

Belarus Human Rights Index

<http://index.belhelcom.org>

2019

General measures

Score: 3.1

Including scores by component:

- State policy on human rights – 2.9
- Interaction with civil society – 2.5
- Interaction with international mechanisms – 3.2
- Equality and non-discrimination – 3.6

- **State policy on human rights**

Belarus has, in general terms, established a system of mechanisms for the realisation of human rights and their protection in cases of violation. There is a system of state bodies responsible for the realisation of human rights, and a system for handling appeals from citizens and legal entities is in place. Courts have been established and are operational, resolving both disputes between citizens and complaints by citizens against the actions of state bodies and other organisations.

However, despite the formal existence of these mechanisms, experts believe that they are not effective, at least when individuals attempt to defend rights violated by the state.

In 2019, there were no changes to the legislative and institutional framework for the promotion and protection of human rights. There is no national human rights institution or other body responsible for implementing policy in the field of the promotion and protection of human rights, despite constant calls from national NGOs and international organisations to establish such a body. In 2018, the UN Human Rights Committee, noting that Belarus was considering the possibility of establishing an independent national human rights institution whilst studying international experience in this field, expressed concern about the slow pace of the process and the lack of a timetable for its completion. The Committee also regretted that none of the specialised institutions with a human rights mandate mentioned by Belarus in its report to the Committee complied with the Principles relating to the status of national institutions for the promotion and protection of human rights¹. It

¹ Concluding observations of the Human Rights Committee on the fifth periodic report of Belarus, 22 November 2018, CCPR/C/BLR/CO/5: <https://undocs.org/ru/CCPR/C/BLR/CO/5>, para. 13



#human rights

#business and human rights

#discrimination

#human rights based approach

#international human rights enforcement mechanisms



office@belhelcom.org



www.belhelcom.org

should also be added that this process took place behind closed doors; civil society organisations have not been informed of the authorities' efforts and plans in this regard².

Belarus fails to comply with the Human Rights Committee's requests for interim measures, primarily in cases involving the imposition of the death penalty, and carries out these sentences before the Committee has concluded its consideration of the relevant cases. According to the HRC, 10 persons have been executed in this manner³.

Furthermore, Belarus ignores the observations issued by the Human Rights Committee on individual communications regarding the state's violation of civil and political rights, considering that observations adopted in accordance with the Optional Protocol to the International Covenant on Civil and Political Rights are merely of a recommendatory nature.

According to experts, at the state level, senior officials effectively deny the universality and inalienability of human rights, which form the basis for the full realisation of human rights. Moreover, despite the formal enshrinement of a number of rights in the Constitution and legislative acts, certain human rights, such as the right to peaceful assembly and the right to participate in the governance of one's country, are in fact not recognised, or the state creates conditions in practice that make their realisation impossible.

Consequently, insufficient attention is paid to human rights education, and neither a national strategy nor relevant plans for human rights education have been adopted. Human rights are not included in the compulsory curriculum at any level of education. According to experts, human rights are not even a compulsory subject for law students. According to available data, human rights are also not included in the compulsory retraining and professional development programmes for judges, prosecutors and civil servants.

- **Interaction with civil society**

The Constitution of the Republic of Belarus explicitly enshrines the right to freedom of association (Article 36). The Constitution also contains a number of other provisions closely linked to the realisation of the constitutional right of association. However, an analysis of legislative and law enforcement practice shows that in the Republic of Belarus, restrictions on freedom of association have been unjustifiably expanded compared to the Constitution and international standards. Furthermore, a trend (which has been emerging since 1999) towards a systematic deterioration in the legislative regulation of processes related to the establishment and activities of non-governmental non-profit organisations is becoming increasingly evident. Thus, in Belarus, a whole range of unlawful

² JOINT REPORT by Belarusian human rights organisations on the fulfilment by the Republic of Belarus of its human rights obligations under the third cycle of the Universal Periodic Review, available at: https://belhelcom.org/sites/default/files/ru_by_upr_coalition_report.pdf

³ Concluding observations of the Human Rights Committee on the fifth periodic report of Belarus, 22 November 2018, CCPR/C/BLR/CO/5: <https://undocs.org/ru/CCPR/C/BLR/CO/5>, para. 7



#human rights

#business and human rights

#discrimination

#human rights based approach

#international human rights enforcement mechanisms



office@belhelcom.org



www.belhelcom.org

restrictions have been introduced and are in force regarding the purposes of establishment and activities, membership, and the conditions for the registration of public associations. Moreover, some of these are enshrined in laws and subordinate legislation, whilst others have arisen as a result of law enforcement by state authorities and administrative bodies⁴.

