

Belarus Human Rights Index

<http://index.belhelcom.org>

2023

Right to a fair trial

Expert Commentary

The score:	2,8	-0,2
<i>Including scores by component:</i>		
• Equality before courts and tribunals	2,2	-0,4
• Fair and public hearing by a competent, independent and impartial tribunal	3,1	-0,1
• Procedural guarantees in criminal proceedings	2,7	-0,1
• Review by a higher tribunal and compensation in cases of miscarriage of justice	3,3	-0,2

In assessing the state of the right to a fair trial in 2023, the Index experts gave lower scores than in 2022. **Among the main reasons are:**

- expansion of the practice of *incommunicado* detention for political prisoners (deprivation of the right to correspond, including with lawyers) actually means also deprivation of the right to apply to court from places of deprivation of liberty;
- increased harassment and pressure on lawyers, making it impossible to find a lawyer in politically sensitive cases; in 2023, lawyers were detained, held administratively and criminally liable and given long prison sentences;
- changes to the Code on Judiciary and Status of Judges: the power to appoint judges was transferred from the president to the ABPA;
- changes in the CPC of a twofold nature: positively, the introduction of the possibility of appealing Supreme Court verdicts to the appellate instance of the Supreme Court; negatively, changes in the CPC expand the scope of application of the criminal law to the deceased; significantly limit the possibility of reviewing cases;
- continuation of the practice of forcing public apologies and confession of guilt on camera - "repentant videos", which are both a form of degrading treatment and a violation of the presumption of innocence;
- expansion of the practice of considering cases *in absentia* (special proceedings) worsens the situation with the right of the accused to be notified of the nature of the charges, to be tried in her presence;
- expansion of the practice of repeated prosecution on political grounds.



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- **Equality before courts and tribunals**

The situation of equality before the court has deteriorated. The experts noted in this regard the practice of *incommunicado*¹, which became widespread in 2023 with regard to political prisoners (deprivation of the right to correspondence, including with lawyers)², which in fact also means deprivation of the right to appeal to the court from places of deprivation of liberty (e.g. to appeal against disciplinary sanctions).

Since September 2023, it is impossible to apply to court from abroad, as the power of attorney for representation in Belarusian courts can be certified only in the territory of the Republic of Belarus. Belarusian citizens living abroad can no longer apply to consulates and embassies to certify powers of attorney (such administrative procedure is excluded from the list of procedures performed by foreign diplomatic and consular missions)³.

As a result of harassment and pressure on lawyers in 2023, it is impossible to find a lawyer in politically sensitive cases: the total number of lawyers has decreased; many lawyers have been disbarred as punishment for providing legal assistance in politically motivated cases; those who continue to practice in the country are turned away for security reasons, intimidation⁴, and pressure⁵.

Lawyers have been detained⁶, prosecuted administratively and criminally, and sentenced to long prison terms⁷. The practice of using disciplinary procedures to intimidate lawyers and deprive them of the right to practice their profession continued. Thus, between 2020 and December 2023, 128 lawyers were stripped of the right to practice their profession, of whom 40 lawyers in 2023⁸: 6 were disbarred for committing a misdemeanor incompatible with the title of lawyer, 17 failed to pass the attestation, 17

¹ <http://spring96.org/ru/news/111682>

² This situation has been the subject of a statement by UN Special Rapporteurs <https://www.ohchr.org/ru/press-releases/2023/05/belarus-must-release-all-detainees-held-political-grounds-and-protect-their>

³ <https://pravo.by/document/?guid=12551&p0=P32300278>

⁴ The experts cited a case where the lawyer did not contact the defendant *in absentia* proceedings (the lawyer was appointed at the request of the body conducting the criminal proceedings).

⁵ Government officials resort to "lawyer is a state man" rhetoric <https://www.belta.by/society/view/glava-minjusta-advokaty-i-notariusy-eto-prezhde-vsego-gosudarstvennye-ljudi-497453-2022/>

⁶ On March 20, 2023, the General Directorate for Combating Organized Crime and Corruption officers simultaneously detained at least 6 lawyers, including Yuri Kozikov, Daria Lipkina, Inessa Olenskaya, Artem Semyanov, Vladimir Stashkevich, and Ivan Chizhik. They were interrogated, searched, and their equipment was seized. Three of them were brought to administrative responsibility. Report "The Crisis of the Bar": Continuation of Repression 2022 - 2023. P. 14-15, <https://www.defendersbelarus.org/news/tpost/c6smyvien31-otchet-krizis-advokaturi-na-russkom-prod>

