

Belarus Human Rights Index

<http://index.belhelcom.org>

2023

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

Expert Commentary

The score:	2,8	-0,1
<i>Including scores by component:</i>		
• Physical and mental integrity of the individual	2,4	
• The prevention of torture, investigation and protection mechanisms	1,5	
• Treatment of persons subjected to any form of detention or imprisonment	3,1	-0,2
• Domestic violence	4,3	

Assessing the condition with the right not to be subjected to torture and ill-treatment in 2023, the Index experts gave lower scores than in 2022. **Among the main reasons:**

- people held in places of detention (especially political prisoners) continue to be subjected to torture and cruel, degrading treatment, posing serious health risks, in some cases reaching lethal risks;
- noting the constant deterioration of the situation, the experts draw attention to the systemic and clearly discriminatory nature of the *incommunicado* detention of political prisoners;
- the humanitarian crisis at the border between Belarus and neighboring EU member states persists: cruel, degrading treatment of migrants is recorded, including by Belarusian border guards;
- against the background of a dangerous trend of general radicalization of society, increasing cases of aggressive behavior with lethal outcomes, including due to the atmosphere of state-sanctioned violence with impunity, the existing mechanisms for combating domestic violence are insufficient and ineffective.

• **Physical and mental integrity of the individual**

Accountability for all acts of torture remains legally unenforceable in 2023. Accountability for torture is scattered across various articles of the Criminal Code (CC). However, the authorities do not use the available articles to initiate criminal proceedings even after reports of acts of torture, cruel, inhuman, degrading treatment, which continue to be reported¹. At the same time, torture and various forms of

¹ <https://spring96.org/ru/news/113976>



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inhuman or degrading treatment remain systemic and widespread. Both arrests² and custody in places of detention³ continue to be accompanied by the use or threat of disproportionate force and torturous conditions⁴.

In 2023, the humanitarian crisis on the border between Belarus and neighboring EU member states also persisted. PRAB (*Protecting Rights at Borders*) and *Médecins Sans Frontières* recorded an increase in cases of cruel, degrading treatment of migrants, including by Belarusian border guards⁵. As of the end of 2023, at least 33 people have died in the border zone in Belarus, the exact number of deaths is unknown. The human rights organization *Human Constanta* has repeatedly appealed to the State Border Committee and emergency medical services in Belarus to conduct search and rescue operations⁶, but in most cases the state services ignored such reports or directly refused to search for migrants and provide them with assistance.

The widespread practice of "digital torture" through the recording of "repentance" videos persists. Moreover, it has begun to be practiced not only within the framework of arrest⁷: the BSU Faculty of Law recorded and published on the official account a "repentance video" with a student who "confesses" to "discrediting" the administration of the faculty and the BRSM. Humiliating "interviews" in 2023 were also recorded by propagandists⁸. Evidence obtained through torture is still accepted by the courts - even in cases of direct statement of the accused at the trial about the use of torture⁹.

The effectiveness of existing protective measures for children from domestic violence is called into question by the 2023 death sentence of the father of a 3-year-old child who died from parental injuries. The systematic beating of the child was known by neighbors, police and social services, but the existing system failed to prevent the tragedy. In this regard, the problem of the formal approach of social services staff to their duties, the use of the institution of "socially dangerous situation" (SDS) as a repressive tool, rather than as a mechanism for solving the problem, taking into account the best interests of the child and aimed at family reunification, has been noted¹⁰. Experts note the continued

² Among other examples, see. <https://spring96.org/ru/news/112285>, <https://spring96.org/ru/news/112193>, <https://spring96.org/ru/news/112649>,

³ See the component "Treatment of persons subjected to any form of detention or imprisonment"; for psychological violence against persons identified by law enforcement officials as LGBTQ+ persons, see https://torturesbelarus2020.org/wp-content/uploads/2023/05/report_lgbtq_ru.pdf

⁴ <https://spring96.org/ru/news/113976>

⁵ In May-August 2023, at least 321 people were subjected to violence by Belarusian border guards: <https://humanconstant.org/za-chetyre-mesyacza-zadokumentirovano-bolee-6000-pushbekov-po-vsej-granicze-es-pochemu-eto-narushenie-prav-cheloveka/>

⁶ Id.

