

National Human Rights Index

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2022

Right to Freedom of Association:

Expert Commentary

Score: 1.6

Including scores by component:

- Freedom of association: general principles 1.7
- Activity of associations 1.5

The right to freedom of association generally covers civil society organizations based on membership - public associations (PAs)¹, political parties, religious organizations, trade unions, associations of legal entities and/or individual entrepreneurs as defined in the legislation of the Republic of Belarus². At the same time, the structure of civil society in Belarus includes a large share of civil society organizations (CSOs), which are registered in the form of institutions and are not based on membership. Registration of an institution and foundation became a way to legalize the activities of organizations that were not registered as a public association for political reasons³. Institutions⁴, as well as foundations⁵, do not

¹ In the legislation of the Republic of Belarus there is also such a form of association as republican state-public associations, which are defined as membership-based non-profit organizations, the purpose of whose activities is to carry out the tasks assigned to them by the state (Article 117¹ of the Civil Code of the Republic of Belarus).

² The OSCE ODIHR Guidelines on Freedom of Association define an association as an organized and independent non-profit entity based on the voluntary association of persons linked by common interests, activities or purpose. The definition of "association", for example, does not include non-governmental organizations that are not based on membership or do not have multiple founders.
<https://www.osce.org/files/f/documents/3/3/160961.pdf> "Association" means any association of individuals and/or entities formed for the collective realization, expression, advocacy, enforcement or defense of common interests. "Association" refers to, inter alia, civil society organizations, clubs, cooperatives, NGOs, religious associations, political parties, trade unions, foundations and even online associations,
http://freeassembly.net/wp-content/uploads/2013/10/A-HRC-20-27_RU.pdf

³ C. 97, State policy towards non-profit organizations in the Republic of Belarus in the context of European standards of freedom of association, Olga Smolyanko, Yuri Chausov, https://www.lawtrend.org/wp-content/uploads/2017/05/Gosudarstvennaya-politika_NKO-ES-3.pdf

⁴ An institution is an organization established by the owner to perform managerial, socio-cultural or other functions of a non-commercial nature and financed in full or in part by the owner (Article 120 of the Civil Code of the Republic of Belarus).

⁵ A foundation is understood as a non-profit organization without membership, founded by citizens (citizen) and



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involve an association of persons. In addition, a characteristic feature of Belarusian civil society is the activity of a large number of organizations not registered in Belarus, which are forced to legalize their status in neighboring foreign countries.

There is a permissive (registration) procedure for the establishment of public associations, political parties and foundations. At the same time, the procedure for state registration of public associations, parties, their organizational structures, and foundations is complicated and leaves the possibility for arbitrary refusal to register any created organization⁶. Activities of unregistered public associations, political parties, foundations, trade unions and religious organizations on the territory of the Republic of Belarus are prohibited.

In respect of institutions and associations of legal entities and (or) individual entrepreneurs, there is a procedure that can be referred to as declaratory. Registration takes place on the day of application or the next day (similar to the procedure for establishing commercial legal entities). However, there is a problem when authorities use the technical stage of "name agreement" to prevent registration. The procedure for name approval is not transparent and clear, the authorities make far-fetched claims about the nature of the organization's activities specified in the name⁷.

In the Criminal Code of Belarus (CC) from 2005 to 2019, there was Article 193¹, which stipulates that organizing activities or participation in the activities of an unregistered public association, party, religious organization or foundation is punishable by a fine or arrest for up to six months, or imprisonment for up to two years. The Council of Europe's Venice Commission "Towards Democracy through Law" recognized the existence of this article as a violation of international standards on freedom of association⁸. In 2019, the said acts became subject to administrative responsibility. In 2022, Article 193¹ of the CC was reinstated and reintroduced criminal liability for organizing activities or

(or) legal entities (legal entity) on the basis of voluntary property contributions, pursuing social, charitable, cultural, educational, promoting physical culture and sports, scientific or other socially useful purposes specified in the foundation's charter (Article 118 of the Civil Code of the Republic of Belarus).

⁶ С. 72, Государственная политика в отношении некоммерческих организаций в Республике Беларусь в контексте европейских стандартов свободы ассоциаций, Olga Smolyanko, Yuri Chausov, <https://www.lawtrend.org/wp-content/uploads/2019/04/book-rds-2019.pdf#viewer.action=download>; С. 3-4, Совместный альтернативный отчет Ассамблеи демократических неправительственных организаций Беларуси и Центра правовой трансформации: Свобода ассоциаций и правовые условия для деятельности организаций гражданского общества (ОГО) в Беларуси, <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=7919&file=RussianTranslation> (hereinafter Joint Alternative Report)

⁷ С. 5, Joint Alternative Report

⁸ CDL-AD(2011)036-e. Opinion on the compatibility with universal human rights standards of article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus adopted by the Venice Commission at its 88th Plenary Session (Venice, 14-15 october 2011) <http://www.venice.coe.int/webforms/documents/default.aspx?pdf=CDL-AD%282011%29036-e>



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participating in the activities of unregistered organizations⁹.