⁷ In 2023, sentences were handed down to attorneys Vitaly Braginets (<https://www.defendersbelarus.org/news/tpost/xygyzcpz21-advokatu-vitaliyu-bragintsu-prisudili-8>), Aljaksandr Danilevicz (<https://prisoners.spring96.org/ru/person/aljaksandr-danilevicz>), Anastasija Lazarenka (<https://prisoners.spring96.org/ru/person/anastasija-lazarenka>), Aljaksei Barodka (<https://prisoners.spring96.org/ru/person/aljaksei-barodka>), Julija Jurhilevicz (<https://prisoners.spring96.org/ru/person/julija-jurhilevicz>), Mikhail Makarau (<https://prisoners.spring96.org/ru/person/mikhail-makarau>).

⁸ <https://defendersbelarus.org/lawyers-persecution-2020>



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were expelled from the Lawyers (Bar) Association by the decision of the disciplinary commission⁹. As a result of the persecution of lawyers there is a situation in which out of 118 districts of the country in 8 - there are no lawyers, in 38 - there is only one lawyer¹⁰.

	1 January 2018	1 January 2019	Beginning 2020	1 January 2021	1 January 2022	1 January 2023	1 January 2024
Number of lawyers	2 127 ¹¹	2 115 ¹²	2 200 ¹³	2 043 ¹⁴	1 872 ¹⁵	1 690 ¹⁶	1 602 ¹⁷

The case of the Human Rights Center "Viasna" is illustrative in the context of the realization of the right to a fair trial. The lawyer of the human rights center described the trial as "massacre of human rights defenders under the guise of justice"¹⁸. In particular, during the trial Judge Maryna Zapasnik did not satisfy any of the human rights defenders' requests, including the request to provide time to familiarize themselves with the remaining materials of the multi-volume case, which the defendants did not have time to read.¹⁹

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

In July 2023, the Code on Judiciary and Status of Judges was amended. Thus, the power to appoint judges was removed from the competence of the president and assigned to the All-Belarusian People's Assembly (ABPA)²⁰. The amendments are not aimed at ensuring the independence of the judiciary²¹.

⁹ https://defendersbelarus.org/tri_sposoba_lisheija_licenzii

¹⁰ As of March 2023., <https://www.defendersbelarus.org/kity-na-kotorych-derjiitsa-rajonnaja-advokatura>, Report "The Crisis of the Bar": Continuation of Repression 2022 - 2023. P. 38. <https://drive.google.com/file/d/1yvUuPG5pOt9Gc6u7WoK-Ne1Wzk8SSZY/view>

¹¹ <https://brka.by/info/development-concept/>

¹² <https://cyberleninka.ru/article/n/beloruskaya-advokatura-nuzhdaetsya-v-uluchshenii>

¹³ https://defendersbelarus.org/disciplinarnyje_sankcyi_2022

¹⁴ https://www.defendersbelarus.org/advokatura_posle_reformy

¹⁵ <https://brka.by/info/development-concept/>

¹⁶ <https://sputnik.by/20230131/glava-brka-shvakov-v-belarusi-nachala-rabotu-komissiya-po-advokatskoy-etike--1071770715.html>

¹⁷ <https://minjust.gov.by/directions/advocacy/>

¹⁸ <http://spring96.org/ru/news/110404>

¹⁹ See National Human Rights Index: The Right to a Fair Trial: Expert Commentary, 2022. p. 4 https://belhelcom.org/sites/default/files/5._pravo_na_spravedlivyy_sud_2022.pdf

²⁰ <https://pravo.by/document/?guid=12551&p0=H12300285>

²¹ On ABPA, see. National Human Rights Index : The Right To Take Part In The Conduct Of Public Affairs: Expert Commentary, 2022, pp. 4-5 (https://belhelcom.org/sites/default/files/11._pravo_prinimat_uchastie_v_vedenii_gosudarstvennyh_del_2022.pdf), National Human Rights Index: The Right to a Fair Trial: Expert Commentary, 2022. (https://belhelcom.org/sites/default/files/5._pravo_na_spravedlivyy_sud_2022.pdf)

Pointing to the questionable role of the ABPA in the context of the separation of powers and the falsely representative procedure of its formation, the experts noted that these changes rather distanced the system of appointment of judges in Belarus from the international standard in this part (professional criterion of formation of the competent body).