⁷ <https://trends.belhelcom.org/storage/reviews/July2023/YPgwxOckfVahLYXrpyl.pdf>

⁸ Gregory Azarenok attempted to participate in the recording of a "repentance video" with the woman arrested for the comments: <https://spring96.org/ru/news/112413>; "interview" of pro-government journalist Lyudmila Gladkaya with the detainee: <https://news.zerkalo.io/life/39803.html>.

⁹ Inter alia see <https://spring96.org/ru/news/107194>

¹⁰ <https://www.dw.com/ru/but-i-ubivaut-zasiseny-li-deti-v-belarusi-ot-nasilija-v-seme/a-67282134>



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use of SDS to pressure parents for political reasons¹¹. In 2023, cases of detention and trials of adolescents in the presence of other children continued to be reported¹².

- **The prevention of torture, investigation and protection mechanisms**

As torture and other forms of prohibited treatment continue to be widely used as a tool of intimidation and to obtain information necessary for prosecution¹³, preventive training for law enforcement officials is either lacking or completely ineffective in the overall repressive situation. The unlawful actions of such officers, even if they are raised in court proceedings¹⁴, remain without a proper response from the competent authorities. The norms of behavior of law enforcement officers, including the rules of interrogation of arrested, detained or imprisoned persons, are still not observed in practice.

Prompt and thorough investigation of all allegations of torture by an independent and impartial body is still not carried out, as noted above, even in cases where complaints of torture and pressure are raised in court¹⁵. The judiciary and law enforcement apparatus remain ideologized and biased¹⁶; as a result, there is no independent, impartial mechanism to conduct relevant investigations. The experts also draw attention to the general climate of fear: victims are afraid to complain to the competent authorities about prohibited treatment; there are still reports of reprisals against victims who try to take advantage of existing remedies against torture.

Human rights defenders are aware of only one case of prosecution for acts of torture or other prohibited treatment in the review period: an employee of Navapolatsk colony was convicted under part 3 of article 426 of the Criminal Code ("Abuse of power or official authority") for beating a prisoner¹⁷. At the same time, there is information that other complaints of similar torture in this colony were not considered, or prisoners were pressured to withdraw their statements¹⁸. This case is rather an exception to the rule, disproportionate to the extensive flow of complaints of torture and other prohibited treatment.¹⁹ The experts also draw attention to persistent problems with access to legal aid: in 2023, the arbitrary practice of excluding lawyers from political prisoners has become the general rule, which further complicates the realization of the right to complain.²⁰

The prolonged *incommunicado* detention of certain prisoners (see below) provides the administrations

¹¹ <https://t.me/LegalHubHelp/132>, <https://t.me/LegalHubHelp/775>

¹² <https://news.zerkalo.io/life/55388.html>,

¹³ <https://spring96.org/ru/news/113976>

¹⁴ <https://spring96.org/ru/news/113162>, <https://spring96.org/ru/news/112952>

¹⁵ <https://spring96.org/ru/news/113976>

¹⁶ https://www.defendersbelarus.org/zakrytye_sudy_podpiski_o_nerazglashenii, <https://spring96.org/ru/news/113976>

¹⁷ <https://spring96.org/ru/news/113130>

¹⁸ Id.

¹⁹ <https://spring96.org/ru/news/113976>

²⁰ <https://www.defendersbelarus.org/news/tpost/bmxnlncg91-otchet-krizis-advokaturi-prodolzhenie-re>



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of places of detention with additional opportunities to use torture and other forms of prohibited treatment of political prisoners with impunity, in the absence of any information about the real situation. In the context of the impossibility to launch an investigation and the general repressive situation, victims of torture continue to be deprived of the possibility to realize the right to redress, fair and adequate compensation.

According to experts, with the development of the ecosystem of "anti-extremist" legislation, the threat of extradition to countries where individuals may face torture is increasing: the traditional lack of due attention of the competent authorities to assess the risk of using prohibited treatment in countries with which Belarus cooperates, as well as the emergence of new (and expansion of old) "extremist" offenses expands the possibilities for extradition to such countries, for example, Tajikistan²¹. In addition, in 2023 Belarus joined a number of international treaties within the framework of the Shanghai Cooperation Organization, which impose additional obligations on the state to cooperate in the field of legal assistance and extradition of persons in connection with the commission of arbitrary and widely interpreted "extremist" crimes²².

The ousting of human rights defenders from the country and, consequently, the impossibility of direct interaction of human rights defenders working on migrants' rights with persons allegedly subjected to torture and (or) other forms of prohibited treatment, as well as the non-transparency of the activities of state bodies, do not allow for the collection of complete information on the treatment of migrants, and deprive this group of the opportunity to learn about their rights and receive assistance in their defense.

