

## Belarus Human Rights Index

<http://index.belhelcom.org>

2022

### Right to liberty and security of person

Expert Commentary

**The score: 2.3**

#### Including scores by component:

- Liberty and security of person 2.9
- Protection against arbitrary arrest or detention 2.0
- Specific safeguards for custody on criminal charges 2.0

The State guarantees the right to liberty and security of person in article 25 of the Constitution, 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 person is enshrined in Article 9 of the Covenant.

When evaluating the state of the right to liberty and security of person in 2022, Index experts assigned lower scores compared to 2021. Their position is elaborated below.

#### • **Liberty and security of person**

In 2022, no changes have been recorded in the protection of the right to personal liberty from infringement by third parties; adequate protective measures remained absent. Not only individuals with active civic stance but also anyone expressing or having expressed views contrary to pro-state ones continued to feel unsafe.

In 2022, pro-state journalists and propagandists persisted in intimidating those with dissenting opinions, using hate speech<sup>1</sup> and threats<sup>2</sup> in the absence of an appropriate law enforcement response.

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<sup>1</sup> <https://mediaiq.info/yazyk-vrazhdy-chno-obshchego-u-voynny-v-u>

<sup>2</sup> "Neither Belarusian civil society nor law enforcement agencies will tolerate such individuals" – SB on "bastards" [Belarusians who hung white-red-white and Ukrainian flags at the Minsk high-rise building]: <https://www.sb.by/articles/s-natury-1321.html>; "GUBOPiK will not tolerate cocky fascist scum on its soil..." <https://news.zerkalo.io/cellar/29236.html>; "Why does Severinets tap on her keyboard and post on Facebook instead of writing letters from prison? There are more than enough grounds for that.." <https://www.sb.by/articles/veselye-kartinki-mukovoz.html>; "I have a list. I've never hidden it, and I've published it as I add to it. You were even proud to get there. Some individuals have already answered before the law. Like



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Moreover, experts note the proliferation of pressure and violence during arrests and in detention facilities: mass detentions of attorneys defending clients in politically motivated cases, accompanied by beatings of detainees, cases of violence against human rights defenders<sup>3</sup> and journalists<sup>4</sup>, and widespread beatings of detainees, including women<sup>5</sup>, with batons, tasers, metal detectors, tibia and a frying pan<sup>6</sup> are known.

Another detention and subsequent criminal prosecution of Nasta Loika is an example of pressure against a human rights defender who persisted in her work within Belarus, even in the face of the government's efforts to suppress civil society in 2021. Following her release from detention in August 2021, Nasta filed complaints about law enforcement misconduct and inhuman treatment of detainees in a pretrial detention facility<sup>7</sup>. Regrettably, there is no information regarding any appropriate actions taken in response to these complaints. On the contrary, in 2022, the human rights defender faced a series of administrative detentions and, subsequently, criminal prosecution. Pressure is known to persist on her in the Okrestina detention center for her demands to respect the rights of detainees<sup>8</sup>.

In 2022, no measures were taken to regulate domestic violence in a separate act – however, amendments were made to Law No. 122-3 of 4 January 2014 "On the Principles of Crime Prevention", introducing the concepts of actions of a psychological, physical and sexual nature, forming the basis for the definition of domestic violence<sup>9</sup>.

- **Protection against arbitrary arrest or detention**

According to experts' estimates, during 2022, law enforcement agencies increasingly disregarded established legal procedures for depriving individuals of their liberty and failed to provide the expected safeguards in politically motivated detentions. Detaining individuals are widely aware of their impunity and the potential tolerance of their actions by the relevant authorities.<sup>10</sup> The existing legislation did not offer effective protection against the arbitrary use of preventive

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Bernstein did. You might wonder why. Let me remind you: I come from a street background, and people there beat you in your face.." <https://www.sb.by/articles/kouchi-i-layfkhaki.html>.

