

Belarus Human Rights Index

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2022

Right to life

Expert Commentary

The score: 3.4

Including scores by component:

- Arbitrary deprivation of life 3.2
- Death penalty 4.1
- Enforced disappearances 2.8

The State guarantees the right to life in Article 24 of the Constitution.¹ Article 59 of the Criminal Code states that “as an exceptional measure of punishment, the death penalty may be used – execution for certain particularly serious crimes involving intentional deprivation of a person’s life under aggravating circumstances (until the abolition of the death penalty). The death penalty may not be imposed: 1) persons who have committed crimes under the age of eighteen; 2) women; 3) men who have reached sixty-five years of age by the day of the verdict. The death penalty may be replaced by life imprisonment by way of pardon.”² According to Article 96 of the Criminal Code, there is a possibility of pardon granted by the President to an individual.³

The Republic of Belarus has been a party to the International Covenant on Civil and Political Rights since 1973⁴. Article 6 of the Covenant states: “The right to life is the inalienable right of every human being. This right is protected by law. No one may be arbitrarily deprived of his life. In countries that have not abolished the death penalty, death sentences may only be imposed for the most serious crimes in accordance with the law in force at the time the crime was committed and which is not contrary to the provisions of this Covenant and the Convention on the Prevention and Punishment of the Crime of Genocide. Anyone sentenced to death has the right to seek pardon or commutation of the sentence. The death penalty is not imposed for crimes committed by persons under 18 years of age and is not

¹ The Constitution of the Republic of Belarus, Article 24, <https://pravo.by/pravovaya-informatsiya/normativnyedokumenty/konstitutsiya-respubliki-belarus/>

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

³ Ibid, art. 96

⁴ Ratification of the International Covenant on Civil and Political Rights by country, https://treaties.un.org/Pages/ViewDetails.aspx?chapter=4&clang=en&mtdsg_no=IV-4&src=IND

carried out on pregnant women.”⁵

It follows from the above that, despite the legislation enshrining the death penalty, Belarus uses a human rights-based approach, not applying the death penalty to minors, women of all ages and backgrounds (regardless of pregnancy), and men who have reached the age of 65 on the day of sentencing.

When assessing the situation with the right to life in 2022, Index experts gave lower scores than in 2021. The experts' position is explained in more detail below.

- **Arbitrary deprivation of life**

In 2022, a number of regulatory documents were adopted that worsen the situation with regard to the right to life. Amendments have been made to the Law “On Internal Troops of the Ministry of Internal Affairs”⁶, which sets out the tasks of the internal troops in a new way. In particular, earlier one of the powers of the internal troops of the Ministry of Internal Affairs was formulated as “to provide assistance to internal affairs bodies in protecting public order”, in the new version, the internal troops of the Ministry of Internal Affairs are directly involved in protecting public order, ensuring public safety, ensuring emergency and martial law regimes, and the legal regime in the area of the counter-terrorist operation; the internal troops of the Ministry of Internal Affairs may also be involved in performing other tasks. The use of weapons by internal troops is also expanding. Prior to the amendments, Article 21 of the Act provided that the use of weapons against a person was possible provided that other methods and means to ensure the fulfillment of the assigned tasks were ineffective. The Law “On Amendments to Laws on the Activities of the Internal Troops of the Ministry of Internal Affairs” excluded this reservation from Article 21. This eliminates such a criterion for the legal use of weapons by internal affairs bodies as necessity.

The list of grounds for the use of weapons has also been expanded: the possibility of using weapons against a person trying to illegally enter (leave) a facility protected by internal troops or escape after such an attempt has been added, if this attempt cannot be stopped by any other means.

In accordance with the order of the President,⁷ some employees of the Ministry of Emergency Situations (hereinafter referred to as the Ministry of Emergency Situations) were armed so that in the event of a conflict or military action, employees could be used for military purposes on an equal basis with the army.⁸ According to the Minister of Emergency Situations, employees of the Ministry of

⁵ International Covenant on Civil and Political Rights, 1966, art. 6,
https://www.un.org/ru/documents/decl_conv/conventions/pactpol.shtml

⁶ Law on Amendments to Laws on the Activities of the Internal Troops of the Ministry of Internal Affairs,
<https://pravo.by/document/?guid=12551&p0=H12200170&p1=1&p5=0>

