

Belarus Human Rights Index

<http://index.belhelcom.org>

2023

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

Expert Commentary

The score:	2.5	-0.2
<i>Including scores by component:</i>		
• General measures	1.9	-0,1
• Personal data	3.9	-0,1
• Inviolability of home and correspondence	1.8	-0,2

In assessing the state with the right not to be subjected to arbitrary or unlawful interference with personal and family life in 2023, the Index experts gave lower scores than in 2022. **Among the main reasons:**

- development of a systematic practice of "questioning" at the border, often accompanied by arbitrary tech checks;
- mass persecutions for charitable transfers to organizations and solidarity initiatives that the state subsequently recognized as "extremist" or "terrorist" testify to arbitrary access to citizens' banking transactions;
- decree No. 278 "On the Procedure for Issuing Documents and Performing Actions" (the so-called "passport decree") threatens many spheres of life of Belarusians living abroad;
- a new version of the law on the Provision of Psychological Assistance came into force, expanding the grounds obliging psychologists to disclose information constituting a professional secret;
- *incommunicado* detention constitutes gross violation of the secrecy and integrity of correspondence: the administrations of places of deprivation of liberty do not hand over letters to political prisoners and arbitrarily prevent the latter from contacting the outside world.



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- **General measures**

In general, experts note the persistence and scaling of negative trends of previous years, including arbitrary stops and searches, surveillance in the digital space, lack of effective remedies against interference¹.

In 2023, arbitrary interference in personal and family life continued in some aspects - in the absence of clear legislative regulation of the grounds and limits of such interference, the status of persons subjected to it, as well as the possibility of appeal. In several indicators of this right, the experts lowered their scores due to the development of a systematic practice of "questioning" at the border, often accompanied by arbitrary checks of the equipment of persons crossing border points (including personal correspondence, saved and archived messages and publications²), with the uncertain legal status of the latter and the absence of any procedural guarantees during such actions. "Questioning" indicates the existence of several databases with personal data of "unreliable" persons, the operators and regulation of which remain closed from the public.

Similar "questioning" is conducted with employees of various state organizations and enterprises. There the KGB officer demands to show personal devices for inspection, to provide login data for social network accounts, reads correspondence, asks questions about political views and actions in 2020, about the presence of residence permit of a foreign country or other similar documents. There are known cases of pressure on people to refuse such documents³. Such conversations often result in arbitrary dismissals, making subsequent employment difficult, detentions, searches, administrative or criminal prosecution⁴.

The public safety monitoring system continued to evolve, with more cameras on city streets supporting facial recognition, which law enforcement agencies used, inter alia, to identify and prosecute participants in the 2020 peaceful protests⁵. Virtually all law enforcement agencies in the state have constant access to these camera recordings⁶.

¹ See National Human Rights Index. Right to be protected against arbitrary or unlawful interference with private and family life: Expert Comments, 2022

https://belhelcom.org/sites/default/files/6_pravo_ne_podvergatsya_proizvolnomu_ili_nezakonnomu_vmeshatelstvu_v_lichnu_yu_i_semeynyuyu_zhizn_2022.pdf

² <https://news.zerkalo.io/life/62709.html> , <https://news.zerkalo.io/life/58402.html>

³ https://news.zerkalo.io/life/35752.html?utm_source=editorial_block&utm_campaign=recirculation_tut&utm_medium=read_more

⁴ https://news.zerkalo.io/life/60869.html?_gl=1*1dsw3c8*_ga*MTAwNzOwNzk5Ny4xNjc5OTI0MDOy*_ga_B8LJ3JOEWY*MTcwNzgxODkzMi4zNC4xLjE3MDc4MTkwMDEuNjAuMC4w , <https://penbelarus.org/2023/11/13/monitoring-narushenij-kulturnyh-prav-i-prav-cheloveka-v-otnoshenii-devatelej-kultury.html>

⁵ https://news.zerkalo.io/life/19843.html?utm_source=editorial_block&utm_campaign=recirculation_tut&utm_medium=read_more , https://news.zerkalo.io/life/55880.html?utm_source=news.zerkalo.io&utm_medium=news-bottom-block&utm_campaign=relevant_news

⁶ <https://news.zerkalo.io/life/55880.html#c>

In 2023, decree No. 269 "On Measures to Counteract Unauthorized Payment Transactions"⁷ was signed. The decree provides for the creation of an automated incident processing system of the National Bank, which will be accessed by the Prosecutor's Office, state security bodies, internal affairs bodies, the Investigative Committee and the Operational and Analytical Center within the framework of their powers. The system will contain information on unauthorized or suspicious payment transactions and attempts to make them, with the possibility of subsequent suspension of debit transactions on a given account. The information that payment service providers will be required to provide to the system includes data that constitutes bank secrecy⁸.

