

Belarus Human Rights Index

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2022

Right to a fair trial

Expert Commentary

The score: 3.0

Including scores by component:

- Equality before courts and tribunals 2.6
- Fair and public hearing by a competent, independent and impartial tribunal 3.2
- Procedural guarantees in criminal proceedings 2.8
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The state guarantees the right to a fair trial in several articles of the Constitution (Articles 11, 22, 25 part 2, 26, 27, 34 part 2, 40, 59, 60, 62, 110, 114, 115)¹, which are further disclosed in legislative acts. The Republic of Belarus has been a party to the International Covenant on Civil and Political Rights (the Covenant) since 1973.² The right to a fair trial is enshrined in article 14 of the Covenant. A description of the basic situation with the implementation of the right to a fair trial can be found in the commentary for 2019. Assessing the situation in 2022, experts gave lower scores than in 2021, based on the reasons stated below.

The significant deterioration of the situation in the context of the right to a fair trial is largely due to the introduction of “special proceedings” into the Criminal Procedure Code (hereinafter the Code of Criminal Procedure)³ - absentee proceedings in criminal cases against accused persons located outside of Belarus, under “protest” articles - acts of terrorism, genocide, mercenarism, treason, sabotage, creation of an extremist group or participation in it, mass riots, calls for sanctions.

“Absentee” trials involve the consideration of criminal cases without defendants – citizens located outside of Belarus – and in cases of an exclusively political nature, in violation of the principle of non-discrimination.⁴

¹ Constitution of the Republic of Belarus, <https://president.gov.by/ru/gosudarstvo/constitution>

² Ratification of the International Covenant on Civil and Political Rights by country, https://treaties.un.org/Pages/ViewDetails.aspx?chapter=4&clang=_en&mtdsg_no=IV-4&src=IND

³ Law of the Republic of Belarus July 20, 2022 No. 199-Z “On amendments to the Criminal Procedure Code of the Republic of Belarus”, <https://pravo.by/document/?guid=12551&p0=H12200199&p1=1&p5=0>

⁴ Para. 3d) Art. 14 Covenant



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The general condition for starting special proceedings is the receipt of a refusal to extradite the accused person or failure to receive a response to the extradition request within 6 months. However, by decision of the Prosecutor General (Chairman of the Investigative Committee or Chairman of the KGB and the consent of the Prosecutor General), special proceedings can be used in other cases.

Experts believe that the list of crimes for which special proceedings can be initiated is not exhaustive, and the refusal of extradition or the lack of response to a request for extradition is not decisive.

From the moment a decision is made to conduct special proceedings (it is agreed upon by the prosecutor), the defendant's defense attorney must necessarily participate in the process. Almost never in such a situation is there a lawyer of choice (with whom an agreement has been concluded), so the investigator appoints a duty lawyer. Only the defense attorney is sent all notifications and copies of procedural decisions regarding the accused; there is no provision for any connection between the body conducting the criminal proceedings and the accused himself. The right to familiarize yourself with documents (criminal case materials, expert opinions, etc.) also passes to the defense attorney in full.

Posting information about the start of special proceedings, the appointment of a court hearing, and the results of the court hearing on the Internet is considered an appropriate procedure for notifying the accused. In case of extradition of the accused by a foreign state or his personal appearance, the case is considered in accordance with the general procedure. At the end of 2022, special proceedings are being conducted against 17 people, two of them have already been convicted.⁵

● **Equality before courts and tribunals**

The situation with the right to go to court without any discrimination, according to experts, has worsened in 2022. Formally, this right is guaranteed to everyone, but in practice its implementation depends on the presence of citizenship of the Republic of Belarus, the status of a refugee or stateless person, or other status. Discrimination on the basis of political opinion is also particularly noticeable.

According to experts, in 2022 the situation with access to court for persons deprived of liberty has worsened compared to 2021. In fact, it becomes impossible to appeal disciplinary sanctions or file a complaint in connection with the forced sale of seized real estate in which minors live, which is violation of the right to a fair trial and access to it. Thus, to file a complaint, a person in custody must be issued a power of attorney for a representative. It is virtually impossible to issue powers of attorney to represent cases in court or for other actions, since the heads of places of detention refuse to certify such powers of attorney. In addition, persons held in custody and included in the lists of those involved in extremist⁶, terrorist⁷ activities, cannot issue powers of attorney due to their inclusion in these lists. Those held in isolation centers for offenders or in temporary detention centers actually cannot appeal

⁵ P. 8, Report of the Human Rights Center "Viasna" "Сітуацыя з правамі чалавека ў Беларусі ў 2022 годзе. Аналітычны агляд", https://spring96.org/files/misc/annual_review_2022_final_be.pdf (hereinafter referred to as the Report of the Human Rights Center "Viasna")

⁶ <https://www.mvd.gov.by/ru/news/8642>

⁷ <http://kgb.by/ru/perechen-inf-ru/>



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decisions on administrative cases (“there are no pens to write a complaint; it is impossible to pay the state fee, if this is necessary in accordance with the type of claim).