⁷ <https://www.belta.by/president/view/ne-tolko-pozhar-budut-tushit-chast-sotrudnikov-mchs-belarusi-planirujut-vooruzhit-483320-2022/>

⁸ <https://sputnik.by/20221017/beloruskie-spasateli-gotovy-zaschischat-stranu-s-oruzhiem-v-rukakh---ministr-1068026863.html>



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Emergency Situations are trained to operate in special conditions: during “internal problems and problems related to mass riots” in the interests of the internal affairs bodies, and in the event of armed conflict and aggression, in the interests of the Ministry of Defense.⁹

At the same time, the Law “On Emergency Bodies and Units ” does not provide for the possibility of using weapons by “rescuers” in such situations.¹⁰ The Law establishes that “an employee of emergency bodies and units has the right to use and use weapons also in other cases determined by the President ”.

Experts note the following use of weapons with obvious signs of deviation from considerations of proportionality in 2022: the detention of “rail guerrillas” – people who, for anti-war reasons, disabled railway infrastructure facilities, preventing the transfer of Russian troops and military goods. The activities of the “rail guerrillas” consisted in setting fire to relay cabinets with equipment. This is the tactic of countering the war in Ukraine and the regime of Alexander Lukashenko that the association of former security forces ByPol called on Belarusians to adopt. At the same time, according to ByPol, such actions do not pose a threat to the life and health of Belarusians, but cause significant damage to the Belarusian Railway infrastructure.

On the night of March 30, 2022, with the forceful support of the SOBR, three “rail guerrillas” from Bobruisk were detained. The Ministry of Internal Affairs reported that “during the arrest, the men actively resisted and tried to escape”. The security forces used weapons. One of the detainees, Vitaly Melnik, was injured and placed in a medical facility, while others received medical care on the spot. December 22, 2022 Melnik was convicted, and then he walked on crutches.¹¹

“We warn everyone who even thinks about committing any illegal actions on the Belarusian Railway: all of them will be qualified as an act of terrorism and the reaction will be as harsh as possible. They do not negotiate with terrorists, they are being destroyed,” the Ministry of Internal Affairs said. Experts note that the authorities’ reaction to the actions of the “rail guerrillas” is not commensurate with the threat, and the agency’s rhetoric reflects a tendency to depart from legal norms in order to achieve political goals, which increases the risks of arbitrary deprivation of life in the country.

As in 2021, government agencies do not properly investigate deaths and life threats associated with political prisoners. Information about such cases is concealed or reported to a minimum extent. At the same time, based on law enforcement practice, experts point to a negative trend of disregard for the principles of independence, impartiality, promptness, thoroughness, efficiency and transparency in investigating cases of arbitrary deprivation of life. Thus, in November 2022, it became known that political prisoner Maria Kolesnikova was taken to an emergency hospital in serious condition,

⁹ <https://reform.by/327585-zhitei-beloozerska-izbival-selchanina-lomom-milicija-primenila-oruzhie>

¹⁰ [Law of the Republic of Belarus No. 45-Z dated July 16, 2009 “On Emergency Bodies and Units of the Republic of Belarus”, Article 21, https://pravo.by/document/?guid=3871&p0=H10900045](https://pravo.by/document/?guid=3871&p0=H10900045)

¹¹ Report of the Human Rights Center “Vesna” “Situation with the Rights of the People of Belarus in 2022. Analytical Review”, pp. 14-15, https://spring96.org/files/misc/annual_review_2022_final_be.pdf

underwent surgery, and then transferred to intensive care. Neither relatives nor her lawyer were informed about the very deterioration of Maria's condition, the time, reasons and other circumstances. The lawyer had been refused several times before to visit Maria on formal grounds, citing the absence of a statement from the prisoner.¹² Maria was diagnosed with a perforated ulcer. Later, Maria was transferred back to the medical unit of Gomel Correctional Colony No. 4.¹³ Information about Maria's future condition is minimal.

The forensic examination and cause-of-death system does not function effectively and impartially. It adapts to instructions "from above". The State Forensic Medical Examination Committee is a de facto and de jure monopolist, which deprives the impartiality of the conclusions of any examination.