In July 2023, amendments were introduced to the Criminal Procedure Code (CPC), expanding the scope of application of the criminal law to the deceased. According to the amendments²², criminal proceedings may be initiated against deceased persons if they have committed certain time-barred crimes against peace and security of mankind²³. The first such case came before the court in mid-December 2023 - the genocide case against Vladimir Katryuk²⁴. As a procedural safeguard, this proceeding provides for the participation of defense counsel, who, in theory, should support the position of the defendant, but in practice it is physically impossible. The representative of the deceased may participate in the process (but there is no obligation to ensure the participation of such a representative), and if several persons expressed a desire to represent the interests of the deceased and did not agree on one candidate for a representative, the investigator chooses a representative from several candidates.²⁵ These changes have had a negative impact on ensuring that all persons have access to the administration of justice, as well as the expansion of *in absentia* criminal proceedings in 2023²⁶.

In 2023, the courts effectively continued to function as an instrument of repression in politically motivated cases. The pressure on relatives of political prisoners increased, including in 2023 sentences to family members of well-known political and public figures (in particular, Darya Losik, Artsiom Liabedzka, Eduard Babariko).²⁷

The situation with ensuring the right to publicity of court proceedings worsened in 2023. Experts noted the prevailing atmosphere of fear in society, which extended to the attendance of court hearings, in particular, by relatives of defendants (at the entrance they check documents, contents of phones, and record personal data of visitors).

²² <https://pravo.by/document/?guid=12551&p0=H12300286>

²³ These include genocide, preparation or waging a war of aggression; an act of international terrorism; use of weapons of mass destruction; violation of the laws and customs of war, etc.

²⁴ <https://www.belta.by/society/view/verhovnyj-sud-belarusi-nachal-rassmatrivat-ugolovnoe-delo-v-otnoshenii-katrjuka-614212-2024/>

²⁵ <https://spring96.org/ru/news/112023>

²⁶ <https://news.zerkalo.io/life/57395.html>, for a detailed discussion of the special proceedings procedure, see. National Human Rights Index: The Right to a Fair Trial: Expert Commentary, 2022.. https://belhelcom.org/sites/default/files/5._pravo_na_spravedlivyy_sud_2022.pdf

²⁷ <https://news.zerkalo.io/life/56871.html>



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- **Procedural guarantees in criminal proceedings**

In the context of ensuring the presumption of innocence, the situation has worsened²⁸. The practice of forcing the authorities to make public apologies and confessions of guilt on camera - "repentant videos", which are humiliating in nature²⁹, continued, with the pro-government media themselves filming such stories and broadcasting them through official media channels³⁰. The media published images of political prisoners in cages during court proceedings³¹. State media repeatedly published reports and materials with violations of the presumption of innocence, as well as the use of hate speech³².

The situation in the context of notification of the nature of charges has worsened due to the expansion of the practice of *in absentia* (special) proceedings in 2023. Lawyers are required to sign a non-disclosure statement³³, and they are afraid to send copies of the materials of the preliminary investigation by e-mail to defendants who are outside the Republic of Belarus, sometimes even to voice the text of documents via videoconference.

There is still insufficient time and opportunities to prepare the defense³⁴, the reasonable period of pre-trial detention is not respected³⁵, and access to a defense counsel is not ensured. Moreover, in 2023, the practice of *incommunicado* detention became widespread, which also negatively affected the situation with access to defense counsel. As a result of total intimidation, lawyers are unable to perform their functions professionally, and their participation in the process often becomes a formality (especially in cases of *in absentia* (special) proceedings).

²⁸ <https://news.zerkalo.io/economics/32621.html>

²⁹ <https://t.me/viasna96/20856>

³⁰ <https://mediainfo.by/pokayannye-sjuzhety-kak-novyy-format-provlastnoj-zhurnalistiki-chast-1>

³¹ <https://www.sb.by/articles/nachalsya-sud-nad-rukovoditelyami-vesny.html>

³² <http://spring96.org/ru/news/111583>

³³ In 2023, the Human Rights Committee adopted views on one of Viktor Babaryka's communications, in which it also noted the problem of non-disclosure statements. According to the Committee, this measure deprives lawyers of the opportunity to provide the Committee with all the necessary documents to substantiate a claim of violation of rights under the Covenant by the state, and creates obstacles to seeking protection of rights to international human rights mechanisms.

