



HUMAN RIGHTS SITUATION IN THE REPUBLIC OF BELARUS

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**Belarusian Association of Journalists (BAJ)
Belarusian Helsinki Committee (BHC)
Belarusian Human Rights House
Human Rights Centre "Viasna"
Human Rights House Foundation (HRHF)
International Federation for Human Rights (FIDH)**

Over the past 15 years authorities of the Republic of Belarus have violated basic human rights, gradually and systematically curtailing the rights to freedom of expression, freedom of peaceful assembly and association, as well as the right to fair trial, and the right to be a human rights defender.

Whilst being one of the founding members of the United Nations, Belarus is the only country in Europe which is not a member state to any regional organisations, even though it is surrounded by four member States of the Council of Europe: Republic of Lithuania, Republic of Latvia, Ukraine and the Russian Federation.

Over the years Belarus has demonstrated systematic unwillingness to cooperate with the United Nations human rights mechanisms. This persistent non-cooperation led to the establishment of the Special Rapporteur on human rights situation in the Republic of Belarus in June 2012 (Human Rights Council resolution 20/13).

Although, the Special Rapporteur was not granted access to the country, he was able to collect first-hand information from extensive consultations with, among other, civil society representatives and victims of human rights violations as he reports in the methodology of his report.¹

The Special Rapporteur concludes that there are systemic and systematic violations of human rights, especially in the areas of due process, fair trial, and torture and ill treatment.² The areas of concern indeed highlight the repetitive and systematic nature of human rights violations.

¹ Report of the Special Rapporteur on the situation of human rights in Belarus to the Human Rights Council, 18 April 2013 (UN Doc: A/HRC/23/52).

² Report of the Special Rapporteur, § 115.

Absence of rule of law and of remedies to protect human rights

Human rights violations also have a systematic nature in Belarus, due to the lack of measures to reform policies and practices in regard to human rights violations, as underlined by the Special Rapporteur³: “In its judgement on *Jerzy Broniowski v. Poland*, the European Court of Human Rights defined systemic human rights violations as deriving from structural causes not addressed by the responsible authorities. In the case of Belarus, many United Nations bodies have observed in several cases similar violations not addressed by the State: violations of the rights to freedom of expression and opinion; right to a fair trial; or to freedom of association.”⁴

This absence of measures to reform the systemic nature of human rights violations also affects the independence of the judiciary. As reported by the Special Rapporteur, “multiple meetings with human rights defenders and victims of human rights violations reflected a lack of trust in the judiciary, as well as a lack in the belief that rights would be protected by the judiciary over the interests of the authorities.”⁵ Some of the provisions in Belarusian law do not guarantee judges independence from the executive branch. The imbalance of the branches of power vested in the amendments of the 1996 Constitution gives the power to the President to appoint, dismiss and determine the tenure of judges⁶, which explains the mistrust in the judiciary.

The absence of independent judiciary in Belarus is aggravated by the pattern of control over and punishment of independent lawyers. As also highlighted by the Special Rapporteur, Aleh Ahejeu, Tatstsiana Ahejeu, Uladzimir Toustsik, Tamara Harajeva and Paval Sapelka are the best-known cases of disbarred lawyers. They have been the subject of retaliation for representing candidates to the December 2010 presidential elections who were detained afterwards or for advocating for the respect of human rights through their work.”⁷ The interference by the executive branch has the effect of a chain reaction: most lawyers in Belarus feel severely intimidated to work with politically motivated cases and tend to reject them. This pattern of intimidation and interference in the discharge of the professional functions of lawyers was also highlighted by the SR on Independence of Judiciary.⁸ The situation has only worsened since June 2012 with an increased control by the Ministry of Justice over the Bar Association and further restrictions on rights of lawyers to make cases public and to use public advocacy tools in defending their clients.