<sup>3</sup> <https://news.zerkalo.io/life/26113.html>

<sup>4</sup> <https://baj.by/sites/default/files/analytics/files/2023/smi-01712023-ru.pdf>

<sup>5</sup> <https://www.defenders.by/news/tpost/pvv726usy1-doklad-verhovnogo-komissara-oon-po-situa>

<sup>6</sup> <https://spring96.org/ru/news/110332>

<sup>7</sup> <https://belsat.eu/en/news/17-08-2021-prosili-skazat-hto-ne-vse-siloviki-plohie-pravozashhitnitsa-anastasiya-lojko-rasskazala-podrobnosti-svoego-dela>

<sup>8</sup> Due to her complaints about detainees being exposed to prolonged cold conditions, an Okrestina employee left her in the courtyard without her outer clothing with a promise that she will "experience firsthand how it feels." Subsequently, the employee requested that she refrain from lodging any further complaints. <https://news.zerkalo.io/economics/41794.html?c> )

<sup>9</sup> Additionally, see Right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment (2022).

<sup>10</sup> "One of the staff members showed me their ID – I saw a red crest but didn't read it. I asked which unit they

measures: in 2022, in particular, practice of deprivation of liberty on objectively minor and absurd grounds<sup>11</sup> and successive arrests<sup>12</sup> in violation of procedural requirements<sup>13</sup> persisted.

According to experts, the inhumane treatment of detainees in 2022 still did not serve any formal detention purposes. Instead, the treatment of both administrative detainees and prisoners continues to be a means of seeking revenge, intimidation, and complete isolation from the outside world. Pressure persists on political prisoners even after sentences have been imposed. Experts have observed an increase in the practice of sending convicts to penal solitary cells or cell-type units on baseless grounds, where they are denied the right to make calls, receive visitors, or send messages. Prisoners are often subjected to harsher prison regimes or face new criminal charges based on unfounded 'violations.'<sup>14</sup>

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were from I wand they replied, "What does it matter? MIA"; "One of them demanded that we remove the pet. Barely a minute had passed, and that man had already shot the dog."; "Even though they took our phones and laptops, rifled through every cupboard, turned over the furniture on the veranda, and shook my children's old toys out of the drawer – as if they had come to create as much chaos as possible. Then they demanded that we unlock all our phones, threatening to destroy everything, even the floor tiles, claiming there was a suspicion of drug possession"; "At the Internal Affairs Department I was met by an employee from Brest GUBOPiK – nervous and twitchy. He read my correspondence and said, "Sloughs? You're hosed. I'll sew your uterus up"; "Afterwards, the man in uniform began demanding that the child show him her phone. She refused since the last time they were searched, they have already taken it. He kept saying, "I will do whatever I want." She was told that if she didn't hand over her phone, she'd be taken to the police station or a shelter. Since she had no pockets, she hid the phone in her underwear. The policeman got in there and grabbed the phone. He grabbed her hands forcefully, causing bruises, and took advantage of her defenselessness to unlock the screen. He demanded to see our correspondence, told her to write me to take a picture with my passport and tell him my current location. He said that the phone would now "break", or "accidentally fall". Hit struck my daughter in the face and threw a phone at her. The blow was so powerful that she temporarily lost hearing in one ear for a while. Called her a "p\*\*\*\*\* kid, bitch, bastard." (<https://news.zerkalo.io/life/24505.html>)

<sup>11</sup> "Three women and three men stayed in one place for an extended period, publicly demonstrating their gathering in front of passersby". "He expressed his socio-political opinions on Ukraine's Independence Day". "They held a picket to express their socio-political interests by way of displaying a calendar featuring the Pahonia image and slogans, including "Long live Belarus!", "Nie raźbić, nie spynić, nie strymać!" (these are words from a Belarusian patriotic song); "she has placed a white, red, and white bag in the car's rear for public display, along with symbols depicting the same color ornament on the car's panel:

<https://spring96.org/en/news/110332>.

<sup>12</sup> Ibid.; it is common practice to send people to a police department for conducting "preventive interviews", to clarify the circumstances of an alleged offence or crime, to draw up a new record and to detain a person again on release after the previous incarceration: <https://spring96.org/en/news/106310>.

<sup>13</sup> "In his report, the policeman stated that at 18:00 on 30 December, during the conversation, Tatiana allegedly poured water on him. But for some reason, the record states she threw the mug at the wall. The personal examination record was not drawn up at all. The policeman who testified at the trial did not remember anything. The original record was again missing from the case file, only a copy was included. But Judge Skuratović paid no attention to these errors, and the policeman's testimony sufficed to deem Tatiana guilty. Skuratović punished Tatiana with a 15-day arrest. Administrative detention totalled 60 days". Ibid.