- **Treatment of persons subjected to any form of detention or imprisonment**

At the end of 2023, there were 1,430 political prisoners in Belarus, including 167 women, 48 pensioners (twice as many as in 2022), at least 42 people with disabilities or serious illnesses²³. Conditions in places of detention for detainees and arrestees continue to fall short of international human rights standards. People held in places of detention continue to be subjected to torture and cruel, degrading treatment²⁴. In particular, prisoners are forced to work in harsh conditions without days off, imposed arbitrary penalties, regularly sent to punitive isolation wards, cell-type premises, "sweat boxes", subjected to physical and psychological violence, threats of sexual violence and murder, and housed in isolation cells in overcrowded conditions, together with unsanitized homeless people, left without proper medical care, deprived of visits and transfers, and letters from relatives destroyed, deprived of

²¹ See example of such extradition in 2023: <https://www.hrw.org/ru/news/2023/08/04/tajikistan-extradited-activist-risk>

²² <https://pravo.by/document/?guid=12551&p0=H12300275>,
https://sherloc.unodc.org/cld/uploads/res/treaties/definitions/treaty/-----_html/_pdf

²³ <https://spring96.org/ru/news/113810>

²⁴ For more details see. The right of persons deprived of their liberty to humane treatment. Expert commentary (2023); analysis of torture and ill-treatment of women: <https://spring96.org/ru/news/113603>; <https://spring96.org/ru/news/113785>,
<https://spring96.org/ru/news/113976>



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sleep, food, warmth, bedding and personal hygiene products, insulted²⁵. In 2023, the practice of pressure on political prisoners through arbitrary transfers from one colony to another, as well as deterioration of detention conditions through transfer to a stricter regime, arbitrary extension of the term of imprisonment under the pretext of punishment for malicious disobedience to the administration of the institution was actively used²⁶.

Noting the constant deterioration of the situation, experts draw attention to the systemic and clearly discriminatory nature of *incommunicado* detention: in 2023, conditions of total isolation lasting several months were created for individual prisoners. As of the end of 2023, there is no direct communication (including information about the state of health) with Maria Kalesnikava (since February 15, 2023), Mikalai Statkevich (since February 10, 2023), Siarhei Tsikhanouski (since March 9, 2023), Ihar Losik (since February 20, 2023), Viktor Babaryka and other political prisoners²⁷. With regard to the practice of prolonged solitary confinement, the experts recall the possibility in the Correctional Code to keep convicted persons held in special-regime penal colonies in solitary confinement for excessively long periods of time²⁸.

Various human rights are systematically violated in a situation of worsening repression²⁹. Thus, the general conditions of detention in places of detention, being unacceptable in themselves, are particularly difficult to bear for representatives of vulnerable groups and people with health problems. The dysfunction of the judicial system, which passes sentences without taking into account the state of health of defendants and without assessing the need for isolation in general, continues to lead to the imprisonment of representatives of vulnerable groups: people with health problems, who have a hard time tolerating the conditions of detention in places of detention (which are unacceptable in themselves). Persistent practices of discriminatory denial of timely and quality effective medical care³⁰, parcels with medicines³¹, as well as other above-mentioned forms of pressure turn detention in places of detention into a serious health threat, in some cases reaching lethal risk³².

There is still no mechanism for independent and objective medical examinations and documentation

²⁵ Id.

²⁶ <https://spring96.org/ru/news/107187>

²⁷ <https://spring96.org/ru/news/113976>

²⁸ Part 7, Article 112 of the Correctional Code provides, inter alia, for the possibility of solitary confinement for six months. (https://kodeksy-bel.com/ui_kodeks_rb.htm) At the same time, the Human Rights Committee notes that prolonged solitary confinement may amount to torture or other forms of prohibited treatment (<https://www.refworld.org/legal/general/hrc/1992/en/11086>); The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment considers that the maximum period of such detention should not exceed 14 days for a particular offense (not to mention the need to comply with procedural safeguards absent in Belarusian practice) (<https://rm.coe.int/16806cccc1>)

²⁹ <https://spring96.org/ru/news/113976>

³⁰ <https://news.zerkalo.io/life/36718.html?c>, <https://news.zerkalo.io/life/50701.html>

³¹ <https://spring96.org/ru/news/113976>

³² <https://doctorsby.com/2023/11/28/12595/>



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of injuries. The experts note the deep, systemic nature of the problem of impunity, manifested, inter alia, in the ineffectiveness of existing mechanisms for medical examinations and disregard for the health status of detainees.