The control over lawyers and the lack of independence of the judiciary directly impacts the right to a fair trial, and therefore further underlines the systemic nature of human rights violations in the country. The Special Rapporteur sees a pattern of “ongoing deficiencies in and violations of the right to a competent, independent and impartial tribunal, a fair trial and the presumption of innocence”⁹

Victims of human rights violations are left with limited avenues to seek justice. Even the international avenues, recognised as such by the Republic of Belarus, are not respected anymore. As victims of human rights violations in Belarus cannot appeal to the European Court of Human Rights, only United Nations human rights mechanisms remain available to them, especially the Human Rights Committee.¹⁰ Basic principle of the rule of law, the *ius appellandi ad*

³ Report of the Special Rapporteur, § 34.

⁴ *Ibidem*.

⁵ Report of the Special Rapporteur, § 33.

⁶ Article 184, Constitution of the Republic of Belarus and Article 124 Code on the Judiciary.

⁷ Report of the Special Rapporteur, § 65.

⁸ Report to the Human Rights Council of the Special Rapporteur on independence of judges and lawyers, addendum, paragraph 101 (<http://A/HRC/17/30/Add.1>).

⁹ Report of the Special Rapporteur, § 69.

¹⁰ Belarus has ratified on 30 September 1992 the Optional Protocol to the International Covenant on Civil and Political Rights of 16 December 1966, recognising the individual complaint mechanism of the International Covenant on Civil and Political Rights of 16 December 1966.

regem of alleged victims of human rights violations is *de facto* denied in the country: authorities indeed systematically dismiss the Committee's "Views". The position of the Government has not changed since June 2012: "The Belarusian authorities have stated that they would reject the admissibility on any merits without any comments. In addition, the Government further argues that any decision taken by the Committee without Belarus's approval will be seen as invalid."¹¹

Measures aiming at restricting rights of lawyers and curbing access to legal counsel, further controlling the work of judges, and the absence of measures to implement basic principles of rule of law, highlight the systemic nature of human rights violations in Belarus.

Absence of checks and balances in the governing system

The systemic nature of human rights violations is further underlined by the government system in the country, as reported by the Special Rapporteur referring to "the structural character" of human rights violations, due to "the centralization of the legislative and executive powers in the office of the President."¹²

The Special Rapporteur reports that "Presidential decrees are used as the main, and in fact, supreme legislative mechanism in the country."¹³

The consequence of presidential decrees used as the major legislative mechanism in the country is double:

- The broad and vague power to govern by decree of the executive branch is not a tool providing with insurances in regard to the stability of law and its abstract and general character. Furthermore, temporary decrees *de facto* become permanent, as reported by the Special Rapporteur, thereby giving to the Office of the President unlimited powers;
- Decrees easily overturn elements of laws and are sometimes even in direct contradiction with the Belarusian constitution, as illustrated by decree No. 9 of 7 December 2012 in relation to forced labour, and the declaration of President Alexander Lukashenko thereto, issued although Art. 41 (4) of the Constitution of the Republic of Belarus of 1 March 1994 as amended on 24 November 1996 and on 17 October 2004 prohibits forced labour other than for a punishment decided by a court or in accordance with the law on state of emergency or martial law, in line with Art. 8 ICCPR.¹⁴

The recommendation in this regard of the Special Rapporteur illustrates once again the systemic nature of human rights violations in the country: "Take measures leading to meaningful political accountability, including the strengthening of checks and balances in the political system, the removal of impediments to the active engagement of non-governmental organizations and opposition parties in political life and the even-handed application of the rule of law."¹⁵

¹¹ Human Rights House Foundation and Belarusian Human Rights House, *Non-cooperation with the United Nations: Belarus is putting itself aside of the international community*, June 2012, available at <http://humanrightshouse.org/Articles/18195.html>.

¹² Report of the Special Rapporteur, § 36.

¹³ Report of the Special Rapporteur, § 37.

¹⁴ See the report of the Special Rapporteur, § 106.

¹⁵ Report of the Special Rapporteur, § 119 (b).