<sup>14</sup> <https://spring96.org/ru/news/107187>

Conditions in these solitary cells and cell-type units are close to torture<sup>15</sup>. The practice of repeated administrative 're-detentions' to prolong detention periods and find grounds for criminal prosecution is also inconsistent with the intended purposes of detention.

In 2022, custodial measures continued to be used as punishment for the legitimate exercise of human rights. In particular, "Viasna" reports 1,100 detainees at anti-war protests on 27 and 28 February<sup>16</sup> alone. Pro-state media<sup>17</sup> journalists and law enforcement<sup>18</sup> channels do highlight the causal link between expressions contrary to official discourse and the inevitability of detention. As noted above, the practice of depriving attorneys, journalists and human rights defenders of their liberty in connection with their professional activities continued. Politically imprisoned human rights defender Nasta Loika<sup>19</sup>, attorney Aliaksandr Danilevich<sup>20</sup>, journalist Denis Ivashin<sup>21</sup> are cited by human rights defenders among the examples of individuals who were deprived of their freedom due to the conscientious execution of their professional responsibilities. Online commentators<sup>22</sup>, persons who shared calls to sum up the results of the republican referendum in a responsible manner<sup>23</sup>, as well as persons supporting political prisoners continued to be imprisoned: On September 6, 2022, diplomats<sup>24</sup> among those arbitrarily detained following a hearing on the so-called Revolutionary Action case in the Minsk City Court.

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<sup>15</sup> "In a solitary cell, five litres of chlorine are poured every morning to poison the convicts. Windows are left open regardless of the weather, although it may be -30° outside. If the cell has a poorly cleaned toilet or washbasin, then the colony director Palcic can personally put an inmate in an extended posture or write a report under which inmates may be sent to a solitary cell for another 10 days"; "Cell-type units, as solitary ones, are usually damp and cold. There is only a bench, table, washbasin, toilet, and a few metal shelves. In some cells, the bench and the table are completely iron, and it is simply impossible to sit on them for long periods, especially when the cell is cold. Once the cold sets in, the heating is kept to a minimum to cause psychological and physical damage to the prisoners. You walk around a cell, you squat, you do push-ups, or you stand by a warm pipe for hours, warming your hands at least." (<https://spring96.org/en/news/107187>)

<sup>16</sup> <https://spring96.org/en/news/110386>; see also the Seventh Interim Report of the International Committee for Investigation of Torture in Belarus on the persecution of Belarusians (including through custodial measures) for anti-war stance: [https://torturesbelarus2020.org/wp-content/uploads/2022/12/otchet\\_belaruskoe-uchast%D0%B8e-v-vojne-v-ukra%D0%B8ne-rezh%D0%B8m-%D0%B8-narod-1.pdf](https://torturesbelarus2020.org/wp-content/uploads/2022/12/otchet_belaruskoe-uchast%D0%B8e-v-vojne-v-ukra%D0%B8ne-rezh%D0%B8m-%D0%B8-narod-1.pdf).

<sup>17</sup> <https://t.me/lqbelarussegodnya/17253>; [https://t.me/Azarenok\\_CTV\\_Belarus/360](https://t.me/Azarenok_CTV_Belarus/360).

<sup>18</sup> [https://t.me/Azarenok\\_CTV\\_Belarus/1793](https://t.me/Azarenok_CTV_Belarus/1793).

<sup>19</sup> <https://humanconstant.org/nasta-lojka-zaderzhana-posle-zasedaniya-po-delu-revolucionnogo-dejstviya-zayavlenie/>

<sup>20</sup> <https://www.defenders.by/news/tpost/k0u5i0x4g1-obraschenie-k-spetsdokladchikam-oon-kasa>

<sup>21</sup> <https://baj.by/be/content/bez-syurpryzau-prysud-zhurnalistu-dzjanisu-ivashynu-pakinuli-u-sile>

<sup>22</sup> See Freedom of Expression (2022)

<sup>23</sup> <https://humanconstant.org/obzor-borby-s-ekstremizmom-v-belarusi-za-iyul-sentyabr-2022/>

<sup>24</sup> Ibid.



