

Belarus Human Rights Index

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2021

Right to life

Expert Commentary

The score: 3,9

Including scores by component:

- Arbitrary deprivation of life 3,8
- Death penalty 4,7
- Enforced disappearances 3,3

The state guarantees the right to life in Article 24 of the Constitution of the Republic of Belarus which proclaims: “Everyone has the right to life. The State shall protect human life from any unlawful infringement. The death penalty, pending its abolition, may be applied in accordance with the law as an exceptional measure of punishment for particularly grave crimes and only pursuant to a court sentence”¹. Article 59 of the Criminal Code of the Republic of Belarus stipulates that “as an exceptional measure of punishment the death penalty (execution) may be applied for certain especially grave crimes involving the deliberate deprivation of human life under aggravating circumstances (prior to the abolition of the death penalty). The death penalty may not be imposed on: 1) persons who committed crimes when they were under the age of eighteen; 2) women; 3) men who have reached the age of sixty-five by the day of sentencing. Capital punishment by pardon may be commuted to life imprisonment”². Under Article 96 of the Criminal Code, there is the possibility of a pardon, which is granted by the President of the Republic of Belarus in respect of specific individuals³.

The Republic of Belarus has been a party to the International Covenant on Civil and Political Rights since 1973⁴. Its Article 6 declares: “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life. In countries which have not abolished the death penalty, the sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of

¹ Constitution of the Republic of Belarus, Art. 24: <https://pravo.by/pravovaya-informatsiya/normativnye-dokumenty/konstitutsiya-respubliki-belarus/>.

² Criminal Code of the Republic of Belarus, Art. 59: <https://pravo.by/document/?guid=3871&p0=hk9900275>.

³ Ibid, Art. 96.

⁴ International Covenant on Civil and Political Rights: ratification status.
https://treaties.un.org/Pages/ViewDetails.aspx?chapter=4&clang=_en&mtdsg_no=IV-4&src=IND.



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the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases. Sentences of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.”⁵

It follows from the above that despite the fact that the death penalty is enshrined in law, Belarus follows a human rights-oriented approach and does not apply the death penalty to minors, women of all ages and conditions (regardless of pregnancy), men who have reached the age of 65 by the date of sentencing.

In assessing the state of the right to life in 2021, the experts of the Index gave lower scores than in 2020. Their position is explained in more detail below.

Arbitrary deprivation of life

Compared to 2020, the changes are minor. Legislation aimed at protecting life from all foreseeable threats has not changed significantly. Repressions persist, the state has not modified the mechanisms of pressure, it is still determined to use force and the threat of force; however, there are fewer cases of such pressure due to the fact that civil resistance has moved into a latent phase compared to August 2020. At the same time, experts are inclined to believe that if such resistance had continued to grow, the state would have used all means to intimidate and suppress dissenting voices. The state fails to properly investigate deaths when they involve political prisoners or activists who do not support the current government.

For instance, on 21 May 2021 a political prisoner, a 50-year-old civic activist from Berezovka, Vitold Ashurak died in Shklou colony № 17. He was charged and convicted under Articles 342 (“Organization and preparation of actions that grossly violate public order or active participation in them”) and 364 (“Violence or threat of violence against a police officer”) of the Criminal Code⁶. The relatives were told that the cause of death was cardiac arrest. The investigation did not reveal any signs of the criminal nature of this death. However, the relatives, who saw the emaciated body with bruises and haematomas, are confident that the man died a violent death. The officials were reluctant to hand over his body. In response to a question about why Vitold’s body was handed over with his head almost completely bandaged, the relatives got two contradictory answers. The first version was provided by the morgue: the brother of the deceased was told that the staff had accidentally dropped the body while removing it from the freezer, so, if there are no objections, the head would be wrapped in bandages. The second version was given by the Investigative Committee: four days after Vitold’s death, a video appeared on the agency’s Telegram channel, in which a man dressed in prison clothes, barely

⁵ International Covenant on Civil and Political Rights, Art. 6: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

⁶ <https://www.dw.com/ru/beloruskij-oppozicioner-vitold-ashurok-skonchalsja-v-kolonii-a-57628472/a-57628472>.



