

## Belarus Human Rights Index

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2022

### Right to be protected against arbitrary or unlawful interference with private and family life

Expert Commentary

#### Score: 2.7

Including component scores:

- General measures 2
- Personal data 4
- Inviolability of home and correspondence 2

When evaluating the state of the right not to be subjected to arbitrary or unlawful interference with personal and family life in 2022, Index experts generally noted that there have been no significant changes compared to 2021. The experts' position is explained in more detail below.

#### • General measures

In 2022, practices involving interference with privacy and family life, as well as violations of the inviolability of home and the confidentiality of correspondence persisted in administrative and criminal proceedings. There have been no changes in the legislative regulation governing such interference, except for digital surveillance and personal data protection (see below). In practice, relevant rules are often subject to arbitrary interpretations or even outright violations. In particular, detentions continue to be accompanied by arbitrary<sup>1</sup> searches that violate procedural requirements.<sup>2</sup> Experts note that both searches and detentions remain tools of pressure and intimidation<sup>3</sup>. In 2022, demonstrative rough

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<sup>1</sup> Belarus in the run-up to the 2020 presidential election and in its aftermath: Report of the United Nations High Commissioner for Human Rights (A/HRC/52/68), p.7; among others, <https://spring96.org/ru/news/109006>

<sup>2</sup> "The arrest officers did not identify themselves. Even when arrest and search warrants were presented, and in most cases they were documented, arrested persons were not allowed to see them. Officers broke into homes or used coercion to break in and conducted interrogations and searches, demanding that mobile phones be unlocked. Computers and other items were seized without explanations.": OHCHR report "Belarus in the run-up to the 2020 presidential election and in its aftermath":

<https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F52%2F68&Language=E&DeviceType=mobile&LangRequested=False>; "Glushkov's house was searched at 6:20 am. All equipment was confiscated, but the freelancer wasn't provided with a copy of the search record. He was also threatened with an incarceration if he did not give his smartphone password": <https://spring96.org/ru/news/106418>

<sup>3</sup> Ibid: <https://spring96.org/ru/news/110324>; searches of activists' homes on the eve of Freedom Day <https://spring96.org/ru/news/107180> and the republican referendum: <https://spring96.org/ru/news/106929>.



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searches were conducted, including in the homes of Belarusians who left the country. During these searches, law enforcement officers damaged furniture, spilled cereals, smashed dishes and mirrors, all while filming the process and sharing it publicly.<sup>4</sup> Numerous searches were accompanied by threats and violence against both individuals and their pets.<sup>5</sup>

Despite the legal requirement to safeguard the privacy of personal information uncovered during searches and seizures<sup>6</sup>, Telegram channels of law enforcement agencies and pro-state journalists regularly publish degrading videos of detentions and smashing of detainees' apartments. They also disclose private details about such individuals, sometimes including sensitive content<sup>7</sup>.

In 2022, a practice emerged, involving the provocation of individuals through an online chat roulette service to make statements that, in accordance with Belarusian law enforcement practices, could

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<sup>4</sup> "Thus, in 2022, GUBOPIK employees destroyed the apartments of Yanina Sazanovich, editor of the "Punishers of Belarus" resource and the Wild Hunt YouTube channel, public figure Vadim Prokopyev, blogger Andrey Pauk, representative of cyberpartisans Yuliana Shemetovets, politician Valery Tsepka, mother of blogger Anton Motolko, press secretary of the Kastuś Kalinoŭski Regiment Christina 'Chabor' and her husband, as well as Natalia Suslova, mother of the deceased Kastuś Kalinoŭski soldier Pavel 'Volat': <https://spring96.org/ru/news/110324>.

<sup>5</sup> "According to Anastasia, they did not even have time to get dressed after sleep, when two fully equipped security officers with machine guns, accompanied by four individuals in black uniforms broke into the room. In the room, along with Anastasia and Yan, their pit bull was also resting that began to bark loudly at the strangers. One of the security officers, according to the girl, shot at the dog with a machine gun" <https://spring96.org/ru/news/110324>; "They rushed into the bathroom, seized and placed [him] in the room. Handcuffed him. A GUBOPIK officer, Vysotsky, took a plaster hand cast from the shelf, put on a condom, and said, "Let's put it in the rear passage." He placed the plaster hand near [the victim's] head. Before that, a SOBR officer kicked [the victim] in the thighs, and another one struck [him] in the face with a glove. They asked for the password, and Dmitry gave it", "Nikolai Bredelev and his friend and a lawyer Alexey, as far as I know, were detained at the same time with extreme harshness. They were beaten and equipment was smashed in the apartment. The lawyer was bluish: his legs were bruised, his lower back as well, he had a bruise under his eye" <https://spring96.org/ru/news/110275>; "M. During the arrest of M. K., they destroyed the entire apartment – everything that was glass and mirrored was smashed. She was taken for questioning with a bag over her head, and even 45 days later there was a huge black bruise on her thigh." <https://spring96.org/ru/news/109252>