The legislation of Belarus establishes strict criteria that must be met to register a public association: to register a republican association at least 50 founders residing in most regions and the city of Minsk are required, any CSO before registration must have a legal address in non-residential premises, the state fee for registration of public associations, parties is several times higher (up to 20 times higher) than the fee for registration of commercial organizations¹⁰. These restrictions are excessive and hinder the ability of individuals to exercise their freedom of association and are contrary to international standards as well as best practices in other countries¹¹.

The wording of the norms on possible grounds for refusal to register public associations is very vague and gives the Ministry of Justice authorities the opportunity to arbitrarily refuse registration on the basis of technical violations or minor deficiencies in the execution of documents. In addition, the conditions for the establishment of political parties in practice do not allow for the realization of the right to establish new parties. As of January 1, 2023, 15 political parties were registered in Belarus¹², since 2000 no new parties have been registered, despite relevant attempts, only the existing ones were liquidated¹³. The possibility of judicial appeal against refusals to register provided for by the law does not really serve as a means of restoring the right to association, as courts do not satisfy complaints against decisions of justice bodies on refusals to register parties, public associations¹⁴.

The procedure for receiving foreign donations is regulated by Decree No. 3 "On Foreign Donations" of 25.05.2020¹⁵. Foreign aid is subject to compulsory preliminary registration with the Department for Humanitarian Activities of the Presidential Property Management Directorate prior to its use. In practice, the registration of foreign aid is selective. The legislation also defines a narrow list of purposes for receiving such assistance, which does not include purposes related to the protection of human rights, development of democracy, and gender equality, among others. The decree also applies to donations from citizens of Belarus, living or staying abroad for more than 183 days in the 12 months preceding the month of providing assistance, as well as to foreign anonymous donors, which are

⁹ <https://pravo.by/document/?guid=3871&p0=hk9900275>

¹⁰ The rate of state duty for registration of a commercial organization is 1 basic unit, political parties - 20 basic units, republican and international public associations, republican trade unions - 10 basic units, local public associations - 5 basic units, republican state-public associations - 2 basic units, republican and international foundations - 10 basic units.

¹¹ C. 28, Assessment of the Legal Framework for Non-Governmental Organizations in the Republic of Belarus, International Center for Not-for-Profit Law under Belarus Reforms and Media Assistance Program (BRAMA) (hereinafter - Assessment of the Legal Framework for Non-Governmental Organizations in the Republic of Belarus). http://www.icnl.org/programs/eurasia/Belarus_Assessment%20of%20NGO%20Legislation.pdf

¹² https://minjust.gov.by/directions/compare_coverage/

¹³ <https://spring96.org/ru/news/29255>; <https://spring96.org/ru/news/89889>

¹⁴ C. 5, Joint Alternative Report

¹⁵ <https://pravo.by/document/?guid=12551&p0=Pd2000003&p1=1>



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equated with all transfers through non-resident banks, which do not contain full data on the donor.

Article 369² of the Criminal Code establishes that the use of foreign gratuitous aid for terrorist and other extremist activities or other acts prohibited by the legislation of Belarus, or the financing of political parties, unions (associations) of political parties, preparation or holding of elections, referendums, recall of a deputy, member of the Council of the Republic of the National Assembly, organization or holding of meetings, rallies, street processions, demonstrations, picketing, strikes, production or distribution of propaganda, etc. shall be prohibited.

The need to obtain prior state consent for the use of foreign donations, as well as a closed list of purposes for which donations from Belarusian legal entities can be received, significantly limits the possibilities of obtaining funding for CSOs, especially human rights organizations¹⁶. The system of state support for CSOs in Belarus is extremely underdeveloped and is based mainly on direct funding from the national and local budgets to a few organizations loyal to the regime (and, in fact, fully controlled and directed by the state authorities)¹⁷. In 2022, a new mechanism of state support was being developed - funding for civic initiatives. On September 12, 2022, the Law on Amendment of Laws on Local Government and Self-Government was passed on first reading in the House of Representatives of the National Assembly (the amendments took effect in 2023) The law introduces such a category as "civic initiative" - activities aimed at improving the quality of life of the population of the relevant administrative-territorial unit or part thereof, including the improvement of territories, construction (erection, reconstruction, repair, restoration, improvement) of socially significant facilities, general prevention of offenses, prevention of injuries and deaths of citizens, as well as the solution of other issues of local significance¹⁸. Funding for the costs associated with the implementation of citizen initiatives will come from the budget. The initiator and other stakeholders shall participate in the financing of the civic initiative in the amount of at least 10% of the cost of the civic initiative.

In assessing the state of the right to freedom of association in 2022, the Index experts gave lower scores than in 2021 for the reasons described below.

