

## Belarus Human Rights Index

<http://index.belhelcom.org>

2023

### Right to liberty and security of person

Expert Commentary

<b>The score:</b>	<b>2.2</b>	<b>-0,1</b>
<i>Including scores by component:</i>		
• Liberty and security of person	2.8	-0.1
• Protection against arbitrary arrest or detention	1,9	-0.1
• Specific safeguards for custody on criminal charges	1,9	-0.1

In assessing the state of the right to liberty and security of person in 2023, the Index experts gave lower scores than in 2022. **Among the main reasons:**

- treatment of political prisoners and detainees remains inhumane; the practice of holding political prisoners *incommunicado* is increasing;
- systematic use of questioning at the border to find grounds for administrative or criminal prosecution;
- expansion of the practice of arbitrary prolongation of deprivation of liberty using Article 411 of the Criminal Code (under the pretext of punishment for malicious disobedience to the administration of the penitentiary institution);
- development of the compulsory rehabilitation centers system, which does not guarantee effective protection from arbitrary hospitalization and from compulsory psychiatric and medical treatment;
- persecution of defense lawyers and narrowing of opportunities to obtain quality legal assistance in "political" cases.

- **Liberty and security of person**

In 2023, the infliction of physical and mental harm by state actors (use of pressure and violence during



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arrests<sup>1</sup>, in places of detention<sup>2</sup>, border crossing checks<sup>3</sup>, workplace inspections<sup>4</sup>) remained permissible and unpunished. There was still<sup>5</sup> insufficient protection from such actions by third parties - in particular, pro-government activists and propagandists used hate speech<sup>6</sup>, threats, and statements that went as far as media harassment of dissidents<sup>7</sup>. According to the experts, a climate of State-sanctioned impunity generally contributes to the growth of violence in the country, including domestic violence<sup>8</sup>. In addition, the experts noted with concern the deployment of the PMC "Wagner" on the territory of Belarus<sup>9</sup>, which creates risks of violation of the personal integrity of citizens by armed members of the group, who once disobeyed the orders of the competent authorities of the Russian Federation.

In general, the situation remains unchanged with regard to the failure to take appropriate measures in response to threats, intimidation and violence emanating from public or private actors. Experts note the continued intensive harassment of lawyers working on "political" cases and the use of administrative arrests and subsequent revocation of licenses as a repressive mechanism for this group<sup>10</sup>.

- **Protection against arbitrary arrest or detention**

In 2023, there were no changes that attest to bringing Belarusian legislation and law enforcement practice in line with the international obligations of the state to protect against arbitrary detention:

1. There is still no possibility to automatically place detention, custody of suspects or accused in criminal cases within the sphere of judicial control (the court verifies the legality and validity of the

<sup>1</sup> <https://spring96.org/ru/news/113269>

<sup>2</sup> See National Human Rights Index: Right not to be subjected to torture, cruel, inhuman or degrading treatment or punishment (2023), component "Treatment of persons subjected to any form of detention or imprisonment"

<sup>3</sup> On strengthening border crossing controls , P. 24:

<https://trends.belhelcom.org/storage/reviews/February2024/gc1h07866DDq8G3X17sq.pdf>;

<https://spring96.org/ru/news/113903>. <https://spring96.org/ru/news/113716>

<sup>4</sup> <https://penbelarus.org/2023/11/13/monitoring-narushenij-kulturnyh-prav-i-prav-cheloveka-v-otnoshenii-devatelej-kulturny.html>

<sup>5</sup> See National Human Rights Index: Right to liberty and security of person, Expert Commentary (2022):

[https://belhelcom.org/sites/default/files/3.\\_pravo\\_na\\_svobodu\\_i\\_lichnyu\\_neprikosnovennost\\_2022\\_1.pdf](https://belhelcom.org/sites/default/files/3._pravo_na_svobodu_i_lichnyu_neprikosnovennost_2022_1.pdf)

<sup>6</sup> On the increasing use of hate speech in state media against the LGBT community, see.