In addition, there are still mechanisms to interfere with privacy by forcing internet resource owners to connect to the user surveillance system described in the 2022 commentary⁹. Similar requirements continue to be imposed on telecommunications operators and internet service providers¹⁰.

One of the practices of individual persecution remained the arbitrary inclusion of persons convicted and accused under "extremist" articles in the lists of organizations and individuals involved in "terrorist"/"extremist" activities with subsequent restrictions on their rights, including restrictions on financial transactions, prohibition of teaching and publishing activities, and holding public office¹¹. Mass prosecutions for charitable transfers to organizations and solidarity initiatives that the state subsequently deemed "extremist" or "terrorist" indicate arbitrary access to citizens' banking transactions¹².

⁷ https://president.gov.by/ru/documents/ukaz-no-269-ot-29-avgusta-2023-g?TSPD_101_R0=08eaf62760ab2000b2506061230aef64fc3fa2c13c133a36e1f1f52170702e4bd3393578b0997a3908ca5411f3143000635120383ce9cbb84135b34afd8bfee1f4aedc76bfb2e7d4bed3eb75dc526c3b1b837b135d5bbafe6732a922c88ceb58

⁸ <https://news.zerkalo.io/economics/47760.html>

⁹ C. 3,

https://belhelcom.org/sites/default/files/6._pravo_ne_podvergatsya_proizvolnomu_ili_nezakonnomu_vmeshatelstvu_v_lichnyu_i_semeynyu_zhizn_2022.pdf,

https://news.zerkalo.io/economics/24701.html?utm_source=news.zerkalo.io&utm_medium=news-bottom-block&utm_campaign=relevant_news

¹⁰ https://news.zerkalo.io/life/55880.html?utm_source=news.zerkalo.io&utm_medium=news-bottom-block&utm_campaign=relevant_news

¹¹ On the arbitrariness of the procedures and their consequences: p. 30-32: <https://baj.media/be/analytics/ekstremizm-i-media-analitika-bazh>

¹² <https://humanconstantia.org/obzor-borby-s-ekstremizmom-v-belarusi-za-oktyabr-dekabr-2023/>



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	2022	2023 (February-March)	2023 (end of year)
Number of persons listed as "extremists"	2 263 ¹³	2 487 ¹⁴	3 654 ¹⁵
Number of persons listed as "terrorists" (including Belarusian citizens)	242 Belarusian citizens ¹⁶	1 015 (268) ¹⁷	1 156 (397) ¹⁸

In 2023, decree No. 278 "On the Procedure for Issuing Documents and Performing Actions"¹⁹ (the so-called "passport decree") was adopted. According to this document,

- a number of administrative procedures can be performed only in Belarus in person or by a power of attorney executed in Belarus (including property transactions);
- a regular passport, ID and biometric passport can be obtained and exchanged only in Belarus, even for citizens who have a PP-series passport (permanent residence in another country).

The decree has many consequences for personal and family life - first of all, for citizens who cannot return to Belarus due to the risk of political persecution. In many cases, such people are deprived of the opportunity to dispose of their property, to obtain an identity document or a duplicate of a document on the completion of education or an act of civil status, a certificate of absence of obstacles to marriage, and so on. The absence of such documents significantly complicates (or, depending on the legislation of the host country, makes it impossible) to perform a number of actions without which it is difficult to imagine a complete human life, including professional and personal self-realization, creation of a family, obtaining medical and educational services²⁰. Thus, the listed acts and existing law enforcement practice do not ensure compliance with the principles of legality, proportionality and necessity of intervention.

¹³ https://humanconstantia.org/obzor-borby-s-ekstremizmom-v-belarusi-za-oktyabr-dekabr-2022/#_____nbsp

¹⁴ <https://humanconstantia.org/razbiraemysya-s-ekstremistskimi-spiskami-perechen-grazhdan-belarusi-inostrannyx-grazhdan-ili-lic-bez-grazhdanstva-prichastnyx-k-ekstremistskoj-deyatelnosti/>

¹⁵ https://spring96.org/files/reviews/ru/review_2023_ru.pdf

¹⁶ Among them are TUT.BY journalists, journalist Andrzej Poczobut, political and civil activists: <https://humanconstantia.org/obzor-borby-s-ekstremizmom-v-belarusi-za-oktyabr-dekabr-2022/#27>

¹⁷ <https://humanconstantia.org/razbiraemysya-s-ekstremistskimi-spiskami-perechen-organizacij-i-fizicheskix-lic-prichastnyx-k-terroristicheskoy-deyatelnosti/>