- **Freedom of association: general principles**

The practice of application of legislation on public associations, trade unions and political parties demonstrates the continuation in 2022 of the state course on suppression of dissent and independent civil society, which began in 2021. The forms of political pressure have not changed significantly: mass forced liquidation of CSOs, suspension of CSO activities, detention and criminal prosecution of leaders and representatives of CSOs, interference in the activities of CSOs, searches at the location of organizations and the place of residence of their leaders. Experts agree that these practices actually mean the destruction of freedom of association in Belarus. Some CSOs are forced to decide to self-

¹⁶ C. 76, Assessment of the Legal Framework for Non-Governmental Organizations in the Republic of Belarus

¹⁷ C. 8, Joint Alternative Report

¹⁸ <https://pravo.by/document/?guid=3941&p0=2022059001>



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liquidate due to their inability to operate in an unfavorable political and legal environment¹⁹.

CSOs are subject to forced liquidation on various formal grounds, which is an excessive interference in CSOs' activities. The political nature of the liquidation is emphasized by the prosecutor's office and internal affairs bodies. Thus, CSOs were liquidated on the following grounds:

- failure to submit, improper or untimely submission of documents during the audit. Such inspections are of a total nature, with the sole purpose of detecting violations and launching a "punitive" mechanism. The identified violations are minor errors, inaccuracies in documents, and minor missed deadlines for submitting reports (while proper preparation of documentation and reports is hindered by sealing of offices, seizure of computers, equipment, etc.)²⁰;
- violations in terms of confirming the legal address of the organization or its local organizational structures;
- Failure to remedy violations that warranted a written warning or suspension of the CSO's activities (and there are common cases where written warnings were not issued at all, but a liquidation suit was filed immediately);
- cooperation with unregistered umbrella structures that are CSO associations²¹.

In 2022, the authorities used new arbitrary grounds to liquidate CSOs, such as information from law enforcement agencies that CSOs were engaged in extremist or other illegal activities. Such information is unreasonably considered as irrefutable evidence for liquidation: a number of lawsuits for CSO liquidation are based on letters from the Main Department of the Ministry of Internal Affairs and the FID, while the essence of the claims and the reasons why the organization's activities are considered extremist remained unknown, as they were under the "for official use" label. Accusations against CSO leaders, activists for allegedly participating in protest, extremist activities can also form the basis of liquidation suits²².

The authorities also began to actively use existing international approaches aimed at implementing FATF mechanisms, countering extremism and terrorism to interfere with CSO activities.

The experts come to the unequivocal conclusion that the restrictions on freedom of association

¹⁹ C. 21-22, Ликвидация некоммерческих организаций в Беларуси, Lawtrend, <https://www.lawtrend.org/wp-content/uploads/2023/05/Likvidatsiya-s-tablitsamired.pdf> (hereinafter - Liquidation of non-commercial organizations in Belarus)

²⁰ <https://www.dw.com/ru/sudy-proverki-likvidacii-kak-pressujut-nko-v-belarusi/a-58221081>

²¹ C. 26, Freedom of Association and the Legal Status of Civil Society Organizations. A review for the year 2022. Belarus. Lawtrend, <https://www.lawtrend.org/wp-content/uploads/2023/03/Svoboda-assotsiatsij-i-pravovoe-polozhenie-organizatsij-grazhdanskogo-obshhestva-v-Respublike-Belarus-obzor-za-2022-god.pdf> (hereinafter Lawtrend Survey 2022); pp. 20-21, CSO Meter 2022. Belarus Country Report, <https://csometer.info/sites/default/files/2023-08/2022%20Belarus%20CSO%20Meter%20Country%20Report.pdf> (hereinafter CSO Meter 2022)

²² C. 26, Lawtrend Review 2022



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imposed do not comply with the principles of legality, necessity and proportionality.

In 2022, independent labor unions were subjected to near-final annihilation. On April 19, 2022 law enforcement agencies searched the headquarters of the Belarusian Congress of Democratic Trade Unions (BCDP) and offices of its affiliated trade unions in Minsk and regions, as well as private homes of activists. The search warrant reportedly cited 10 different articles of the Criminal Code as grounds for criminal proceedings²³. From April 19 to 21, more than 20 representatives of the independent trade union movement of Belarus were detained. Members and participants of independent trade unions are summoned for "preventive talks" and forced to join the "pro-government" trade union under threat of dismissal.

On April 7, 2022, the KGB ruled to recognize the Belarusian Trade Union of Workers of the Radio-Electronic Industry (REP) as an extremist formation²⁴. At the same time, the decision on forced liquidation of this trade union was made by the Supreme Court only on July 12, 2022; the trade union was excluded from the Unified State Register of Legal Entities and Individual Entrepreneurs on September 28, 2022.

On May 11, Grodno Regional Court decided to recognize the primary organization of the Belarusian Independent Trade Union of Employees of Grodno Azot as extremist and to ban its activities²⁵. In July 2022, decisions of the Supreme Court liquidated the Belarusian Independent Trade Union of Miners, Chemists, Oil Refiners, Energy Workers, Transport Workers, Construction Workers and Other Workers, the Belarusian Trade Union REP, the Free Trade Union of Belarusians (FTUB), the Free Trade Union of Metalworkers (SPM) and the Belarusian Congress of Democratic Trade Unions²⁶. The leaders and a number of members of these unions allegedly actively participated in destructive activities, mass events that violated public order, and distributed information products with extremist content²⁷.