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able to stand, falls face down into a toilet bowl. After that, a correctional officer wraps a bandage around his head. Soon the man falls again, this time onto the concrete floor. After a few seconds, five people appear in the frame, crowding around the lifeless body. The relatives were not asked permission to publish this footage. Vitold's family and relatives are sure that the video was compiled from several fragments filmed at different times, so the authorities tried to provide themselves with an alibi⁷. A month after Vitold's death the Republican Public Supervisory Commission, including representatives of human rights organizations, visited the colony in order to assess the conditions of detention in the light of this death. The visit was coordinated with the authorities, which makes it possible to doubt the realism of the situation demonstrated by the Commission⁸.

An impartial forensic science is absent. The system of forensic expertise and determination of causes of death does not function effectively and impartially⁹. It adjusts to the "top-down" instructions. The State Committee for Forensic Medicine is a *de facto* and *de jure* monopolist in forensic medicine, which deprives the conclusions of any expertise of impartiality.

Thus, state authorities do not properly investigate deaths related to political prisoners, often under the guise of formalism.

The migration crisis in 2021, provoked by the current authorities¹⁰, has demonstrated their inhumane attitude towards migrants, when a person's life has no value, but serves as a means that the current regime utilizes to achieve its objectives. Thus, four bodies were found by border guards on August 19, 2021, in different places along the Polish-Belarusian border. The body of a 39-year-old Iraqi citizen was found on the Belarusian side and three more — on the Polish one. It is preliminarily established that all persons died of hypothermia. On September 21st an Iraqi citizen was found "unconscious with signs of physical abuse" in Svisloch district of Belarus. On 23 September, the body of an Iraqi was found on the territory of Poland, the presumed cause of death being a heart attack. On October 14, the body of a migrant from Syria was found in the border zone¹¹. The authorities claim that Belarus has nothing to do with the crisis and that the West is to blame. For example, on September 27, 2021, Alexander Lukashenko stated: "Western countries are themselves to blame for the emerging migration crisis: you called them here. You have ruined those countries. You are the root cause of the fact that people are fleeing to the West, so we have to deal with it here. And I have repeatedly stressed that it is an international gang, which is not only transporting people from there via Belarus. More people are

⁷ <https://www.bbc.com/russian/features-57642388>; <https://reform.by/228265-sk-o-smerti-vitolda-ashurka-upal-i-razbil-golovu>.

⁸ <https://spring96.org/ru/news/104065>.

⁹ The above-mentioned Vitold Ashurak's case is illustrative in this regard.

¹⁰ <https://www.opendemocracy.net/ru/kak-i-zachem-belarus-sprovotsirovala-migratsionnyy-krizis/>.

¹¹ Ibid.



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coming to the EU through the Mediterranean Sea. They are coming in droves. And it's all organized by the appropriate people.”¹²

The Belarusian side did not provide any public information about the proper investigation of the deaths of migrants at the border¹³.

In 2021, legislation on the use of lethal weapons by law enforcement authorities was amended. Such deprivation of life is not arbitrary *per se*, as it is accompanied by institutional safeguards. However, in 2021 law enforcement authorities were given an indulgence to use weapons against civilians if necessary. On May 17, 2021, Law No. 106-3 “On Amendments to Legislation on the National Security of the Republic of Belarus” has been adopted¹⁴. It amended several existing laws: “On Internal Troops of the Ministry of Internal Affairs of the Republic of Belarus”, “On the State Border of the Republic of Belarus”, “On Internal Affairs Bodies of the Republic of Belarus” and others. The law allows using weapons, special means, military and special equipment by representatives of the above security agencies “taking into account the prevailing circumstances, nature of the crime or administrative offense and personality of the offender, being guided by the requirements of the Law”. Previously, weapons and special equipment were allowed to be used “if the fulfillment of the task assigned to them is impossible by other means”.

