

The analysis of violations by the Republic of Belarus of international human rights obligations and constitutional guarantees in respect of its citizens due to the adoption of Decree No. 278 "On the Procedure for Issuing Documents and Performing Actions" of September 4, 2023

On September 4, 2023, Decree No. 278 "On the Procedure for Issuing Documents and Performing Actions" was adopted.

Firstly, several administrative procedures (including property transactions) can now be performed only on the territory of Belarus in person or by a power of attorney issued in Belarus. Secondly, it will only be possible to obtain and exchange a regular passport, ID, and biometric passport in Belarus, even for Belarusian citizens who possess PP series passports (i.e., those who have formalized permanent residence in another country).

In the 21st century, it is widely understood that citizens are one of the most important components of a state's international legal personality, "statehood" and sovereignty *per se*. The passport is a manifestation of the latter and an indication of the mutual obligations between citizens and the state. A state cannot abandon a dissenting or "inconvenient" segment of its citizens without violating its international obligations and its Constitution.

The adoption of the Decree cannot be justified by the optimization of administrative procedures and the activities of foreign missions, as the [preamble](#) of the document states. The measures taken contradict the normal approach and commitment of a sovereign state to protect its citizens abroad, as well as a number of international human rights obligations of Belarus, the 1963 Vienna Convention on Consular Relations and the Belarusian Constitution.

According to Article 5(a) of the Vienna Convention on Consular Relations (to which Belarus has been a party since 1989), the first consular function is to protect in the receiving state the interests of the sending state and of its nationals. Additionally, paragraphs (d), (e), (f), and (h) of Article 5 define the consular functions that have either been completely eliminated by the Decree or cannot henceforth be exercised appropriately.

In Article 59 of its Constitution, Belarus committed to taking all measures available to establish an internal and international order necessary for the full realization of the rights and freedoms of its citizens as provided by the Constitution. It also specifies that state bodies, officials and other individuals entrusted with performing state functions are obligated, within the limits of their authority, to take the necessary measures for the realization and protection of citizens' rights and freedoms.



#human rights

#human rights based approach



office@belhelcom.org

#business and human rights

#international human rights enforcement
mechanisms



www.belhelcom.org

#discrimination

The State cannot arbitrarily restrict the authority of its institutions without aligning such "optimization" with its obligations to protect human rights and uphold the constitutional guarantees it is obliged to maintain with respect to its citizens.

These include, at the very least:

- The right to equal treatment (non-discrimination) (Art. 26 of the Covenant on Civil and Political Rights, Art. 22 of the Constitution);
- The right to freedom of movement (Art. 12 of the Covenant);
- The right to respect for private and family life (Art. 17 of the Covenant)
- The right to marry and found a family (Art. 23 of the Covenant);
- The right of every child to be registered and acquire a nationality (Art. 7 of the Convention on the Rights of the Child);
- The right to property (Art. 44 of the Constitution).

Discrimination as a separate violation:

The adopted measures discriminate against all Belarusian citizens who are temporarily staying or permanently residing abroad, as they are placed in an unjustifiably unequal position compared to other Belarusian citizens.

The amendments effectively exclude individuals temporarily staying in another country from the scope of legislation governing the issuance of documents and administrative procedures. Nearly all references in the legislation that previously addressed such individuals have been eliminated. Consequently, this group is now legally nonexistent . Legislation only sees "citizens of the Republic of Belarus" and "citizens who have formally established permanent residence abroad".

The exceptions outlined in the Decree regarding the possibility to certify abroad the powers of attorney for state employees and "other persons" (with the list of the latter approved by the government) further underscore the discriminatory nature of the norms adopted.