<https://jt.info/2023/12/29/monitoring-yazyika-vrazhdyi-v-otnoshenii-lgbtk-v-smi-belarusi-v-2023-godu/>, about the increased stigmatization of Childfree and "anti-Westernism" see <https://mediaiq.info/otchjot-po-rezultatam-monitoringa-media-iq-za-2023-god>

<sup>7</sup> <https://mediaiq.info/karajushhaya-dlan-propagandy>, <https://mediaiq.info/my-budem-sypat-vam-etu-sol-na-rany-dalshe-bahmut-ocherednoj-vitok-oskorblenij-i-ugroz-ot-azarjonka>, <https://mediaiq.info/otchjot-po-rezultatam-monitoringa-media-iq-za-2023-god>

<sup>8</sup> <https://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>

<sup>9</sup> <https://news.zerkalo.io/economics/47223.html>

<sup>10</sup> <https://drive.google.com/file/d/1yvUuPG5pOt9Gc6u7WoK-Ne1Wzk8SSZYy/view>



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application of detention or preventive measure only in case of appeal; preventive measures restricting personal freedom are authorized by the prosecutor);

2. Periods of pretrial detention are also determined by the procurator and are subject to judicial review only in connection with the filing of a complaint by the accused; there is no proper justification for the need to extend such periods;

3. The assessment of the reasonableness of remand in custody is limited to verification of compliance with the formal requirements of the Code of Criminal Procedure (CCP); no proper justification for the impossibility of applying another preventive measure is provided either in the decisions on the application of the preventive measure/extension of the time limit or in the court rulings issued following the examination of complaints.

The experts note cases of arbitrary detentions contrary to the requirements of national legislation<sup>11</sup> and also draw attention to the qualitative deterioration of the situation due to the tendency to systematically use border “questioning” to seek grounds for administrative or criminal prosecution of persons who may be considered dissidents. This “questioning” may be accompanied by arbitrary checks of border crossing equipment, including personal correspondence, saved and archived communications and publications, with the uncertain legal status of the interviewees and lack of due process safeguards during such actions. Detected photos from peaceful protests, subscriptions to “banned” resources, and messages in “banned” chats become grounds for detention and subsequent prosecution: according to Viasna, at least 207 people, including citizens of Lithuania, Ukraine, and Russia, were detained at the border in 2023<sup>12</sup>. During the review period, the practice of summoning employees of various state organizations and institutions for “conversations” with the management or employees of the Ministry of Internal Affairs and the KGB became more and more frequent; in some cases, people were taken from their homes or places of work, the “conversation” with pressure could last up to 10 hours, during that time the person was in an uncertain procedural status without the possibility to contact relatives and a lawyer, without access to food and medicine<sup>13</sup>.

The overall situation in terms of protection from arbitrary detention continues to deteriorate due to the continued harassment of lawyers and the narrowing of opportunities to obtain quality legal assistance in “political” cases.

In 2023, deprivation of liberty continued to be used as a punishment for the legitimate exercise of rights and freedoms. The “anti-extremist” legislation and its application continued to develop: the number of prosecutions on “extremist” grounds increased<sup>14</sup>, allowing the state to suppress freedom of

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<sup>11</sup> In particular, it is known about the administrative detention of a woman with a dependent minor child, which lasted more than 3 hours, which is prohibited by paragraph 4 of Article 8.4 of the Procedural-Executive Code of Administrative Violations.

<sup>12</sup> <https://spring96.org/ru/news/113903>

<sup>13</sup> <https://penbelarus.org/2023/11/13/monitoring-narushenij-kulturnyh-prav-i-prav-cheloveka-v-otnoshenii-deyatelej-kultury.html>

<sup>14</sup> <https://humanconstantia.org/obzor-borby-s-ekstremizmom-v-belarusi-za-yanvar-mart-2023/>



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expression<sup>15</sup>, the right of access to information<sup>16</sup>, freedom of association<sup>17</sup>, practice detention and imprisonment as a result of criminal prosecution<sup>18</sup> of persons who financially supported solidarity funds and non-governmental initiatives arbitrarily recognized as "extremist"<sup>19</sup>. In addition, experts note an increase in the practice of *incommunicado* detention of political prisoners, which, like other practices of prohibited treatment of prisoners, is used to punish the exercise of human rights and freedoms<sup>20</sup>.

