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NOTE VERBALE

The OSCE Office for Democratic Institutions and Human Rights presents its compliments to the Delegations of the OSCE participating States and, in accordance with the second part of paragraph 11 of the Moscow Document of 1991, has the honour to transmit the report of the OSCE rapporteur appointed by 17 OSCE participating States under the Moscow Mechanism invoked in respect of the Republic of Belarus.

The OSCE Office for Democratic Institutions and Human Rights avails itself of this opportunity to renew to the Delegations of the OSCE participating States the assurances of its highest consideration.

Warsaw, 29 October 2020



To the Delegations of the
OSCE participating States
Vienna

*) correction due to change of distribution status.

OSCE Rapporteur's Report under the Moscow Mechanism on Alleged Human Rights Violations related to the Presidential Elections of 9 August 2020 in Belarus

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Summary

On 17 September 2020 the Moscow Mechanism of the human dimension of OSCE was invoked by 17 participating States with regard to credible reports of human rights violations before, during and after the Presidential election of 9 August 2020 in the Republic of Belarus. Due to the decision of Belarus not to appoint a second expert the author of this report has been appointed as a single rapporteur. The Office for Democratic Institutions and Human Rights (ODIHR) facilitated the mission by providing administrative and logistical support to the rapporteur. In particular, it opened a channel for communications to the rapporteur under the Moscow Mechanism through which the rapporteur received more than 700 submissions.

The mandate of the rapporteur was defined by the 17 invoking States based on the Moscow Document as to establish the facts and give advice on possible solutions to the questions raised, which were defined as:

“Intimidation and persecution of political activists, candidates, journalists, media actors, lawyers, labour activists and human rights defenders, as well as the detention of prospective candidates; election fraud; restriction on access to information, including internet shutdowns; excessive use of force against peaceful protesters; arbitrary and unlawful arrests or detentions; beatings; sexual and gender violence; abductions and enforced disappearances; torture and other cruel, inhuman or degrading treatment or punishment, and widespread impunity for all of the above.”

The wide mandate required particular efforts to cope with the large amount of material available, both based on the submissions and research in view of the limited time available for the report, i.e., 14 days. The rapporteur also immediately turned to the Permanent Representation of the Republic of Belarus with the request to facilitate a visit to Belarus and provide the position of Belarus on the allegations, but was informed that the Government of Belarus had decided to refrain from participating in the implementation of the Moscow Mechanism (see attached). Consequently, the rapporteur had to collect the evidence and conduct the interviews online as documented in this report.

The findings are very clear. With regard to the question of “election fraud” the rapporteur comes to the conclusion that there were evident shortcomings of the presidential elections which did not meet the basic requirements established on the basis of previous election monitoring. ODIHR being invited too late to observe the crucial process of registration of candidates, as in previous elections, had to renounce sending a monitoring mission. The observations by local monitoring organizations and citizens, as well as international observers with good reasons found the presidential election fell short of fulfilling the basic international requirements for genuine elections. Accordingly, the allegations that the presidential elections were not transparent, free or fair were found confirmed.

Regarding the allegations related to major human rights abuses, they were found to be massive and systematic and proven beyond doubt. It is particularly worrying that the well-documented cases of torture and ill-treatment in the crackdown by the security forces on political dissent have not, as yet, resulted in anybody being held accountable, which confirms allegations of general impunity, also due to the absence of fair trials in political cases. The freedom of the media and the safety of journalists are under massive attack, as are the freedom of assembly and association and the right to liberty and security. However, elections and human rights abuses are related to each other. Without democratic and structural reforms, it cannot be expected that necessary legal reforms will have the desired effects.

As requested by the mandate and based on the findings in the report the rapporteur has made recommendations to the Republic of Belarus, to the OSCE and to the international community, which could contribute to addressing the dramatic situation with regard to the Presidential election and the related massive human rights violations, which were still ongoing when the rapporteur had to complete his report. This was done in a constructive spirit with a view to the future of Belarus as a European country based on human rights, democracy and the rule of law.

Recommendations

I. Recommendations to the Republic of Belarus

A. On the Presidential Elections of 9 August 2020:

1. Cancel the results of the presidential elections of 9 August 2020 due to irregularities at all stages of the process;
2. Organize new genuine presidential elections based on international standards;
3. Invite international observation by OSCE/ODIHR on time, in line with OSCE/ODHIR commitments as well as other international and domestic observers;
4. Make sure that all election commissions are composed of all actors of society and can perform their obligations in full independence;
5. Bring the electoral law in conformity with international standards as recommended by OSCE/ODIHR and the United Nations;
6. Allow the right to vote, also for certain categories of persons serving prison sentences or who are in pre-trial detention;
7. Implement all outstanding recommendations from past OSCE/ODIHR election observation missions.