Individuals who can visit Belarus will have to face unreasonable restrictions and inconveniences in terms of time and finances due to the Decree. Belarusians who were forced to leave the country because of political persecution or the risk thereof after 2020 will find themselves in an especially vulnerable position. They are unable to return to Belarus to carry out the necessary procedures due to the substantial risks of arbitrary persecution. It is evident that the legislative measures enacted are aimed specifically at limiting the rights



#human rights

#business and human rights

#discrimination

#human rights based approach

#international human rights enforcement
mechanisms



office@belhelcom.org



www.belhelcom.org

of forced political migrants. This is evidenced, among other things, by the subsequent statements from government officials, including [proposals](#) to ease regulations for “patriotically-minded” citizens abroad.

Human rights defenders, representatives of democratic forces, civil society activists, and independent media journalists find themselves in an even more vulnerable position, as there is an almost 100% likelihood of their arrest upon returning to Belarus. The Human Rights Center "Viasna" in collaboration with the International Federation of Human Rights (FIDH) issued a special [statement](#) in this regard.

The inability to return to Belarus affects not only recent political expatriates (those who left after 2020) but also Belarusian citizens who have resided permanently abroad for an extended period. Risks stemming from their public civic stance or activism (even non-public) remain high.

Hence, the mere enactment of such a Decree constitutes a violation of non-discrimination obligations of the state. This aligns with the broader trend of formalizing discrimination based on loyalty to the state, a [trend](#) we have been observing since the beginning of 2023. Belarusian authorities persistently violate Article 22 of their own Constitution and Article 26 of the International Covenant on Civil and Political Rights, which enshrine the principle of equality before the law and the right to equal protection under the law without discrimination.

The Human Rights Committee underscores in [General Comment No. 18](#) that the principle of non-discrimination, as enshrined in Article 26 of the Covenant, applies not only to the rights articulated in the latter but also to the obligations of States with regard to their legislation and its enforcement. Article 26 prohibits both formal and *de facto* discrimination in all domains in which State authorities carry out regulatory or protective functions.

In the context of discrimination, it is important to note that the situation of inability to return to Belarus for a number of people was created by the state itself through its repressive policies. And in this case, it is not just a discriminatory legislative measure, but a part of mass political repression, its next step. Not being able to violate the rights of the dissenters who left and to reach them "physically" inside the country, the Lukashenko regime, within the limits of its possibilities, deliberately creates for these persons a situation of even greater vulnerability and obstacles to the realization of their rights abroad, thus, drawing more state institutions and employees (in this case, employees of diplomatic missions and consular posts) into participation in repressive actions, compelling them to carry out instructions that are illegal, albeit formalized.



#human rights

#business and human rights

#discrimination

#human rights based approach

#international human rights enforcement
mechanisms



office@belhelcom.org



www.belhelcom.org

Violation of the right to freedom of movement

The absence of the possibility to renew a passport or receive a new document abroad constitutes a violation of the right to freedom of movement, primarily the right to leave any country. A passport as a travel document is a *sine qua non* condition for the exercise of this right, as it is a mandatory document when crossing international borders. The responsibility for providing this document to its citizens lies with the State of nationality.

Furthermore, in [General Comment No. 27](#) on Article 12 of the Covenant on Civil and Political Rights, the Human Rights Committee addresses situations where passports are not issued to citizens residing abroad. The Committee explicitly acknowledges, firstly, that a State's refusal to issue or renew a passport for a citizen living abroad constitutes a violation of Article 12, and secondly, that a State cannot justify its refusal by claiming that its nationals could return to its territory without a passport.

Violation of the right to marry and found a family

One of the repercussions of the measures taken is that citizens who cannot return to their home country due to the threat of persecution are unable to obtain and legalize a certificate confirming the absence of a marriage record. The requirement to provide evidence of the absence of another registered marriage is a rule [contained](#) in most legal systems, in which Belarusians might seek to establish a family. By depriving its citizens of the ability to demonstrate their eligibility to marry in another jurisdiction, the state arbitrarily interferes with their right to marry and create a family.

