

Belarus Human Rights Index

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2021

Right not to be subjected to torture, cruel, inhuman or degrading treatment or punishment

Expert Commentary

The score: 3

Including scores by component:

- Physical and mental integrity of the individual 2,5
- The prevention of torture, investigation and protection mechanisms 1,6
- Treatment of persons subjected to any form of detention or imprisonment 3,5
- Domestic violence 4,4

The state guarantees the right not to be subjected to torture and ill-treatment in Article 25 of the Constitution of the Republic of Belarus. Its wording states: 'No one shall be subjected to torture, cruel, inhuman or degrading treatment or punishment or, without his consent, to medical or other experiments'¹. Legislation criminalising torture has not been amended in 2021 (Article 128, Article 394 of the Criminal Code²). However, the suppression of a peaceful protest in the second half of 2020 and the continuing repression in 2021 demonstrated that the constituent elements of the crimes enshrined in the Special Part of the Criminal Code, which could be used for bringing to criminal responsibility for acts of torture against peaceful protesters, were not applied in practice. On the contrary, torture has become part of the repressive mechanism of current authorities against any form of dissent.

The Republic of Belarus has been a party to the International Covenant on Civil and Political Rights since 1973³. Article 7 of the Covenant prohibits torture and other cruel, inhuman or degrading

¹ Constitution of the Republic of Belarus, Art. 25: <https://pravo.by/pravovaya-informatsiya/normativnye-dokumenty/konstitutsiya-respubliki-belarus/>.

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

³ 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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treatment or punishment⁴. Belarus is also a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment since 1987⁵.

While assessing the state of the right not to be subjected to torture, cruel, inhuman or degrading treatment or punishment in 2021, Index experts gave lower scores than in 2020. The experts' position is explained in more detail below.

Physical and mental integrity of the individual

The legislation has not changed, the matter is still regulated by 2 Criminal Code articles (mentioned above). There is still no specific article establishing responsibility for torture, cruel, inhuman or degrading treatment or punishment. In 2021, despite the fact that the Criminal Code contains the above-mentioned Articles 128 and 394, law enforcement authorities have misused their power and force and used them against detainees and prisoners. The law enforcement agents exceeded their authority to obtain "evidence" by the use of force. 2021 has demonstrated that legislation fails to constrain the actions of state authorities when the situation concerns torture. Politics trumps law, the legal crisis has allowed the authorities to disregard the letter of the law.

The force applied in connection with the arrests, detention and punishment is disproportionate. This practice has not changed since 2020. Force is used systematically in arrests, including the aim of punishing and humiliating individuals. In 2021, mass repressions that followed the August 2020 elections persisted in Belarus. During this period, human rights organisations recorded at least 2,500 cases of torture. Following large-scale searches of the offices of human rights organisations in July 2021, a joint statement by human rights defenders worldwide, signed by 161 organisations, was published condemning systematic arbitrary detentions, beatings and torture⁶.

The instances of obtaining confessions in violation of the prohibition of torture or ill-treatment have become more frequent in 2021. Such situations were reported by defendants in administrative and criminal trials. However, in most cases, judges failed to demand an investigation into the defendants' allegations of torture or decided on the admissibility of their preliminary statements and used the testimony obtained by force as evidence, despite the prohibition established by the criminal procedure legislation. The court was politicized, there was no guarantee of the fairness of the proceedings, especially in political cases. Only in January 2021, 14 of those detained during peaceful protests reported torture and other inhumane treatment, including the deprivation of parcels and basic necessities, lack of walks and showers⁷. In 2020-21, preliminary investigation bodies in Belarus

⁴ International Covenant on Civil and Political Rights: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

⁵ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: ratification status. https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&clang=_en.

⁶ <https://baj.by/ru/content/pravozashchitnye-organizacii-raznyh-stran-trebuyut-prekrashcheniya-repressiy-v-belarusi>.

⁷ <https://spring96.org/ru/news/101653>.



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received 4,644 complaints on the use of physical force and means of restraint by representatives of the Interior Ministry during the dispersal of peaceful protests, but not a single complaint has been properly investigated⁸. For example, Kirill Pavlovets' application to the Savetski District Court of Minsk for the beating was not properly considered by the judge⁹. Failure to undertake adequate measures was also noted in the case of allegations of torture made by Mikalai Dziadok in court.

