Belarus Human Rights Index

http://index.belhelcom.org

2019

Right to a fair trial

Score: 6.0

Including scores by component:

- Equality before courts and tribunals – 6.1
- Fair and public hearing by a competent, independent and impartial tribunal – 5.5
- Procedural safeguards in criminal proceedings – 6.1
- Review by a higher tribunal and compensation in cases of miscarriage of justice – 6.3

The right to access the courts is enshrined in the Constitution and set out in detail in the relevant legislation. The procedural codes contain provisions guaranteeing the equality of citizens before the law and the courts, regardless of origin, social and financial status, race and nationality, gender, education, language, attitude to religion, political and other convictions, type and nature of occupation, place of residence, length of residence in the locality and other circumstances. Foreign nationals and stateless persons, including refugees, foreigners who have been granted subsidiary protection or asylum, as well as those seeking protection, have the right to unimpeded access to the courts and enjoy all civil procedural rights therein on an equal footing with citizens of Belarus. The latter, however, are granted shorter time limits for appealing against decisions taken in their regard[1]. At the same time, foreigners whose permanent residence permits in Belarus have been revoked, in particular, are *de facto* unable to exercise their right to appeal against a court decision rejecting their complaint against the relevant decision of a state body.

The principle of equality of arms is also enshrined in law. In practice, however, according to experts, there are frequent instances where this principle is not observed. There is evidence, in particular, of disproportionate compliance with motions from the defence and prosecution in criminal proceedings. There is no liability for failure to comply with requests for information made by lawyers.

[1] See Article 70 of Law No. 354-Z of the Republic of Belarus of 23 June 2008 "On the Granting of Refugee Status, Subsidiary Protection, Asylum and Temporary Protection to Foreign Nationals and Stateless Persons in the Republic of Belarus"

With regard to judicial independence, a number of issues remain relevant that undermine the independence of judges and affect the realisation of the right to a fair trial[2]. The President has the power to hold any judge accountable or dismiss them without initiating disciplinary proceedings[3]. Moreover, the President's decision to terminate a judge's powers may be taken either on the recommendation of the President of the Supreme Court or without such a recommendation. The Code of Judicial Organisation does not provide for the possibility of a judge appealing against the President's decisions to impose disciplinary sanctions. In its Concluding Observations on Belarus's fifth periodic report, the Human Rights Committee expressed concern that the independence of the judiciary continues to be undermined by the President's role in the selection, appointment, reappointment, promotion and dismissal of judges and prosecutors and his control over these processes, as well as the lack of guarantees of irremovability for judges, who are initially appointed for a five-year term with the possibility of reappointment for a further term or for an indefinite period. It also expressed concern that judges' salaries are determined by presidential decree rather than by law[4].

When bringing a case to court, claimants must pay a court fee. Claims of a pecuniary nature are subject to the following court fees: claims of a pecuniary nature – 5% of the value of the claim; divorce proceedings – 4 base units[5]; claims not subject to valuation – 3 base units. The law provides for the possibility of granting exemptions from state fees[6]. Furthermore, the law stipulates that a court or judge is entitled to fully or partially exempt from the payment of state fees in court cases involving individuals, based on their financial circumstances regarding items subject to state fees that are not related to the conduct of business activities[7]. Among the problems identified by experts were the ineffective mechanism for exemption from court fees and difficulties in accessing the courts for prisoners serving sentences, including due to an inability to pay court fees.

---

[2] See the Alternative Report of the National Human Rights Coalition on the Implementation by the Republic of Belarus of the International Covenant on Civil and Political Rights for the 124th session of the UN Human Rights Committee: https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/BLR/INT_CCPR_CSS_BLR_31288_R.pdf, paragraphs 94–100

[3] See Article 102 of the Code on the Judicial System and the Status of Judges

[4] See the Concluding Observations of the Human Rights Committee on the fifth periodic report of Belarus, CCPR/C/BLR/CO/5, paragraph 39

[5] On average, 1 base unit amounts to approximately 10% of the subsistence minimum budget in Belarus

[6] See Article 285 of the Tax Code

[7] See Article 130 of the Code of Civil Procedure

The Constitution of the Republic of Belarus provides that, as a general rule, proceedings in all courts are public, and closed hearings are permitted only in cases specified by law. There are instances of unjustified closed proceedings in corruption cases[8] and other trials[9].