As a violation of the right to equal access to court, experts note the situation with the inability to appeal the inclusion of Internet resources in the Republican List of Extremist Materials (hereinafter referred to as the List). The list continues to grow, and cases of including materials on the List are considered without involving the owners of such Internet resources (they are not notified of the process). Subsequently, when the owner, having learned about the decision to include his Internet resource in the List, goes to court to appeal it, the court refuses to accept the complaint, citing a formal reason: the owner is not an interested party and does not have the right to file a complaint, since he did not participate during the process when a decision was made to recognize an Internet resource as extremist.

Equality of competitive opportunity is guaranteed by law, however, in practice it does not always work. The parties to criminal proceedings, especially in politically motivated cases, have traditionally been unequal. Inequality increased significantly in 2021 and worsened in 2022, when most political cases were delayed, it was difficult for the accused to find a lawyer (this was influenced by repression of the legal profession, a shortage of qualified lawyers and the departure of some lawyers from the profession due to civil commitment), and the work of lawyers itself is hampered by unfounded prohibitions and obstacles from government bodies.

Since 2021, the investigation has been forming multi-volume cases, which are physically impossible for the defense to get acquainted with within the established total period of 1 month, and the deadlines for such cases are not increased. Case materials may not be photographed or copied. At court hearings in closed courts and open courts on the territory of correctional institutions, lawyers are prohibited from using technical means (computers, etc.), while the prosecution widely and freely use technical means during the hearings.

As experts note, in 2022, the courts began to systematically question the accused, victims, and witnesses by the defense as a last resort, after the interrogation was conducted by the prosecution, pre-trial materials were read out and contradictions were eliminated. Questioning of the accused, witnesses and victims by the defense in this order is devoid of any meaning in the process and does not correspond to the principle of equality of arms.

In 2022, in politically motivated cases, the practice of the court not satisfying requests to call witnesses, request materials from a person against whom administrative or criminal proceedings are ongoing, the plaintiff (when filing a complaint against the actions of officials), or the defense has become widespread. At the same time, according to experts, similar requests from the opposing party are granted by the court without delay.

The absentee proceedings introduced in 2022 also violate the principle of equality before the court, since the accused in such a procedure is, in principle, excluded from the adversarial process, since special proceedings are initiated at the moment when the preliminary investigation is practically completed (no later than 15 days before the end of the preliminary investigation period) , and there is



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no mechanism for familiarizing the accused with the charges and case materials. However, in practice, courts refuse to send charges and sentences even if there is a corresponding statement from the accused.

- **Fair and public hearing by a competent, independent and impartial tribunal**

In 2022, there were changes in the legislation on the election of judges. At the 2022 referendum, amendments were made to the Constitution, according to which the All-Belarusian People's Assembly (ABPA) is given the authority to elect the Chairman, Deputy Chairman and judges of the Constitutional Court; Chairman, Deputy Chairman and judges of the Supreme Court, and dismiss them from office on the grounds provided by law. This power of the ABPA is exercised at the proposal of the President, previously agreed upon with the Presidium of the ABPA.⁸

Experts express doubts about the independence of the ABPA⁹, and also assume that the main operational powers will be concentrated in the hands of the Presidium of the ABPA, the functions of which will be chaired by the current President. The ABPA is not a “truly” representative body, as stated in the Constitution. As the Venice Commission pointed out, the ABPA “is a redundant body, bearing the stamp of communist “democratic centralism” (which seriously impedes fruitful debate and makes elections predictable). ... its composition and competence are incompatible with the principle of separation of powers; it also entails a strong merger and concentration of powers. His main goal, apparently, is to preserve forever the power of the current President of the Republic and his entourage...”¹⁰

