

## National Human Rights Index

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2021

### Right of Peaceful Assembly:

Expert Commentary

**Score: 1.3**

#### Including scores by component:

- General principles 1.2
- Procedural issues regarding the organization and conduct of assemblies 1.5
- Holding of assemblies 1.2

A description of the previous situation with the right to peaceful assembly can be seen in the 2019 and 2020 review. In assessing the situation with the right to peaceful assembly in 2021, the experts of the Index gave lower scores than in 2020. The experts' position is explained in more detail below.

In 2021, the legal default in the state strengthened, as did the human rights crisis, which directly affected the right to peaceful assembly. People have no trust in law enforcement agencies. The general climate in the society, the feeling of insecurity, the toughening of legislation in the sphere of peaceful assemblies, the impunity of law enforcement officers and, as a consequence, the distrust of people in the judicial system, resulted in the fact that, despite the formal possibility to hold mass events (with restrictions), in practice in 2021 people do not use and/or cannot exercise this right without further punishment.

#### General principles

For 2021, there is still no presumption in favor of freedom of assembly in the legislation. Whereas in 2020 it was still possible for groups of people loyal to the authorities to hold assemblies, in 2021 peaceful assemblies were under an implicit prohibition. In 2021, not only were all the shortcomings of the current legislation not corrected, but it was exacerbated: against the background of the political crisis of 2020, the legislation became more repressive. On May 24th, 2021, Law No108-3 "On alterations to the Law of the Republic of Belarus "On Mass Events in the Republic of Belarus" was adopted. The Law excludes the notification procedure for holding mass events; prohibits collecting, receiving and using money and other property, performing works, and rendering services for reimbursing expenses associated with being held responsible for violation of the procedure for holding mass events; bans real-time coverage of mass events held in violation of the established procedure for the purpose of their popularization or propaganda, which applies also to journalists of the mass media; the liability of political parties and public associations for public calls by their leaders and members of



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their governing bodies to organize and hold a mass event before obtaining permission to hold it has been established.<sup>1</sup>

The right to freedom of peaceful assembly is provided selectively, but the situation has not significantly changed in comparison with 2020. The context of 2021, according to experts, has become more repressive, the right to peaceful assembly is almost impossible to exercise. The political situation in the state and changes in the legislation have led to the fact that the authorities in a permissive model must approve any mass event. In practice, any mass assembly that could be suspected of disloyalty to the authorities is prohibited. There is a selective and discriminatory approach in allowing certain groups to hold mass events. In 2021 only pro-government events authorized by the state itself were held. Since 2021, journalists cannot be organizers of mass events.<sup>2</sup>

The present legislation in the Republic of Belarus provides for the duty of organizers of mass events to independently sign contracts with communal services and independently provide security for a mass event by their own means. This mechanism often becomes a formal reason for refusing to hold an event organized by opponents of the current authorities. For example, in March 2021 Minsk city executive committee prohibited the Belarusian Popular Front "Adradzhenne", the "Movement "For Freedom" and the Belarusian Social Democratic Party (Hramada) to hold a mass event on March 25th, the 103rd anniversary of the Belarusian People's Republic and one of the reasons was the absence of a contract with the municipal services<sup>3</sup>. By comparison, when organizing pro-governmental rallies the absence of contracts with municipal services does not become an obstacle. On May 25, 2021, such a rally was held near the building of the Embassy of the Republic of Lithuania.<sup>4</sup>

If there were cases in 2020, when law enforcement agencies implemented security measures at public events, there were no such cases in 2021. According to the amendments to the Law "On mass events" of 2021, it is prohibited to collect, receive and use money, other property, works or services for reimbursement of expenses caused by violation of the procedure for holding mass events.<sup>5</sup>

Changes to the Law "On mass events" adopted in 2021 had a significant negative impact on the realization of the right to peaceful assembly: the exclusion of the notification procedure for organizing mass events and the obligatory permission-based procedure for organizing events constitute a disproportionate restriction on the right to peaceful assembly; such restrictions violate the principles of legality, necessity and non-discrimination.

According to experts, due to the general situation in the country in 2021 and the toughened legislation, the real possibility to hold assemblies within "sight and sound" of their target audience is not ensured.