The systemic nature of impunity is confirmed by the Investigative Committee's statement of 26 August 2021, in which it announced its refusal to investigate torture and acts of cruel, inhuman and degrading treatment in the detention facilities of the Main Internal Affairs Directorate of Minsk City Executive Committee that had allegedly taken place on 9-15 August 2020¹⁰.

Children were subjected to torture, cruel, inhuman, or degrading treatment or punishment. In 2021, the practice of detaining children in the presence of other minors was used as a means of intimidation and pressure. The situation has worsened since 2020. On 10 August 2020, Nikita Zolotarev was detained in Gomel. He was 16 years old and diagnosed with epilepsy at the time of his arrest. After being arrested, he was taken to the police station, where he was beaten and tortured with electric shocks. He was accused of allegedly throwing a Molotov cocktail at two police officers while participating in protests. Seven months later, on February 22, 2021, the verdict in his case was announced – five years' imprisonment. Nikita was sent to a juvenile colony¹¹. He was given some unidentified medication for epilepsy once every two days, although Nikita is supposed to take epilepsy medication twice a day, in the afternoon and in the evening¹². Letters, food and medication parcels were not transferred to him. For a long time, Nikita was kept in solitary confinement, constantly awakened at night, and taken out for checks. He received a yellow tag upon arrival in the colony, which identifies "extremists". Now he wears a red one, meaning that he is "prone to escape"¹³. In July 2021 he was sentenced to another 1.5 years in prison under Article 364 of the Criminal Code (Violence or threat of violence against an internal affairs officer). He was accused of assaulting an officer of the detention facility, as well as of threatening a female officer of the detention facility and members of her family. Nikita admitted guilt but added that his actions constituted not violence, but resistance, and the insulting words were uttered in the heat of the moment. There was a conflict between him and the staff. However, the teenager claims that he did not hit the staff member, nor grabbed him by his clothes or body parts: "I only touched the mask." "Due to the fact that I was tried under "political" articles, I am treated badly and inhumanely in the pre-

⁸ <https://spring96.org/ru/news/102222>.

⁹ <https://spring96.org/ru/news/102723>.

¹⁰ <https://spring96.org/ru/news/104826>.

¹¹ <https://eurasia.amnesty.org/2021/12/08/ya-by-peredal-emu-v-koloniyu-knigi-no-u-nih-tam-minuty-svobodnoj-net-istoriya-17-letnego-nikity-zolotaryova-geroya-marafona-pisem/>.

¹² <https://www.currenttime.tv/a/zolotarev/31119185.html>.

¹³ <https://eurasia.amnesty.org/2021/12/08/ya-by-peredal-emu-v-koloniyu-knigi-no-u-nih-tam-minuty-svobodnoj-net-istoriya-17-letnego-nikity-zolotaryova-geroya-marafona-pisem/>.



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trial detention facility. I have been sitting alone for a long time, almost two months, and can't stand it anymore: I just freak out in such a situation," the teenager said¹⁴.

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 25¹⁵.

In 2021, law enforcement agencies proceeded with their pressure and intimidation practices: there were cases of "repentant videos" with minors being published. Children were subjected to criminal punishment for participating in the 2020 protests¹⁶.

Torture Prevention, Investigation and Protection Mechanisms

Information on training for law enforcement officials on torture prevention and humane treatment is not publicly available. However, the actions of law enforcement agencies in the aftermath of the 2020 presidential elections demonstrate that the agents were instructed to use excessive force and torture against dissenters. In 2021 the situation worsened, which is indicative of a systematic state policy of using force against "unwanted" individuals. There are public statements about the use of torture. For instance, Alexander Lukashenko has openly endorsed the use of violence by the OMON (Special Purpose Mobility Unit), justifying it by the past convictions of the victims¹⁷.

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, state media published¹⁸ an edited video of the incident, which raised many questions from the public. 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

¹⁴ <https://www.currenttime.tv/a/v-belarusi-snova-sudyat-podrostka-s-epilepsiey/31346834.html>.

¹⁵ <https://news.liga.net/world/news/v-minske-pokonchil-s-soboy-17-letniy-podrostok-iz-za-dela-o-mitingah-pravozaschitniki>.

¹⁶ <https://www.dw.com/ru/politzeki-tinejdzheri-repressii-v-belarusi-zatronuli-i-podrostkov/a-56750788>.