	2020 <sup>21</sup>	2021 <sup>22</sup>	2022 <sup>23</sup>	2023 <sup>24</sup>
Number of persons convicted in politically motivated criminal cases (as a minimum)	Known of more than 650 persons subject to criminal proceedings during the election and post-election period	1 285	1 242	1 603
Number of detainees (as a minimum)	More than 31,000	6 443	6 381	6 500

The treatment of political detainees and prisoners remains inhumane, inconsistent with the formal aims of custodial measures:

- detainees continue to be forced (often with physical violence) to publicly "apologize" and "confess guilt" on camera<sup>25</sup>;
- a targeted policy of segregation and discrimination against political prisoners in places of deprivation of liberty, worsening their conditions of detention in comparison with other prisoners. They are subjected to particularly harsh conditions of serving their sentences, especially strict control over compliance with the requirements of the regime, and restrictions not provided for by law, including deprivation of parcels and packages, including medicines, and restriction of correspondence,

<sup>15</sup> <https://baj.media/be/analytics/ekstremizm-i-media-analitika-bazh>

<sup>16</sup> Ibid., pp. 12-13, 20.

<sup>17</sup> See: National Human Rights Index: the right to freedom of association: expert commentary (2023), p. 6

<sup>18</sup> In 2023, the number of criminal cases on charges of establishing, leading and participating in "extremist formations", financing "extremist" and "terrorist activities" increased, [https://spring96.org/files/reviews/ru/review\\_2023\\_ru.pdf](https://spring96.org/files/reviews/ru/review_2023_ru.pdf), p. 2

<sup>19</sup> On the arbitrariness of the procedure for recognizing a group of citizens as an "extremist formation" (with a subsequent prohibition on financing the activities of the "formation" when this norm is applied retroactively), see pp. 21-23, <https://baj.media/be/analytics/ekstremizm-i-media-analitika-bazh>; on persecution practices: <https://humanconstantia.org/prigovory-za-finansirovanie-terrorizma-i-ekstremistskie-startap-haby-obzor-borby-s-ekstremizmom-v-belarusi-za-iyul-sentyabr-2023/>

<sup>20</sup> <https://www.ohchr.org/ru/press-releases/2023/05/belarus-must-release-all-detainees-held-political-grounds-and-protect-their>

<sup>21</sup> <https://spring96.org/ru/news/101195>

<sup>22</sup> <https://spring96.org/ru/news/106328>

<sup>23</sup> <https://spring96.org/ru/news/110468>

<sup>24</sup> [https://spring96.org/files/reviews/ru/review\\_2023\\_ru.pdf](https://spring96.org/files/reviews/ru/review_2023_ru.pdf)

<sup>25</sup> [https://spring96.org/files/reviews/ru/review\\_2023\\_ru.pdf](https://spring96.org/files/reviews/ru/review_2023_ru.pdf), p. 13



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deprivation of visits from family, spouses and lawyers, solitary confinement in punitive isolation cells and cell-type facilities, forced low-paid work in harsh conditions, and the practice of false accusations leading to more severe imprisonment<sup>26</sup>;

- various ways of inflicting particular suffering on political prisoners in colonies and prisons: beatings by persons acting in an official capacity<sup>27</sup> and by other prisoners acting on the instructions and with the knowledge of the administration<sup>28</sup>, additional deprivation of liberty in the form of placement in punitive isolation cells, cell-type facilities, solitary confinement, prison for minor or fictitious offenses, prolonged *incommunicado* detention<sup>29</sup>;

- the state of health of defendants is still not taken into account when imposing punishment: people with disabilities, chronic illnesses, and the elderly find themselves in places of detention under the above-mentioned conditions<sup>30</sup>;

- among others, political prisoners are still not provided with timely, adequate medical care<sup>31</sup>. In 2023, the lack of medical care led to the death of two political prisoners, Ales Pushkin and Nikolai Klimovich<sup>32</sup>.

The state continues to develop the system of compulsory rehabilitation centre (CRC)<sup>33</sup>. According to experts, the system in its current form does not guarantee effective protection from arbitrary hospitalization and from compulsory psychiatric and medical treatment. The new version of the law "On the Procedure and Conditions of Referral of Citizens to Compulsory Rehabilitation Centers and Conditions of Stay in them" simplifies the procedure for admission to CRC and narrows the range of persons who can be admitted to centers<sup>34</sup>. There is also a stricter procedure for the isolation of people with drug addiction: citizens who applied to or were admitted to health care organizations for assistance in poisoning caused by narcotic substances receive an official warning about the possibility

<sup>26</sup> [https://spring96.org/files/reviews/ru/review\\_2023\\_ru.pdf](https://spring96.org/files/reviews/ru/review_2023_ru.pdf)

<sup>27</sup> See information about the beating of ex-presidential candidate and political prisoner Viktor Babaryka: <https://planbmedia.io/down/profilakticheskie-besedy-v-vide-pytok-no-ved-bumerang-vernetsya.html>