<sup>6</sup> Code of Criminal Procedure of the Republic of Belarus, Article 210: "11. The investigator, and the person conducting the inquiry, must take measures to ensure that the private circumstances of the person occupying the premises or others revealed during the search and seizure are not disclosed." <https://etalonline.by/document/?regnum=HK9900295>.

<sup>7</sup> Among other things, when filming 'repentant videos', outing of the detainees was practiced, as well as disclosure of information about the detainees' places of residence, property status and income, details of intimate life, habits and inclinations, and details of correspondence: <https://news.zerkalo.io/life/9011.html>; <https://humanconstant.org/razvitie-cifrovyyx-prav-v-belarusi-cifrovoj-avtoritarizm-i-cifrovoe-soprotivlenie/>; <https://t.me/ChistiyMogilev/108>; [https://t.me/Azarenok\\_CTV\\_Belarus/1155](https://t.me/Azarenok_CTV_Belarus/1155); [https://t.me/grodno\\_puls/1670](https://t.me/grodno_puls/1670); [https://t.me/Azarenok\\_CTV\\_Belarus/425](https://t.me/Azarenok_CTV_Belarus/425); [https://t.me/Azarenok\\_CTV\\_Belarus/568](https://t.me/Azarenok_CTV_Belarus/568) [https://t.me/Azarenok\\_CTV\\_Belarus/213](https://t.me/Azarenok_CTV_Belarus/213); [https://t.me/belarusian\\_silovik/3891](https://t.me/belarusian_silovik/3891)



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potentially lead to administrative or criminal responsibility. A resident of Mozyr frequently posted recordings of his conversations with Belarusians and Ukrainians. In these videos, he deliberately incited his interlocutors to insult the President and law enforcement agencies, express their attitude to the war in Ukraine, and the policies of the Belarusian and Russian authorities. Rather than addressing the distribution of these private conversations in an appropriate manner, Belarusian law enforcement agencies employed them as a pretext for conducting violent detentions and searches of individuals who had made such statements.<sup>8</sup>

In 2022, the regulation of surveillance in the digital space was further elaborated. The adoption of Decree No. 368, titled "On the Interaction of Telecommunication Operators, Telecommunication Service Providers, and Owners of Internet Resources With Bodies Carrying Out Operational and Investigative Activities," provided bodies conducting operational and investigative activities with a *free, 24-hour remote access* to the databases and information systems of Internet resources determined by the KGB and the OAC (the Operations and Analysis Centre under the President of the Republic of Belarus). It also obliged providers to supply information about users and the services they receive, which must be stored for a year<sup>9</sup> Human rights activists note: "[the powers granted to law enforcement agencies and special services] are not limited by any reasonable safeguards and are not subject to judicial review due to their secretive nature and the current practical challenges in ensuring a fair trial within Belarusian courts".<sup>10</sup> The amended legislation extends the authorities' reach to collect information on various internet services, encompassing subscriptions, newsletters, both free and paid access to information, posting messages on forums or chat rooms. To this one must add all the services provided by internet resources, including online trading, crypto exchanges, internet banking, online insurance, dating services, etc. This also includes offline interactions conducted via online platforms, such as ordering food or taxi, scheduling appointments with doctors or hairdressers, and accessing professional services like repair and furniture assembly. <... > Let's assume that Internet of Things services also become an object of interest. These may include smart home services with extensive insights into residents' lives, as well as GPS tracking for personal or corporate vehicles. <... > This can also include intelligent voice assistants, including Alice from Yandex, who will now be monitored not only by the FSB officers, but also by the KGB and the OAC."<sup>11</sup> At the same time, users will not have the technical means to ascertain whether an internet service is linked to a system that provides surveillance capabilities to law enforcement and special services.<sup>12</sup>

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<sup>8</sup> <https://news.zerkalo.io/life/30716.html>

<sup>9</sup> <https://pravo.by/document/?guid=12551&p0=P32200368&p1=1&p5=0>.