B. On the Situation of Human Rights:

Right to liberty and security

1. Immediately cease all violence, in particular torture and ill-treatment against peaceful protesters and opponents;
2. Immediately and unconditionally release all prisoners held for political reasons, including all detainees that were arrested in relation to the protests against the presidential elections of 9 August 2020;
3. In particular, release all journalists, media workers and bloggers;
4. Stop deportations of or pressure to leave the country on political opponents and respect the human right not to be arbitrarily deprived of the right to enter his own country;
5. Provide detainees with speedy access to lawyers and families;
6. Bring detention conditions in line with international standards like the UN Standard Minimum Rules for the Treatment of Prisoners;
7. Immediately establish a truly independent oversight mechanism regarding the conditions of detention pending the accession to international treaties;
8. Provide detainees with proper access to medical care as well as protection against COVID-19 virus infections;
9. End the use of preventive detention, in particular for administrative offenses and respect the principles of legality and proportionality, as well as due process;
10. Refrain from reprisals and extra-judicial punishment, like dismissal of protesters and strikers or criminal persecution of company officials.

Related to the right to fair trial

11. Ensure that the standards of fair trial are respected both in criminal as well as administrative procedures like the presumption of innocence and the speedy access to legal assistance;
12. Guarantee and respect the independence of judges;
13. Stop any harassment, intimidation, obstruction or pressures regarding lawyers taking “political” cases;
14. Ensure that lawyers have access to relevant information, files and documents in sufficient time to provide effective legal support;
15. Make sure that lawyers do have access to their clients without delay and to respect the confidentiality of the communication of lawyers with their clients;
16. Refrain from putting any restrictions on the freedom of expression of lawyers to publicly inform about cases in agreement with their clients.

Freedom of assembly and association

17. Ensure the freedom of peaceful assembly in line with international standards like the General Comment 37 of the UN Human Rights Committee of 2020 and the Venice Commission/OSCE Guidelines of 2019;
18. Permit notified assemblies at the locations preferred by the organizers except for the specific reasons indicated in the ICCPR, if necessary, in a democratic society;
19. Respect the right to spontaneous assemblies as part of the right to assembly;
20. Refrain from requiring the payment of unreasonable fees for the security of or the cleaning after assemblies with a prohibitive effect;
21. Refrain from arbitrarily detaining participants in common protests, picketing or other forms of expression;
22. Respect the right of children to freedom of expression and assembly;
23. Stop threatening parents with custodial removal of children in the context of participation in assemblies or political dissent (Decree No. 18);
24. Refrain from judicial harassment and reprisals as well as criminalization of citizens and organizations critical of government policies and actions;
25. Respect legitimate protests in the fields of culture, universities and sports as well as from labour activists or religious leaders and refrain from taking reprisals for such actions;
26. Ensure the protection of human rights defenders in accordance with the UN Human Rights Defenders Declaration of 1998 and the OSCE/ODIHR *Guidelines on the Protection of Human Rights Defenders* of 2014 and end all judicial harassment against them;
27. Abolish restrictions on receiving foreign support by non-governmental organizations in Belarus.

On freedom of expression and the media

28. Ensure the safety of all journalists and refrain from any persecution related to the performance of their duties, seizure of and damage to equipment and footage;
29. Facilitate and deregulate the accreditation of foreign journalists;
30. Refrain from interference with the access to the Internet, including the mobile one, and terminate censorship and blocking of webpages as well as any restrictions on bloggers;
31. Stop the lawsuit of the Ministry of Information to derecognize the status of mass media for online outlet tut.by and derestrict the 70 webpages presently blocked;
32. State-owned networks should provide access to printing and distribution services to independent print media;
33. End the obligation of all media outlets to keep records of and disclose to authorities the names of people who submit comments as well as the criminal liability of owners of registered online media for any content on their website;
34. Provide an enabling environment for the work of journalists and the media.

On accountability and preventing impunity

35. Promptly investigate all allegations of torture, ill-treatment, sexual violence, disappearance and killing by security forces including their disproportionate use of weapons by an independent and impartial body;
36. Provide effective judicial remedies for alleged violations of human rights;
37. Provide full redress and compensation to all victims of unlawful persecution;
38. Ensure accountability of perpetrators, speedily completing the investigations and instigating trials to bring those responsible for torture, inhuman treatment and other human rights violations to justice;
39. Allow for the UN Special Procedures, in particular the Special Rapporteur on the Situation of Human Rights in Belarus to visit the country on the basis of standing invitations;
40. Enable an independent, transparent and impartial international in-depth investigation in all allegations of torture and ill-treatment, as well as other serious human rights violations;
41. Engage into a dialogue with all actors, in particular civil society and also the Coordination Council.