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<sup>1</sup> <https://pravo.by/document/?guid=12551&p0=H12100108&p1=1&p5=0>

<sup>2</sup> <https://president.gov.by/ru/events/podpisan-zakon-o-massovyh-meropriyatiyah>

<sup>3</sup> <https://reform.by/210579-mingorispolkom-otkazal-v-provedenii-massovyh-meroprijatij-na-25-marta>

<sup>4</sup> <https://www.the-village.me/village/city/news-city/288975-miting-posol>

<sup>5</sup> <https://pervadmin.gov.by/zakon-respubliki-belarus-30-dekabrya-1997-g.-n-114-z-o-massovyix-meropriyatiyax>



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The state has created all the conditions (permission-based procedure for organizing events, selective and discriminatory approach in permitting certain groups to hold public events; prohibition on real-time coverage of mass events held in violation of the established order for the purpose of their popularization or propaganda; state agencies have broad discretion in choosing places for holding events) so that this right cannot be exercised, especially by those who do not support the current government. For example, in practice, in 2021 state bodies did not allow events to be held; only those events which were aimed at supporting the authorities were held and allowed. For instance, Pukhavichy District Executive Committee decision No 2802 of 17.08.2021 "On determining the places for holding mass events in Pukhavichy District" prohibited holding mass events on the central square, which, obviously, could have been the most convenient place for such events. However, the restrictions do not apply to mass events that are organized by public authorities<sup>6</sup>. Similar restrictions are also contained in the decision of the Hrodna City Executive Committee of June 25, 2021<sup>7</sup>, and the decision of the Minsk City Executive Committee<sup>8</sup>. Moreover, according to amendments to Article 9 of the Law mass events are not allowed "within a distance of less than 100 meters from territories of facilities and productions where potentially hazardous objects with chemical, physical and chemical, physical processes are operated, where formation of explosive environments (mixture of gases, vapors with air and other oxidants) is possible, and where dangerous substances are received, used, processed, stored, transported as specified in Annex 1 to the Law of the Republic of Belarus of 5 January No 354-3 "On industrial safety"<sup>9</sup>. In practice, according to experts, this deprived employees of the plants of the right to conduct and participate in mass events within "sight and sound" of the target audience. This norm is a response to numerous strikes, pickets, meetings and rallies of plant workers after August 2020 events. In 2021, those who took part in actions, flash mobs, which were held online or abroad, began to be prosecuted.

### **Procedural issues regarding the organization and conduct of assemblies**

According to experts, the situation with the process of informing the authorities about the assembly worsened compared to 2020. In practice, it has become more difficult to conduct events due to the introduction of a permissive procedure. There is no clear regulation of how to inform the authorities about the plan of holding events, despite the current law on mass events.

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<sup>6</sup> [https://kodeksy-by.com/norm\\_akt/source-%D0%9F%D1%83%D1%85%D0%BE%D0%B2%D0%B8%D1%87%D1%81%D0%BA%D0%B8%D0%B9%20%D1%80%D0%B0%D0%B9%D0%B8%D1%81%D0%BF%D0%BE%D0%BB%D0%BA%D0%BE%D0%BC/type-%D0%A0%D0%B5%D1%88%D0%B5%D0%BD%D0%B8%D0%B5/2802-17.08.2021.htm](https://kodeksy-by.com/norm_akt/source-%D0%9F%D1%83%D1%85%D0%BE%D0%B2%D0%B8%D1%87%D1%81%D0%BA%D0%B8%D0%B9%20%D1%80%D0%B0%D0%B9%D0%B8%D1%81%D0%BF%D0%BE%D0%BB%D0%BA%D0%BE%D0%BC/type-%D0%A0%D0%B5%D1%88%D0%B5%D0%BD%D0%B8%D0%B5/2802-17.08.2021.htm)

<sup>7</sup> <https://sputnik.by/20210706/mesta-provedeniya-massovykh-meropriyatij-utverdili-v-grodno-1054445767.html>

<sup>8</sup> <https://minsk.gov.by/ru/normdoc/3132/>

<sup>9</sup> <https://pervadmin.gov.by/zakon-respubliki-belarus-30-dekabrya-1997-g.-n-114-z-o-massovyix-meropriyatiyax>



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The process of decision-making on permission to hold assemblies, its transparency and timely notification with an explanation of the reason for each restriction, according to experts, has deteriorated in 2021. If in 2020 there were mass assemblies, including during the presidential campaign of 2020, the state bodies provided explanations for the decision about the event, then in 2021, due to the overall situation in the country, there were fewer mass events. People stopped applying for certain events, and if there were any events, they were purely pro-government. The decision-making process for assemblies is not open, as applications to hold mass events are considered by the head of the executive and administrative body alone, without the presence of the applicant or any third parties independent of the authorities.<sup>10</sup>

According to experts, as in 2020, in 2021 the right to appeal any restriction or ban on an assembly in court is not ensured by the state, due to the default of the legal system, the lack of an impartial court and the lack of confidence in it.

