

Belarus Human Rights Index

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2021

Right to liberty and security of person

Expert Commentary

The score: 2,5

Including scores by component:

- Liberty and security of person 3
- Protection against arbitrary arrest or detention 2,2
- Specific safeguards for custody on criminal charges 2,3

The state guarantees the right to liberty and security of persons in Article 25 of the Constitution of the Republic of Belarus, which proclaims: 'The state shall ensure the liberty, security and dignity of the individual. Restriction or deprivation of personal liberty shall be possible in cases and in the manner prescribed by law. The Republic of Belarus has been a party to the International Covenant on Civil and Political Rights since 1973. The right to liberty and security of a person is enshrined in Article 9 of the Covenant.

For a description of the basic situation regarding the realization of the right to liberty and security of a person, see the 2019 overview. In assessing the state of the right in 2021, the Index experts gave lower scores than in 2020. The experts' position is explained in more detail below.

In 2021, the legal situation in general and the human rights crisis in particular worsened. Mass and arbitrary detentions of dissenters persisted in 2021, but compared with 2020 arbitrary detentions of peaceful protesters *en masse*, in the given period (due to the transition of peaceful protests to underground) detentions became targeted at specific social groups, in particular, persons expressing their critical opinion about what is happening in the country.

Adequate measures to protect the right to personal liberty from violation by third parties are not applied. People, especially those with active civic positions, have an increased sense of anxiety and insecurity both on the streets and at home.

Legislation has changed significantly. On May 17, 2021, Law No. 106-3 "On Amendments to Legislation on the National Security of the Republic of Belarus" was adopted. It 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. 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



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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 appreciation¹. 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*"².

In 2021, the issue of personal inviolability, including in combination with the inviolability of the home, was acute. An example of this is the situation with the shooting in the apartment of Andrei Zeltser, as a result of which the latter was killed and the KGB officer was fatally wounded³. This example illustrates 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 law enforcement agencies using weapons are not properly investigated.

In 2021, compared to 2020, the situation has deteriorated with respect to appropriate measures that have to be taken in response to threats and intimidation as well as violence against human rights defenders and journalists, retaliation against witnesses, violence against women, including domestic violence, the hazing of conscripts in the armed forces, violence against children, violence against persons on the basis of their sexual orientation or gender identity, and violence against persons with disabilities originating from public or private actors.

According to expert assessments, the repression of dissenters has increased significantly in 2021. Detentions are accompanied by torture, psychological pressure and disproportionate use of physical force. The practice of recording "repentant" videos has taken root, with law enforcement authorities forcing detainees to confess to video recordings of things they have not done, revealing personal information about themselves, such as their sexual orientation. These videos were disseminated on pro-government social networks and state-run mass media in order, on the one hand, to sow fear in the society before such "demonstrative executions" and, on the other hand, to make the society repudiate the person in the video. For instance, 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 in which he discloses his sexual orientation and confesses to passing

¹ https://belhelcom.org/sites/default/files/novoe_zakonodatelnoe_regulirovanie_bielarus_2021_2.pdf.

² <https://www.belta.by/society/view/mamajko-beloruskoe-zakonodatelstvo-o-natsbezopasnosti-ostaetsja-dostatochno-liberalnym-441782-2021/>

³ <https://www.bbc.com/russian/news-58730869>



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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 channel.

State TV still uses hate speech against dissenters, and the same is true of pro-government Telegram channels. Journalists and human rights activists are persecuted *en masse*. In the spring and summer of 2021, the state intensified its repression of civil society, most human rights and socially-oriented organizations were forcibly liquidated, and the risk of persecution for their members increased.

There is still no specific legislation criminalizing domestic violence and marital rape. However, on December 22, 2021, the Council of the Republic of the National Assembly of Belarus approved a draft law "On the Basis for the Prevention of Offenses Activities" (finally adopted on January 6, 2022). The law provides for the following innovations:

- expanding the range of persons against whom violence qualifies as domestic one: this includes former spouses, separated close relatives, other persons who live together and have a common household;
- supplementing the basic principles of the activities of crime prevention agents with such principles as 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;
- specifying the procedure for cooperation between domestic violence prevention agents and their functions;
- the application of individual preventive measures is optimized; a corrective program is introduced as one of such measures;
- changing the procedure for the application of protective orders, defining the procedure for processing information on cases of domestic violence
- depriving citizens who have been subjected to administrative penalties for committing violent acts or violating a protective order, of the right to purchase weapons;
- inclusion in the list of grounds for the seizure of weapons and ammunition from a person who owns them, the issuance of a protective order.

Protection against arbitrary arrest or detention

Compared to 2020, the situation with the procedure of deprivation of liberty, including detention, custody, house arrest, etc., has significantly worsened. In 2021, Law No. 133-3, Law No. 112-3, Law No. 85-3 on criminal liability were adopted. Each of them partially or fully amended the procedures for the worse or towards an increase in the imprisonment terms.

In 2021, the trend towards failing to provide timely access to attorneys to those held in punitive confinement facilities, thereby depriving the latter of the right to appeal against such a preventive measure, has strengthened.



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According to experts, the judicial system has degraded, focusing solely on the procedural processing of the incarceration of dissenters. Whereas in 2020, protesters were more often held administratively liable, in 2021 they were held criminally liable.

In 2021, specific social groups became subject to arrest and prosecution, such as journalists, human rights activists, and all those who do not support the current regime, speak out about it in any way, or engage in public or human rights activities. Experts estimate that in 2021 detention without proper justification was used more frequently.