Death penalty

One of the issues of concern in this regard is the use of death penalty in the country, as reported by the Special Rapporteur.¹⁶ Belarus indeed continues to be the only country in Europe and Central Asia to use death penalty and more than 400 people have been executed in the past 20 years.¹⁷

On 30 November 2011, the Belarusian Supreme Court confirmed death sentence of Mr Dzmitry Kanavalau and Mr Uladzslau Kavalyou for alleged acts of terrorism committed in the Minsk subway in April 2011. The investigation and the trial were marked with numerous procedural violations and failed to meet international standards of fair trial. Notwithstanding the numerous appeals and protests from various international institutions and human rights bodies, and despite the fact that Human Rights Committee requested interim protection measures while reviewing the cases, the two young men were executed in March 2012¹⁸ after President of Belarus Alexander Lukashenka refused clemency appeals. The exact dates of the executions, the circumstances of the executions and the location of the bodies are unknown since the death penalty in Belarus is executed in secrecy and the bodies are not given to the families. All this, despite the fact that the Committee against Torture has recommended Belarus to remedy the secrecy and arbitrariness surrounding executions so that family members do not have added uncertainty and suffering, and to improve the conditions of detention of persons on death row.¹⁹ “The way death penalty is carried out in Belarus amounts to inhuman treatment.”²⁰

On 20 December 2012 Belarus announced that a Parliamentary Working Group on the Death Penalty was reactivated in the country.²¹ This might be seen as a progress, highlighted by the Special Rapporteur. However, Belarus has still not ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights, which aims to abolish death sentence, and the Working Group already existed in the past and was already chaired by the same Member of Parliament, Mikalai Samaseika. In addition, as has become recently known, there is yet another person currently on the death row in Belarus.²²

¹⁶ Report of the Special Rapporteur, § 42 and following.

¹⁷ Amnesty International, “Death Penalty in Belarus: ‘I can’t believe he’s not here anymore’”, 12 April 2013, available at <http://www.amnesty.org/en/news/death-penalty-belarus-i-can-t-believe-he-s-not-here-any-more-2013-04-12>.

¹⁸ This is the 5th death sentence carried out despite the fact that the cases were pending before HRC, other cases are Andrei Zhuk (case 1910/2009) and Vasily Yuzepchuk (case 1906/2009); Aleh Gryshkautstou (case 2013/2010) and Andrei Burdyka (case 2017/2010). Further information on these cases available at <http://humanrightshouse.org/Articles/14003.html>.

¹⁹ United Nations Committee against Torture concluding observations, 7 December 2011, paragraph 27 (UN Doc: CAT/C/BLR/CO/4).

²⁰ Report of the Special Rapporteur, § 45.

²¹ Human Rights Centre “Viasna”, “Review-Chronicle of Human Rights Violations in Belarus in December 2012”, 16 January 2013, available at <http://spring96.org/en/news/60947>.

²² Human Rights Centre “Viasna”, “Another death sentence: Think about it!”, 21 May 2013, available at <http://spring96.org/en/news/63303>.

Political Prisoners and politically motivated prosecutions

To date, 11 political prisoners remain in detention in Belarus,²³ including Ales Bialiatski, a renowned human rights defender, chairman of the Human Rights Centre “Viasna”, Vice-President of the International Federation of Human Rights (FIDH) and one of the founders of the Belarusian Human Rights House, who was awarded the Lech Walesa Prize for his fight for freedom and human rights in Belarus on 28 September 2012. “As well as these 11 political prisoners, a number of unimprisoned Belarusian citizens are currently subject to severe restrictions imposed following prosecution in politically motivated criminal cases. At the time of writing, 40 individuals are subject to such restrictions.”²⁴

On April 2012, former presidential candidate Andrei Sannikau and his campaign aid, Zmitser Bandarenka, were granted a pardon by President Lukashenka. Notably, before the release, both men were forced to sign a pledge confessing the illegality of their actions and their non-participation in future political activities, as prohibited by law for them for years to come. “In 2012, three persons were placed under preventative supervision by internal affairs agencies on the basis of administrative penalties imposed by courts in connection with their social activism. These mean that they must stay at home during nighttime hours, are unable to leave their hometowns without permission from the authorities, and are subject to a numerous bans that severely restrict their freedom, including on visiting public places, etc. Violating these regulations can entail repeat criminal prosecution and deprivation of freedom, as illustrated by the case of Vasil Parfiankou, who was sentenced to six months detention in 2012 for violating the terms of his preventative supervision and Pavel Vinahradau sentenced to seven days in detention on 28 February 2013.”²⁵