Moreover, according to the amendments, a law enforcement officer is not liable for damage caused by the use of physical force, special means, military or special equipment, application or use of weapons, if it is carried out in accordance with the requirements of the Law. Thus, officers are provided with a wide margin of appreciation¹⁵. The rhetoric of the deputies when discussing and adopting this law showed that they were doing everything possible to exempt law enforcement bodies from responsibility for the use of weapons, to make the law as “usable” as possible. As a member of the Standing Commission on National Security of the House of Representatives, Ivan Mamayko stated, “The Belarusian legislation is still quite liberal. The main goal of the proposed changes is to create legislation that will *correspond to the realities of life*”¹⁶.

Law enforcement practice in 2021 has raised questions about the existence of effective institutional safeguards in the use of weapons by law enforcement agencies against civilians, such as in the case of the murder of Andrei Zeltser. On 28 September 2021, the shooting took place in Minsk. Andrei Zeltser met law enforcement officers dressed in plain clothes trying to break into his flat with a hunting weapon in his hand. Andrei and KGB officer Dzmitry Fedosyuk were killed. On the same day, the state

¹² <https://www.svoboda.org/a/ochenj-nezdorovaya-situatsiya-v-tsentre-minska-i-na-granitse-desyatki-bezhentsev/31502128.html>.

¹³ <https://telegraf.news/world-news/v-oon-soobshhili-cto-21-migrant-umer-na-belorussko-polskoj-granice-s-nachala-2021-goda-cto-izvestno/>.

¹⁴ <https://pravo.by/document/?guid=12551&p0=H12100106&p1=1>.

¹⁵ https://belhelcom.org/sites/default/files/novoe_zakonodatelnoe_regulirovanie_bielarus_2021_2.pdf.

¹⁶ <https://www.belta.by/society/view/mamajko-belorusskoe-zakonodatelstvo-o-natsbezopasnosti-ostaetsja-dostatochno-liberalnym-441782-2021/>.



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TV channel ONT published an edited video of the incident, which raised many questions from the public¹⁷. The video confirms that the officers were instructed to inflict harm to the individuals living in this flat and even shoot on sight, rather than just detain Andrei and his wife. It is not clear from the video who shot first and who actually killed the KGB officer. The KGB asserted that security officers were conducting a "sweep of the addresses where persons involved in terrorist activities may have been located" when one of the residents shot at them and fatally injured the KGB officer¹⁸.

There is no information on a proper investigation into the use of weapons by law enforcement agencies in this case. This story demonstrates that law enforcement agencies have an indulgence to use weapons against civilians, there are no guarantees of its non-use in practice, and cases of the use of weapons by law enforcement agencies are not properly investigated.

At the same time, despite changes in legislation, there were fewer cases of use of weapons in 2021 compared to the period of escalating law enforcement violence against civilians in August 2020.

In 2021, cases of arbitrary deprivation of life or the threat thereof were not investigated according to the principles of independence, impartiality, rapidity, thoroughness, effectiveness and transparency, just as in 2020. The reasons are the total legal crisis, which has been worsening since 2020, the lack of public trust in state authorities, the lack of the right to a fair trial, and the dependence of the courts in making decisions, especially in political cases. Investigations are conducted formally, in a short time, the aim of any investigation in the aftermath of August 2020 is to "whitewash" the actions of the authorities and prove their non-involvement in a particular lethal case.

For instance, on the night between December 31st, 2021 and January 1st, 2022 Dzmitry Ushopau died in Rechytsa. The man was detained by police at a public transport stop for drinking alcohol. When detained he resisted and was taken to a police station. In about an hour and a half, he was taken to an emergency ward of Rechytsa district hospital, where doctors started resuscitation. The therapist said that they tried to resuscitate the young man with adrenaline and heart massage, "but the time was lost"¹⁹. All of Dmitry Ushopov's clothes, down to his underwear, were soaked with water, they were squelching. This was also noted by the therapist on duty: the man was admitted to the hospital in the state of clinical death and for some reason was soaking wet²⁰. The relatives believe he might have been beaten up at the police station. According to relatives, the man was "either interrogated and beaten, or hit in the head once, or shot with an air gun" at the police station²¹. The Investigative Committee stated that according to preliminary expert conclusions, the death was not of a traumatic nature²².