The above-mentioned law "On Amendments of Legislation on National Security of the Republic of Belarus" significantly expands the rights of law enforcement officers, while infringing on the rights of citizens. The law allows personal searches of citizens during detention without grounds of necessity, as well as the prohibition to make sound and video recordings.

In 2021, the Criminal Code was toughened. The Law of the Republic of Belarus No. 112-3 of May 26, 2021 "On Amendments of Codes Concerning Criminal Responsibility" toughened responsibility under Article 361 of the Criminal Code, introduced new crimes, increased the terms of punishment and amended wording that establishes responsibility for extremism (in fact, for public and human rights activities). Article 193-1 introduced criminal liability for the illegal organization of the activity of a public association, religious organization or foundation or participation in their activities.

In 2021, the treatment of detainees, including those under custody, house arrest, etc. has worsened. Thus, about 200 commentators that expressed their opinions about the incident and their attitude towards the deceased KGB officer in the social networks, were detained within the "Zeltser case". The detainees were placed in inhumane conditions and deprived of parcels.

In general, according to experts, the treatment of detainees, especially in political cases, is essentially a "revenge" for their civic position, forcing them to abandon their views or not express them publicly.

In 2021 the practice of detention or imprisonment as a form of punishment for the legitimate exercise of rights, including the right to freedom of opinion and expression, freedom of assembly, freedom of association, freedom of religion, etc., was reinforced. According to the experts, dissenters essentially became a target for law enforcement agencies.

In 2021 people were detained not only for exercising their right to freedom of expression and assembly but also for exercising their right to freedom of association. The authorities detained, for example, human rights activists Ales Bialiatski and other members of the Human Rights Center Viasna, Olga Gorbunova, and many others.

We note the extensive use of Article 130 of the Criminal Code ("Inciting racial, national, religious or other social hatred or discord"). According to the experts, this article, due to its vague wording, can be "incriminated" to anyone for any statement or action, which is widely utilized by law enforcement agencies.

In 2021 the situation with involuntary hospitalization and compulsory psychiatric and medical treatment in psychiatric institutions has not changed.



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Terms of detention and confinement in compulsory isolation facilities are not reasonable and justified solely by the interests of justice. Often they exceed the period that seems absolutely necessary. In 2021, this practice became widespread, primarily with respect to people on politically motivated charges. For example, Eduard Babariko was arrested in June 2020 and was supposed to be released from pre-trial detention in December 2021 after the expiration of his 18-month detention limit. However, another criminal case was initiated against him (for inciting hatred and organizing mass riots), which was the basis for his continued detention. Another example is the repeated administrative arrest of a married couple, Siarhei Krupenich and Anastasiya Krupenich-Kandratsiyeva, as a result of which they served about 100 consecutive days.

In 2021 the legislation regarding compensation for victims of arbitrary arrest or detention changed for the better: now there is no need for a statement from the body conducting the criminal proceedings as a basis for appealing to court. However, according to the experts, in practice, these legislative changes have not led to an improvement in the situation of compensation for harm.

Specific safeguards for custody on criminal charges

Under the experts, the year 2021 was marked by a deterioration in safeguards for custody on criminal charges. 2021 was the year of politically motivated criminal cases. The practice of arbitrary detention has taken root. Detainees were not informed in a timely manner about the reasons for their arrest. The practice of law enforcement agencies conducting “raids” in residential districts, within which law enforcement officers invade homes and conduct arrests; later the information about these “raids” is reported in pro-government Telegram channels.

The practice of detaining people for administrative offenses, bringing them to administrative responsibility in the form of arrest, after which they are imprisoned on charges of committing a crime, has become entrenched. Experts note that, apparently, law enforcement agencies know in advance that the person in question will be detained by them within criminal proceedings. This causes additional suffering to the detainee and his family, as they are kept in the dark about their fate. In addition, initial administrative detention deprives a person of the legal assistance of an attorney, which is most effective in criminal proceedings.

According to the experts, the practice of “multistage” charges in politically motivated criminal cases has also emerged in 2021. The practice is the following: firstly, a relatively “minor” charge is incriminated to a detainee in criminal proceedings; some time later several more charges are added to the original, or an entirely different charge is incriminated. The case of Marfa Rabkova is quite illustrative: she was initially detained within criminal proceedings under Part 3 of Article 293 of the Criminal Code (“Training or other preparation of persons for participation in mass riots, financing or other material support of such activities”), and three months later she was charged under Part 3 of Article 130 (“Incitement of racial, national, religious or other social hatred or discord committed by a group”) and Part 2 of Article 285 of the Criminal Code (“Participation in a criminal organization”); 10 months later she wrote a letter to her family informing them that she would be tried under 11 articles of the Criminal Code.



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In 2021 the situation with the realization of the right to legal assistance for detained and arrested persons has worsened. According to the experts, in 2021 it became much more challenging to find an attorney in a criminal case, especially for politically motivated criminal charges. The number of attorneys who "were not afraid" to provide legal assistance in politically motivated criminal cases decreased. Some attorneys were forced "to leave the profession," and some were deprived of their licenses.

Pre-trial detention is not extensively used, but, according to the experts, it is most often practiced in politically motivated criminal cases. In 2021 the situation worsened due to an increase in the number of crimes, which provided law enforcement authorities with the right to detain persons only on the basis of the severity of the crime.

The period of pre-trial detention in practice is unreasonable and unjustified. Defendants are held in pre-trial detention for as long as possible, especially under politically motivated charges.

The experts commented positively on the introduction in 2021 of a new procedure for credit for time spent in pre-trial detention. Now a day spent in custody counts as 1.5 days of serving the sentence.



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