The overall situation is aggravated by the lack of independent control over the closed penitentiary system: specialized CSOs have been liquidated (which, among other things, deprived prisoners of additional channels of communication with the outside world), and public monitoring commissions under the Ministry of Justice continue to state that the conditions of detention of prisoners in all places of detention comply with legal requirements, ignoring the facts of torture and other forms of prohibited treatment constantly recorded by human rights defenders³³.

- **Domestic violence**

Criminal liability for domestic violence and marital rape is still not established. Legislatively, the fight against domestic violence is mainly confined to the Law "On the Fundamentals of Activities for the Prevention of Offenses". In March 2023, the Deputy Minister of Labor and Social Protection stated that the problem of such violence "is not so acute that it is necessary to adopt a special law"³⁴.

At the same time, there is a dangerous trend of general radicalization of society, an increase in cases of aggressive behavior with lethal outcomes, including due to the atmosphere of state-sanctioned violence with impunity³⁵. It is difficult to assess the scale of the problem: in response to a request for statistics on domestic violence crimes, the competent authorities reported that such information was classified as "restricted official information" for reasons of national security³⁶. It is also difficult to assess the effectiveness of existing measures (introduced, among others, by legislative changes in 2022³⁷): for example, there is evidence of an increase in the response of law enforcement agencies to reports of domestic violence, and the active use of protective orders that allow for the temporary isolation of the aggressor³⁸. Nevertheless, experts expressed doubts about the effectiveness of this measure in the absence of criminal liability as well as rehabilitative measures that should follow prosecution and help prevent similar situations in the future³⁹.

Previously liquidated CSOs that provided direct assistance to victims of domestic violence, educated

³³ https://minjust.gov.by/press/news/politicheskie_partii_obshchestvennye_obedineniya_i_drugie_nekommercheskie_organizatsii/sovmestnoe_zasedanie_respublikanskoy_i_mestnykh_obshchestvennykh_nablyudatelnykh_k_omissiy_sostoyalos/?sphrase_id=375297

³⁴ <https://news.zerkalo.io/life/34124.html>

³⁵ www.rfi.fr/ru/европа/20231129-эксперт-всё-насилие-схоже-по-своей-природе-от-лукашенко-оно-исходит-или-члена-семьи-четверти-века-оказалось-недостаточно-чтобы-мы-осознали-эту-взаимосвязь

³⁶ Id.

³⁷ See National Human Rights Index: Right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment. Comments by experts (2022)

³⁸ <https://www.dw.com/ru/v-belarusi-polovina-zertv-domasnego-nasilija-ne-obrasaetsa-za-pomosu/a-67700962>

³⁹ Id.



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law enforcement officials and other institutions are still unable to return to their activities due to ongoing violations of the right to freedom of association⁴⁰. There is no information on the coping with these community needs by the State. The situation is aggravated by the exodus of professionals able to work effectively on the topic of domestic violence⁴¹. The general repressive environment in the country, the lack of effective remedies and distrust in existing institutions, the lack of shelters for victims of domestic violence continue to create a situation in which they are afraid to seek help⁴². According to the results of an online survey conducted in November 2023, more than half of the women surveyed prefer not to seek help in situations of domestic violence⁴³.

Experts also note the problematic nature of the compulsory rehabilitation centers (CRC), which the State supports as an institutional solution to, inter alia, the problem of domestic violence⁴⁴: CRC remain a repressive measure, and their maintenance in itself contradicts Belarus' human rights obligations⁴⁵.

⁴⁰ See the review on the right to freedom of association

⁴¹ www.rfi.fr/ru/европа/20231129-эксперт-всё-насилие-схоже-по-своей-природе-от-лукашенко-оно-исходит-или-члена-семьи-четверти-века-оказалось-недостаточно-чтобы-мы-осознали-эту-взаимосвязь

⁴² <https://www.dw.com/ru/v-belarusi-polovina-zertv-domasnego-nasilija-ne-obrasaetsa-za-pomосу/a-67700962>

⁴³ <https://news.zerkalo.io/life/55752.html>

⁴⁴ https://t.me/belta_telegramm/77895

⁴⁵ On changes related to CRC, see National Human Rights Index, The Right to Liberty and Security of the Person-2023 (expert commentary): <https://index.belhelcom.org/>



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