In 2021, according to the experts, the situation with the possibility of spontaneous, simultaneous assemblies, as well as counter-demonstrations has not changed. The experts noted that in practice, in 2021, the possibility of spontaneous, simultaneous assemblies and counter-demonstrations was realized by the people loyal to the current regime.

### **Holding of assemblies**

According to experts, in 2021 the law enforcement agencies were set at dispersing any action, regardless of the scale and size of the event. In May 2021, Law No. 106-3 "On Amendments to the Law on National Security of the Republic of Belarus"<sup>11</sup> was adopted. It amended several existing laws: "On Internal Troops of the Ministry of Internal Affairs of the Republic of Belarus", "On the State Border of the Republic of Belarus", "On Internal Affairs Bodies of the Republic of Belarus" and others. The law allows the use of weapons, special means, and military and special equipment by representatives of the above-mentioned security, defense and law enforcement agencies "taking into account the situation, the nature of the crime, the administrative offense and the personality of the offender, guided by the requirements of the Law". Previously, weapons and special means were allowed to be used "if it is not possible to fulfill their tasks in other ways". Moreover, according to the innovations, a law enforcement officer is not responsible for the harm caused by the use of physical force, special means, military or special equipment, the use or use of weapons, if the use of physical force, special means, military or special equipment, the use or use of weapons was carried out in accordance with the requirements of the Law. Thus, the officers are given a wide margin of appreciation.<sup>12</sup>

The situation with the arbitrary detention of assembly participants has not changed in 2021 in comparison with 2020: detentions occurred arbitrarily, without good reason, regardless of the degree

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<sup>10</sup> <https://www.mrik.gov.by/naseleniyu-rajona/organizatsiya-massovykh-meropriyatij>

<sup>11</sup> <https://pravo.by/document/?guid=12551&p0=H12100106&p1=1>

<sup>12</sup> [https://belhelcom.org/sites/default/files/novoe\\_zakonodatelnoe\\_regulirovanie\\_belarus\\_2021\\_2.pdf](https://belhelcom.org/sites/default/files/novoe_zakonodatelnoe_regulirovanie_belarus_2021_2.pdf)



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of danger to the participants of the events. In 2021, the Belarusian courts issued 3,211 court decisions in administrative cases, the majority of which are cases of responsibility for participation in unauthorized mass events. The political charge of such decisions can be clearly traced. Belarusians were detained for wearing white-red-white socks, dyed hair, using string lights, fireworks, reading Belarusian books, walking in the city with a bag from the "Sosedi" store, or for putting a candle or a lamp near churches in memory of victims of political repression. All of the above mentioned examples were recognized in court as unauthorized mass actions or pickets, and their participants were actually sentenced to administrative arrest<sup>13</sup>. Significant is the conviction of V. Kamkar who was detained not even at the mass event itself, but after it, having been identified through a photograph that found its way to the Internet.<sup>14</sup> There were many other similar cases recorded during 2021.

In 2021, protection of participants of peaceful assemblies from any person or group of persons who attempted to disrupt or obstruct an assembly was provided selectively: only when they were pro-government assemblies. Persons who tried to disrupt or obstruct such assemblies were held administratively liable.

The situation in 2021 with respect to the actions to protect order during assemblies, including the use of force, and their compliance with human rights principles, has improved slightly compared with 2020. There were fewer inhuman acts of mass violence by law enforcement agencies, which were characteristic of 2020 and which are crimes against humanity, also due to a decrease in the number of mass events. In 2021, the practice of non-compliance and abuse of the law increased: law enforcement agencies became more inventive in their methods of intimidation and use of force and began to use numerous administrative punishments instead of the use of force. Preventive detentions continued to be used. For example, on 9 September 2021 Uladzislau Kubitski, Dzmitry Polyakov, and Aleksei and Tatiana Busel were detained for organizing a neighborhood march, which had not yet taken place. The detained later claimed violence and torture by the law-enforcers.<sup>15</sup> Violation of publicity in the actions of police officers can be clearly traced in the case with the conviction of Zmitser Lanin. On September 28, 2021, on patrol the police noticed the emblem "Pahonia" on his car headrest and regarded it as an unauthorized mass event. The officers did not inform him, but decided to follow him for some time and detain him in another district of the city.<sup>16</sup>

In 2021 the situation with the actions of law-enforcement bodies during the assemblies, their openness and publicity did not change significantly. In 2021, there were fewer events, so it is difficult to assess the scale of the actions of the authorities. However, in 2021, if such events were held, the law enforcement officers were in uniform, they were telling what they were going to do, openly dispersed

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<sup>13</sup> <https://spring96.org/ru/news/106356>

<sup>14</sup> <https://spring96.org/ru/news/105823>

<sup>15</sup> <https://spring96.org/ru/news/105190>

<sup>16</sup> <https://spring96.org/ru/news/105190>



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peaceful assemblies and detained people. Journalists' access to assemblies is restricted, the practice of detaining all people indiscriminately, whether it is a journalist with a "press" vest or not, is common.