On measures of a structural nature

42. Invite the Venice Commission of the Council of Europe to assist with necessary constitutional and other legal reforms to ensure that human rights are respected in practice;¹
43. Reform the electoral law to ensure full independence of Electoral Commissions;
44. Reform the law and registration procedure for public associations and other relevant legislation on civil society organizations, political parties and labour unions in conformity with international standards on the freedom of association;
45. Reform the law on mass events and bring it in conformity with international standards on the right to assembly;
46. Abolish the administrative sanction of detention for unauthorized peaceful assemblies;
47. Reform the law and the media allowing for freedom of expression and information offline and online;
48. Include in the Criminal Code a definition of torture in line with international standards as well as appropriate sanctions for perpetrators;
49. Reform the law on the mass media with the purpose to allow for easy registration of offline and online media;
50. Fully decriminalize defamation;
51. Review the law on anti-extremism as well as the related offenses under the criminal law;
52. Establish a constitutional complaint mechanism for violations of human and fundamental rights;
53. Ensure the independence of the Bar Association and to end the interference by the Ministry of Justice through its inspection powers; disciplinary measures should be taken independently by the Bar Association;
54. Establish an independent complaint procedure on police behavior;
55. Reform the appointment system of judges with a view to strengthen their independence from the executive like the nomination by the president and establish an independent judicial council for appointments and disciplinary measures and ensure security of tenure as requested by international standards for their profession;
56. Enable prosecutors to operate without undue interference from the executive;
57. Approach the Committee of Ministers of the Council of Europe to be invited to join the European Convention for the Prevention of Torture and other inhuman or degrading treatment and punishment;
58. Ratify the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and establish a National Prevention Mechanism;

¹ Venice Commission activities related to Belarus, see at <https://www.venice.coe.int/webforms/documents/default.aspx?country=5&year=all&other=true>.

59. Ratify the Statute of the International Criminal Court;
60. Establish a National Human Rights Institution based on the Paris Principles;
61. Fully cooperate with UN Special Rapporteur on the Situation of Human Rights in Belarus;²
62. Ratify the International Convention on the Protection of All Persons from Enforced Disappearance;
63. Accede to the Istanbul Convention on Violence against Women of the Council of Europe;
64. Establish a moratorium on the death penalty and work on its full abolition;
65. As a member of the family of European states consider joining the 47 European state parties of the European Convention on Human Rights and also become a member of the Council of Europe.

II. Recommendations to OSCE Participating States:

1. Not to recognize the results of the presidential elections in Belarus of 9 August 2020;
2. Request new elections monitored by ODIHR and other international observers based on OSCE standards;
3. Request the implementation of the above recommendations by the government of Belarus;
4. Continue efforts at facilitating a dialogue between all actors in Belarus;
5. Participate in an international investigative mechanism of the human rights violations in the context of the presidential elections;
6. Extend technical assistance to Belarus for preparing new presidential elections and to undertake the suggested legal reforms;
7. Monitoring the establishment of human rights, democracy and the rule of law based on the recommendations made by the rapporteur under the Moscow Mechanism.

III. Recommendations to the International Community:

1. Refrain from recognition of the results of the presidential elections of 9 August 2020;
2. Request new presidential elections under international monitoring;
3. Establish an independent international body for the in-depth investigation of human rights violations in the context of the presidential elections with the help of forensic experts;
4. Bring perpetrators of torture and inhuman treatment among the Belarusian security forces and their responsible superiors to justice wherever possible;
5. Provide assistance to people who had to leave the country, both for their (temporary) protection as well as for the treatment of injuries and trauma as a result of torture and ill-treatment;
6. Grant asylum in cases of persecution covered under the Geneva Refugee Convention;
7. Provide support to human rights defenders and civil society organizations promoting and protecting human rights;
8. Provide legal and technical support for the necessary constitutional and legal reforms using existing specialized bodies like the Venice Commission on Democracy through Law or the International Bar Association;
9. Facilitate the involvement of the UN special procedures in the protection and promotion of human rights as well as the establishment of a country office of the UN High Commissioner on Human Rights in Belarus to assist in the transformation to human rights, democracy and the rule of law.

² See at: <https://www.ohchr.org/EN/HRBodies/SP/CountriesMandates/BY/Pages/SRBelarus.aspx>.