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Furthermore, experts observed an expansion in 2022 of the practice of prosecuting actions that occurred several years earlier, notably participation in 2020 and reposting materials that were unrestricted at the time<sup>25</sup>.

Legal safeguards against involuntary hospitalization and compulsory psychiatric and medical treatment in psychiatric facilities deteriorated in 2022. In 2022, the Council of Ministers initiated changes in the regulation of compulsory treatment referrals<sup>26</sup>. Based on the draft law, human rights defenders note, on the one hand, the narrowing of the range of persons who can potentially be sent to compulsory rehabilitation centers (CRCs) and, on the other hand, the simplification of the procedure for sending these persons to CRCs<sup>27</sup>. Human rights defenders have consistently emphasized the unacceptability of deprivation of liberty by sending persons suffering from conditions that do not necessitate isolation in such centers.<sup>28</sup>

Experts note an increase in the use of coercive medical measures for politically motivated reasons. In 2022, political prisoners, including Igor Alkhov, accused of insulting the President and committing an act of terrorism<sup>29</sup>, Maria Uspenskaya<sup>30</sup>, the widow of Andrei Seltzer, and Yuri Kovalev<sup>31</sup>, accused of insulting the President and willful disobedience to the demands of the correctional institution administration, were subjected to compulsory treatment in psychiatric hospitals. Conditions in such facilities have been described as "punitive psychiatry"<sup>32</sup>. Experts continue to note the lack of

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<sup>25</sup> "On August 24, 2022, the Head of the Investigative Committee Minsk Office stated that more than 280 persons were detained in the first half of 2022 on suspicion of participating in the August 2020 mass protests" (<https://humanconstantia.org/obzor-borby-s-ekstremizmom-v-belarusi-za-iyul-sentyabr-2022/>)

<sup>26</sup> <https://news.zerkalo.io/life/21030.html>

<sup>27</sup> Under the current procedure, a person may be sent to the CRC following another administrative responsibility for an offence committed, inter alia, under the influence of alcohol, within one year after the person has already been warned of the possibility of being sent to the center for three such offences. The new bill proposes to issue a warning about the possibility of referral to CRC following the commission of two offenses: <https://spring96.org/en/news/110206>; <https://pravo.by/document/?guid=3941&p0=2022070001>.

<sup>28</sup> <https://spring96.org/ru/news/109155>, <https://spring96.org/ru/news/110206>.

<sup>29</sup> <https://prisoners.spring96.org/ru/person/ihar-alkhou>

<sup>30</sup> <https://news.zerkalo.io/life/20779.html>

<sup>31</sup> <https://prisoners.spring96.org/ru/person/juryi-kavaliou>

<sup>32</sup> "He's having a hard time there. He says it was a lot easier back in prison, even in the punitive solitary or the SHU cell. The hospital has declared a coronavirus outbreak. Yuri hasn't been able to make a call for three weeks. Visits were reduced from 20 minutes to five minutes, and conducted through the glass. He's injected with what I think are strong medications. I fear for his condition after receiving them. They locked him in a psychiatric hospital for six months. After six months, the council will decide whether Yuri has recovered or not. With much luck, he'll end up in a "free" psychiatric hospital for another three months. If not, the council could extend his compulsory treatment. In the most "favourable" scenario, if he goes to a "free" hospital for another three months, he will then be monitored for another year. This means they'll automatically revoke his driver's license, restrict his activities, and require him to see a psychiatrist. Compulsory treatment can be extended for as long



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transparency in the functioning of such institutions, the lack of public control and challenges in objectively assessing what is happening in them<sup>33</sup>.

Experts estimate that the duration of detention and custody still consistently exceeds the maximum permissible limits. Eduard Babaryka, who was detained in June 2020, continued to be held in record-long pretrial detention throughout 2022, with complaints of unlawful extension repeatedly dismissed<sup>34</sup>. In practice, legally established restrictions are circumvented by successive detentions on "new" grounds, which provide grounds for an increase in the total length of detention. Thus, in 2022, Orthodox priest Vladislav Bogomolnikov spent a total of 100 days in Okrestina detention center under seven different administrative records<sup>35</sup>, the head of the independent trade union Naftan Olga Britikova was incarcerated for 75 days, and human rights defender Nasta Loika – for 60 days before being charged<sup>36</sup>. Ales Bialatsky, Valentin Stefanovic and Uladzimir Labkovich remained in pretrial detention for a year and two months when it was revealed that the prior criminal case (related to "non-payment of taxes") against them had been dropped, but a new one was initiated under Part 4 of Article 228 of the Criminal Code ("Smuggling") Human rights defenders have spent the whole year 2022 in detention<sup>37</sup>.