Experts note that changes in the procedure for the appointment and dismissal of judges of the Constitutional Court and the Supreme Court are not aimed at ensuring the independence of the judicial system. The proper method of ensuring the independence of the judiciary is the creation of a judicial council, the composition of which is determined by the judges themselves and partly by parliament, and which should be endowed with constitutional guarantees regarding composition, powers and autonomy.¹¹

Practice reflects the deterioration of the situation in terms of the independence of the judiciary. The judicial system still operates on repression and carries out the “plan”¹². According to experts, it cannot be said that the court is independent, impartial and protected from any interference in the decision-making process. In Belarus, the court performs a decorative function, serving to protect against people disloyal to the regime. According to the observations of experts and the statistics of sentences passed,

⁸ Art. 89-3 Constitution

⁹ See more about the ABPA in the commentary to the Right to take part in the conduct of public affairs 2022

¹⁰ C. 13, [https://venice.coe.int/webforms/documents/?pdf=CDL-AD\(2022\)035-e](https://venice.coe.int/webforms/documents/?pdf=CDL-AD(2022)035-e)

¹¹ P. 10, Judicial Appointments, Report adopted by the Venice Commission, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2007\)028-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2007)028-e)

¹² Brief statistical data on the activities of courts of general jurisdiction in the administration of justice for 2022, https://www.court.gov.by/ru/justice_rb/statistics/5b82a6c416a342a7.html

judges have developed a strong sense of omnipotence if they, in turn, are loyal to the regime. Almost all court decisions in criminal and administrative cases agree with the position of the prosecution. Experts have noted a trend in the career advancement of judges who considered politically motivated cases, especially noticeable in the appointment of judges to the Supreme Court.

The powers of judges can be terminated arbitrarily. Since August 2020, the length of judges' terms of office depends on their loyalty or disloyalty to the regime and government policy towards dissidents. Applications for dismissal from office at one's own request are in fact often not drawn up at one's own request, but are a kind of "cover" for dismissal for political reasons. In 2022, the example of the judge of the Minsk City Court Dmitry Tsykal, who was dismissed from office at his own request, according to the Decree published on January 4, 2022, is notable¹³. At the same time, it is known that earlier Dmitry Tsykal was replaced in the case of a political prisoner when Tsykal stated that he did not see the case as an attempted murder, and therefore would consider the case under Art. 364 of the Criminal Code of the Republic of Belarus (hereinafter referred to as the Criminal Code) "Violence or threat of violence against an employee of internal affairs bodies" (this case is described in the commentary to the assessment of the right to a fair trial for 2021.¹⁴)

Access to justice is formally guaranteed so that no person can be procedurally deprived of his or her right to seek justice. However, experts note that in practice in 2022, discrimination against certain groups of people, especially dissidents, in accessing and exercising the right to go to court has affected overall access to justice.¹⁵

The size of the court fee creates obstacles to access to justice and actually closes access to justice. Experts point to exorbitantly high fees for appealing fines in administrative cases, for example, to appeal a fine of 10 basic units, you must pay a fee of 2 basic units, which is 20% of the fine amount. At the same time, a state fee of 2 basic amounts must be paid for each appeal: to the court of second instance, to the chairman of the court of second instance, to the Supreme Court, to the regional (city) prosecutor, to the Prosecutor General. Thus, a situation arises in which the amount of the state duty actually paid is equal to the amount of the fine. It is important that in case of cancellation of the decision (a positive outcome for the plaintiff), a refund of the state duty is not provided. Experts also point out that the legislation does not provide for an offset mechanism, when the time that the defendant spent in a temporary detention center before trial is counted towards the fine (day-fine). For example, a person served 3 days before trial, and then received a fine (often the maximum) - thereby the person suffered two punishments for one "misdemeanor".

In this regard, experts point to a general decline in the standard of living in Belarus, a decrease in opportunities for third-party support: "donations" to pay fees and fines through solidarity funds are considered by the authorities as financing extremist activities¹⁶, which entails criminal liability,

¹³ <https://pravo.by/document/?guid=12551&p0=P32100517&p1=1&p5=0>

¹⁴ https://belhelcom.org/sites/default/files/5_pravo_na_spravedlivyy_sud_2021.pdf,

¹⁵ See p. 2-3 above

¹⁶ <https://humanconstantia.org/kak-poslednie-gody-v-belarusi-zakonodatelno-izmenyalas-i-uzhestochalas->



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independent human rights organizations that provided financial assistance were forcibly liquidated¹⁷. At the same time, requests for exemption from payment of state duty are granted extremely rarely; experts know of the only case of exemption from payment of duty - partially, by 50%. Experts come to the conclusion that in conditions of a budget deficit, the state is looking for any opportunities to replenish the “treasury.”