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F139%2FD%2F3788%2F2020&Lang=en

³⁴ In this aspect, the case of "Viasna" is illustrative. The experts also noted a case when a defendant received a multi-volume case file in the pre-trial detention facility and was threatened into signing a document confirming that he was fully familiarized with the case file, although it was physically impossible for him to do so..

³⁵ In this regard, the case of Eduard Babariko, head of the election headquarters of his father Viktor Babaryka, is noteworthy. Eduard was arrested together with his father on June 18, 2020. At first, he was charged with "tax evasion", and Eduard was kept in the pre-trial detention center for the maximum possible 18 months, but the materials on this charge were not submitted to the court due to lack of evidence. Eduard was charged with organizing mass riots and incitement to hatred, and later it became known about charges of money laundering. Eduard Babariko was sentenced on July 5, 2023. The first 18 months in custody were not counted as part of his sentence, as the sentence was formally passed in the second criminal case, while the first case was discontinued <https://news.zerkalo.io/life/56871.html>

The experts also noted a worsening situation with regard to the right of the accused to be tried in his presence, due to the increasing practice of cases *in absentia*, as well as proceedings against deceased persons.

In 2023, the practice of repeated prosecution on political grounds continued³⁶, and a new model of repression emerged: subscription to "extremist" resources, such as Telegram channels, is considered by the authorities to be an administrative offense; a check of the phone leads to the detection of relevant subscriptions, as a consequence, a person is imputed for subscription to channel "A", prosecuted, and after serving an administrative arrest he is imputed for subscription to channel "B", after serving a second sentence – for subscription to channel "C", etc.

- **Review by a higher tribunal and compensation in cases of miscarriage of justice**

In July 2023, amendments to the CPC came into force³⁷, according to which sentences of the Supreme Court became subject to appeal to the appellate instance of the Supreme Court (previously, the sentences of the Supreme Court rendered at first instance were not subject to appeal). Experts consider this change as positive, however, it does not seriously affect the overall improvement of the situation, as the number of cases considered by the Supreme Court as first instance is very small.

The experts assessed negatively the novelties in the CPC, which significantly limit the possibility of reviewing cases. In particular, the grounds for annulment of a judgment that has entered into legal force (cassation, supervision) - incorrect application of criminal law, substantial violations of the law of criminal procedure - have been reduced. Now the review of the case on the merits is available only by appeal (previously it was possible in cassation proceedings)³⁸. In addition, a ban on repeated complaints in cassation and supervisory review proceedings against one person has been established, which seriously worsens the situation of the accused, since appealing a verdict is limited to only one "attempt" at these stages (previously it was allowed to file several complaints in favor of one person - on different grounds or to another official, first, for example, to the Deputy Prosecutor General, and then to the Prosecutor General).

Among the circumstances worsening the situation in the context of access to the verdict, the experts also mentioned the intensification of the practice of *in absentia* (special) proceedings in 2023³⁹, as well as the practice of *incommunicado* detention in relation to political prisoners.

Below are the statistics on the work of courts of general jurisdiction in relation to the possibility of

³⁶ <https://news.zerkalo.io/life/56871.html?c>.

³⁷ <https://pravo.by/document/?guid=12551&p0=H12200199&p1=1&p5=0>

³⁸ National Human Rights Index: The Right to a Fair Trial: Expert Commentary, 2022.. https://belhelcom.org/sites/default/files/5_pravo_na_spravedlivyy_sud_2022.pdf

³⁹ The defendant is abroad, the mechanism of sending him the text of the court decision is not provided for by law, the participation of defense counsel is formal. For details see, National Human Rights Index: The Right to a Fair Trial: Expert Commentary, 2022. p. 13. https://belhelcom.org/sites/default/files/5_pravo_na_spravedlivyy_sud_2022.pdf



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review of a decision by a higher court⁴⁰. As can be seen from the figures, the percentage of overturned sentences fluctuates around 1%, which is critically low. The appeal process does not lead to a review of politically motivated criminal cases on the merits and to the annulment of wrongful convictions.

	2020	2021	2022	2023
Persons convicted in criminal cases	34 572	36 356	38 206	33 777
Number of persons acquitted	119	51	33	47
Cases heard on appeal and under supervisory review (against persons)	7 489	8 138	8 841	8 610
Sentences overturned on appeal and under supervisory review (against persons) ⁴¹	93	79	83	90

⁴⁰ https://www.court.gov.by/ru/justice_rb/statistics/

⁴¹ Cumulatively, decisions to overturn the sentence and discontinue criminal proceedings and to overturn and remit the case for a new trial before the trial court.