<sup>10</sup> <https://belhelcom.org/ru/news/pravozashchitniki-probuyut-borotsya-s-ukazom-368-kotoryy-vyvodit-slezhku-na-besprecedentnyy>

<sup>11</sup> [https://news.zerkalo.io/economics/24701.html?utm\\_source=news.zerkalo.io&utm\\_medium=news-bottom-block&utm\\_campaign=relevant\\_news](https://news.zerkalo.io/economics/24701.html?utm_source=news.zerkalo.io&utm_medium=news-bottom-block&utm_campaign=relevant_news)

<sup>12</sup> Ibid.



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Protection from interference with personal and family life is not provided. Under legal system breakdown, the remedies provided by existing laws are generally ineffective.<sup>13</sup> However, with regard to the protection of personal data, the beginning of full operation of the National Personal Data Protection Center in 2022 is noteworthy. Throughout the year, the Center processed 1,018 applications, 101 complaints, conducted 50 inspections, and removed over 1.6 million records associated with the illegal dissemination of personal data.<sup>14</sup> According to the data provided by the Centre, it can serve as a potential remedy, but it is currently challenging to consider it effective and accessible to everyone on a non-discriminatory basis. Taking into account the activities of the Center, experts note the development of a dual approach to safeguarding individuals against violations of their personal and family life in 2021. On the one hand, the Personal Data Act is in effect, the Center performs planned and unscheduled inspections and considers citizens' complaints. On the other hand, the personal data protection mechanism functions to protect citizens from business attacks, as well as protect civil servants – in the latter case, it is used as another tool for repressing ordinary citizens. In 2022, individuals continued to face criminal charges for sharing personal data of civil servants<sup>15</sup>, while illegal actions targeting the personal data of detainees, opposition politicians, and activists often went unaddressed by law enforcement.

Human rights defenders also note that many citizens remain unaware of the new law, the existence of a new remedy, and the specifics of their legal rights and obligations regarding personal data.<sup>16</sup>

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<sup>13</sup> "Individuals appearing before courts were unable to defend themselves effectively or through legal assistance of their own choosing. Records of administrative offences drafted by law enforcement, and reviewed by OHCHR, in many cases were the only documents used as evidence and were relied upon by judges at trial, when issuing their decisions, even though they often contained factual or legal errors and false information. Trials in administrative cases continued to be conducted online via videoconference, without justification, with prosecution evidence being based mostly on the written testimony of police officers who could not be cross-examined or anonymous witnesses whose identity was not disclosed to the defence. The non-disclosure was allegedly to protect prosecution witnesses or for reasons of State security. In addition, legal counsel were not able to call or cross examine witnesses or present additional evidence and, when presented, it was not duly considered by the court. These elements, taken cumulatively, indicate that the courts do not appear to a reasonable observer to be impartial and that victims of human rights violations are effectively denied their right to appeal or other remedies." – OHCHR report "Situation of human rights in Belarus in the run-up to the 2020 presidential election and in its aftermath":

<https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F52%2F68&Language=E&DeviceType=Mobile&LangRequested=False>.

<sup>14</sup> <https://cpd.by/otchet-o-deyatelnosti-nacionalnogo-centra-zashhity-personalnyh-dannyh-za-2022-god/>.

<sup>15</sup> <https://spring96.org/ru/news/109260>; <https://spring96.org/ru/news/109743>; <https://spring96.org/ru/news/109784>; <https://spring96.org/ru/news/109931> <https://spring96.org/ru/news/110113>; <https://news.zerkalo.io/life/15507.html> <https://news.zerkalo.io/life/15469.html>

<sup>16</sup> <https://humanconstant.org/yak-pa-zakone-ab-abarone-personalnyx-dadzenyx-u-belarusi-kantralyuyuc-tolki-biznes-ignaruyuchy-dzyarzha%d1%9enyya-parushenni/>.

Nevertheless, it should be noted that the Center's activities in 2022 were aimed, among other things, at raising awareness on these issues<sup>17</sup>.