The procedure for state registration of foundations, public associations, political parties and their organisational structures remains complex and burdensome, and allows the registering authorities to refuse registration of any organisation being established on trivial grounds. The registration procedure for parties, foundations and public associations, including local ones, remains significantly longer and more expensive compared to the procedure for registering commercial legal entities⁵.

The ban on the activities of unregistered organisations remains in place. Despite some steps in the right direction, such as the repeal in 2019 of Article 193-1 of the Criminal Code, which provided for criminal liability for leading or participating in the activities of unregistered organisations, significant problems persist in the area of freedom of association, which have contributed to the overall low rating.

In 2019, events were held to discuss changes to human rights legislation with the participation of civil society representatives; however, relevant civil society organisations were not always invited to such events. To date, interaction between representatives of state bodies and human rights organisations to discuss pressing human rights issues has not been institutionalised and takes place in an ad hoc manner. One of the few institutionalised forms of interaction between civil society and the state is the system of public monitoring commissions (PMCs) to oversee compliance by penal institutions with the conditions of detention. However, as human rights defenders have repeatedly emphasised, this form of public oversight is ineffective in many respects⁶. In particular, human rights NGOs specialising in the monitoring of places of detention are virtually excluded from the work of the Public Monitoring Commissions.

Another shortcoming, according to experts, is that despite the opportunity enshrined in legislation for citizens and NGOs to participate in the discussion of draft legislative acts, in practice, the role of civil society in both shaping legislative agendas and ensuring that NGOs' proposals are taken into account in draft legislation is minimal, due to the state's failure to recognise civil society as a legitimate stakeholder. The state allows NGOs to submit their proposals, but these are practically never taken

4

<https://www.lawtrend.org/freedom-of-association/pravovoe-regulirovanie-nko/konstitutsionnye-osnovy-i-dopolnitelnye-ogranicheniya>

⁵ COALITION REPORT by Belarusian human rights organisations on the fulfilment by the Republic of Belarus of its human rights obligations under the 3rd cycle of the Universal Periodic Review, available at:

https://belhelcom.org/sites/default/files/ru_by_upr_coalition_report.pdf

⁶ See, for example, the Alternative Report by the National Human Rights Coalition on the Republic of Belarus's implementation of the International Covenant on Civil and Political Rights, May 2018, available at:

https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/BLR/INT_CCPR_CSS_BLR_31288_R.pdf, paras. 70–72



#human rights

#business and human rights

#discrimination

#human rights based approach

#international human rights enforcement mechanisms



office@belhelcom.org



www.belhelcom.org

into account. Experts also highlighted the lack of adequate transparency in the process of discussing draft legislation, programmes, concepts, policies, etc., as a serious problem. Thus, many draft laws regulating key areas of public life, as well as those directly concerning civil society, are not always published; if they are published, it is at the very latest stage, when the draft as a whole has already been agreed upon and, in essence, submitting proposals regarding the text of the draft law serves no practical purpose. As experts note, the situation is slightly better when it comes to the discussion of draft regulatory legal acts in the economic sphere. However, problems exist here too, preventing experts from giving a high rating.

- **Interaction with international mechanisms**

In 2019, the state demonstrated a willingness to engage with international human rights mechanisms. In the assessment of experts, the state "cleared all outstanding debts" with respect to reporting to UN treaty bodies. No information was available to suggest that the state had refused to cooperate with UN special procedures.

At the same time, the state continued its policy of non-recognition of the mandate of the UN Special Rapporteur on the situation of human rights in Belarus.

The Republic of Belarus continues to ignore and not implement the Views issued by UN treaty bodies in response to individual communications concerning state violations of human rights. In 104 communications, the Committee found that the Republic of Belarus had violated its obligations under the Covenant; to date, not a single set of Views has been implemented by the state.

