), which found defendant **K.I.** guilty under Article 369 of the CC, mentioned the words and phrases found by the court to be offensive, namely “miarzota” (a Belarusian word equated by the court to the Russian “merzost” (“ugliness”) and “svoloch” (“scum”), which excludes any doubts about the subject of the court’s assessment.

The same can be alleged about the verdict of the Stoŭbcy District Court (judge L. Shutko), which found defendant **K.O.** guilty under Article 369 of the CC for writing a message “V. is a freak”.

It should be noted that threats of being subjected to torture or being arbitrarily sentenced to a harsher punishment because of being a protester or a dissident force many defendants to hide the true motives of their actions. However, in some cases, such motives are announced, but not used by the court for the purposes promoted by the Covenant. In particular, during the consideration of a case at the court of the Lida district (judge Haurylau), the defendant said that he had written the offensive comment “with a desire to influence the socio-political situation in the country, to persuade law enforcement agencies to engage in a peaceful dialogue without using physical force.” These circumstances were not subjected to a court assessment from the perspective of human rights and the Covenant.

ARBITRARY RECOVERY OF DAMAGES

Criminal trials involve civil claims of individuals, legal entities and the prosecutor for compensation for physical, property or moral damage caused directly by a crime or a socially dangerous act of an insane person, as stipulated by the criminal law. Establishing proofs in a civil claim filed in the course of criminal proceedings is carried out in the manner prescribed by the CCP, and if the procedural relations arising in connection with a civil claim are not regulated by the CCP, then the norms of civil procedural legislation are applied, provided they do not contradict the CCP. The burden of proving the circumstances of importance in a criminal case lies with the authority of criminal prosecution, and in court proceedings – with the public or private prosecutor (Article 102 of the CCP).

In this regard, the Supreme Court [said](#):

“12. In accordance with the provisions of Art. 360 and 362 of the CCP, the rationale of the ruling should specify the reasons for the decision taken in the civil suit. For each claim, the court must determine the nature of the damage (physical, property, or moral); specify and evaluate evidence related to the civil claim, in accordance with the provisions of Art. 105 of the CCP; indicate the norm of the relevant substantive law on the basis of which the civil claim is subject to resolution. In case of full or partial upholding of the claim for compensation for property or physical damage, the court should provide calculations of its size. With regard to claims for compensation for moral damage, the court should, taking into account the arguments of the plaintiff and the objections of the defendant or the civil defendant, specify the reasons for the decision based on the specific circumstances that caused the damage, as well as the requirements of reasonableness and justice.”

Thus, the law does not relieve the prosecution from the obligation to prove all the circumstances related to the civil claim, but only shifts the burden of proof to the prosecuting authority and the prosecutor. In addition, along with the evidence of the guilt or innocence of the person and other circumstances that are important for the legal assessment of the actions of the accused, the court is obliged to check and evaluate the evidence (or lack thereof) as part of a civil claim in the criminal proceedings, and to mention the results of the check and the evaluation in the trial.

However, the courts engage in the widespread practice of resolving civil claims without taking into account these standards. As a rule, the judgments regarding the resolution of civil claims are based only on the testimonies of the victims, while the prosecution does not present any other evidence necessary for assessing these testimonies. The available evidence was not analyzed by the court and was incorrectly assessed for sufficiency when sentencing.

The victim P., a police officer, filed claims against the accused A. and T. for the recovery of financial compensation for moral damage in the amount of 2,500 rubles from each. No bodily harm was caused to the victim, while the court only mentioned the infliction of physical pain, mental suffering and beatings of the victim (and other victims who did not file a claim). When justifying the recovery of damages from the accused in the amount of 2,000 rubles, the court referred to the norms of law, and also indicated that “it takes into account the circumstances of the crime, the consequences, the degree of moral and physical suffering of the victim, the

financial situation of the accused, as well as the requirements of reasonableness and justice.” However, the court did not indicate in the verdict what kind of mental and physical suffering the victim experienced. The testimony of the victim P. given in the court session suggests that the accused did not hit him, but only pulled him out of a car. It was not reflected in the testimony of the victim set out in the verdict whether he experienced pain at the same time.