Experts noted frequent instances of failure to observe the guarantees of a fair trial, including the rights to a public hearing, access to a lawyer and the principle of the presumption of innocence during trials of opposition representatives and civil society activists, including throughout 2019. Experts also see a problem in the fact that court decisions are not published, with rare exceptions (economic cases), although this is a technically feasible task.

In violation of the principle of the presumption of innocence, state-run newspapers and television channels use language that implies the guilt of alleged criminals long before the start of legal proceedings. A violation of the principle of the presumption of innocence of those accused of criminal offences is the fact that, during the trial, they are still held in glass or metal cages and sometimes appear in court in handcuffs and in a bent position.

The problem is that persons accused of a crime are not promptly informed of the nature and grounds of the charges against them, as required by international standards on the right to defence. Accused persons also do not always have full access to the materials of the criminal case, in particular to the materials of operational and investigative activities.

In practice, there are frequent instances of defence witnesses being refused the opportunity to be examined during the trial stage on the grounds that they were not examined during the preliminary investigation stage. The law provides for the possibility of reading out witness statements if it is not possible to cross-examine them in court. Consequently, in such cases, defendants are deprived of the opportunity to challenge the evidence given by witnesses during the pre-trial investigation. At the same time, the courts endeavour to hear all witnesses so that there are no formal grounds for overturning the verdict.

According to experts, the right to defence is not effectively guaranteed. First and foremost, it should be noted that there is a lack of genuine independence and self-governance among bar associations, as well as a lack of freedom to practise the legal profession. The Ministry of Justice, unlike the bodies of bar self-governance, has the broadest powers in the administration of the legal profession; in particular, it grants admission to the profession through licensing and exercises control over both the activities of individual lawyers and the legal profession as a whole. There is no information whatsoever on procedures allowing for a genuine appeal against the revocation of a licence. The

[8] Case concerning the former assistant to the President of Belarus – inspector for the Grodno region: https://www.belta.by/incident/view/sergej-rovnejko-prigovoren-k-12-godam-kolonii-za-vzjatki-353940-2019, trial of Alexander Sharak, director of the enterprise ‘Belmedtechnika’: https://news.tut.by/society/664894.html

[9] The trial of political prisoner D. Palienko was originally scheduled to be held in camera, but following the defendant’s attempt to slit his wrists, the case was heard in open court: https://news.tut.by/society/657700.html

Qualification Commission includes representatives of the executive authorities. These problems prevent lawyers from exercising their powers freely and without unlawful interference. It is not uncommon for lawyers involved in politically motivated criminal or administrative cases to be subjected to various forms of pressure. In practice, there are frequent instances where defendants or those under administrative arrest are arbitrarily denied access to a lawyer, citing a lack of available offices.

A duty lawyer may be summoned for a detainee if the participation of a defence lawyer in a criminal case is mandatory. In such cases, legal aid is provided at the expense of the local budget at fixed rates, which are very low, thereby reducing lawyers' motivation to take on such cases. In the event of a conviction, the convicted person must reimburse the state for the costs of legal assistance, and at a higher rate than that paid to the lawyer, except in cases where the case is discontinued on grounds of rehabilitation or an acquittal is handed down.

The Code of Criminal Procedure stipulates that evidence obtained in breach of the law is legally invalid and may not form the basis of a charge or be used to prove guilt. The law stipulates that evidence is deemed inadmissible if it has been obtained, in particular, in violation of a citizen's constitutional rights and freedoms[10]. Nevertheless, there are reports that statements obtained through various forms of coercion are used as evidence in court[11].