¹⁷ <https://www.bbc.com/russian/news-58730869>.

¹⁸ https://t.me/belta_telegramm/71215.

¹⁹ <https://www.dw.com/ru/otdel-sk-provodit-proverku-posle-smerti-zhitelja-rechicy/a-60315087>.

²⁰ <https://www.dw.com/ru/smert-na-novyi-god-cto-izvestno-o-pogibshem-v-belorussoj-rechize/a-60318933>.

²¹ <https://www.dw.com/ru/otdel-sk-provodit-proverku-posle-smerti-zhitelja-rechicy/a-60315087>.

²² <https://euroradio.fm/ru/delo-ushopova-kratkaya-hronologiya-i-nestykovki>.



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The head of the human rights organization Belarusian House in Ukraine, Vitaly Shishov, was found hanged in Kyiv in August 2021. The Ukrainian authorities opened a criminal case under Article 115 of the Ukrainian Criminal Code ("Premeditated murder") and tested all versions, including the version of a murder disguised as a suicide²³. According to the Belarusian human rights center Viasna, Vitaly Shishov had previously noticed that he was under surveillance. He was repeatedly warned both by local sources and by his own acquaintances in Belarus about possible provocations, up to and including kidnapping and liquidation²⁴. It is an open question whether it was suicide, being driven to suicide or murder at the hands of the Belarusian authorities.

As to safe, legal and effective access to abortion, Belarusian legislation provides women with the right to handle the issue of motherhood themselves. Minors require the consent of their legal representative. The abortion procedure is preceded by a consultation with a specialist doctor. Recently, it has become common practice for an employee of a religious organization to come and talk to a woman under the guise of a psychologist. In fact, such persons use psychological violence to try to convince the woman that abortion is harmful and immoral. Abortion is carried out when the pregnancy is not more than 12 weeks, except in certain cases where abortion is allowed for a later pregnancy. All grounds for abortion are defined by law.

The suicide prevention situation, especially among people in situations of vulnerability, including those deprived of liberty, has worsened compared to 2020. The topic of suicide is considered taboo in society. The state still does not have a systematic policy for suicide prevention and work with vulnerable groups. Civic initiatives and non-governmental organizations (NGOs) were and remain the key actors working on this topic. However, in 2021, due to the crackdown on civil society, a large number of NGOs were dismantled. The activities of initiatives and unregistered NGOs are hampered because in 2021 the Criminal Code was amended, and participation in the activities of an unregistered organization was criminalized²⁵.

Persons deprived of their liberty are disempowered. The state does not fulfil its duty to protect them: suicides are not properly investigated. Psychological assistance is formally provided, but its quality is poor and it is not always available. Both physical and psychological abuse is used against prisoners in places of detention, particularly against political prisoners. It leads in some cases to suicide attempts, hunger strikes as a way of fighting for their rights and against injustice. For instance, on 1 June 2021 activist Stepan Latypau stuck a pen to his throat during a session of the Savetski district court of Minsk, where his case on the organization of mass riots was being considered. Before that, he stood on the bench and shouted the phrase: "GUBOPiK²⁶ has promised, if I don't admit guilt, I will end up in a

²³ <https://www.bbc.com/russian/news-58068438>.

²⁴ <https://www.dw.com/ru/beloruskogo-aktivista-shishova-nashli-mertvym-v-kievskom-parke/a-58737737>.

²⁵ Criminal Code, Art. 193¹: <https://pravo.by/document/?guid=3871&p0=hk9900275>.

²⁶ The Main Directorate for Combating Organized Crime and Corruption (GUBOPiK).



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sweatbox²⁷, they will start criminal cases against my relatives and neighbors"²⁸. From December 2020 to January 2021, activist Igor Losik starved himself for 42 days in protest against the charges brought against him²⁹.