On May 19, just before the liquidation, the Prosecutor General's Office demanded that the independent unions provide documents, including information on all union members. Experts note that in the long term, this could create legal grounds to prosecute thousands of people who were members of these unions²⁸.

In response to the crackdown on trade unions, the International Labour Organization (ILO) launched a procedure under Article 33 of the Constitution for systematic violations by Belarus of fundamental workers' rights, which states "if any Member fails to implement within a specified time limit such recommendations as may be contained in the report of a commission or in a decision of the

²³ <https://csometer.info/updates/belarus-trade-union-declared-extremist-formation>

²⁴ <https://www.mvd.gov.by/uploads/news/8642/02e01780f792852403040ef83ab86933b21256d4.docx>

²⁵ <https://spring96.org/ru/news/107938>

²⁶ <https://spring96.org/ru/news/108606>

²⁷ <https://www.belta.by/incident/view/po-iskam-genprokurora-prekraschena-dejatelnost-tak-nazyvaemyh-nezavisimyh-profsojuzov-514326-2022/?ysclid=l64x29tae5212987184>

²⁸ C. 18, CSO Meter 2022



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International Court of Justice, the Governing Body may recommend to the Conference such action as it considers appropriate to secure the implementation of those recommendations." By March 2023, the ILO should develop appropriate measures against the authorities and adopt them at the International Labor Conference in June²⁹.

Repression against CSOs, which began after the 2020 elections, expanded in 2022. CSO representatives, human rights defenders, leaders and members of Belarusian independent trade unions are subjected to administrative and criminal prosecution on various arbitrary grounds. The homes of human rights defenders and civil activists are rudely broken into and searched by people wearing balaclavas and unmarked uniforms. The raids are usually conducted early in the morning and computers, cell phones, laptops and other equipment, including gadgets belonging to children, are seized during the raids. Searches and subsequent interrogations are conducted without the presence of lawyers³⁰.

Thus, on January 13, 2022, a member of the Board of the NGO "Radislava" Daria Tsarik was detained after a search carried out by the officers of the State Department for Combating Organized Crime. After the interrogation, an administrative report was drawn up on Daria and she was detained for 8 days. On January 13, searches were also conducted at the homes of three more Radislava board representatives and their relatives³¹. On May 6th, Savetski Court of Minsk passed a sentence on the criminal case of human rights activist, former head and member of the Board of the NGO "Radislava" Olga Gorbunova. Olga was found guilty of organizing and preparing actions that grossly violate public order (part 1 of article 342 of the Criminal Code) and was punished with restriction of freedom without referral to an open-type institution for three years³².

On January 18-19, 2022, searches were conducted at members of the NGO "Mahiliou Human Rights Center", which at that time was the only human rights public association with registered status. On February 24, the Mogilev Regional Court decided to liquidate this NGO³³.

Human rights defender Nasta Loika was administratively detained six times during the fall of 2022, 4 of them consecutively. According to Loika's statement, during one of the trials she was tortured by being hit with a stun gun and left without outer clothing for eight hours in the inner courtyard of the CIP, as a result of which she became very ill. After serving her fourth administrative detention, having spent 60 days in detention uninterruptedly, Nasta was not released³⁴.

²⁹ <https://www.lawtrend.org/freedom-of-association/situatsiya-so-svobodnoj-assotsiatsij-i-organizatsiyami-grazhdanskogo-obshhestva-respubliki-belarus-obzor-za-noyabr-2022-g>

³⁰ <https://reform.by/292079-u-chlenov-zaregistrovannogo-mogilevskogo-pravozashhitnogo-centra-proshli-obyski/>; <https://www.lawtrend.org/freedom-of-association/hronologiya-narushenij-svobody-assotsiatsij-i-presledovaniya-organizatsij-grazhdanskogo-obshhestva-v-belarusi>

³¹ C. 12, Lawtrend Review for 2022

³² <https://prisoners.spring96.org/ru/person/volha-harbutova>

³³ C. 12, Lawtrend Review for 2022

³⁴ <https://prisoners.spring96.org/ru/person/anastasija-loika>



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In the fall of 2022, a raid was conducted against former activists of the NGO "Movement for Freedom" liquidated by the authorities on November 19, 2021. On November 22nd, in Verkhnedvinsk after the search and seizure of equipment the public activist Valiantsina Bolbat was detained (sentenced to 10 days of administrative arrest). On November 21-22, searches also took place in other regions of Belarus at the homes of Georgy Stankevich, Aleksei Atroshchanka, Vladimir Katsora, Yuri Kazakevich and other activists³⁵.