The Belarusian authorities continue the practice of selective cooperation with the Committee in the framework of the individual communications procedure. In at least 36 cases between 2014 and 2016, the Belarusian authorities failed to submit observations on the admissibility and/or merits of the authors' claims contained in individual complaints submitted to the Committee. Where Belarus does submit observations, these are as a rule formal in character and represent an attempt by the Belarusian authorities to justify non-compliance with the provisions of the Optional Protocol to the International Covenant on Civil and Political Rights of 1966 – on grounds such as non-recognition of the Committee's Rules of Procedure on the basis that they do not form part of the Covenant itself, or the characterisation of communications submitted by third parties – lawyers or other individuals – on behalf of persons alleging violations of their rights as an abuse of the right of submission.

The Committee has repeatedly emphasised that, pursuant to Article 39(2) of the Covenant, it has the authority to establish its own rules of procedure, which states parties have agreed to recognise, and that by adhering to the Optional Protocol a state party to the Covenant accepts the competence of the Committee to receive and consider communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant – as set out in the preamble and Article 1 of the Optional Protocol – regardless of who represents the victim's interests. Non-compliance with these norms constitutes, in effect, a violation by the state of its obligations to recognise the competence of the Committee to receive and consider communications from persons subject to its jurisdiction who claim to be victims of a violation by that state party of any of the rights set forth in



#human rights

#business and human rights

#discrimination

#human rights based approach

#international human rights enforcement mechanisms



office@belhelcom.org



www.belhelcom.org

the Covenant, and to cooperate in good faith with the Committee with a view to ensuring full and thorough consideration of the circumstances set out in the complaint.

Furthermore, the state refuses to comply with interim measures addressed by the UN Human Rights Committee requesting the suspension of the execution of death sentences pending consideration of the relevant case by the Committee. The Committee has requested the application of interim measures in relation to Belarus in respect of at least 11 individuals who have submitted individual communications to the Committee and are awaiting execution; not one of these requests has been granted.

In general, experts concurred that engagement with international human rights mechanisms takes place on a purely formal basis, with no genuine steps being taken by the state to improve the actual human rights situation.

- **Equality and non-discrimination**

The principle of equality before the law is enshrined in the Constitution, as well as in a number of legislative acts⁷.

Furthermore, Belarus is a party to a number of international treaties that guarantee the implementation of the principle of equality and non-discrimination, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and a number of others.

At the same time, in practice there are numerous examples of violations of this principle. Cases of discrimination against certain vulnerable groups are widespread, both at the legislative level and in law enforcement practice – women, religious and ethnic minorities, members of the LGBTIQ community, etc.

For instance, in 2018, the Human Rights Committee expressed concern over reports of discrimination against Roma, including hate speech and racial profiling by law enforcement agencies, as well as high rates of illiteracy and school non-attendance among Roma children⁸, as well as reports of discrimination on the grounds of sexual orientation and gender identity, including harassment, homophobic slurs and hate speech, violence against lesbians, gay men, bisexuals and transgender people, as well as the lack of adequate protection against such discrimination, both in law and in practice⁹.

In 2019, there was no comprehensive piece of legislation prohibiting discrimination in all its forms and setting out a set of specific principles, measures and public policy guidelines to ensure equality

⁷ https://belhelcom.org/sites/default/files/discrim_uyazvimje_rus.pdf

⁸ Concluding observations of the Human Rights Committee on the fifth periodic report of Belarus, 22 November 2018, CCPR/C/BLR/CO/5: <https://undocs.org/ru/CCPR/C/BLR/CO/5>, para. 17

⁹ Concluding observations of the Human Rights Committee on the fifth periodic report of Belarus, 22 November 2018, CCPR/C/BLR/CO/5: <https://undocs.org/ru/CCPR/C/BLR/CO/5>, para. 19

and protection against discrimination, despite calls from both UN treaty bodies and national NGOs for the adoption of such a law.

In 2019, the implementation period for the Interdepartmental Plan for the implementation of the recommendations adopted by the Republic of Belarus following the second cycle of the Universal Periodic Review at the UN Human Rights Council, and the recommendations addressed to the Republic of Belarus by human rights treaty bodies, for the period 2016–2019, came to an end. One of the measures in the plan was “to analyse legislation with a view to determining the need to enshrine provisions prohibiting discrimination on any grounds, as well as to assess the advisability of drafting a comprehensive legislative act prohibiting such discrimination”. Civil society and relevant NGOs had certain hopes that a law would be adopted following the examination of this issue. However, in 2019 it became known that the government had deemed the adoption of comprehensive anti-discrimination legislation to be inappropriate.