In the context of safe, legal and effective access to abortion, Belarusian legislation gives women the right to decide independently on the issue of motherhood. Minors require the consent of their legal representative. The abortion procedure is preceded by a consultation with a specialist doctor. In 2022, the practice of an employee of a religious organization coming to a conversation with a woman under the guise of a psychologist continued. Using actual psychological violence, he tries to convince a woman that abortion is harmful and immoral. Abortion is performed when the gestation period is not more than 12 weeks, except in some cases when abortion is allowed at a later pregnancy. All grounds for abortion are defined by law.

At the same time, when justifying the decrease in the score for the component related to access to abortion, experts draw attention to the deterioration in the general level of medicine due to the departure of a large number of specialists, problems with the provision of medicines, medical equipment, infrastructure, international support, etc.

The situation with suicide prevention, especially among people in situations of vulnerability, including persons deprived of liberty, has worsened compared to 2021. The topic of suicide is taboo in society. The state still does not have a systematic policy to prevent suicide and work with vulnerable groups. Civil initiatives and NGOs have been and are key actors working on this topic. Since 2021, due to the repression of civil society, a large number of NGOs have been liquidated. Among those liquidated in 2022 NGOs that help vulnerable groups are the educational and social public association "Zveno"¹⁴ (the decision of the Minsk City Court to terminate its activities was made in 2021, appealed to the Supreme Court, and the process was completed in 2022), as well as the Radislava public association.¹⁵

In the context of suicide prevention, experts note places of detention where the practice of ill-treatment of prisoners increased in 2022. As a result, many people who are in prison or released from detention report suicidal thoughts both during and after detention. The administration in places of detention does not respond to such reports, treats such cases with indifference and does not conduct

¹² <https://www.dw.com/ru/maria-kolesnikova-v-bolnice-cto-izvestno-rodnyam/a-63944889>

¹³ <https://news.zerkalo.io/life/27723.html>

¹⁴ <https://www.dw.com/ru/v-belarusi-likvidirujut-eshhe-dve-pravozashhitnye-organizacii/a-59418690>

¹⁵ <https://news.zerkalo.io/life/11070.html>



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real investigations into situations involving suicides. Experts support this argument by the fact that many prisoners use public suicide attempts as a mechanism to attract the attention of the administration and, in some way, protect themselves from abuse. According to experts, it is also significant that cases of incitement to suicide are not initiated at all.

The general climate of neglect and cruelty towards political prisoners, repression against members of the political opposition, NGOs, activists, etc. also contributes to the worsening situation in terms of suicide prevention. In this regard, experts cite the following example: Dmitry Dudoit from Smorgon, convicted of insulting a government official in connection with the performance of his official duties on the Internet (Article 369 of the Criminal Code) to two years of imprisonment ¹⁶ for commenting on Odnoklassniki, committed suicide by jumping off a bridge.

- **Death penalty**

Experts' assessment of the situation in the context of the death penalty has decreased compared to 2021. The amendments to the Criminal Code adopted in 2022 worsen the situation with regard to the right to life. Thus, in May 2022, the list of crimes for which the death penalty may be applied was expanded. ¹⁷ The death penalty can now be imposed for *attempts to commit*, as well as acts such as:

- killing a representative of a foreign state or international organization in order to provoke international complications or war or destabilize public order in a foreign country (article 124 (2));
- acts of international terrorism committed by an organized group, either using nuclear facilities, or using radioactive substances or nuclear materials, potent, toxic chemical or biological substances, or involving the murder of a person, as well as the murder of a statesman or public figure of a foreign state in order to provoke international complications or war or destabilize public order in a foreign country (article 126 (3));
- acts of terrorism committed by an organized group, either using nuclear facilities or using radioactive substances or nuclear materials, potent, toxic chemical or biological substances, or involving the murder of a person (article 289 (3));
- the murder of a statesman or public figure committed in connection with his state or public activities in order to influence decision-making by the authorities, or to obstruct political or other public activities, or to intimidate the population, or destabilize public order (article 359 (2)).