¹⁷ <https://www.belta.by/president/view/lukashenko-nazval-fejkom-zajavlenija-o-pytkah-na-ul-okrestina-v-minske-454550-2021/>.

¹⁸ <https://www.bbc.com/russian/news-58730869>.



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and fatally injured the KGB officer¹⁹. Andrei Zeltser's widow was detained during that raid by KGB officers. A criminal case was initiated against her for complicity in the murder of the KGB officer, although the state media video shows her only filming the incident on her smartphone. The woman's outer clothing was confiscated in the Okrestina detention facility, and the heat in her cell was turned off. She was tortured with cold. Later she was transferred to the Volodarskogo detention facility and then sent for a psychiatric examination in Novinki mental asylum. At that stage, relatives managed to transfer a parcel to the woman for the first time, as staff at the detention center refused to accept items, food and hygiene products for her²⁰. The shooting situation caused a public outcry. According to human rights defenders, about 200 persons have been detained for comments on social networks on the "Zeltser case". Criminal cases were initiated against them under Article 369 of the Criminal Code ("Insulting a representative of the authorities") and under Article 130 of the Criminal Code ("Inciting social hatred") The detainees were deprived of letters, parcels, and even hygiene products, as well as access to attorneys²¹.

The official rhetoric in this case is marked by open hatred and encouragement of the use of violence by security forces against citizens. At the funeral ceremony for the deceased KGB officer Dzmitry Fedosyuk, Major-General Aleh Bialakonev, a member of the House of Representatives, told journalists: "In what families were these people raised? I think we're going too easy on them and their likes. Somehow they do break the law, but we try to do everything to keep in line with it. We speak with them according to the law, we persuade them according to the law, we try to convince them. And we have to, as Putin said, "waste them all in an outhouse" – 20 or 100 for one [person]... To deter the others. It may be rude, but fair"²².

In May 2021, Law No. 106-3 was introduced "On Amendments to Legislation on the National Security of the Republic of Belarus" which extends the powers of law enforcement agencies to use weapons against civilians²³. The law amends several existing laws: "On the Internal Troops of the Ministry of Internal Affairs of the Republic of Belarus", "On the State Border of the Republic of Belarus", "On the Bodies of Internal Affairs of the Republic of Belarus", etc. It regulates the use of physical force, special means, military and special equipment, and weapons by officers of internal affairs bodies and servicemen of internal troops, as well as servicemen, customs officers, border guards, servicemen who perform regular military service in border guard bodies, and officers of state security agencies. 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".

¹⁹ https://t.me/belta_telegramm/71215.

²⁰ <https://belsat.eu/ru/news/28-10-2021-delo-zeltsera-dve-smerti-pytki-i-prizyv-k-terroru-chto-stalo-izvestno-za-mesyats/>.

²¹ Ibid.

²² <https://nashaniva.com/?c=ar&i=278677>.

²³ <https://pravo.by/document/?guid=12551&p0=H12100106&p1=1>.



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Previously, weapons and special equipment were allowed to be used “if the fulfillment of the task assigned to them is impossible by other means”²⁴.

Internal instructions for law enforcement officers, including the rules of interrogation of arrested, detained or imprisoned persons, are not publicly available. In 2021, procedural rules continued to be formally respected, e.g. a person who was tortured could record this fact in the interrogation protocol, but this did not lead to any adequate measures being undertaken. Since August 2020, the administrative practice has been aimed at protecting employees of state structures rather than citizens, especially dissenters. The rule of law does not work, and the authorities encourage repression. Interrogations are videotaped, often with the aim of publishing them to the public. Humiliating “repentant” videos are filmed, in which, usually under compulsion, a person confesses to something they did not do, or tells personal information about themselves, which, in the sense of the security forces, would discredit the arrested person in the public eye, so this person wouldn’t be empathized with. For example, on 10 December 2021 Nikolai Bredelev, an employee of the A1 telecommunications company was arrested; later a “repentant” video appeared on pro-governmental Telegram channels where he is telling about his sexual orientation and confessing to passing the information to the blogger Anton Motolko for the Telegram channel of the latter. Nikolai was accused of communicating confidential information about the company’s clients to the mentioned channel²⁵.