Belarus lacks a juvenile justice system. As a general rule, a person who has reached the age of sixteen at the time of committing a crime is subject to criminal liability, except in cases provided for in the Criminal Code (Article 27). The age of criminal responsibility for drug-related offences is 14, as a result of which dozens of children are sentenced to disproportionately long prison terms. In its Concluding Observations on the combined fifth and sixth periodic reports of Belarus, the Committee on the Rights of the Child expressed concern at the use of a harsh punitive approach towards children, whilst a system of restorative justice for children has yet to be established; the absence of provisions mandating the involvement of lawyers, legal guardians, teachers, psychologists and relevant authorities in administrative and criminal proceedings concerning child offenders; the lowering of the age of criminal responsibility for drug-related offences from 16 to 14, which allows for the detention of children in early adolescence; the increase in the number of convictions of girls; the possibility of imposing long prison sentences of up to 20 years even on children committing offences for the first time, particularly for drug-related offences[12].

The law provides for the right to appeal court rulings to higher courts. However, decisions and sentences handed down by Supreme Court judges are not subject to appeal, which is a significant

---

[10] See the Criminal Procedure Code of the Republic of Belarus, Article 105

[11] See, for example, the Concluding Observations of the Human Rights Committee on the fifth periodic report of Belarus, CCPR/C/BLR/CO/5, paragraph 29

[12] Concluding observations of the Committee on the Rights of the Child on the combined fifth and sixth periodic reports of Belarus, 28 February 2020, CRC/C/BLR/CO/5-6, paragraphs 42–43

problem. According to experts, the appeal system in criminal cases is extremely ineffective, and appeal courts are reluctant to expand the evidence base. The judicial system misinterprets the principle of the finality of court decisions (in essence, any overturned court decision is treated as an 'exceptional circumstance'), which ultimately harms the person appealing the court ruling.

The defendant has the right to examine the minutes of the court hearing and submit comments on them, as well as to request that entries be made in the minutes regarding circumstances which, in their opinion, should be noted. However, as experts have noted, in practice, convicted persons' access to court documents is hampered. According to experts, documents are effectively obtained through unofficial channels, and passages from the case file are copied out by hand, etc.

In accordance with the law, damage caused as a result of an unlawful conviction is compensated in full, regardless of the fault of officials of the criminal prosecution authorities and the court, in the manner prescribed by legislative acts. A person unlawfully convicted is entitled to compensation for non-pecuniary damage. Compensation is awarded through civil proceedings, with exemption from the state fee for filing a claim. At the same time, according to experts, the legislation contains 'loopholes' designed to avoid paying compensation: the requirement to recognise the actions that formed the basis for the conviction as unlawful. The reversal of a conviction does not in itself entail compensation for harm. An admission of guilt during the investigation results in a refusal to award compensation.

Sources:

1. 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
2. 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, May 2018, https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/BLR/INT_CCPR_CSS_BLR_31288_R.pdf
3. Report of the Working Group on the Universal Periodic Review A/HRC/46/5, available at: https://undocs.org/ru/A/HRC/46/5
4. Coalition report by Belarusian human rights organisations on the fulfilment by the Republic of Belarus of its human rights obligations under the third cycle of the Universal Periodic Review, available at: https://belhelcom.org/sites/default/files/ru_by_upr_coalition_report.pdf

5. Analysis of the implementation of recommendations received by the Republic of Belarus under the second cycle of the Universal Periodic Review, available at: https://belhelcom.org/sites/default/files/ru_by_appendix_analysis_of_implementation.pdf

6. Independence of the legal profession. Right to a defence (Article 14 of the International Covenant on Civil and Political Rights). Report prepared by the Helsinki Foundation for Human Rights in partnership with the World Organisation Against Torture for the 36th session of the Human Rights Council as part of the 3rd UPR cycle, available at: https://www.hfhr.pl/wp-content/uploads/2019/11/HFHR_OMCT_UPR_Belarus_ru.pdf.

7. The human rights situation in Belarus in 2019: an analytical review. Viasna Human Rights Centre, available at: https://spring96.org/files/misc/review_2019_ru.pdf