Minors are also a vulnerable group. In 2021, the practice of politically motivated pressure and persecution of minors for participation in peaceful rallies continued. Thus, on May 25, 2021, Dmitry Stakhovsky, a 17-year-old criminal defendant accused of participation in "mass disorders" on August 9-11, 2020, committed suicide in Minsk. He left a suicide note on his page on the social networking site VKontakte, in which he based his action on the criminal prosecution for participation in the protests. In his suicide post, he wrote: "The Investigative Committee was to blame. It is no longer a secret that I am criminally charged under Part 2 Article 293. If they hadn't continued to exert moral pressure on me, I don't think I would have dared to do such a terrible thing as suicide. But I was at the end of my strength." According to the Viasna Human Rights Centre, Dmitry was questioned on the afternoon of May 25³⁰.

Suicides and incitements to them in the Belarusian army are a fairly common practice. Due to the closed nature of the system, it is difficult to know the exact number of such cases per year.

Death penalty

The experts' assessment of the situation in the context of the existence of the death penalty has not changed since 2019 and 2020. The legislation explicitly underlines the temporary and exceptional nature of the death penalty, which is applied for certain particularly grave crimes involving intentional deprivation of life under aggravating circumstances. Life imprisonment is used in Belarus as an alternative to the death penalty (Art. 59, Part 3, of the Criminal Code). However, there are still no clear criteria to distinguish between life imprisonment and the death penalty. The practice of the Supreme Court of the Republic of Belarus to pass death sentences as a court of first instance deprives convicts of the right to appeal because a sentence issued by the Supreme Court of the Republic of Belarus enters into force immediately after it is announced and is not subject to appeal, while the execution of such a sentence is irreversible. In 2021 the procedural guarantees have worsened. The court is not considered to be independent and impartial. Communication with attorneys is complicated. There are fewer opportunities to choose an attorney due to state harassment of lawyers taking place since 2020.

Belarus still fails to comply with the Human Rights Committee's requests for interim measures, mainly in death penalty cases referred to it under the Optional Protocol and executes those sentences before the Committee has completed its consideration of the relevant complaints.

²⁷ A "sweatbox" is a detention place with cellmates who create unbearable living conditions for the inmates.

²⁸ <https://www.dw.com/ru/beloruskij-oppozicioner-sovershil-popytku-suicida-v-sude/a-57750673>.

²⁹ <https://reform.by/196694-igor-losik-na-42-j-den-ostanovil-golodovku>.

³⁰ <https://news.liga.net/world/news/v-minske-pokonchil-s-soboy-17-letniy-podrostok-iz-za-dela-o-mitingah-pravozaschitniki>.



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All persons sentenced to death have the right to apply to the President of the Republic of Belarus for pardon, and the convicted person is informed of this when the sentence is pronounced.

In 2021, the situation is slightly better than in 2020. On 30 April 2021, brothers Stanislav and Ilya Kostev were pardoned, and their death penalty was commuted to life imprisonment. The Kostev brothers were convicted in January 2020 for killing their former teacher Natalya Kostritsa. The woman was stabbed more than a hundred times; then brothers stole her groceries and computer and set her house on fire. Ilya was 21 at the time and Stanislav was 19. At the trial, the brothers confessed to the murder, said they repented of what they had done and asked for forgiveness from the victim's relatives³¹. On 16 September 2021, the President of Belarus pardoned 13 persons. According to the deputy head of his administration Olga Chuprys, these are those who have committed "crimes on the Internet" or participated in "mass riots" and "repented of their deeds"³².

In 2021, the death penalty is still carried out non-publicly, by firing squad. The date and place of execution are not disclosed to the convicted person. The state sees a reasonable period of execution as the shortest possible time from the issuance of the judgment, which negatively affects the possibility of an appeal or an application for pardon.

The bodies of those executed continue to be withheld from relatives and the place of burial remains unreported, despite the UN Human Rights Committee's recognition of this practice as a violation of the state's obligations under Article 7 of the Covenant (right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment). In 2021 the situation worsened. In the "Vitsebsk case" the relatives of the convicted person have not received any letters for almost a year³³. The same situation is with the case of Vitali Skrundyk from Slutsk, convicted for the murder of 2 elderly men and the attempted murder of an 85-year-old woman. On January 15, 2021, Minsk regional court in Slutsk sentenced Vitali to death, and his two accomplices to 22 and 18 years of imprisonment in a strict regime colony respectively. As of December 2021 Vitali does not get in touch with his relatives, no letters are sent or received, which indirectly indicates that the sentence has been carried out. However, the state authorities do not provide information about the execution of the verdict³⁴.