The experts noted that the practice of prosecution under the newly introduced article for participation in the activities of "unregistered" CSOs (Article 193¹ of the ^{Criminal Code}) exists but is not extensive. To prosecute CSOs, the authorities widely use other articles of the Criminal Code that provide for more severe penalties (some of them sanction up to 12-15 years of imprisonment):

- calls for restrictive measures aimed at harming the national security of the Republic of Belarus (Art. 361 of the Criminal Code),
- Incitement of other social enmity and discord (art. 130 of the Criminal Code),
- Creation of an extremist formation or participation in it (art. 361-1 of the Criminal Code),
- actions that grossly violate public order (Art. 342 of the Criminal Code),
- treason against the state (Art. 356 CC),
- Participation in an organization established to carry out terrorist activities (art. 290-4 CC),
- facilitation of terrorist activities (Art. 290-2 CC),
- Insulting the President (Art. 368 of the CC).

There are two cases of CSOs prosecuted under Article 193¹ of the Criminal Code in 2022. Thus, the prosecutor's office initiated a criminal case under Article 193¹ against Olga Vialichka, head of the NGO "Hrodna Children's Hospice". The charge was based on the fact that money transfers were made using the hospice's bank account. The prosecutor's office found that the public association liquidated by court order "functioned under the remote management of the director"³⁶. The case of the Grodno Children's Hospice is the first case of application of Article 193¹ to an organization that previously had registration and was forcibly liquidated by a court decision³⁷. Criminal cases under the same article were initiated against the officials of "Clerigata" Ltd. because, according to the prosecutor's office, the company actually carried out the activities of the unregistered NGO "Union of Poles of Belarus"³⁸. Experts noted

³⁵ <https://spring96.org/ru/news/109913>

³⁶ <https://prokuratura.gov.by/ru/media/novosti/nadzor-za-resheniyami-po-ugolovnym-i-grazhdanskim-delam/prodolzhali-rabotat-nesmotrya-na-reshenie-suda-o-likvidatsii-obedineniya-prokuratura-grodnenskoj-obl/>

³⁷ <https://csometer.info/updates/belarus-first-criminal-case-brought-continuing-cso-activities-after-forced-liquidation>

³⁸ <https://prokuratura.gov.by/ru/media/novosti/nadzor-za-resheniyami-po-ugolovnym-i-grazhdanskim->



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that this is the first known case when a criminal case was initiated against officials of a commercial organization.

Experts confirm the existence of a long practice of coercion to join "pro-governmental" public associations in Belarus. For example, it is reliably known about the facts of coercion to join the Belarusian Republican Youth Union under the threat of expulsion from school³⁹. This trend is also evident in the authorities' rhetoric on the need to establish trade unions in private commercial organizations: Alexander Lukashenko said that private business "should be forced" to create trade union cells. Despite the principle of voluntary establishment of trade unions, enshrined in the legislation of Belarus, Lukashenko warned that there might be a separate decree obliging private businesses to establish trade unions: "Prepare, if they do not understand, my decree on the establishment of primary trade union organizations in private enterprises," he addressed the head of the Federation of Trade Unions of Belarus⁴⁰.

Politicians and government officials have resorted to hate speech against human rights organizations, opposition groups, independent trade unions and other CSOs that receive foreign funding⁴¹. The discrediting of CSOs, their representatives in state media, Telegram channels of "pro-government" activists continues⁴². The results of the propaganda monitoring revealed that one of the constant narratives used in state media is to discredit other states and their authorities, as well as the protest movement, including activists. It uses such techniques as manipulative evaluative statements, manipulative semantics, speculation and overstatements, conjecture instead of facts, emphasis shifting, fudging, selection⁴³.

Publications in mass media "Belarus. Today" is characterized by particularly licentious language and hatred⁴⁴. The following are some of the many examples. The Belarusian diaspora abroad is labeled as "the "civil society" that escaped from Belarus with a white-red-white-soul. That is, a gang of fugitives." The expressions "swindlers from the subhuman rights center"⁴⁵, "classic impostors" were used against human rights defenders. "Self-appointed. Crooks on public trust"⁴⁶, the very activity of human rights defenders, according to the authors of the publication in "Belarus. Today", consisted in "endless fake reports and tearful stories about the 'bloody dictatorship'".

[delam/nezakonno-organizova/](#)

³⁹ <https://www.svaboda.org/a/29573437.html>

⁴⁰ <https://neg.by/novosti/otkrytj/tripartizm-po-beloruski/>

⁴¹ C. 11, 27-28, Lawtrend Review for 2022

⁴² <https://mediaiq.info/te-kto-podderzhivayut-deystvuyushchuyu-vlast-inogda-pokazyvayutsya-kak-lyudi-nedal>

⁴³ <https://mediaiq.info/dinamika-i-vidy-topovyh-narrativov-gospropagandy-v-2022-godu-infografika;>
<https://mediaiq.info/kak-menyalis-narrativy-belarusskoj-propagandy-v-2022-godu>

⁴⁴ <https://www.sb.by/articles/profsoyuznye-afery.html>, <https://www.sb.by/articles/ya-i-ekologi.html>

⁴⁵ <https://t.me/lgbelarussegodnya/18061>

⁴⁶ <https://www.sb.by/articles/pyat-minut-pozora.html>



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According to experts, the legislation governing freedom of association is not clear, accessible and public. This conclusion is largely based on the practice of using counter-extremism legislation to "mop up" the civilian sector. In addition, the experts pointed out that the website of the Ministry of Justice - the main source of information on the regulation of freedom of association in Belarus - is inaccessible from abroad.