Experts note that from a formal point of view, the above crimes fall into the category of “especially serious”, which does not contradict the provision enshrined in the Constitution, according to which the death penalty can be used as an exceptional measure of punishment for especially serious crimes. At the same time, according to experts, the definitions of “assassination” and “act of terrorism” are not clearly defined in legislation, as they contain evaluative structures and general formulations. The line

¹⁶ <https://reform.by/289584-osuzhdennyj-na-himiju-smorgonec-sovershil-suicid>

¹⁷ Law of the Republic of Belarus No. 165-Z dated May 13, 2022 “On Amendments to the Criminal Code of the Republic of Belarus”, <https://pravo.by/document/?guid=12551&p0=H12200165&p1=1&p5=0>

between thinking, preparing, and actual assassination is blurred. The qualification of acts within these offences is based on a subjective assessment by law enforcement agencies. In other words, experts noted a deterioration in such criteria as the clarity of legislation establishing the death penalty.

Experts say that the scope of the death penalty has been significantly expanded to cover such acts whose degree of public danger does not correspond to potential punishment. In addition, experts separately draw attention to the fact that the consequences do not matter for the qualification of an act and even “futile” crimes (for example, an attempt to commit an act of terrorism that did not lead to any socially dangerous consequences) fall under the above offences and, as a result, may be punished by death.

Experts cite the case of “rail guerrillas” as an example of the potential use of the death penalty for “insufficiently dangerous” acts. In particular, the following act was qualified as an act of terrorism under Part 3 of Article 289 of the Criminal Code, and men who committed it faced a maximum penalty of up to the death penalty. Thus, in February 2022, residents of Svetlogorsk joined ByPol, the Peramoga Mobilization Plan, whose leaders were instructed to disable the railway infrastructure in the Gomel region. On the night of February 28 to March 1, the accused “set fire to a relay cabinet with alarm equipment that ensures the safe passage of pedestrians and vehicles, which caused the risk of catastrophic consequences, including train crashes and the death of passengers.” They were finally sentenced to 21, 22 and 23 years of imprisonment and served in a correctional colony under enhanced security conditions, as well as 150 basic fines for each.¹⁸

The trend towards further expanding the scope of the death penalty has continued. At the end of 2022, in the first reading, the House of Representatives of the National Assembly adopted a draft law that provides for the possibility of imposing an exceptional measure of death penalty for treason against the state committed by an official holding public office or by a person who has the status of a military officer.¹⁹ The law was signed by the President on March 6, 2023²⁰.

Experts note that this expansion of the scope of the death penalty is a direct violation of the Republic of Belarus's obligations under article 6 of the International Covenant on Civil and Political Rights, according to which death sentences may be imposed only for the most serious crimes.

In the context of procedural guarantees, experts note a progressive deterioration in guarantees of fair trial due to the general situation of “legal default”. In particular, among the factors contributing to the deterioration, experts note the pressure on the legal profession, as a result of which access to legal aid, as well as the opportunities for persons “facing” the death penalty to obtain legal assistance, have been reduced.

¹⁸ <https://www.belta.by/incident/view/na-troih-66-let-tjurmy-v-gomele-vynesli-prigovor-za-terakt-na-zheleznoj-doroge-i-izmenu-gosudarstvu-542286-2022/>

¹⁹ <http://www.house.gov.by/ru/zakony-ru/view/ob-izmenenii-kodeksov-po-voprosam-ugolovnoj-otvetstvennosti-1352/>

²⁰ <https://www.belta.by/president/view/lukashenko-podpisal-zakon-ob-usilenii-otvetstvennosti-za-prestuplenija-protiv-gosudarstva-554510-2023/>



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Belarus continues to fail to comply with requests from the Human Rights Committee for interim measures, mainly in death penalty cases submitted to it under the Optional Protocol, and is implementing these sentences before the Committee has completed its consideration of the relevant complaints.

All persons sentenced to death have the right to apply to the President for pardon, which is notified to the convicted person when the verdict is pronounced. When assessing the criterion “persons sentenced to death have the right to seek pardon or commutation of sentence”, experts also take into account the availability of pardon decisions. In 2022, no pardons were issued, which led to a decrease in the score for this component compared to 2021, when two people sentenced to death were pardoned.

In 2022, one case of execution and denial of pardon is known: the case of Viktor Skrundik. In February 2023, the date of the execution of the death sentence against Viktor Skrundik, a resident of Slutsk, was announced. He was shot dead on July 16, 2022. The Belarusian authorities carried out the death sentence one year and a half after the sentence came into force.²¹

The bodies of those executed are still not handed over to relatives and the place of burial is not reported, despite the Human Rights Committee's recognition of this practice as a violation of the State's obligations under article 7 of the International Covenant on Civil and Political Rights (the right to be subjected to torture or to cruel, inhuman or degrading treatment or punishment).