Experts also note that citizens do not appeal numerous decisions in civil cases to recover damages caused during mass events in 2020, not seeing prospects for a positive outcome and knowing about the very high state duty. In this regard, experts note that it is necessary to legislatively determine a reasonable upper limit of the state duty.

The court is subject to influence, pressure, intimidation or interference in the administration of justice, especially by the state. Employees of the Ministry of Internal Affairs, ensuring order during hearings, behave extremely arbitrarily in courtrooms, aware of their impunity. Experts cite a case where such employees forced those present at an open court hearing to erase an audio recording from their phone memory right in the courtroom, when the judge read out the verdict. Judges do not react in any way to such and other facts of intimidation.

Pressure on defense lawyers continues. Many lawyers were suspended from practicing law under the pretext of failure to pass certification¹⁸. A system has been created to intimidate lawyers who defend political prisoners. Repression against lawyers is manifested through: removal from the defense, intimidation and harassment for performing professional duties, psychological pressure, arbitrary detention and wrongful imprisonment. Lawyers work in an atmosphere of fear and the constant risk of losing their status, which is why many of them refuse to conduct politically sensitive cases and defend politicians, activists, human rights defenders, and journalists. Those who decide to defend individuals in politically motivated cases cannot perform their duties independently and effectively.¹⁹ Thus, the UN High Commissioner for Human Rights in the Report on the situation of human rights in Belarus notes that “intimidation and punishment of independent lawyers has a serious chilling effect on the legal profession and effectively deprives victims of human rights violations of the right to a fair trial and access to justice.”²⁰

The situation with the consideration of civil cases has not changed compared to 2021, according to experts.

The right to publicity of judicial proceedings is enshrined in the Constitution and procedural legislation,

[otvetstvennost-za-donaty/](#)

¹⁷ C. 14, 22-26, CSO Meter, Belarus 2021, Country Report, https://csometer.info/sites/default/files/2023-04/CSO%20Meter%20Belarus%20Country%20Report%20ENG%200-2_0.pdf

¹⁸ <https://www.defendersbelarus.org/news/tpost/ljl1v8xah1-resheniem-minyusta-prekrascheni-deistviy>

¹⁹ P.110, Report “Кризис белорусской адвокатуры: как вернуть право на защиту” <https://www.defendersbelarus.org/news/tpost/zddo1zimv1-krizis-belorusskoi-advokaturi-kak-vernut>

²⁰ P. 61, [A/HRC/49/71](#)



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but in practice in 2022 the situation worsened: decisions to hold closed court hearings were made unreasonably. For example, a closed trial was held in the criminal case of the coordinator of the HRC “Viasna” Volunteer Service Maria (Marfa) Rabkova; “Viasna” volunteer Andrei Chepyuk and eight other political prisoners, activists of the anarchist movement Akihiro²¹; trial in the case of the Busly liaciać group over political prisoners Alexei Ivanisov and Alexei Gameza, as well as Nikolai Biblis, Andrei Budai, Alexander Muravyov, Alexander Sidorenko; court in the BelaPAN case²²; trial of political prisoner philosopher Vladimir Matskevich²³ and others.

When a decision is made to open a trial, spectator access to the courtroom is often arbitrarily restricted. For example, in the Autukhovich case, it was formally determined that most of the trial would be held in open court. However, in fact, only a few relatives of the accused were allowed to attend the court hearing; other persons were denied access.²⁴ In 2022, repressions against independent media continued in Belarus: recognition of them as extremist organizations or extremist formations, forced liquidation, detention of journalists²⁵. The repressions are systemic in nature and are aimed at the virtual destruction of the independent media sector; in this regard, there are no independent media in Belarus that could attend the meetings and directly observe the progress of the process.