¹⁸ A total of 160 persons connected to Belarus were listed for 2023, including human rights activist Nasta Loiko, lawyer Anastasia Lazarenko, political activist Eduard Babariko, <https://humanconstantia.org/obzor-borby-s-ekstremizmom-v-belarusi-za-oktyabr-dekabr-2023/#i-15>

¹⁹ <https://pravo.by/document/?guid=12551&p0=P32300278>

²⁰ <https://belhelcom.org/ru/news/analiz-narusheniy-respublikoy-belarus-mezhdunarodnyh-obyazatelstv-po-pravam-cheloveka-i>

It remains impossible to effectively challenge abuses, both because of the general repressive atmosphere, in which bringing a complaint against State interference in personal and family life to the competent authorities entails the risk of persecution, and because of the lack of independence of the judiciary²¹, as well as the aforementioned uncertainty in the regulation of interference. Continued repression of independent CSOs, journalists, human rights defenders, and defense lawyers²² further limits the ability to expose abuses and hold perpetrators accountable. Due to the denunciation of the Optional Protocol to the International Covenant on Civil and Political Rights, individual complaints against Belarus to the Human Rights Committee have also become unavailable since February 8, 2023²³. The *incommunicado* detention of individual political prisoners, in the absence of any communication with the outside world, including a lawyer, exacerbates the general trend of limiting the possibility to appeal against abuses in places of detention²⁴.

- **Personal data**

The experts still note the ambivalence of the situation of personal data protection: on the one hand, the activity of the National Center for Personal Data Protection is evaluated positively due to the latter's active activity in responding to complaints (including demands to eliminate the detected violations)²⁵, clarifying the regulation (in particular, the article-by-article commentary to the Law on personal data protection was published²⁶) and educating in other formats²⁷, informing about the leaks and responding to them properly²⁸. On the other hand, these activities are mainly related to data processing by private actors and do not address more significant breaches by public authorities in administrative, judicial, law enforcement contexts. The current legislation on personal data protection does not prevent the existence of the above-mentioned databases, the regulation of which remains opaque and unpredictable for citizens, along with clear grounds and procedure for getting into them, legal consequences and remedies.

It is not ensured that requests from public bodies (especially law enforcement agencies) are limited to information relating to the personal life of an individual, the obtaining of which is necessary in the public interest.

During the review period, additional, more stringent border checks continued to be carried out on persons listed in the "Riot" database. Persecution of people who signed up for the alternative

²¹ P. 12-15, https://spring96.org/files/reviews/ru/review_2023_ru.pdf

²² <https://www.defendersbelarus.org/news/tpost/bmxnlncg91-otchet-krizis-advokaturi-prodolzhenie-re>

²³ https://www.defendersbelarus.org/zakrytye_sudy_podpiski_o_nerazglashenii

²⁴ <https://www.defendersbelarus.org/news/tpost/bmxnlncg91-otchet-krizis-advokaturi-prodolzhenie-re>

²⁵ https://t.me/cpd_by/557 , https://t.me/cpd_by/534 , https://t.me/cpd_by/549

²⁶ <https://cpd.by/pravovaya-osnova/metodologicheskiye-dokumenty-rekomendatsii/postatejnyj-kommentarij-k-zakonu-respubliki-belarus-o-zashhite-personalnyh-dannyh/>

²⁷ https://t.me/cpd_by/538 , https://t.me/cpd_by/548 , https://t.me/cpd_by/550 , https://t.me/cpd_by/540

²⁸ https://t.me/cpd_by/537 , https://t.me/cpd_by/390 , https://t.me/cpd_by/395



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candidates in 2020 continued, and the practice of "blacklists" formed according to unpredictable criteria, serving as a basis for censorship and other obstruction of professional activity, persisted²⁹. In 2023, a new version of the Law on Psychological Assistance entered into force, expanding the grounds obliging psychologists to communicate information constituting professional secrecy without the consent of the person seeking help and a written request. Concerns have been raised that such information may be shared with law enforcement officials³⁰. A similar concern relates to registration for Polish visa applications through the Interbank Identification System: there are reports that law enforcement agencies have access to data from this system, allowing for targeted harassment³¹ of Polish visa applicants³².

The possibility to ascertain clearly whether and for what purpose the automated data files contain personal information, as well as the possibility to request the correction or deletion of information collected or processed contrary to the provisions of the law, is still lacking when it comes to data used by law enforcement agencies, which is particularly dangerous given the trend towards the expansion of various databases of "unreliable" persons.

There is no information on the prosecution of law enforcement officials for the ongoing practice of disclosing the personal data of detainees³³. In particular, in 2023, the National Center for Personal Data Protection issued a clarification that tattoos on the human body are personal data³⁴ - which did not prevent authorities from continuing the humiliating display of tattoos of people detained for political reasons³⁵. At the same time, the use of personal data protection legislation for politically motivated prosecutions continued in 2023³⁶. In the review period, the publication of investigations based on personal data leaks related to the activities of "Cyberpartisans"³⁷ continued - at the same time, experts note the lack of information on the measures taken by the state to ensure the protection of personal data of citizens.