May 13, 2022 The Human Rights Committee adopted views on the complaint filed by Tamara Selyun, mother of a person sentenced to death in 2013. Pavel Selyun. The woman asked for recognition of a violation of her right not to be ill-treated by the Department of Enforcement of Penitentiary, which, after her son's execution, sent her a package of prison clothes marked “IMN”, which Pavel wore during his stay in the “death corridor”. At the same time, the agency did not report the time and place of the boy's burial. After receiving such a package, the woman was so shocked that she chopped the clothes with an ax and burned them. Tamara Selyun tried to obtain justice through national courts and authorities, but to no avail. The HR Committee found a violation of Pavel Seliun's mother's rights under articles 7 (right not to be subjected to torture, cruel, inhuman or degrading treatment or punishment) and 14 (1) (right to access to a fair trial) of the International Covenant on Civil and Political Rights. The HR Committee ordered the authorities to provide the woman with compensation for her violations, release information about her son's burial place and hand her son's remains over to her.²²

Human rights activists note that with this decision, the HR Committee confirmed that “the death penalty system is aimed specifically at punishment and bullying, it is inhuman and affects a very wide

²¹ <https://dp.spring96.org/ru/news/110807>

²² <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6OkG1d%2fPPRiCAqhKb7yhstcNDCvDan1pXU7dsZDBaDU6H%2bFDG7FZxkZpyr5d%2b6OIB7M%2bD5r%2bv0yoZ8ClbnrXbe1xQO4F%2bq44FLiNwwihoK9cnLTEZEjhwkAO5HsxV6spxH6g8SAKqDNIeumpjMASfA9QLqaC%2b1uqaxgBtSgup91%3d>



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range of people”.²³

The death penalty is still carried out privately, by firing squad. The date and place of execution are not reported to the convicted person. The state sees a reasonable period of execution of a sentence as the shortest period from a court decision, which has a negative impact on the possibility of appealing or seeking pardon. As before, Belarusian legislation does not prohibit extradition to countries where there is a risk of torture and the death penalty.

- **Enforced disappearances**

Belarus does not have specific and effective measures to prevent the disappearance of individuals. There are no public reports on the work done to prevent the disappearance of individuals by government agencies. The Republic of Belarus is still not a party to the International Convention for the Protection of All Persons from Enforced Disappearance. There is still no centralized list of all detainees.

At the same time, experts identified a worsening trend in the situation compared to 2021. Thus, experts point to the general deterioration of the human rights situation in the country, in particular the isolation (*incommunicado*) of political prisoners and repression against lawyers, who were previously almost the only way to learn about a person's condition and whereabouts. In addition, the practice of so-called “quasi-arrests” continues, when a person is forcibly brought to the internal affairs bodies for questioning, and the authorities deny his presence there. Moreover, according to experts, this practice is systematic and is becoming a habit, a new norm for the authorities.

One example is the case of Artem Dubsky. In May 2022, it was reported that he disappeared. On May 11, he was detained in Minsk and taken to the KGB for questioning. On the night of May 12, Artem was released from the KGB with a demand to return at 2:30pm for “operational search activities”. When A. Dubsky was returning to Osipovichi after interrogation and was followed to his home by a car with three “masked men”. In the morning, a minibus joined the car. Artem went outside and never came back. Since then, Artem has not been in touch. Human rights activists drew attention to the fact that Artem was severely beaten during his arrest, as well as to the improper treatment of Artem directly by the KGB.²⁴

Since May 12, Artem Dubsky's relatives and human rights activists have been trying to find out where Artem is. The police claimed they did not know where he was. A. Dubsky's presence was denied by the KGB, in the detention center on Okrestina Street and in the pre-trial detention center. Five days later, relatives were informed that he was at Okrestina. It turned out that during this time the police took him to the hospital and then took him from there themselves.²⁵

²³ <https://spring96.org/ru/news/108481>

²⁴ <https://belhelcom.org/ru/news/obrashchenie-v-specialnye-procedury-oon-v-svyazi-s-ischeznovaniem-artema-dubskogo>

²⁵ <https://news.zerkalo.io/life/15235.html>



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