- **Procedural guarantees in criminal proceedings**

The practice of applying criminal law remains arbitrary; the assessment of the prosecution’s evidence is carried out by the court in a manner that is deliberately incorrect in favor of the prosecution.²⁶ Administrative processes continue to take place via videoconferencing without proper assessment of the materials presented by the investigation; decisions are made repeatedly and consistently on the basis of dubious charges.²⁷

Since August 2020, the presumption of innocence in Belarus has been selective. In politically motivated

²¹ <https://spring96.org/ru/news/107592>

²² <https://spring96.org/ru/news/107938>

²³ <https://reform.by/316560-segodnja-nachalsja-sud-nad-filosofom-mackevichem>

²⁴ <https://www.bbc.com/russian/features-61664571>, <https://spring96.org/ru/news/107763>

²⁵ On June 14, the Supreme Court recognized the limited liability company TUT BY MEDIA, previously the largest online resource in Belarus, as an “extremist organization.” During the year, independent media “Nasha Niva”, “Flagstaff”, “KYKY.ORG”, “Euroradio”, “Charter’97”, as well as the so-called “samizdat” - protest print media were recognized as “extremist formations” by decisions of the KGB or the Ministry of Internal Affairs newspapers published and distributed by non-professional journalists: “Honest Newspaper”, “Belarusian Bulletin”, “Protest Belarus”, “Protest Gomel”, “Slovo Belarusov” and “Newspaper “7Chizhey”. See <https://baj.by/ru/analytics/smi-v-belarusi-v-2022-godu-0>

²⁶ P. 42, Report of the Human Rights Center “Viasna” “Уголовное преследование по политическим мотивам. Беларусь 2021-2022 гг.”, https://spring96.org/files/book/ru/2022_politically_motivated_criminal_prosecutions_ru.pdf (hereinafter referred to as the “Criminal Prosecution” Report)

²⁷ P. 15-16, Report of the Human Rights Center “Viasna”



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cases, both administrative and criminal, on the contrary, the presumption of guilt applies. The defendants continue to be kept in cages²⁸, handcuffed inside a cage. There is a state monopoly on the media, as independent media have been virtually destroyed since the summer of 2020, leading to a lack of access to objective information. A propaganda system has been built against dissidents. Hate speech that has escalated into “hate speech” is used on state television and in newspapers²⁹, as well as in pro-government Telegram channels. Those accused in criminal cases are insulted, humiliated, and declared guilty in advance of the charged elements of the crime. Experts note a worsening of this trend in 2022 due to an even more cheeky style of presentation (in particular, in the Telegram channels of the GUBOPiK Ministry of Internal Affairs, which were repeatedly deleted by Telegram³⁰), a feeling of impunity. Examples include publications from 2022 on the affairs of “rail partisans”³¹, Autukhovich³², Kastuś Kalinoŭski regiment³³, which revealed violations of the principle of presumption of innocence. Experts also cite a case where, in a press release about an arrest, an official names as a criminal a person detained on suspicion of committing a crime not related to a political context.³⁴

Often, until the end of the preliminary investigation, people do not know what the claims from law enforcement agencies are. In 2022, the practice of “multi-stage” charges in relation to political cases continued. First, a person is charged with one article, after a while it is already another article or several of them, and by the time of the trial there may be more than ten of them.

The special proceedings procedure, introduced in 2022, does not involve informing a person that they are under investigation and what the charges are. To get acquainted with the case materials, the person must appear in court. This means the need to return to the territory of Belarus, which is avoided by people who were subjected to repression in the context of the 2020 presidential elections. Citizens who are outside the Republic of Belarus and took part in the protests cannot freely return to their country, as the authorities have introduced a system of checking those entering, in which the citizen will be immediately detained at the border, and the subsequent trial (which usually results in a long prison sentence) will take place without meeting minimum fair trial standards.³⁵

The accused do not have enough time and opportunity to prepare their defense. In 2022, according to

²⁸ <https://spring96.org/ru/news/107744>

²⁹ <https://mediaiq.info/otchjot-po-rezultatam-monitoringa-media-iq-za-2022-god>

³⁰ <https://euroradio.fm/ru/telegram-uzhe-v-tretiy-raz-udalil-kanal-gubopika-no-oni-sozdali-novyj>

³¹ <https://www.belta.by/society/view/kazakevich-terrorizm-na-zheleznoj-doroge-budet-presekatsja-s-ispolzovaniem-oruzhija-494579-2022>

³² <https://www.sb.by/articles/vsye-zvere-v-kletke.html>

³³ <https://mediaiq.info/ugroza-kotoruju-prishlos-priznavat-polk-kalinovskogo-cherez-prizmu-propagandy>