I. Introduction

A. Background and Invocation of the Moscow Mechanism

According to the government of Belarus the Presidential elections in Belarus of 9 August 2020 were won with 80 % of the votes by the acting president Aleksander Lukashenko. However, local observers and international media reported about wide-spread intimidation and harassment of other candidates before the elections and of large irregularities during the election process. The critical actors claimed that based on the results of local monitoring the results should rather have been in favor of an alternative candidate, Svetlana Tikhanovskaya. Large protests emerged in Minsk and other cities of Belarus, which were violently repressed by police and other forces without being able to stop them. In this context wide-spread violations of different human rights allegedly were committed.³ This led to debates in international fora including the OSCE Permanent Council, where a special plenary meeting took place on 28 August 2020.⁴ There the chairperson-in-office and the incoming chair of the Council offered their good services⁵ which seem not to have been accepted. However, the situation aggravated as the protests and alleged human rights violations continued and calls to establish a dialogue between the conflicting parties were rejected by the government of Belarus.

On 17 September 2020, the so-called “Moscow Mechanism” under the Human Dimension of OSCE was invoked by 17 Participating States, i.e. Belgium, Canada, Czech Republic, Denmark, Estonia, Finland, France, Iceland, Latvia, Lithuania, Netherlands, Norway, Poland, Romania, Slovakia, United Kingdom and United States. They referred to a number of concerns based on credible reports of human rights violations and abuses before, during and after the Presidential elections of 9 August 2020 and expressed their view “that these reports reflected a particularly serious threat to the fulfilment of the provisions of the OSCE human dimension”. Consequently, they invoked Paragraph 12 of the Moscow Mechanism in order to establish a fact-finding mission of experts to examine the issues identified. This mission should have the purpose “to establishing the facts and reporting on them” and “to give advice to the Republic of Belarus, to the OSCE, and to the international community, on possible solutions to the questions raised”.

According to Paragraph 10 of the Moscow Document one member of the expert mission is to be chosen by the invoking states from a resource list of experts, existing for that purpose, while Belarus is entitled to choose a second member from the same list in which case the two have to agree on a third one. In the case that no second expert is appointed, the first expert nominated by the invoking states becomes a single rapporteur and has to provide his report within 14 days. In the case at hand Belarus on 28 September 2020 informed that it would not nominate a second rapporteur. On 29 September 2020 the present rapporteur was informed by ODIHR that he had to do the fact-finding as a single rapporteur and that his mission would start on 1 October 2020. Accordingly, the report was due on 13 October 2020.

The Moscow document describes the purpose of the fact-finding as establishing the facts, reporting on them and giving advice on possible solutions for the questions raised (Paragraph 11). According to Paragraph 6 of the Moscow document referred to by Paragraph 10, the requested State

“will cooperate fully with the mission of experts and facilitate its work ...”. In particular, the requested State will allow the mission, for the purpose of carrying out its tasks, to enter its territory without delay, to hold discussions and travel freely therein, to meet

³ See “ODIHR gravely concerned at situation in Belarus following presidential elections”, at: <https://www.osce.org/odihr/belarus/459664> and “OSCE/ODIHR alarmed by increasing threats to human rights in Belarus following presidential elections” of 19 August 2020, at: <https://www.osce.org/odihr/460693>.

⁴ See the documents of the August 2020 Permanent Council plenary meetings at: <https://www.osce.org/permanent-council/462607>.

⁵ See the address by OSCE chairperson-in-office, at: <https://www.osce.org/files/f/documents/4/c/461878.pdf>.

freely with officials, non-governmental organizations and any group or person from whom it wishes to receive information". It also states that *"the mission may receive information in confidence from any individual, group or organization ..."*. *"The participating States will refrain from any action against persons, organizations or institutions on account of their contact with the mission of experts ..."*. According to Paragraph 4 the pertinent CSCE institution, now ODIHR *"will provide appropriate support to such mission"*.

Accordingly, ODIHR opened a channel through which information could be sent by any source to the Rapporteur and provided it with a list of contacts. ODIHR also provided technical services such as assistance for translations.

B. Mandate of the Rapporteur

The mandate is determined by the invoking States, which nominate one expert from the resource list, who then formally is appointed by ODIHR. As indicated in the invocation the mandate of the rapporteur in the present case has been identified as to investigate:

"Intimidation and persecution of political activists, candidates, journalists, media actors, lawyers, labour activists and human rights defenders, as well as the detention of prospective candidates; election fraud; restriction on access to information, including internet shutdowns; excessive use of force against peaceful protesters; arbitrary and unlawful arrests or detentions; beatings; sexual and gender violence; abductions and enforced disappearances; torture and other cruel, inhuman or degrading treatment or punishment, and widespread impunity for all of the above."