CSOs have been prosecuted under laws on countering extremism and terrorism. The practice of declaring various structures of the civil sector as extremist formations (this is done extrajudicially), activists as leaders and participants of extremist formations, and information resources as extremist materials has become widespread.

Thus, according to the Prosecutor General, in January-November 2022, a total of more than 5,000 extremist crimes were detected in Belarus⁴⁷. According to the PC "Viasna", at least 83 people were convicted by the end of 2022 for creating an extremist formation, leading it, as well as for joining it for the purpose of committing extremist crimes, providing or collecting funds for them, and otherwise assisting extremist activities⁴⁸.

Experts draw attention to the fact that anti-extremist legislation and the practice of its application in Belarus leads to a significant restriction of a number of key political rights and freedoms, such as: the right to free expression, the right to peaceful assembly, the right to freedom of association, etc.

According to the Law No. 203-Z of 4 January 2007 "On Combating Extremism", an organization registered in the territory of the Republic of Belarus is recognized as extremist on the basis of a court decision. A decision to recognize a group of people as an extremist formation does not require a court hearing, only a decision of the Ministry of Internal Affairs or the KGB is sufficient. Affected individuals lack access to information about the specific reasons why their actions are recognized as extremist. This simplistic mechanism of declaring groups of people as extremist formations jeopardizes any manifestations of self-organization and solidarity, including in response to systemic and gross human rights violations⁴⁹.

A group of people can be recognized as an extremist formation, for example, for actions "otherwise facilitating extremist activity". The criteria for confirming the connection of a group of individuals with extremist activity are not established in the Law "On Countering Extremism". Moreover, facilitating extremist activities entails criminal liability (Article 361⁴ of the Criminal Code). Thus, recruitment, other involvement of a person in extremist activities, training, as well as other assistance to extremist activities entail a possible punishment up to imprisonment for up to 8 years. There are no criteria for determining what constitutes "facilitation of extremist activity" or "involvement in extremist activity" in the Criminal Code. The existence of such vague wording gives law enforcement agencies unlimited

⁴⁷ <https://ctv.by/esli-li-dlya-beglyh-doroga-obratno-i-kak-nachat-zhizn-na-rodine-s-chistogo-lista-intervyu-s>

⁴⁸ C. 14, Human Rights Situation in Belarus in 2022. Analytical review, PC "Viasna", https://spring96.org/files/misc/annual_review_2022_final_ru.pdf (hereinafter "Viasna" PC Review)

⁴⁹ C. 17, Lawtrend Review for 2022



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powers and the ability to independently decide on the applicability of this article, to prosecute a wide range of persons on the basis of subjective criteria.

On October 19, 2022, the List of organizations, formations, individual entrepreneurs involved in extremist activities posted information about the inclusion of the organization "Ekodom"⁵⁰. This is the first case when a public association, which is not formally a liquidated organization on the territory of Belarus, is recognized as an extremist formation. The case of the Belarusian environmental organization "Ekodom", whose forced liquidation was recognized as a case of persecution and harassment of CSOs under the Aarhus Convention, is described in the commentary to the assessment of the right to participate in public affairs for 2021. Another example of inclusion of an active organization in the list of extremist formations is the Belarusian Trade Union of Radioelectronic Industry Workers (the decision to recognize it as an extremist formation was made on April 7, 2022, the decision on forced liquidation was made on July 12, 2022).

Joining an organization listed as an extremist formation is a crime punishable by a long term of imprisonment, as established by amendments to article ³⁶¹¹ of the Criminal Code in 2021. Thus, part 3 of article ³⁶¹¹ establishes liability for a person's joining an extremist formation for the purpose of committing an extremist crime (participation in an extremist formation). Despite the fact that the very norm of the article provides for the presence of the purpose of extremist activity as a mandatory sign for qualification of the crime, in practice the investigation and the court do not find out the motives for joining and consider the formal membership of a person in an association as a completed crime. In this regard, members of an organization recognized as an extremist formation but not yet liquidated are automatically and retrospectively "subjected" to criminal liability, which clearly contradicts the standards of the right to freedom of association in terms of non-punishment for membership in a CSO.