- **Personal data**

In 2022, constitutional amendments were introduced to address the right not to be subjected to arbitrary or unlawful interference with privacy and family life with regard to the protection of personal data. Article 28 of the Constitution was extended with a new section, obligating the state to "create conditions for the protection of personal data and the safety the safety of individuals and society when using them."<sup>18</sup> Experts commended the educational and explanatory activities of the National Center for Personal Data Protection.

Overall, as noted above, the enactment of the Personal Data Protection Act in 2021 did not result in improvements for individuals and groups that are in a vulnerable to the current law enforcement practices. On the contrary, the regulatory framework appears to be evolving towards utilizing personal data protection measures as an additional means of repression against individuals deemed "undesirable". For example, in 2022, amendments were made to the Guidelines governing the procedure for entering into a contract for military service in the Armed Forces of the Republic of Belarus. These changes introduced further justifications for the Ministry of Defense to prematurely terminate contracts, including "breaches of legal provisions concerning personal data protection that lead to harm to the state, public interests, or citizens' interests."<sup>19</sup>

The Center does not address the most significant problems reported by human rights defenders – the abuse of personal data by government agencies. The creation of databases of "unreliable" citizens and the dismissal of persons who signed in 2020 for alternative candidates and participated in election observation still fall outside the scope of the current progressive regulations<sup>20</sup> Furthermore, experts express doubts about the effectiveness of the Center's measures to rectify violations, as they note instances where its employees had to repeatedly remove certain information, and it's pointed out that "deleting something on the Internet is nearly impossible; once deleted in one place, it reappears elsewhere."<sup>21</sup> The effectiveness of the mechanism allowing for compensation for non-pecuniary damages is also questionable: human rights defenders note the lack of information regarding its actual use.<sup>22</sup>

Nonetheless, cases of politically motivated use of the personal data protection mechanism recovery of large sums continue to surface. For instance, in November 2022, a 72-year-old activist, Boris Kuchinsky,

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<sup>17</sup> <https://cpd.by/novosti/>.

<sup>18</sup> <https://president.gov.by/ru/gosudarstvo/constitution>.

<sup>19</sup> <https://pravo.by/document/?guid=12551&p0=W22239035>.

<sup>20</sup> <https://news.zerkalo.io/life/28310.html>.

<sup>21</sup> <https://humanconstant.org/yak-pa-zakone-ab-abarone-personalnyx-dadzenyx-u-belarusi-kantralyuyuc-tolki-biznes-ignaruyuchy-dzyarzha%d1%9enyya-parushenni/>.

<sup>22</sup> Ibid.



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was sentenced to three years of imprisonment (without being sent to a correctional facility), fined 150 basic units (4,800 Belarusian rubles), and was also ordered to pay 5,000 Belarusian rubles in compensation to an injured police officer for moral suffering. This was due to a "Like" mark on the Odnoklassniki social network under a post containing the personal information of the police officer<sup>23</sup>.

The regulation and practice concerning the ability to request information related to an individual's private life that is only necessary for the public interest, its reasonable storage period, and the ability to access information about the presence of such data in automated data files remained unchanged in 2022

- **Inviolability of home and correspondence**

As noted above, the legislative regulation in this area remained unaltered. Decree No. 368 expanded the possibilities for arbitrary electronic surveillance. There are continued interferences with the confidentiality of correspondence for administrative detainees and prisoners. Letters often fail to reach their intended recipients<sup>24</sup>, particularly correspondence in the Belarusian language. In December 2022, it was reported that the censor in the Vitebsk pre-trial detention center does not understand Belarusian, resulting in political prisoners held there being strongly advised against writing letters in this language<sup>25</sup>.

In practice, the inviolability of home and correspondence are consistently violated. Both home searches and personal searches extend beyond the scope of finding necessary evidence. Judging by the materials regularly published by state media and Telegram channels affiliated with law enforcement agencies<sup>26</sup>, such actions aim to disrupt individuals living at the search sites, humiliate their dignity, and serve as "illustrative examples" for other dissenters. The systematic nature of this practice in 2022 involves using procedural actions, such as searches, inspections and security checks without adhering to necessary procedural safeguards, justifying their necessity, and employing them as tools for intimidating and suppressing dissent.

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<sup>23</sup> <https://spring96.org/ru/news/109784>.

<sup>24</sup> <https://news.zerkalo.io/economics/28276.html>.

<sup>25</sup> <https://news.zerkalo.io/life/27344.html>.

<sup>26</sup> See above.



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