Police officers K., P., and E. filed a claim against the accused M. for the recovery of financial compensation for moral damage in the amount of 1,000 rubles each in connection with the infliction of physical and mental suffering on them due to the use of violence against them, and also threats of violence. When justifying the recovery of this amount, the court referred to the norms of the Civil Code and took into account the degree of “physical and mental suffering” and the principle of reasonableness and justice. At the same time, only one of the victims, P., sought medical assistance from a healthcare institution about the consequences of being exposed to tear gas, while the actions in relation to the victim K. were expressed by holding his body, which did not cause him pain or injury.

When determining the amount to be recovered in favor of the victim D.E., the Lida District Court, in addition to general references to the requirements of reasonableness and justice, took into account the circumstances of the offense – the commission of actions with access to the Internet, which, according to the court, increases the degree of moral and mental suffering of the victim. However, this goes beyond the justification of the claims set out by the victim, which prompts obvious parallels with Inquisition, when it was the court, rather than the parties, who obtained arguments and evidence. In addition, the indication in the verdict that the court took into account the financial situation of the accused when determining the amount of compensation, 3,000 rubles, is refuted by the absence in the verdict of information about the income of the accused (working as a mechanic) and his family, the presence of information that he has three minor children dependent on him and a disabled wife suffering from cancer. In such circumstances, the amount of compensation for a publication on the Telegram messaging application containing offensive statements about the victim is unreasonably overstated.

A verdict of the Minsk City Court ordered the recovery of 10,000 rubles in non-pecuniary damage from the defendant A.T., accused under Part 1 of Article 14, and Article 362 of the CC, in favor of the victim, Yu.V. The court determined the amount of damage on the basis of “the nature of the [...] physical and mental suffering inflicted,” as well as taking into account the requirements of reasonableness and justice. Contrary to the law, the court did not take into account the financial situation of the accused and the victim, and also incorrectly assessed the circumstances testifying to the nature of the suffering caused: the victim suffered one bruise on the right forearm, one on the left lateral surface of the torso, an abrasion on the right foot (all without specifying the size), which refer to minor bodily injuries that did not entail health disorders or a permanent disability.

Judge M. Zapasnik of the court of the Lieninski district of Minsk recovered from **A. Chervinski**, **S. Ratkevich** and **A. Khrenkou** 5,000 Belarusian rubles each in damages in favor of the victim V. Melnikau. The victim reportedly suffered bodily harm, which did not entail a short-term health disorder or insignificant permanent loss of work capacity. It is worth recalling that this degree of severity is established in accordance with the guidelines on the procedure for conducting a forensic medical examination to determine the severity of bodily injury in the presence of insignificant and short-lasting consequences for health.

While holding an accusatory position, the judges also commit procedural violations leading

to gross violations of the interests of the accused. In particular, in the criminal trial of **Aleh Zubrytski**, the court of the Centralny district of Minsk considered a civil claim for compensation for moral damage allegedly caused by the crime. The victim received messages of an offensive and threatening nature in a messaging application, and Zubrytski was accused of sending one of them. In the court hearings, the victim dropped the claim. The judge, without clarifying the reasons for the decision and without explaining its consequences, invited her for “consultations” (the victim was not represented by a lawyer) and left the courtroom. After the break, the victim again supported the claim, which was subsequently upheld for the entire amount claimed.

Meanwhile, in accordance with Article 154 of the CCP, an individual has the right to drop the civil claim. The plaintiff’s waiver of a claim shall be recorded in the summary record and the record of the court session. A waiver of the claim may be accepted by the court at any time during the trial, but before the court is removed to the deliberation room for a decision. Acceptance of a waiver of a claim entails the termination of respective proceedings. The court should not accept a forced waiver. According to the position of the Supreme Court, “if a civil plaintiff or his representative waives a claim, the court must find out the reasons for such a waiver. The civil plaintiff shall be informed about the consequences of the court’s acceptance of the waiver of the claim, provided for in Part 4 of Art. 154 of the Code of Criminal Procedure, and Art. 164 Code of Civil Procedure.”¹⁵ Thus, when considering a criminal case, the judge, instead of impartially explaining the provisions of the law in the prescribed manner and making procedural decisions, in fact expressed her opinion about the position of the civil plaintiff, without clarifying her motives, before being removed to the deliberation room.