The term "extremism (extremist activity)" is defined very broadly in the Law "On Countering Extremism"⁵¹, and is used to qualify criminal offenses, which is not compatible with the criterion of legality and the principle of legal certainty, and also does not correlate with the international approach, which uses the clearer term violent extremism. The Law "On Combating Extremism" uses such concepts as "incitement of social, political, ideological enmity", "discord", "dissemination of knowingly false information... discrediting the Republic of Belarus", "organization providing other assistance to extremist activities", "organization recognizing the possibility of carrying out extremist activities in its activities", etc. Such vague wording allows for a broad interpretation of the provisions of the law, which, in turn, does not meet the requirement of legal predictability. The International Center for Not-for-Profit Law concluded that the Law "On Countering Extremism" can hardly be called publicly accessible, defined, specific and clear, allowing everyone to foresee whether an action is illegal or not⁵².

⁵⁰ <https://www.mvd.gov.by/uploads/news/8642/f9ec26b67e0509bae39efc399cdc3f5fa900aee1.docx>

⁵¹ <https://pravo.by/document/?guid=3871&p0=H10700203>

⁵² С. 17, Анализ законодательства Республики Беларусь о противодействии экстремизму и недопущении реабилитации нацизма, International Center for Nonprofit Law (hereinafter - Analysis of Legislation on Countering Extremism), <https://www.icnl.org/wp->



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The concepts of "extremist materials" and "extremist symbols and paraphernalia" are looped; they are defined through themselves. Thus, extremist material is recognized as that which is used "for the purpose of extremist activity or its propaganda". Almost all court hearings on recognizing materials as "extremist" are held in closed session⁵³. In addition, the Law "On Countering Extremism" does not provide for a procedure to exclude information products from the list of "extremist materials". As of the end of 2022, the list of "extremist materials" includes, among others, opposition websites, resources of opposition initiatives and solidarity funds; resources of human rights organizations⁵⁴.

The offenses provided for in the Law "On Countering Extremism" do not pose a direct threat to the interests of national security, public order, etc., and do not contain an element of violence or threat of violence. For example, "insulting a representative of authority in connection with the performance of his official duties", "public justification" of public calls for extremist actions, "dissemination of knowingly false information about the political, economic, social... situation of the Republic of Belarus, the legal status of citizens in the Republic of Belarus, discrediting the Republic of Belarus"⁵⁵.

In law enforcement practice, acts that are not socially dangerous are recognized as criminal. For example, financing extremist activity, which entails criminal liability, is understood to include small legal donations⁵⁶, even an interview with a media outlet that has been recognized as an extremist formation or sending to such a resource information about the movement of Russian troops, weapons towards Ukraine and other information of an anti-war nature⁵⁷ can be considered as assistance to extremist activity.

The imprecision and the possibility of an expanded interpretation of definitions in the legislation on extremist activity make it possible to prosecute an extremely wide range of individuals. The problem is aggravated by the absence of an independent judiciary, difficulties with the realization of the right to access to legal assistance in Belarus, in light of the practice of repression against lawyers.

Until August 2021, the List of Organizations and Individuals Involved in Terrorist Activities (the List) contained only foreign organizations on the relevant UN list. Since August 2021, it began to be supplemented with organizations recognized as "terrorist" by a court decision in Belarus, which became another mechanism of suppression of the opposition and civil society by the authorities. It is true that

[content/uploads/%D0%B0%D0%BD%D0%B0%D0%BB%D0%B8%D0%B7-%D0%B7%D0%B0%D0%BA%D0%BE%D0%BD%D0%B0-%D0%91%D0%B5%D0%BB%D0%B0%D1%80%D1%83%D1%81%D1%8C_%D1%8D%D0%BA%D1%81%D1%82%D1%80%D0%B5%D0%BC%D0%B8%D0%B7%D0%BC_28-07-2021-1.pdf](#)

⁵³ <https://humanconstanta.org/procedura-priznaniya-informacii-ekstremistskimi-materialami-vs-standarty-pravosudiya-espch/>

⁵⁴ <http://mininform.gov.by/documents/respublikanskiy-spisok-ekstremistskikh-materialov/>

⁵⁵ C. 18-19, Analysis of legislation on countering extremism

⁵⁶ <https://humanconstanta.org/kak-poslednie-gody-v-belarusi-zakonodatelno-izmenyalas-i-uzhestochalas-otvetstvennost-za-donaty/>

⁵⁷ C. 14, Review of PC "Viasna"



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some of them use violent methods in their activities, but the list is much broader. Thus, recognized as "terrorist":

- Civil Self-Defense Units of Belarus;
 - The Supraciŭ movement, with its member initiatives Cyber-Partisans, Druzhiny Narodnoy Samooborony - DNS and Busly liaciać;
- Telegram channel NEXTA, with its subdivisions NEXTA Live and LUXTA;
- BYPOL, an organization of former law enforcers, with its structural subdivisions Situatsyna-analitachny Tsentr and Peramoga Mobilization Plan⁵⁸.

The list of grounds for inclusion in the List includes 32 articles of the Criminal Code, such as directly "act of terrorism" (Article 289 of the Criminal Code) and "act of terrorism against a state or public figure (Article 356 of the Criminal Code), as well as genocide, use of weapons of mass destruction, financing and facilitation of terrorist activities, crimes against the security of humanity (extrajudicial execution, slavery, torture), theft of radioactive materials, sabotage.