³⁴ <https://www.youtube.com/watch?v=olXdi34PPG0>

³⁵ P. 5, Conclusion “Условия справедливого судебного разбирательства и «специальное производство». Белорусский кейс – изменения уголовного судопроизводства в Законе Республики Беларусь от 20 июля 2022 г. № 199-З”, <https://cchr.online/zakluchenie/> (hereinafter referred to as the Conclusion “Conditions of a fair trial and “special proceedings”)



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experts, the situation has worsened. Since February 2022, lawyers who supported a petition against the war in Ukraine have been subject to disciplinary procedures that could lead to the loss of their license. Thus, in 2022, 74 lawyers were subject to disciplinary action (in 2021 – 48 lawyers), including 27 people who were deprived of their license³⁶. In 2022, 195 lawyers stopped working (only 24 were hired). In total, from 2020 to 2022, the number of lawyers in Belarus decreased by 503³⁷.

The Right to Defense project reports on the so-called incorrect legal “matryoshka” - consistent punishment for the professional activities of a “lawyer’s lawyer.” Thus, in September 2022, lawyer Vladimir Angelsky was arrested for 14 days under Art. 24.3 of the Code of Administrative Offenses (alleged disobedience to an internal affairs officer) and ended up in Akrestsin. Lawyer Angelsky defended lawyer Vitaly Braginets, who ended up in a pre-trial detention center and was recognized as a political prisoner. In turn, Vitaly Braginets defended lawyer Andrei Mochalov, who participated in many high-profile cases before the deprivation of his license and became a defendant in a fabricated criminal case.

Multi-volume cases are still practiced, which are physically impossible for a lawyer to review within the established total period of 1 month, but the deadlines for such cases are not increased, which affects the quality of the defense. All investigation materials are presented to the accused for review only after the investigation is completed, with the exception of expert opinions³⁸. You cannot make copies of case materials. Moreover, in 2022, a practice emerged when case materials are issued for review in a “random” order, which makes it difficult to trace connections and chronologically compare the course of events. Another way to put pressure on lawyers is to sign a non-disclosure agreement regarding investigation data. This unlawful practice violates the Covenant and also restricts the freedom of speech of lawyers.

The court often refuses to announce a break to prepare for the debate, or announces a break, but for a negligibly short period of time - 10 minutes. Such a break is meaningless for the defense, given that cases often amount to 50-70 or more volumes. In administrative cases that are not socially dangerous, the accused are placed in custody until trial, which limits their ability to prepare a defense; in criminal cases, the same is true.

A reasonable period of pre-trial detention (from the moment of arrest until the verdict is rendered by the court of first instance) is not observed. Due to the fact that many cases are considered behind closed doors, the following situation is often observed: the court announces a break for an indefinite period, and then returns to this case a few months later. The case is deliberately “laid” in court without explanation, thereby arbitrarily prolonging the period of detention.

Accused persons in criminal and administrative cases are not always guaranteed the right to be tried in their presence. In 2022, this practice worsened. The court often exercises its power indiscriminately

³⁶ See above, as well as https://defendersbelarus.org/disciplinaryje_sankcyi_2022

³⁷ https://www.defendersbelarus.org/2022_recap

³⁸ P. 51, Report “Criminal Prosecution”



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to remove the accused from the courtroom before the end of the trial. Experts noted that in 2022, defendants in the Autukhovich case were alternately removed from the courtroom on controversial grounds³⁹.

Experts agree that the introduced “trial in absentia” procedure represents a significant violation of fair trial standards in terms of ensuring the right of the accused to be tried in his presence. The absence of the accused during the trial in absentia is not compensated by procedural guarantees, in particular the involvement of a lawyer in the process (in Belarus, lawyers are actually unable to effectively and independently perform their duties). The rights of defendants are declared, but the practices are not ensured or cannot be ensured, since they contradict other acts of legislation. Changes to the Code of Criminal Procedure relating to special proceedings were adopted hastily, were not coordinated with the current legislation, and in general, according to experts, the law on amendments to the Code of Criminal Procedure is characterized by weak legal technique and contradicts the international obligations of the Republic of Belarus.

At the same time, those accused in special proceedings cannot be considered persons who refuse to exercise their right to be tried in their presence⁴⁰. As noted earlier, citizens of Belarus cannot freely return to the country and exercise their right to a fair trial. In addition, the trial is not allowed to be held via videoconference, even if there is a request from the accused. The state also does not take all possible measures to properly inform the accused: it is only necessary to post information about the start of special proceedings, the appointment of the trial and its results on the Internet⁴¹.