In accordance with the legislation, crimes committed by officials of the Prosecutor’s Office, internal affairs bodies and the Investigative Committee in connection with their official or professional activities are investigated by the Investigative Committee. However, no measures have been taken in 2020-2021 to ensure the independent investigation of cases involving torture. There is no special unit within the Investigative Committee to investigate cases of torture. The legislation does not provide for the removal from the service of officers who are being investigated for torture. They continue to work and have the possibility of putting pressure on victims and potential witnesses.

Persons who have been subjected to acts of torture can formally complain to the prosecutor’s office. However, the latter constitutes part of the state’s repressive machinery. Investigations into mass torture that took place in August 2020 have still not been carried out.

Belarus still lacks a national preventive mechanism or any other effective mechanism to monitor the conditions of detention. There are also no effective remedies for victims of acts of ill-treatment or torture.

In 2021, there was no information on the extradition of persons who were at risk of torture in the State of their nationality. The cases where persons may have been expelled or were expelled in 2021 are often related to humanitarian crises or war. However, the non-transparency and closed nature of the expulsion process does not allow experts to state with confidence that people who were expelled from Belarus in 2021, for example, Syrians, will not face torture in their home state. In general, the lack of

²⁴ https://belhelcom.org/sites/default/files/novoe_zakonodatelnoe_regulirovanie_belarus_2021_2.pdf.

²⁵ <https://reform.by/285254-zaderzhan-press-sekretar-a1>.



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minimum legal safeguards and legal crisis in Belarus was taken into account by the experts as an additional risk for the proper operation of the extradition mechanism, including to places where a person may face a risk of torture. The refugee crisis in Belarus in 2021 revealed that border guards tried to forcibly remove refugees to Poland. Some refugees gave interviews where they spoke about the use of force by the Belarusian security forces.

Although the law formally provides for the possibility of compensation for a victim of torture, in practice it is not utilized. The situation has not fundamentally changed since 2020. On the contrary, the 2020 practice has demonstrated the ineffectiveness of the mechanism for protecting victims of torture and the impunity of all violent actions committed by state bodies against the citizens in August 2020 and thereafter. These acts were not recognised as torture, and the prosecutor's office did not conduct a proper investigation. Experts suggest that there is a tacit prohibition on the official registering of beatings. Consequently, if torture is not recognised as such, compensation claims become useless.

Despite a legal right to file a complaint, in 2021 it has become much more difficult to realize it. Whereas in 2020, victims were willing to fight for their rights and file complaints, in 2021, due to fear of retaliation from law enforcement agencies, people are afraid to express their position, defend their rights publicly, and file complaints. The right to complain has become a "dead" right.

Treatment of persons subjected to any form of detention or imprisonment

Detention conditions for detainees and arrestees do not meet international human rights standards. Against the background of the general deterioration of the situation, the practice of systematic pressure on political prisoners can be highlighted. Such prisoners are deliberately subjected to cruel and inhumane conditions of detention on the verge of torture²⁶. The systematic policy of worsening their detention conditions includes a ban on the transfer of parcels, medication, letters and hygiene products²⁷. For example, Anatol Bokun, leader of the "Belaruskali" strike committee, spent 45 days of his arrest in the heat and without proper access to drinking water²⁸. The inhumane detention conditions were also described by Hrodna journalist Iryna Novik after her release²⁹.

On 21 May 2021, a political prisoner, a 50-year-old public activist from Berezovka, Vitold Ashurak died in Shkloou 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

²⁶ <https://spring96.org/ru/news/105919>.

²⁷ <https://belsat.eu/ru/news/28-10-2021-delo-zeltsera-dve-smerti-pytki-i-prizyv-k-terroru-chto-stalo-izvestno-za-mesyats/>; <https://eurasia.amnesty.org/2021/12/08/ya-by-peredal-emu-v-koloniyu-knigi-no-u-nih-tam-minuty-svobodnoj-net-istoriya-17-letnego-nikity-zolotaryova-geroya-marafona-pisem/>.

²⁸ <https://spring96.org/ru/news/103977>.

²⁹ <https://baj.by/ru/analytics/pod-sakuroy-i-s-princessoy-irina-novik-o-grodnenskoj-tyurme-i-lechebno-golodanii-na>.