The general amnesty announced for July 2012 crushed the hope that political prisoners would be released, since the procedures were defined in such a way as to exclude the possibility of allowing them to benefit from the amnesty. Furthermore, the Amnesty Law excludes articles 342 (the organisation of actions grossly violating public order, or participation in such actions) and 367 (defamation of the President) of the Criminal Code.²⁶

“The convictions of 25 political prisoners pardoned or released early in 2011 to 2012 have not been expunged. This deprives them of numerous civil and political rights, including the right to run in elections or work as a government employee. Their names remain on “preventive watch” lists maintained by internal affairs agencies, making them vulnerable to regular police visits. If brought in on administrative charges three times in one year, they face “preventative supervision”. Such supervision carries more serious restrictions and makes repeated criminal prosecution and deprivation of freedom possible.”²⁷

To the Special Rapporteur the instances of detention of politicians, human rights defenders and activists are “emblematic of a broader pattern of continuous, cumulative and cruel pressure applied to individuals while isolated from the outside world (for example, by limiting access to relatives, lawyers, correspondence and communication). The overall aim (often voiced even by wardens) is to “break” these individuals and force them to seek a pardon. Such practices could be viewed as amounting to ill-treatment or even torture.”²⁸

²³ Full list of political prisoners made available by the Human Rights Centre “Viasna” at <http://spring96.org/en/news/49539>.

²⁴ Human Rights Center “Viasna” & FIDH, Belarus: Political Prisoners in Critical Situation and Restricted Freedom for 40 Activists, 5 March 2013, available at <http://freeales.fidh.net/2013/03/belarus-political-prisoners-in-critical-situation-and-restricted-freedom-for-40-activists/>.

²⁵ Human Rights Center “Viasna” & FIDH, *op. cit.*

²⁶ Report of the Special Rapporteur, § 40.

²⁷ Human Rights Center “Viasna” & FIDH, *op. cit.*

²⁸ Report of the Special Rapporteur, § 60.

Continuous violations of freedom of expression, association and assembly

Belarus continues to violate its international obligations and to further tighten laws aiming to restrict the rights to freedom of expression, association and peaceful assembly.

On 15 December 2005, the Criminal Code of the Republic Belarus was amended with Article 193.1, *de facto* criminalising the activities of non-registered NGOs. In concrete terms this means that members of a non-registered association may be punished under Article 193.1 with a fine or two years of imprisonment, simply due to the work done for that association.

Criminalization of human rights activities, as does Article 193.1, cannot be regarded otherwise than as going against international human rights law, as expressed by the European Commission for Democracy through Law.²⁹

Repressions against human rights defenders, journalists, political opponents and activists have persisted throughout 2012, and reached a peak during the parliamentary campaign period. On 21 June 2012, Andrzej Poczobut, Belarusian correspondent of the Polish *Gazeta Wyborcza* and activist of Belarusian Union of Poles, was arrested and accused of libel against the president.³⁰ This arrest was seen as an attempt to intimidate all journalists before the parliamentary elections in Belarus, which were held on 23 September 2012. Human rights defender Oleg Volchek was arrested on 24 May 2012. On 18 September 2012, 7 journalists, including those of Associated Press, Reuters, and German television channel ZDF were briefly detained.

These arrests and the harassment of human rights defenders, journalists, political opponents and activists are yet another illustration of the systematic nature of human rights violations in Belarus, as reported by the Special Rapporteur on the various human rights concerns he mentions.

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²⁹ Opinion of Venice Commission of 18 October 2011 on the compatibility with universal human rights standards of Article 193.1 of the Criminal Code on the rights of non-registered associations, available at <http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282011%29036-e>.

³⁰ Human Rights House Network, "Belarusian journalist Andrzej Poczobut arrested", 24 June 2012, available at <http://humanrightshouse.org/Articlesa/18260.html>.