The situation with witnesses and their presence at meetings in 2022, according to experts, has worsened. In this regard, experts point to a systemic problem with the order of questioning of witnesses⁴². In politically motivated cases, the practice has become stronger when defense requests to invite a witness are not granted. Victims in politically motivated cases are exempt from appearing in court, even if they submit a petition.

The situation with the language used in court and the provision of a free translator in 2022, according to experts, has not changed.

Courts do not take into account the testimony of the accused in politically motivated criminal cases about the use of torture against him by law enforcement agencies and prison guards. The court actually promotes impunity in matters of torture and demonstrates the state position on their permissibility for the benefit of the current regime. Experts note that courts accept so-called “repentance” videos as admissions of guilt and do not question their admissibility as evidence, although there is reason to believe that such video confessions were obtained as a result of torture or inhuman or degrading

³⁹ <https://spring96.org/ru/news/108606>

⁴⁰ P. 17, Conclusion “Conditions of a fair trial and “special proceedings”

⁴¹ S. 18, -//-

⁴² See p. 3 above



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treatment. The very practice of filming “repentance” videos is degrading.⁴³ For example, the Viasna Human Rights Center reports on Nikita Storozhenko, a former investigator who resigned after the elections in protest. During his detention, he was tortured. After the arrest, a “repentance” video was posted, in which Storozhenko looked frightened and injuries were visible on his face. The cellmate then said that Nikita was kicked, beaten with batons, had a rag wrapped around his head, and had a trash can put on his head⁴⁴.

In 2022, the practice of repeated criminal prosecution after serving a sentence in an administrative case for political reasons continued. Judges do not count the served administrative term when considering a criminal case. Often, Article 23.34 of the Code of Administrative Offenses (violation of the procedure for organizing or holding mass events) turns into Art. 342⁴⁵ Criminal Code (organization and preparation of actions that grossly violate public order, or active participation in them) or Art. 411 of the Criminal Code (malicious disobedience to the requirements of the administration of a correctional institution executing a sentence of imprisonment). In this case, people are subjected to repeated persecution after a significant period of time. According to experts, in this way the authorities apply additional politically motivated punishment. Among other things, this practice allows the regime to maintain an atmosphere of fear in society.

In 2022, there is still no adequate criminal justice system for juveniles. Moreover, there are no known cases when the courts took advantage of the opportunity provided by the Criminal Code to impose other measures of criminal liability - conviction with a suspended sentence or with conditional non-application of punishment (Articles 77, 78)⁴⁶.

- **Review by a higher court and compensation in case of miscarriage of justice**

Convicted persons do not have effective access to review of the case by a higher court, despite the formal enshrinement of such a right in legislation.

In Belarus in 2022, 38,206 people were convicted in criminal cases, which is 5% more than in 2021. (36,356 people); only 33 people were acquitted (51 in 2021). Among the 38,206 people convicted in 2022, 8,062 people were sentenced to imprisonment, or 21% of the total number of people convicted, which is comparable to the figures for 2021. 2 people were sentenced to life imprisonment (in 2021 - 6 people), and not a single one - to be shot. According to Supreme Court statistics, in 2022, only 83 sentences were overturned on appeal and supervisory review.⁴⁷ According to the Prosecutor General's data for January-November 2022, a total of more than 5,000 extremist crimes were identified in

⁴³ P. 6, National Human Rights Index. 2021 The right to a fair trial: expert comments, https://belhelcom.org/sites/default/files/5._pravo_na_spravedlivyy_sud_2021.pdf

⁴⁴ <https://spring96.org/ru/news/107515>

⁴⁵ <https://m.nashaniva.com/323989/>

⁴⁶ P. 58, Report “Criminal Prosecution”

⁴⁷ https://www.court.gov.by/ru/justice_rb/statistics/5b82a6c416a342a7.html



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Belarus⁴⁸. Human Rights Center “Viasna” is aware of at least 1,242 people convicted in politically motivated criminal cases in 2022.⁴⁹

In general, due to distrust in the judicial system, belief in its ineffectiveness and dependence on decisions “from above”, people do not go to appeal decisions to appeal or supervision. The courts formally approach review procedures; in fact, appeal and supervision are the legitimation of the verdict of the first instance court.