A positive development, according to experts, is the existence in Belarus of three National Action Plans: on ensuring gender equality, on improving the situation of children, and on implementing the provisions of the Convention on the Rights of Persons with Disabilities. These plans provide for a range of measures to achieve equality in the aforementioned areas. At the same time, no corresponding plan has yet been adopted in the area of social integration of the Roma population, which is the most vulnerable and discriminated-against minority in Belarus.

The low rating for the right to equality and non-discrimination was influenced by the fact that no effective mechanisms have been established in Belarus for examining complaints of discrimination. In the absence of a national human rights institution, one of the few ways to protect the right to equal treatment is to take legal action. However, the legal positivism prevailing in legal and judicial practice hinders the possibility of using legal action as a tool to protect the right to equal treatment¹⁰.

A problem in the area of ensuring equality and non-discrimination in Belarus is the lack of specialised anti-discrimination review of draft legislation, as a result of which draft legislation is not assessed during the legislative process for potential consequences of violating the right to equal treatment in relation to vulnerable groups, which may lead to various forms of discrimination against them.

Furthermore, according to experts, a problem is that judges, prosecutors and civil servants do not undergo retraining or professional development on issues of equality and non-discrimination.

Sources:

1. Concluding observations of the Human Rights Committee on the fifth periodic report of Belarus, 22 November 2018, CCPR/C/BLR/CO/5: <https://docs.un.org/CCPR/C/BLR/CO/5>

¹⁰ Ibid.



2. Concluding observations of the Committee on the Elimination of Discrimination against Women on the eighth periodic report of Belarus, CEDAW/C/BLR/CO/8, available at: <https://docs.un.org/CEDAW/C/BLR/CO/8>
3. Concluding observations of the Committee on the Elimination of Racial Discrimination on the combined twentieth to twenty-third periodic reports of Belarus, CERD/C/BLR/CO/20-23, available at: <https://docs.un.org/CERD/C/BLR/CO/20-23>
4. Alternative report by the National Human Rights Coalition on the implementation by the Republic of Belarus of the International Covenant on Civil and Political Rights, May 2018, https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/BLR/INT_CCPR_CSS_BLR_31288_R.pdf
5. Responses to the list of issues prior to the submission of Belarus' eighth periodic report on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (alternative report by Belarusian NGOs), available at: https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/BLR/INT_CEDAW_NGO_BLR_25453_E.pdf
6. Report by civil society organisations on the implementation by the Republic of Belarus of the International Convention on the Elimination of All Forms of Racial Discrimination, available at: https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/BLR/INT_CERD_NGO_BLR_29418_R.pdf
7. Report of the Working Group on the Universal Periodic Review A/HRC/46/5, available at: <https://undocs.org/ru/A/HRC/46/5>
8. COALITION REPORT by Belarusian human rights organisations on the fulfilment by the Republic of Belarus of its human rights obligations under the third cycle of the Universal Periodic Review, available at: https://belhelcom.org/sites/default/files/ru_by_upr_coalition_report.pdf
9. Analysis of the implementation of recommendations received by the Republic of Belarus under the second cycle of the Universal Periodic Review, available at: https://belhelcom.org/sites/default/files/ru_by_appendix_analysis_of_implementation.pdf
10. Citizen participation in decision-making: a brief analytical report, Belarusian Helsinki Committee, 2018, available at: https://belhelcom.org/sites/default/files/bhc_grazhdanskoe_uchastie.pdf
11. Interaction between local authorities and non-profit organisations in Belarus: legal regulation and practice / Olga Smolyanko, Yuri Chausov. – Minsk: Knigazbor, 2019, <https://www.lawtrend.org/wp-content/uploads/2019/04/book-rds-2019.pdf>



#human rights

#business and human rights

#discrimination

#human rights based approach

#international human rights enforcement mechanisms



office@belhelcom.org



www.belhelcom.org

12. Discrimination against specific vulnerable groups in Belarus: report / D. Chernykh, O. Gulak. – Minsk: RPOO ‘Belarusian Helsinki Committee’, 2018. – 40 pp., available at: https://belhelcom.org/sites/default/files/discrim_uyazvimje_rus.pdf
13. Report on inequality and discrimination in Belarus ‘Half an hour before spring’, pp. 196–230, available at: http://www.equalrightstrust.org/ertdocumentbank/belarus%20cr_russian_4web.pdf



#human rights

#business and human rights

#discrimination

#human rights based approach

#international human rights enforcement
mechanisms



office@belhelcom.org



www.belhelcom.org