

## Belarus Human Rights Index

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2019

### Right to liberty and security of person

**Score: 3.9**

***Including scores by component:***

Liberty and security of person – 4.9

Protection against arbitrary arrest or detention – 3.0

Specific safeguards for custody on criminal charges – 3.7

The legislation contains basic principles guaranteeing the right to liberty and security of person against both third parties and the state. These guarantees are ensured, inter alia, by mechanisms of prosecutorial and judicial oversight, and by the imposition of criminal liability for various forms of restriction of liberty.

In Belarus, detention may be ordered by a wide range of officials: a prosecutor or his deputy, or the Chair of the Investigative Committee, the Chair of the KGB, or persons acting in their stead; or, with the authorisation of a prosecutor or his deputy, by a preliminary inquiry body or an investigator. The court also applies this preventive measure, but only if the issue arises at the trial stage.

Pre-trial detention is not always applied solely to achieve legitimate objectives (to prevent the possibility of absconding from criminal prosecution, obstructing the investigation, etc.), but also for formal reasons. It is common practice to apply detention solely on the grounds of the seriousness of the offence of which the person is accused. According to experts, this constitutes a flaw in both the legislation and its application.

As experts have noted, although the Resolution of the Plenum of the Supreme Court ‘On the practice of courts in considering complaints regarding the application of preventive measures in the form of detention, house arrest or the extension of their duration’ requires courts to verify both the legality and the justification for detention, it remains unclear what criteria the court follows. No statistics are published on the courts’ consideration of complaints regarding pre-trial detention. No cases are known from open sources where a court has ruled in favour of a complaint against the application of pre-trial detention.

In view of these issues, the Human Rights Committee expressed concern in 2018 that, under current legislation: (a) the pre-trial detention of persons arrested or detained on suspicion of having committed a criminal offence may be authorised by a significant number of persons, including the



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prosecutor, a deputy prosecutor, the Chair of the Investigative Committee, the Head of the State Security Committee or persons performing these functions, as well as by a preliminary inquiry body or an investigator with the authorisation of a prosecutor or deputy prosecutor; b) judicial review of detention decisions (habeas corpus) is limited to verifying the legality of the procedure<sup>1</sup>.

In 2019, there were cases of arrests and detentions for the lawful exercise of rights and freedoms<sup>2</sup>. There were also detentions on discriminatory grounds of representatives of the Roma community<sup>3</sup>. The Special Rapporteur on minority issues and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment addressed the Government of Belarus regarding the mass detentions of Roma and inhuman treatment in May 2019 in Mogilev and other localities<sup>4</sup>.

In 2018, the Human Rights Committee expressed concern that administrative detention for the purpose of establishing the identity of a person against whom administrative proceedings have been initiated is applied too broadly and is accompanied by abuses. The Committee is particularly concerned that the preventive detention of individuals in the run-up to political or social events is reportedly common practice, particularly with regard to human rights defenders and journalists, and that it formally falls within the legal framework of administrative detention<sup>5</sup>.

The basis for compulsory hospitalisation and treatment is a court order for compulsory hospitalisation and treatment. Furthermore, compulsory hospitalisation is possible without a court order, based on a doctor's decision. In such cases, the person is subject to a psychiatric assessment by a medical advisory board within 24 hours of admission, excluding weekends and public holidays. Within two days of the Medical Advisory Commission issuing its report, the psychiatric hospital must apply to the court, which will consider the case within five days. The hospitalisation of a person known to be mentally healthy, or their unlawful detention, is a criminal offence.

In the event of a breach of immigration law – loss of documents or lack of documents – foreign nationals and stateless persons are held for a prolonged period without a court order in temporary detention centres not designed for long-term detention, pending identification. Due to a shortage of specialised centres (there are only three centres for persons seeking international protection, with a limited number of places), foreign nationals and stateless persons are held in detention centres

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<sup>1</sup> Concluding observations of the Human Rights Committee on the fifth periodic report of Belarus, 22 November 2018, CCPR/C/BLR/CO/5, paragraph 31

<sup>2</sup> See, for example, The Human Rights Situation in Belarus in 2019: An Analytical Review, Viasna Human Rights Centre: [http://spring96.org/files/misc/review\\_2019\\_ru.pdf](http://spring96.org/files/misc/review_2019_ru.pdf), p. 13,