<sup>28</sup> The situation of political prisoner Polina Sharendo-Panasiuk is illustrative: <https://news.zerkalo.io/life/44122.html>

<sup>29</sup> [https://spring96.org/files/reviews/ru/review\\_2023\\_ru.pdf](https://spring96.org/files/reviews/ru/review_2023_ru.pdf)

<sup>30</sup> Among many others, see the situation of Ryhor Kastusiou, who noted the deterioration of his health in detention (in 2023, the colony administration refused to inform the political prisoner of the results of oncological tests):

<https://prisoners.spring96.org/ru/person/ryhor-kastusiou>, Pavel Kuchynski (convicted for comments on the Internet), who has the first disability group (stage 4 Hodgkin's lymphoma): the condition of the political prisoner has deteriorated markedly in detention, the inflammatory process has begun. Pavel needs a bone marrow transplant, but due to the imprisonment and conditions of detention it is impossible to perform it: <https://prisoners.spring96.org/ru/person/pavel-kuczynski>.

<sup>31</sup> On the lack of individualized therapy for HIV-positive persons in places of detention: <https://news.zerkalo.io/life/55869.html>

<sup>32</sup> <https://news.zerkalo.io/economics/43524.html>, <https://spring96.org/ru/news/111634>

<sup>33</sup> See presidential decree No. 333 of October 19, 2023, providing for the establishment of a new CRC at a correctional facility, <https://pravo.by/document/?guid=12551&p0=P32300333>; <https://spring96.org/ru/news/113235>

<sup>34</sup> [https://belhelcom.org/sites/default/files/3\\_pravo\\_na\\_svodou\\_i\\_lichnyu\\_neprikosnovennost\\_2022\\_1.pdf](https://belhelcom.org/sites/default/files/3_pravo_na_svodou_i_lichnyu_neprikosnovennost_2022_1.pdf), p. 5-6, footnote 27.



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of being sent to CRC. The second such referral within a year will be the basis for a decision on referral to CRC<sup>35</sup>. In 2023, compulsory medical measures continued to be imposed on politically motivated grounds<sup>36</sup>; in addition, it became known that persons held in CRC may also be arbitrarily placed on a discriminatory register as "prone to extremist activity", which confirms the inconsistency between the declared goals of "medical and social rehabilitation" and the actual treatment of prisoners, aimed at isolating people perceived by the state as dissidents<sup>37</sup>.

Given the lack of safeguards against the arbitrary application of such mechanisms, as well as an effective and fair judicial system, experts have raised concerns about the 2023 Law on the Amendment of Codes related to Criminal Responsibility, which, among other things, expands the scope of persons who may be subjected to forced treatment to include persons suffering from pedophilia<sup>38</sup>.

According to experts' estimates, in 2023, the use of the practice of arbitrary extension of the term of imprisonment using Article 411 of the Criminal Code (CC) under the pretext of punishment for malicious disobedience of the administration of the correctional institution increased. By the end of 2023, at least 29 political prisoners were convicted under this article (and thus received from a few months to two additional years of imprisonment to the original sentence), and criminal cases under Article 411 of the CC were opened against another 32 people.<sup>39</sup>

In 2023, the right to fair compensation for arbitrary arrest or detention remains virtually inaccessible: effective national remedies are still lacking, and opportunities to obtain quality legal aid are steadily decreasing. Due to the denunciation by Belarus of the Optional Protocol to the International Covenant on Civil and Political Rights, since February 8, 2023, it has been impossible to file an individual complaint with the HRC against the actions of the Belarusian authorities<sup>40</sup>. There are still no mechanisms to ensure the enforcement of decisions already taken by international bodies<sup>41</sup>.