Since the spring of 2022, human rights defenders have also observed the practice of extending the prison sentence of political prisoners by filing charges of malicious disobedience to the requirements of the administration of a correctional institution under Article 411 of the Criminal Code<sup>38</sup>. It is noted, however, that the Law on "National Unity Day Amnesty" did not provide exemptions or sentence reductions for individuals convicted under "extremist" articles of the Criminal Code or those on the List of persons involved in extremist activities.<sup>39</sup> Experts acknowledge that assessing the full extent of the problem is challenging, as many cases of violations may remain unknown even to human rights defenders.

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as they want. It's just punitive psychiatry": <https://spring96.org/en/news/109761>

<sup>33</sup><https://news.zerkalo.io/life/14201.html>; <https://reform.by/340202-sledovatel-mozhet-pugat-durkoj-no-ot-nego-daleko-ne-vse-zavisit-kak-politzakljuchennyh-otpravljajut-na-prinuditelnoe-psihiatricheskoe-lechenie>

<sup>34</sup> <https://prisoners.spring96.org/ru/person/eduard-babaryka>

<sup>35</sup>Each for disseminating messages from "extremist" channels in private correspondence.

<sup>36</sup> <https://spring96.org/en/news/110332>; "...he was serving his fifth or sixth administrative sentence at that time without being released. Imagine: it's June, and a man is in winter clothe and boots, never once cut his hair in all that time.": <https://spring96.org/en/news/109814>.

<sup>37</sup> <https://mediazona.by/article/2023/01/05/viasna>

<sup>38</sup> "Most of the cases involved minor violations of the rules for which the convicted persons had already been summarily punished, or refusal to comply with the administration's instructions, which would have reduced the status of the convicted person under the informal rules of the convict relationship, which are tacitly cultivated and exploited by the correctional administration to pressure recalcitrant prisoners, followed by threats to the life, health and dignity of the prisoner. At least 15 political prisoners are known to have been tried under this article, including Ruslan Okostko, Polina Sharendo-Panasyuk, Victoria Kulshi, Andrey Novitsky, Pavel Ovcharov and others.": <https://spring96.org/en/news/110468>, p. 7.

<sup>39</sup> Ibid., p. 8.



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Experts estimate that in 2022, the exercise of right to fair compensation for arbitrary arrest or detention remained virtually inaccessible. In addition to the widespread belief that filing complaints of arbitrary detention for politically motivated reasons is ineffective (given the rarity of justifications in such cases, and even when the unlawful restriction of the right to liberty and security of a person is acknowledged, the amount of compensation awarded is often difficult to deem reasonable and fair<sup>40</sup>), it has become increasingly challenging to even attempt to exercise this right due to the repression of lawyers involved in "political" cases. Experts observe that access to quality legal assistance is becoming progressively elusive, and filing complaints from places of detention has become impossible, largely because lawyers are denied access to their clients<sup>41</sup>.

International human rights mechanisms' findings that establish violations by Belarusian authorities of victims' right to compensation continue to be disregarded. Thus, in 2022, the opinion of the United Nations Working Group on Arbitrary Detention was published, in which experts found that Maxim Znak's detention was arbitrary and that he had an enforceable right to compensation<sup>42</sup>; the competent authorities disregarded it<sup>43</sup>.

- **Specific safeguards for custody on criminal charges**

In addition to arbitrary custodial measures, detainees still frequently learn about the charges against them after an unreasonable amount of time has passed. The case of attorney Vitaly Brahinetz exemplifies the tendency for individuals to be subjected to several consecutive administrative arrests before the grounds for criminal prosecution are established. Vitaly was detained on May 23, 2022, and re-detained on June 7; as of the end of December, the charges against him<sup>44</sup> were still unknown. As a result of this practice, detainees are still unable to be brought promptly before a judge.