There is still no prohibition of extradition to countries where there is a threat of torture and the death penalty in Belarusian law. In 2021, despite the migration crisis, there have been no publicly recorded cases of extradition of persons to countries where they face the death penalty, but according to experts, this possibility exists. The instrumentalisation of masses of people by the Belarusian authorities during the migration crisis showed a lack of a value-based approach to the individual. The state authorities did not consider, on an individual basis, whether a certain person would face the death penalty in the country to which he or she was being deported. Large groups of migrants were sent home by plane. On the one hand, the state media said that people (migrants or refugees) came to Belarus because they

³¹ <https://www.dw.com/ru/pravozashhitniki-soobshhili-o-pomilovanii-bratev-kostevyh-v-belarusi/a-57395112>.

³² <https://www.dw.com/ru/13-vmesto-100-kogo-i-pochemu-pomiloval-lukashenko-v-belarusi/a-59210595>.

³³ <https://m.nashaniva.com/ru/286162/>.

³⁴ <https://dp.spring96.org/ru/news/104879>.



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were in danger in their country, on the other hand, the same authorities sent them back, without considering their refugee status, and without providing minimum guarantees and protection.

The case of a Cuban, Roberto Valdes Casanueva, who has lived in Belarus for 30 years, is also illustrative. In November 2020, during one of the peaceful actions, he was detained and sentenced to 15 days in jail, his residence permit in Belarus was annulled, and a decision was taken to deport him from the country. The Cuban spent more than a year in the Okrestina detention center in Minsk awaiting deportation, until in December 2021, officers from the Citizenship and Migration Department put him on a flight to Moscow to take him to Cuba. He is banned from entering Belarus for three years, although he has three children left in the country³⁵.

Enforced disappearances

There are still no specific and effective measures to prevent the disappearances of individuals. The situation has not worsened compared to 2020. There is no public reporting on the work done by state authorities to prevent cases of disappearances of individuals. The Republic of Belarus is still not a party to the International Convention for the Protection of All Persons from Enforced Disappearance. The kidnapping of Maria Kolesnikova in the center of Minsk city has still not been properly investigated.

As of December 2021, there is still no investigation into enforced disappearances of political opponents of the authorities in 1999-2000. There is no information on the authorities' ongoing investigations into the said criminal cases.

There is still no centralized list of all persons in custody. However, the police department has, for instance, separate lists of detainees.

Chapter 22 of the Criminal Code contains certain offenses related to enforced disappearances, such as kidnapping and human trafficking. A formalistic approach is widely applied in the investigation of enforced disappearances by law enforcement agencies. Since August 2020, human rights defenders, activists, and people with an active civic position have been subjected to enforced detention by law enforcement authorities without procedural guarantees, presentation of charges and/or arrest warrants. Detention is often carried out by individuals without uniforms and identification badges, who do not report their names or positions. Relatives and attorneys of detainees are unable to ascertain the detainee's status, location and state of health, while the facts of detention themselves are often made known through the volunteer Telegram channels. Such practice is illegal, however, it is endorsed by the authorities.

For example, on 14 July 2021, there was no contact with the head of the Human Rights Center "Viasna" Ales Bialiatski³⁶ since morning, and only in the evening of the same day it became known that he had been detained on criminal charges³⁷. This situation illustrates the widespread practice of law

³⁵ <https://www.dw.com/ru/uchastnik-belorusskih-protestov-s-kuby-o-sizo-i-deportacii/a-60414455>.

³⁶ <https://reform.by/240843-otsutstvuet-svjaz-s-alesem-beljackim>.

³⁷ <https://reform.by/241088-ales-beljackij-zaderzhan-po-ugolovnomu-delu>.



enforcement agencies demonstrating their power to decide when to disclose a person's detention, to notify his attorney or not, or to notify the attorney but forbid him to disclose the important information. These tactics of intimidation and psychological violence against detainees, their relatives and society as a whole have become the norm in 2021.



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