There are almost no independent media outlets left in 2021. According to the amendments to the legislation, a media journalist may lose his accreditation if he or his editorial board have violated the accreditation procedure or if they disseminate information that "does not correspond to reality and defames the business reputation of the organization that accredited the journalist, or if an intentional illegal act is committed in the course of their professional activities"<sup>17</sup>. A ban has been introduced on real-time coverage of mass events held in violation of the established procedure, for the purpose of their popularization or propaganda<sup>18</sup>. For example, on February 18, 2021, two journalists of the Belsat TV channel Ekaterina Andreeva and Darya Chultsova were sentenced to two years in jail for allegedly organizing actions that grossly violate public order (part 1 of article 342 of the Criminal Code). On November 15, 2020, they conducted a live broadcast of the violent dispersal of peaceful demonstrators who had come to pay tribute to Roman Bondarenko at the site of his death in the courtyard of an apartment building.<sup>19</sup>

In 2021 security forces detained journalists on at least 113 occasions, at least 29 media representatives were sentenced to administrative arrest. More than 60 media representatives are under criminal prosecution, 32 are in custody or in prison. The offices of the majority of independent national and regional media organizations and the apartments of their employees were searched and inspected some 146 times, with equipment, documents and money seized<sup>20</sup>. More than 68 media representatives faced violence or were injured in 2021. When detained, Yegor Martinovich, editor-in-chief of the Nasha Niva online edition, was beaten and suffered a head injury<sup>21</sup>. At least four journalists told Human Rights Watch that they were subjected to ill-treatment during or after their detention. Such treatment included severe beatings, denial of medical care, and poor conditions of detention.<sup>22</sup> While in 2020 physical violence against journalists was more frequent, in 2021 there was less direct physical violence, but threats of physical violence increased, resulting in those journalists who could leave leaving for safety reasons.

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<sup>17</sup> New Legislative Regulation in the Republic of Belarus as a Response of the Authorities to the Events of 2020, its Relationship with International Human Rights Standards, Center for Legal Transformation of the RPAO "Belarusian Helsinki Committee", 2021,

[https://belhelcom.org/sites/default/files/novoe\\_zakonodatelnoe\\_regulirovanie\\_belarus\\_2021\\_2.pdf](https://belhelcom.org/sites/default/files/novoe_zakonodatelnoe_regulirovanie_belarus_2021_2.pdf)

<sup>18</sup> <https://president.gov.by/ru/events/podpisan-zakon-o-massovyh-meropriyatiyah>

<sup>19</sup> <https://baj.by/ru/analytics/elektronnyy-byulleten-smi-v-belarusi-no2-64-2021-presledovanie-zhurnalistov>

<sup>20</sup> <https://baj.by/ru/analytics/cifry-goda-presledovanie-zhurnalistov-i-media-v-belarusi-v-2021-godu>

<sup>21</sup> <https://belsat.eu/ru/news/09-07-2021-nasha-niva-glavnogo-redaktora-izbili-pri-zaderzhanii-ne-davali-edy-ves-den/>

<sup>22</sup> <https://www.hrw.org/ru/node/378348/printable/print>



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Because of the general atmosphere of fear in the society after August 2020, the ensuing repressions of people for their civic position and the crackdown on public organizations and human rights organizations in particular<sup>23</sup>, it was not possible to carry out monitoring activities as a representative of a certain organization in 2021. This activity became unsafe, as law enforcement bodies could detain an independent observer and the court would impose administrative penalties for a solitary picket, as the legislation does not distinguish between participants and non-participants of mass events.

Since August 2020 participants and organizers of peaceful assemblies are prosecuted only for the fact of participation in an unauthorized assembly, in 2021 this practice has not changed.

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<sup>23</sup> According to Lawtrend, since July 2021 the Belarusian authorities have liquidated more than 300 non-profit organizations, regardless of the nature of their activities (cultural, educational, human rights, social, charitable, etc.) Official grounds for liquidation included non-statutory activities, receiving two warnings from the Ministry of Justice within a year, or failure to carry out entrepreneurial activities for 24 months. The liquidation was not applied to pro-governmental NGOs. About 200 other civil society organizations decided to close down. <https://www.lawtrend.org/liquidation-nko>



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