Violation of the right to respect for private and family life

The inability to obtain essential documents, including a valid passport, duplicates of documents verifying an individual's education or civil status, a certificate of no impediment to marriage, and their legalization, significantly complicates (and, depending on the legislation of the country of residence, may even entirely prevent) the pursuit of numerous activities crucial for a fulfilling human life. These include professional and personal self-fulfillment, establishing a family, accessing medical and educational services, etc. The arbitrary measures adopted flagrantly impede such possibilities without adequate justification, thus violating the right to respect for private and family life.

This right also covers various aspects of an individual's identity. The European Court of Human Rights [consistently maintains](#) that nationality constitutes a significant element of



#human rights

#business and human rights

#discrimination

#human rights based approach

#international human rights enforcement mechanisms



office@belhelcom.org



www.belhelcom.org

identity. The absence of a document certifying citizenship impacts one's identity in terms of both legal status in legal matters and the capacity to affirm one's civic self-identification.

Potential violation of the right of every child to be registered and acquire a nationality

The adopted amendments obstruct the protection and realization of the rights of underage Belarusian citizens, constituting a distinct violation since children are recognized as a vulnerable group under international standards, warranting special protection.

In the case of children born outside the jurisdiction of Belarus, the issue of identity becomes particularly critical. Therefore, among children, a particularly vulnerable group comprises newborns born to Belarusian citizens who cannot return to Belarus for political reasons. Whereas the 1989 Convention on the Rights of the Child obliges the state not to discriminate against children based on their parents' beliefs (Article 2(2)).

Firstly, the discriminatory treatment of dissenting citizens, manifested in the denial of the opportunity to acquire a valid passport abroad, naturally extends to their children since the absence of a valid passport for the parents may serve as an impediment to registering a newborn at foreign missions. In such a scenario, the child will not be included in the database of registered Belarusian citizens and will, *de jure*, remain "invisible" to Belarus.

Secondly, despite the host state's obligation to issue a birth certificate to the newborn, and the fact that some Belarusian citizens may also register their child at a Belarusian foreign mission (since not every citizen's passport is nearing expiration), the child will still be unable to obtain the first passport, and thus acquire *de jure* evidence of Belarusian citizenship. According to Belarusian legislation, only a valid passport of a citizen of the Republic of Belarus serves as such proof.

The Human Rights Committee, in its [General Comment No. 17](#), emphasizes that due to their vulnerability, children necessitate special protection, primarily including the right to be "seen" by the state's legal system through prompt registration shortly after birth. Additionally, children should have the opportunity to obtain a passport to effectively exercise the rights intrinsic to their status (in this case, the rights of a citizen of a foreign state). The certainty of civil status is also important for the development of a child's identity, particularly through the realization of their affiliation with the state, which is obliged to protect their rights and interests.



#human rights

#business and human rights

#discrimination

#human rights based approach

#international human rights enforcement mechanisms



office@belhelcom.org



www.belhelcom.org

Violation of the right to property

By depriving its citizens of the possibility, among other things, to sell or gift their real estate, or register or deregister a car without their personal presence or through a representative with a power of attorney issued in Belarus, the state infringes upon their right to full ownership, control, and utilization of their property, which constitutes a violation of Article 44 of the Constitution.

Currently, given the absence of established law enforcement practices, it is challenging to outline comprehensively all the potential difficulties Belarusian citizens may face when attempting to exercise their rights abroad. Human rights are interconnected and mutually dependent. The inability to verify one's citizenship, civil status, or acquire other essential documents crucial for compliance with the laws of the host country allows us to assume with confidence a broader range of rights that may be affected by the measures taken, including, among others, the right to work and the right to education (the realization of which, for instance, may be hindered by the impossibility to provide an apostilled diploma).

It is essential to emphasize that the fulfillment of human rights obligations by host states concerning Belarusian citizens present on their territory and the failure of Belarus to fulfill its obligations are distinct matters. Even if host states can partially mitigate the consequences of the adopted Decree for Belarusians within their jurisdiction, it will not rectify the violations committed by Belarus.



#human rights

#business and human rights

#discrimination

#human rights based approach

#international human rights enforcement
mechanisms



office@belhelcom.org



www.belhelcom.org