Experts estimate that in 2022, the right to legal aid almost ceased to be effectively available for exercise. The systematic policy of establishing comprehensive State control over lawyers and interfering in their work in order to curb "undesirable" activities, including participation in politically motivated cases<sup>45</sup>, persisted. Obstacles to an attorney's involvement in a case remain in place: defense lawyers are often denied access to detainees, both due to a lack of reliable information about them (down to a person's whereabouts) and because of some "material obstacles" (insufficient lawyer-client meeting rooms) and arbitrary discretion on the part of investigators<sup>46</sup>. Furthermore, the number of

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<sup>40</sup> <https://news.zerkalo.io/life/46351.html>

<sup>41</sup> See "The Belarusian Bar Crisis: How to Return the Right to Defence" (<https://report2022.defendersbelarus.org/>), p. 43.

<sup>42</sup> <https://www.ohchr.org/sites/default/files/2022-06/A-HRC-WGAD-2022-24-BLR-AEV.pdf>

<sup>43</sup> <https://prisoners.spring96.org/ru/person/maksim-znak>

<sup>44</sup> <https://www.defenders.by/news/tpost/0n81hffoe1-advokat-vitalii-braginetz-obvinyaetsya-p>

<sup>45</sup> See "The Belarusian Bar Crisis: How to Return the Right to a Defence" (<https://report2022.defendersbelarus.org/>), p. 33.

<sup>46</sup> See "The Belarusian Bar Crisis: How to Return the Right to Defence" (<https://report2022.defendersbelarus.org/>), p. 38.

attorneys available to provide high-quality legal assistance is rapidly decreasing: between October 2021 and April 2022 alone, the overall number of attorneys in the country decreased by 11%, with one in nine professionals leaving the profession for various reasons<sup>47</sup>. In total, 195 specialists<sup>48</sup> were missing from the Bar in 2022. Experts note that it is virtually impossible to find an attorney capable of providing quality legal assistance in a politically motivated prosecution in 2022.

In 2022, the use of pretrial detention measures continued, irrespective of impeding circumstances such as age, health condition, the presence of minor children,<sup>49</sup> or the considerations of minimal public danger presented by the alleged actions of the person (which is subsequently corroborated by the issuance of a non-custodial sentence<sup>50</sup>). Pretrial detention is still applied to juveniles<sup>51</sup>. Adolescents face further restrictions of their rights through being included in the lists of Belarusian citizens, foreign nationals, and stateless individuals involved in extremist activities<sup>52</sup>. Simultaneously, experts highlight a distinct policy shift aimed at "normalizing" the detention of minors. Guidelines for the education and upbringing of detainees are being created<sup>53</sup>, and formal programs and activities are being ceremoniously introduced within pretrial detention centers<sup>54</sup>.

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<sup>47</sup> [https://www.defenders.by/advokatura\\_posle\\_reformy](https://www.defenders.by/advokatura_posle_reformy)

<sup>48</sup> [https://www.defenders.by/2022\\_recap](https://www.defenders.by/2022_recap)

<sup>49</sup> The example of Darya Losik, a political prisoner and the wife of journalist Ihar Losik, sentenced to 15 years in a penal colony, who was held in pretrial detention for three months is illustrative. Darya was accused of "assisting extremist activity" (Part 1 of Article 361-4 of the Criminal Code) through providing a commentary to the media recognized as an "extremist formation" (<https://prisoners.spring96.org/en/person/darja-losik>).

<sup>50</sup> Among many other examples, stories of people who have gone through pretrial detention with non-custodial sentences: <https://prisoners.spring96.org/person/darja-sudnik>; <https://prisoners.spring96.org/person/mikhail-sudnik>; <https://prisoners.spring96.org/person/dzjanis-puczak>; <https://prisoners.spring96.org/person/artur-vauczok>; <https://spring96.org/news/109788>

<sup>51</sup> Among other examples: <https://gomelspring.org/be/news/9145>; <https://prisoners.spring96.org/en/person/maksim-szakhocin>;

<sup>52</sup> See Children Extremists Behind Bars: <https://spring96.org/en/news/109895>

<sup>53</sup> <https://pravo.by/document/?guid=12551&p0=W22238387&p1=1>

<sup>54</sup> <https://news.zerkalo.io/life/21194.html>



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