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<sup>35</sup> Law of 21.07.2023 N 301-3 "On Amendments to Laws on Compulsory Treatment and Medical and Social Re-adaptation", <https://pravo.by/document/?guid=12551&p0=H12300301>

<sup>36</sup> See the situation of Igor Popov, convicted of insulting the president, insulting a representative of the authorities and threatening to use violence against an employee of the internal affairs bodies, who was sentenced to indefinite compulsory treatment with strict supervision, <https://news.zerkalo.io/life/46769.html?c>; Valery Yarotsky, who was accused of defaming the president, <https://news.zerkalo.io/life/46192.html>

<sup>37</sup> <https://spring96.org/ru/news/114646>

<sup>38</sup> <https://pravo.by/document/?guid=12551&p0=H12400349>

<sup>39</sup> [https://spring96.org/files/reviews/ru/review\\_2023\\_ru.pdf](https://spring96.org/files/reviews/ru/review_2023_ru.pdf), c. 11

<sup>40</sup> <https://www.defendersbelarus.org/news/tpost/0saxehvfh1-poslednii-den-podachi-zhalob-v-kpch-dlya>

<sup>41</sup> Paragraphs 173 - 181 of the Report on the Serious Threat to the OSCE Human Dimension in Belarus from November 5, 2020 of the OSCE Fact-Finding Mission to Belarus (2023) in accordance with paragraph 12 of the Moscow Mechanism Document



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

There are still widespread practices of arbitrary checks of citizens' phones - at border crossings<sup>42</sup>, "preventive conversations"<sup>43</sup>, "raids" on institutions. The practice of arbitrary checks of citizens' phones - at border crossings, "preventive talks", "raids" on institutions and enterprises<sup>44</sup>, and other forms of interaction with state bodies - may be followed by detention and further loyalty testing, with the possibility of criminal proceedings. The practice of perfunctory, formal charges remains, which does not allow to understand what was the real reason for the arrest, as well as what charges will be considered by the court if the criminal case is brought to court. Often detailed and conditionally "understandable" charges are brought against persons practically at the moment of the end of the preliminary investigation.

The right of every person arrested or detained on criminal charges to be brought before a court as a matter of urgency is still not ensured.

Experts note the deliberate denial of access to legal aid to detainees and political prisoners: the competent authorities continue to resort to arbitrary "admission" procedures<sup>45</sup>. Access of lawyers to detainees in administrative proceedings remained completely excluded. It was practically impossible for lawyers to visit defendants: the ban on visiting temporary detention facilities and centers for isolation of offenders, introduced in 2020 as an "anti-epidemic measure", has not yet been lifted<sup>46</sup>. Court hearings on cases of administrative offenses were held in the format of videoconferencing, which did not provide opportunities for the preparation of the defense and confidentiality of consultations between the lawyer and the client. Unimpeded access of lawyers to clients serving sentences in colonies was also not ensured. According to experts, it is virtually impossible to obtain quality legal assistance in politically motivated cases - especially in terms of providing a lawyer of the client's choice and the possibility to count on the presence of the same defense counsel at different stages of the process.

In addition, since February 2023, the most prominent political and public figures have been held in correctional colonies under *incommunicado* conditions<sup>47</sup>. There are reports of continuing practices of obstruction of confidential communication between lawyers and clients in penitentiary institutions: the colony administration required lawyers to present documents brought by them, prohibited lawyers to

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<sup>42</sup> <https://spring96.org/ru/news/112165>

<sup>43</sup> <https://nashaniva.com/ru/311467>, <https://ru.hrodna.life/2023/03/03/zaderzhanie-benjakoni/>

<sup>44</sup> <https://spring96.org/ru/news/113649>, [https://t.me/lida\\_grab\\_court/828](https://t.me/lida_grab_court/828), <https://spring96.org/ru/news/111959>

<sup>45</sup> P. 7, <https://drive.google.com/file/d/1yvUuPG5pOt9Gc6u7WoK-Ne1Wzk8SSZYy/view>

<sup>46</sup> Id.

<sup>47</sup> There is no information about the state of health and fate of Maria Kalesnikava (from February 15, 2023), Mikalai Statkevich (from February 10, 2023), Siarhei Tsikhanouski (from March 9, 2023), Ihar Losik (from February 20, 2023), Viktor Babaryka (from February 6, 2023), Maksim Znak (from February 9, 2023) and other political prisoners., <https://spring96.org/ru/news/113976>



bring any documents (except blank sheets of paper); there are known cases of personal searches of lawyers, seizure of working documents containing attorney-client privilege<sup>48</sup>.

In politically motivated trials, the use of pre-trial detention has actually become the general rule. At the same time, the expediency of using this particular preventive measure is not properly assessed and justified.

According to experts' assessments, the conduct of court proceedings within a reasonable time for pretrial detainees is still not ensured.

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<sup>48</sup> P. 41, <https://drive.google.com/file/d/1yvUuPG5pOt9Gc6u7WoK-Ne1Wzk8SSZYy/view>



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