Both the list of "terrorists" and the list of "extremists" can be included for such actions as participation in mass riots, incitement of hatred, creation of an armed formation, calls for sanctions and harm to national security. According to the legislation of Belarus, such actions refer only to "extremist" activities and have nothing to do with terrorism, but are still grounds for adding "terrorists" to the list⁵⁹.

- **Activity of associations**

The situation with the freedom of CSOs to operate as well as their funding has worsened compared to 2021. There is blocking of crowdfunding mechanisms by the authorities, e.g. access to the Patreon platform has been restricted⁶⁰. The experts noted that the number of new international technical assistance projects is very low, and there is a tendency of the authorities to denationalize various programs and projects. Significant restrictions on the receipt of foreign grant aid remain.

In spring 2022, representatives of trade unions were brought to administrative responsibility for violating the procedure for using foreign gratuitous aid (Article 24.14 of the Code of Administrative Offenses), in particular the head of the Free Trade Union of Metalworkers⁶¹.

The practice of initiating criminal proceedings for financing extremist formations has expanded, as well as the qualification of financial assistance to those detained during the 2020 protests as criminal offenses. Thus, media manager Andrei Alexandrov and Irina Zlobina were found guilty of treason, which was expressed in cooperation with the "foreign organization" By_Help (a fund through which they

⁵⁸ <http://kgb.by/ru/perechen-inf-ru/>

⁵⁹ <https://humanconstant.org/razbiraemsiya-s-ekstremistskimi-spiskami-perechen-organizacij-i-fizicheskix-lic-prichastnyx-k-terroristicheskoy-deyatelnosti/>

⁶⁰ <https://reform.by/v-belarusi-zablokirovali-kraudfandirovaniju-platformu-patreon>

⁶¹ C. 23, Lawtrend Review 2022



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collected funds to help victims of the regime's actions). A. A. Aliksandrov and I. Zlobina were also found guilty of carrying out activities "aimed at harming the national security of Belarus". This is how the prosecutor's office qualified the payment of fines and lawyers' fees to those detained during the 2020 protests⁶². A. Aleksandrov was sentenced to 14 years' imprisonment, I. Zlobina - 9 years' imprisonment⁶³.

In addition, the founders of the BY SOL Foundation Andrei Strizhak and Aleksei Leonchyk were charged with financing the activities of an extremist formation and training persons to participate in group actions that grossly violate public order. According to the investigation, Leonchik and Strizhak "through other persons" transferred money to A. Alexandrov and I. Zlobina, who paid the fines of the protesters and compensated for the damage caused by "their unlawful actions"⁶⁴. In February 2022, another criminal case was brought against the founders of BY SOL - "on financing extremist activities"⁶⁵.

It is unprecedented to recognize as smuggling a model of receiving money from a foreign state to carry out human rights activities. Thus, the chairman of the Human Rights Center "Viasna," Nobel Peace Prize 2022 laureate Ales Bialiatski, member of the Council of the Human Rights Center "Viasna," vice-president of the International Federation for Human Rights (FIDH) Valentin Stefanovich, lawyer, coordinator of the campaign "Human Rights Defenders for Free Elections" Uladzimir Labkovich were kept in the pre-trial detention center on spurious charges. By the end of the year, they had spent 17.5 months in prison; in September, the investigation dropped the charges on the basis of which the human rights defenders had spent 14 months in pre-trial detention and brought new, unrelated charges of smuggling, financing and ensuring group actions that grossly violate public order as part of an organized group⁶⁶. The prosecution reclassified the activity of importing funds to Belarus to finance the human rights center from tax violations to the more serious charge of money smuggling, which led to the conviction (despite the fact that the funds were moved across the border in amounts not requiring mandatory declaration).

As noted in the report of PC "Viasna", the described reclassification of the criminal case from charges of tax evasion to charges of smuggling represents the culmination of the authorities' use of unjustified financial methods to suppress civil society organizations in Belarus⁶⁷.

In addition, the requirements for reporting and publishing information on the use of cash have changed. If previously reported by revenue item, the change also requires information on amounts expended and activities undertaken for each expenditure item.

⁶² <https://reform.by/316111-segodnja-nachinaetsja-sud-po-delu-belapan>

⁶³ <https://www.dw.com/ru/do-14-let-kolonii-v-minske-oglasen-prigovor-po-delu-belapan/a-63356066>

⁶⁴ <https://www.currenttime.tv/a/andrey-strizhak-delo-za-finansirovanie-voennogo-konflikta/31856329.html>

⁶⁵ <http://kgk.gov.by/ru/news-press-center-ru/view/v-otnoshenii-organizatorov-ekstremistskix-formirovanij-fond-solidarnosti-bysol-i-by-help-vozbuzhdeno-112613/>

⁶⁶ C. 8, Review of PC "Viasna"

⁶⁷ C. 7, CSO Meter 2022



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