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(“Violence or threat of violence against a police officer”) of the Criminal Code³⁰. The relatives were informed that cardiac arrest was the cause of death. The investigation did not reveal any signs of the criminal nature of his death. However, the relatives, who saw the emaciated body with bruises and haematomas, are confident that the man died a violent death. The officials did not want to hand over his body. In response to a question why Vitold’s body was handed over with the head almost completely bandaged, the relatives received two contradictory answers. The first version was given by the morgue: the brother of the deceased was told that the staff has accidentally dropped the body while removing it from the freezer; if there are no objections, the head would be wrapped in bandages. The second version was provided by the Investigative Committee: four days after Vitold’s death, a video appeared in the agency’s Telegram channel, in which a man dressed in prison clothes, barely 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 alibi³¹. 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 Commission³².

Persons detained or imprisoned are not subjected to medical or scientific experimentation without the free consent of the person concerned. The situation has not changed since 2020. However, state authorities continue to facilitate Covid contamination of detainees or prisoners by way of placing many people in one cell.

Solitary confinement continues to be used as a punitive measure and a form of torture, especially against political prisoners, including juveniles. For example, solitary confinement was applied to Maria Kalesnikava, Siarhei Tsikhanouski.

Independent and objective medical examinations and documentation of bodily injuries are almost non-existent. A vivid example of the negligence of doctors and their attitude towards political prisoners is the above-mentioned Vitold Ashurak’s death³³.

A mechanism to monitor the conditions of detention and treatment of persons subjected to any form of arrest, detention or imprisonment has been developed and is formally applied. In Belarus, the Republican Public Monitoring Commission, whose members include representatives of human rights

³⁰ <https://www.dw.com/ru/beloruskij-oppozicioner-vitold-ashurok-skonchalsja-v-kolonii-a-57628472/a-57628472>.

³¹ <https://www.bbc.com/russian/features-57642388> ; <https://reform.by/228265-sk-o-smerti-vitolda-ashurka-upal-i-razbil-golovu>.

³² <https://spring96.org/ru/news/104065>.

³³ See above.



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organizations, carries out such activities. Due to Covid in 2021, the Commission's visits to places of detention were suspended; only one visit was made to Shklov, to Correctional Colony № 17. Moreover, the NGOs whose staff members were part of the Republican Commission were liquidated in 2021 during a massive crackdown on civil society.

Domestic violence

Legislation on domestic violence has remained unchanged for a long time. The attempt to pass a law on domestic violence in 2018 was unsuccessful and lost out to the rhetoric of "traditional values". As a positive development, experts noted the discussion and adoption in December 2021 of amendments to the Law No 122-3 of 4 January 2014 "On the Basis for the Prevention of Offenses Activities". The law now enshrines the concept of 'domestic violence', which includes not only physical and psychological violence, but also sexual one. Financial and economic violence were not included in the text, although being quite common in Belarus. The principles of offense prevention were amended; now they contain as well the preservation of traditional family values; respect for private life; inadmissibility of treating customs, beliefs and traditions as justifications for offenses; and priority of preventive measures over measures of responsibility. An article on protective orders has been redrafted. A register of information on domestic violence is also to be created, which is an information system for the collection of relevant data. The register will be operated by the Ministry of Internal Affairs. The law provides for the rights of victims of domestic violence. It is also supplemented by an article on a corrective programme³⁴. The law is to come into force in early January 2022³⁵.

At the same time, 2021 has become a year of repressions against civil society. Thus, NGO "Gender Perspectives" was liquidated and had to suspend its hotline for the victims of domestic violence. NGO "Radislava", which worked with victims of domestic violence, was searched, some of its staff members were detained, but as of 2021, the NGO has not yet been liquidated. There is no safe way for victims of domestic violence to seek help.

The new law will enter into force in 2022. Still, its effectiveness is questionable because the responsibility to prevent domestic violence lies with law enforcement agencies that are not trusted by society. Having a long history, this mistrust has intensified with the total legal crisis developing since August 2020. Gender stereotypes are deeply entrenched in society, including among law enforcement officials. This negatively affects the attitude towards victims of domestic violence when they seek protection: often they are not believed, their complaints are not registered, and investigations are not initiated.

There is no legal prohibition on all corporal punishment in the family, schools and other institutions. Physical violence against children is still considered an acceptable educational measure. In public space, including in the statements of the country's leadership, there is a *de facto* acceptance: using physical force against children is permissible.

³⁴ <https://reform.by/290493-v-belarusi-pojavitsja-reestr-informacii-o-domashnem-nasilii>.

³⁵ <https://pravo.by/document/?guid=12551&p0=H12200151&p1=1&p5=0>.



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