In the court of the Centralny district of Minsk, when substantiating his claim for compensation for moral damage caused to him, the victim, a police officer, said, describing the events of August 9, that “after these events, my soul was not very calm, my sleep was disturbed, I had insomnia, I did not sleep for about two nights, which affected my official activity, my composure [...] [I had] disorders of health, some kind of constant lethargy.” After the incident (a group of people blocked the road in front of the victim’s car and inflicted several blows on it), the victim did not seek medical help, but took “valerian drops” without a doctor’s prescription. The court did not check the reliability of this information and did not assess it in conjunction with the events that took place in Belarus after August 9. Nor did it take into account other factors that could affect the well-being of the victim.

When justifying the demand to recover compensation for moral damage from **Piatrukhin** and **Kabanau**, the victim, riot police officer Vital Autushenka, said that the comment under his picture shown on YouTube demonized him as a representative of the government, and his neighbors stopped talking to his parents after the photo appeared online. “I began to worry about my loved ones and relatives, since I am a representative of law enforcement agencies and am afraid that third parties may harm them,” the officer said. The court should have assessed such grounds for worries critically in order to find out whether it was the victim’s reported involvement in unlawful actions against the protesters, rather than the offensive comments, that triggered the public rejection, as well as rationally assess the assumptions about potential threats to the victim’s family.

Thus, the practice of recovering financial damage in the absence of evidence confirming and substantiating the physical and mental suffering inflicted on the victim, the causal

¹⁵ <http://pravo.levonevsky.org/bazaby09/sbor34/text34901.htm>

relationship between the actions of the civil defendants and the consequences referred to by the accused, as well as the appointment of unreasonable and overstated compensations testify to the biased attitude of the courts against the defendants. The widespread uniform manifestation of this practice testifies to the lack of independence of judges in decision-making.

COMPENSATION FOR MATERIAL DAMAGE

An analysis of sentences in protest-related criminal trials showed that courts demonstrate different approaches to considering claims for the recovery of material damage from this category of defendants.

In particular, when passing a sentence against **S.**, accused of committing a crime under Art. 293 of the CC, the court of the Frunzienski district of Minsk, chaired by judge Y. Blizniuk, recognized the civil plaintiff's right to uphold the claim and referred the issue of its size for consideration in civil proceedings. The prosecutor of the city of Minsk, in the interests of the government-owned public transport operator Minsktrans, filed a claim in the amount of 21,831.69 rubles. The court concluded that when considering this case it was impossible to calculate the amount of property damage caused in the specific period and in the place of the commission of the crime, as established by the verdict.

Having considered a claim filed by the prosecutor in the interests of Minsktrans, the Saviecki District Court of Minsk (judge A. Zhukovich), ruled to recover from the accused 21,861.69 rubles in damages expressed in alleged "losses to the public transport operator on August 10, 2020," recognized the right to uphold a civil claim and submitted it for consideration in civil proceedings.

At the same time, a verdict of March 10 by the Maskoŭski District Court of Brest, composed of judge V. Filonik and lay judges N. Hrytsuk and A. Dauhaliuk, recovered from the seven defendants and the legal representatives of two minors more than 23,800 Belarusian rubles in damages allegedly inflicted in the course of protests on several streets of Brest at different times, while each of the accused was charged with actions in a specific place of one of the streets.

EXCESSIVELY HARSH AND LONG SENTENCES

Viasna's volunteers and experts monitored numerous politically motivated criminal trials on charges of violence or calls for violent actions, which ended in the imposition of illegal or knowingly excessively harsh sentences. The persons involved in such cases, in accordance with the Guidelines, were not recognized as political prisoners. However, the sentences passed against them also extremely negatively characterize the judicial system.

A verdict of the Smarhoń District Court convicted Ivan Viarbitski of incitement to commit an act of terrorism under Part 1 of Article 289 of the CC, sentencing him to 8 years in prison and to 2 additional months in prison for the destruction of an official document, which resulted in the final sentence of 8 years and 1 month of imprisonment.