In 2022, changes were made to the Code of Criminal Procedure regarding the procedure for appealing court decisions in criminal proceedings: a cassation stage of legal proceedings is being introduced (appealing a sentence that has entered into force). Thus, a three-stage review system is created: appeal, cassation, supervision. At the same time, narrower grounds for review in cassation and supervisory procedures have been established - only on issues of the correct application of substantive and (or) procedural law. These changes will come into force in the summer of 2023.⁵⁰ However, these changes allow experts to record a negative trend in 2022 towards a reduction in the possibilities for reviewing a court verdict on the merits - only on appeal.

The special proceedings procedure does not meet the standards of a fair trial for the reason that the convicted person does not actually have the opportunity to appeal the verdict⁵¹. The legislation does not have a mechanism for sending a person the text of a court decision; as a result, a person cannot familiarize himself with the court verdict, which in the future must be the subject of an appeal. It is necessary to take into account that the period for appealing a sentence passed within the framework of special proceedings is limited to a single period applicable to “general proceedings” - 10 days (calculated from the date of posting information about the court verdict on the Internet portal of the courts of general jurisdiction of the Republic of Belarus).

The right to compensation is formally established, but in 2022 it remains difficult to implement in practice. The amount of compensation is often unreasonably reduced: in one case, the court awarded compensation in the amount of 4,000 BYN (\$1,566)⁵², when the plaintiff requested compensation in the amount of 5,000 BYN⁵³, in another – in the amount of 800 BYN (\$307) with the requested compensation of 1000 BYN⁵⁴. Examples of recovery of moral damages are given below.

The man was accused of illegal distribution of drugs, the investigation lasted an extremely long time,

⁴⁸ <https://ctv.by/esli-li-dlya-beglyh-doroga-obratno-i-kak-nachat-zhizn-na-rodine-s-chistogo-lista-intervyu-s>

⁴⁹ P. 3, Report of the Human Rights Center “Viasna”

⁵⁰ Law of the Republic of Belarus July 20, 2022 No. 199-Z “On amendments to the Criminal Procedure Code of the Republic of Belarus”, <https://pravo.by/document/?guid=12551&p0=H12200199&p1=1&p5=0>

⁵¹ See also p. 16 Conclusions “Conditions of a fair trial and “special proceedings”

⁵² Hereinafter, the calculation was carried out at the exchange rate of the National Bank of the Republic of Belarus on the day the decision was made

⁵³ <https://pravo.by/pravovaya-informatsiya/bank-sudebnykh-resheniy/document/975177>

⁵⁴ <https://pravo.by/pravovaya-informatsiya/bank-sudebnykh-resheniy/document/532332>

he spent almost two years in a pre-trial detention center until the court pronounced an acquittal. In December 2021, he was adjudged 15,000 BYN (\$5,964) as compensation for moral damage⁵⁵. The decision stood on appeal⁵⁶. Almost the same compensation was received by a man who was wrongly accused of murder and spent 16 months behind bars.⁵⁷

A resident of the Mozyr district received 7,000 BYN (\$2,817) as compensation for moral damage based on a decision dated November 18, 2021. For several years she sought a review of the conviction for theft by abuse of power, for which the woman was sentenced to two years of restriction of freedom⁵⁸.

3,000 BYN - compensation for moral damages awarded to Svetlana from the Mozyr district by decision dated April 12, 2022. Svetlana was accused of committing an accident in which a person died. The plaintiff assessed physical and moral suffering at 15,000 rubles⁵⁹.

On February 28, 2022, a resident of Mozyr was awarded compensation for moral damage in the amount of 4,000 BYN (\$1,449) - the citizen was found not guilty of taking property by abuse of trust (fraud). The body conducting the criminal proceedings chose a preventive measure in the form of a recognizance not to leave, as a result of which he was limited in freedom of movement and determination of his place of residence. In connection with the inspections and investigative actions carried out against him, he was forced to resign from the educational institution of the city of Mozyr⁶⁰.

⁵⁵ <https://news.zerkalo.io/life/46351.html>

⁵⁶ <https://pravo.by/pravovaya-informatsiya/bank-sudebnykh-resheniy/document/291602>

⁵⁷ <https://news.zerkalo.io/life/46351.html>

⁵⁸ <https://pravo.by/pravovaya-informatsiya/bank-sudebnykh-resheniy/document/73134>

⁵⁹ <https://pravo.by/pravovaya-informatsiya/bank-sudebnykh-resheniy/document/406881>

⁶⁰ <https://pravo.by/pravovaya-informatsiya/bank-sudebnykh-resheniy/document/322127>



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