<sup>3</sup> See, for example, The Human Rights Situation in Belarus in 2019: An Analytical Review, Viasna Human Rights Centre: [http://spring96.org/files/misc/review\\_2019\\_ru.pdf](http://spring96.org/files/misc/review_2019_ru.pdf), p. 18

<sup>4</sup> See, for example, The Human Rights Situation in Belarus in 2019: An Analytical Review, Viasna Human Rights Centre: [http://spring96.org/files/misc/review\\_2019\\_ru.pdf](http://spring96.org/files/misc/review_2019_ru.pdf), pp. 18–1

<sup>5</sup> Concluding observations of the Human Rights Committee on the fifth periodic report of Belarus, 22 November 2018, CCPR/C/BLR/CO/5, para. 33



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intended for the serving of administrative arrests for up to 25 days, or for up to 10 days on suspicion of having committed a crime. Furthermore, when applying for refugee status, these individuals often remain in detention centres until a decision is made. There have been cases where foreign nationals and stateless persons have been held in detention for extended periods<sup>6</sup>. Detention may also occur for the purposes of removal and deportation. Thus, in all the procedures mentioned (establishing the identity of a foreign national, expulsion, deportation, and consideration of an application for refugee status) – the duration of detention is not limited by law, detention is applied without judicial review, there is no procedure for periodic review of the detention decision, there are no guarantees of free legal aid in such situations, and there is no procedure for appealing against such detention in court).

The Civil Code provides for the possibility of compensation for harm caused as a result of the unlawful application of coercive security and medical measures, detention, custody, house arrest, placement in a psychiatric institution, or the unlawful imposition of an administrative penalty in the form of administrative arrest, regardless of the fault of the law enforcement authorities or the court. To claim compensation, a person must bring a claim before the court. In practice, the possibility of obtaining compensation is limited<sup>7</sup>. There have been cases where compensation was refused on spurious grounds: the person admitted guilt<sup>8</sup>, measures restricting freedom were taken on lawful grounds, etc. Furthermore, according to experts, a problem is that the court awards compensation only if the actions of the investigating authority are recognised as unlawful. In practice, such actions must be recognised as unlawful either by the investigating authority itself (when the case is discontinued at the pre-trial investigation stage) or by the court (if it delivers an acquittal). Otherwise, the claim for compensation is rejected on the grounds that the individual has failed to prove the unlawfulness of their detention.

According to experts, the following issues have contributed to the low rating of the right to liberty and security of person: the imperfection, and in some cases the inconsistency, of national legislation with the provisions of the International Covenant on Civil and Political Rights and other international human rights treaties; the lack of effective procedures; issues relating to the independence of judges; and the failure of law enforcement agencies, investigators, prosecutors and judges to understand the importance and value of every person's rights, etc.

#### Sources:

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<sup>6</sup> Alternative report by the National Human Rights Coalition on the implementation by the Republic of Belarus of the International Covenant on Civil and Political Rights to the Human Rights Committee, May 2018: [https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/BLR/INT\\_CCPR\\_CSS\\_BLR\\_31288\\_R.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/BLR/INT_CCPR_CSS_BLR_31288_R.pdf), paragraph 83

<sup>7</sup> See, for example, <http://spring96.org/ru/news/90756>,

<sup>8</sup> <https://news.tut.by/society/646388.html>



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2. General Comment No. 35 of the Human Rights Committee, Article 9 (Liberty and security of person), CCPR/C/GC/35, <https://undocs.org/ru/CCPR/C/GC/35>
3. Concluding observations of the Human Rights Committee on the fifth periodic report of Belarus, 22 November 2018, CCPR/C/BLR/CO/5: <https://undocs.org/ru/CCPR/C/BLR/CO/5>
4. Concluding observations of the Committee against Torture on the fifth periodic report of Belarus, 2018: <https://undocs.org/ru/CAT/C/BLR/CO/5>
5. Report by non-governmental organisations on the Republic of Belarus's compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2018: [https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/BLR/INT\\_CAT\\_CSS\\_BLR\\_3\\_0686\\_R.pdf](https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/BLR/INT_CAT_CSS_BLR_3_0686_R.pdf)
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