On October 14, 2020, he posted a message in a Telegram channel called "Ašmiany", reading "Tomorrow we are going to storm the local KGB office", after which he added "In small groups with Molotov cocktails". He was told that there was no KGB office in Ašmiany anymore, and that the building was occupied by the prosecutor's office. Viarbitski replied: "We will burn the prosecutor's office." After that, Viarbitski moved to a channel called "Astraviec for Living", where he made a repost from a Telegram channel labelled as extremist by the authorities, and added: "All police cars and cars of their wives should be on fire." Also on October 21, he ripped up a search protocol. The accused explained in court that "one has to understand the border between reality and virtual life." According to him, the discussions in the Telegram channels were absolutely comic and had no connection to real life.

When analyzing the case, *Viasna* experts came to the conclusion that, despite the presence of a political motive in persecuting Viarbitski, he cannot be recognized as a political prisoner, based on the nature of his actions. When published in the public domain, calls for the destruction of property could, with a certain degree of probability, be perceived by individual users as real and lead to the commission of violent actions, and therefore such calls are not acceptable in a democratic society. The arguments that these calls were humorous and therefore cannot be prosecuted cannot be accepted, since their content is literal and the Covenant allows for imposing restrictions on freedom of expression, including in the interests of maintaining public order.

At the same time, when qualifying the actions of the accused under Article 289 of the CC, the court made a serious mistake, since the CC criminalizes calls to commit an act of terrorism (Article 361 of the CC) and threats of violence and destruction of property against police officers, officials and their relatives (Articles 364-366 of the CC), the possible penalties of which are much milder than that of Article 289, which led to the appointment of an excessively harsh punishment for actions that, by their nature, did not carry a great public danger.

By a verdict of the court of the Čyhunačny district of Homieĺ, **Leaid Kavaliou** and **Dzmitry Karneyeu** were sentenced to imprisonment for making preparations for participation in mass riots and illegal actions with objects, the damaging properties of which are based on the effect of combustible materials. Karneyeu was additionally convicted of threats of violence against a police officer, and Kavaliou – for the involvement of a minor in the commission of a crime. By partial addition, Kavaliou was sentenced to 6 years, and Karneyeu – to 8

years in prison. According to the verdict and the case file, the defendants discussed the possibility of using Molotov cocktails to set fire to a wall or a police vehicle. It was assumed that Karneyeu and a minor, M.Z., would take part in the implementation of this plan. The discussion process was recorded by Kavaliou. He confirmed the fact and contents of the record in court, and therefore the experts did not question its contents. In this regard, the human rights community did not find it possible to recognize Kavaliou and Karneyeu as political prisoners, since their actions and plans were unacceptable in a democratic society, even though their persecution had a political motive. However, it should be noted that the sentences imposed on the defendants are excessively harsh. In particular, the defendants did not use bottles with a flammable substance for their intended purpose: M.Z. threw his bottle away, and Karneyeu cast his towards police officers without setting fire to the bottle, which, as a result, did not cause any damage. The prosecution did not provide evidence refuting the position of the accused, who stated that they did not want to commit a crime with the use of an incendiary mixture. Thus, Kavaliou and Karneyeu were sentenced to long terms of imprisonment for committing acts that in reality did not entail any consequences.

CONCLUSIONS AND RECOMMENDATIONS

Criminal proceedings, including in courts, are marked by widespread violations of domestic legal norms, together with constitutional and internationally recognized standards of a fair trial. Trampling on human rights and ignoring their gross violations have fundamentally undermined the credibility of the law enforcement agencies, as well as the 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 documents;**
- abandon repressive legislation that arbitrarily restricts human rights and freedoms;**
- take all necessary measures to respect fundamental human rights in criminal proceedings, including ensuring that all detainees and those brought before a court have the right to defense, the right not to be subjected to torture, the presumption of innocence, as well as other rights and guarantees stipulated by the Covenant;**
- ensure a comprehensive process of supervisory reviews of cases considered in violation of national law and human rights, with the aim of rehabilitating all victims and compensating for the damage caused to them;**
- take measures to restore the constitutional role of courts in the system of the state;**
- release all political prisoners and take measures to review all illegal and politically motivated sentences.**