²⁹ <https://penbelarus.org/2023/09/08/the-cultural-sector-in-belarus-in-2022-2023-repressions-trends.html> , <https://planbmedia.io/down/i-chernye-spiski-ni-pri-chem-vlast-uidela-kadrovuju-problemu-i-ozabotilas-zakreposhheniem-rabotnikov.html>

³⁰ <https://telegra.ph/EHto-stagnaciya-na-dolgie-gody-Psihiatr-pro-bazu-klientov-dlya-silovikov-sostoyanie-lyudej-i-budushchee-Belarusi-04-20> , <https://pravo.by/document/?quid=12551&p0=H12200184>

³¹ <https://news.zerkalo.io/life/45754.html> , <https://news.zerkalo.io/life/52296.html>

³² In light of recent trends of special attention, on the one hand, to persons with foreign residence permits and other documents "entitling them to benefits" and, on the other hand, to the Polish minority and Polish language schools (due to attempts to combat the outflow of labor abroad), such access may be particularly dangerous: P. 7-8, <https://trends.belhelcom.org/storage/reviews/February2024/gc1h07866DDq8G3X17sq.pdf>

³³ <https://prisoners.spring96.org/ru/person/vadzim-czarauko> , <https://spring96.org/ru/news/113373> , <https://spring96.org/ru/news/112796> , <https://spring96.org/ru/news/112647>

³⁴ <https://news.zerkalo.io/life/31719.html>

³⁵ <https://news.zerkalo.io/life/44135.html>

³⁶ <https://news.zerkalo.io/life/47175.html> , <https://news.zerkalo.io/life/49499.html> , <https://humanconstantia.org/obzor-borby-s-ekstremizmom-v-belarusi-za-yanvar-mart-2023/>

³⁷ <https://news.zerkalo.io/life/56867.html> , <https://news.zerkalo.io/life/56777.html> , <https://news.zerkalo.io/life/47282.html>



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- **Inviolability of home and correspondence**

During the period under review, interference with the confidentiality of correspondence of administrative detainees and prisoners continued: the administration of places of detention continues to arbitrarily censor correspondence³⁸. The *incommunicado* detention shows, among other things, a gross violation of the secrecy and integrity of the correspondence: prison administrations do not hand over letters to political prisoners and arbitrarily prevent the latter from contacting the outside world³⁹.

Protection from arbitrary electronic or other surveillance and wiretapping remained inadequate, both in law and in practice. Home and body searches continued beyond the search for necessary evidence - including "showcasing" raids aimed at intimidation⁴⁰. At the end of 2023, there were approximately 200 searches across the country of Coordinating Council members and associated persons⁴¹. There are reports of personal valuables going missing after searches⁴².

In addition, practices of interference in the private life of persons serving restriction of liberty without referral to a correctional institution remained widespread during the reporting period. They are raising questions about their necessity and proportionality: there are known cases of night checks of political prisoners by KGB officers in civilian clothes and with weapons, installation of a bot on devices that collects and transmits personal data of prisoners to law enforcement agencies, prohibition to go out into the courtyard of one's own private house at any time, provocations for minor violations, which can be the basis for more severe punishment⁴³.

In December, one of the key propagandists voiced the need to take away the apartment in Minsk from Nobel Prize winner Svetlana Alexievich, who left Belarus in 2020, and hand it over to a "many children's OMON officer"⁴⁴.

The experts lowered the score for the indicator of personal searches and inspections, because the above-mentioned "questionings" at the border, in addition to the legal uncertainty of the procedure itself, are accompanied by interference in personal life through inspection of mobile devices, requirements to answer personal questions, which may offend the dignity of the interviewees.

³⁸ <https://baj.media/be/analytics/pro-pogodu-pro-prirodu-kak-dela-kak-napisat-pismo-politzaklyuchennomu-chtoby-ego-propustil>

³⁹ <https://spring96.org/ru/news/111682>

⁴⁰ https://spring96.org/files/reviews/ru/review_2023_ru.pdf

⁴¹ <https://spring96.org/ru/news/113474>

⁴² <https://news.zerkalo.io/life/65439.html>

⁴³ <https://spring96.org/ru/news/111521>

⁴⁴ https://news.zerkalo.io/economics/56776.html?_gl=1*1kxo46*_ga*MTY1MjA4Njc0LjE2NzYzNTcwNTI.*_ga_B8LJ3JOEWY*MTcwMzA3MTUxNC42NTguMC4xNzAzMDcxNTE0LjYwLjAuMA..



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