As already indicated, the expert mission is expected *"to give advice to the Republic of Belarus, to the OSCE, and to the international community, on possible solutions to the questions raised"*.

C. Methodology of the Rapporteur

In order to cope with his wide mandate and short time frame on the first day of his mission, the 1 October 2020 the rapporteur sent a letter to the Permanent Representation of Belarus with the OSCE asking for the cooperation of the government of Belarus. He informed that he intended to travel to Belarus in order to learn about the position of the government as well as other actors and asked for the facilitation of his visit. He also invited the Belarusian government through the Permanent Mission to OSCE to provide him with a detailed opinion on the allegations contained in his mandate and a list of persons to be contacted for pertinent information. The response from the Permanent Mission of 2 October 2020 unfortunately was negative. It argued that that the Belarusian government did not see *"valid reasons for launching the 'Moscow Mechanism'"* and therefore refrained from participating in it and for this and other reasons given was not in a position to arrange a visit to Belarus.⁶

Therefore, the rapporteur had to collect the necessary information online and from interviews with the contacts identified. This was also facilitated by ODIHR which opened a specific information channel to allow everyone interested to share information with the rapporteur or approach him for conversations and interviews. In response, the rapporteur received a great number of testimonies and reports from individuals and pertinent local human rights organizations such as Human Rights Centre *"Viasna"*, Belarusian Association of Journalists, Belarusian Helsinki Committee, Human Constanta, Platform Golos (Voice), platform Zubr, Honest People, BY SOL, Centre for the Promotion of Women's Rights *"Her rights"*, Committee against Torture or Committee on the Investigation of

⁶ See the request by the rapporteur and the response received in annex to this report.

Torture, International Forensic Expert Group and others, some of them being a coalition of NGOs.⁷ In addition, information came from NGOs such as Human Rights Watch, FIDH, OMCT, Amnesty International, Front Line Defenders, Anti-Discrimination Center Memorial Brussels, Article 19 or Committee for the Defense of Journalists. Pertinent public information available from UN bodies, OSCE and Council of Europe as well as EU was also used. Very importantly, also stimulated by an appeal of Svetlana Tikhanovskaya of 30 September 2020 more than 700 submissions with pertinent information were received from Belarusian citizens and organizations, to which the rapporteur would like to express his gratitude for their confidence in the Moscow Mechanism. This information was cross-checked by the rapporteur with other sources and with the help of a number of interviews the rapporteur made with persons with a particular knowledge of the events in question. He also personally interviewed victims of police violence and persecution by authorities. In his research and drafting of the report he was assisted by several part-time assistants with the necessary language skills.⁸

The original plans to visit Belarus and to obtain the opinion of the government of Belarus on the allegations in order to listen also to its position could not be realized because of the lack of cooperation by the government in spite of the clear obligations under the Moscow Mechanism.⁹ However, the rapporteur did also take Belarusian laws and decrees as well as information on governmental websites and in media into account.

It should be noted that Belarus has already been the subject of a fact-finding mission under the Moscow Mechanism in 2011 in the context of the repression of demonstrations which took place after the Presidential election of 19th December 2010. The 17 requesting states at the time asked the rapporteur to investigate a list of human rights violations quite similar to the ones in the present mandate. Also then, the government of Belarus refused to cooperate which did not prevent the former rapporteur from producing a very substantive report with significant recommendations.¹⁰

II. Allegations of Human Rights Violations

A. Respect of Political Rights – the Right to Participate in Public Affairs, to Vote and to be Elected at Genuine Elections

1. The Substance of the right: UN and OSCE standards

The main basis for the international standards of the United Nations is the International Covenant on Civil and Political Rights (ICCPR). As mentioned in its Article 25 on the participation in the conduct of public affairs,¹¹ elections have to be “*genuine*”. In this context this means that elections should be “*conducted fairly and freely*” and “*persons entitled to vote must be free to vote for any candidate for election and for or against any proposal submitted to referendum or plebiscite, and free to support or oppose government, without undue influence or coercion*”.¹² Furthermore, states have to ensure that citizens have the possibility to participate in elections, either as a voter or a candidate.¹³

⁷ See, for example “Belarusian human rights activists submit report to OSCE Moscow Mechanism”, Viasna, 6 October 2020, at: <http://spring96.org/en/news/99839>.

⁸ The rapporteur wants to thank in particular Maren Krimmer, who provided valuable assistance especially on the chapter on political rights, Inga Zelena and Idia Ohenhen for their much appreciated support.

⁹ See “Makei: The Belarusian government will not participate in the OSCE’s Moscow Mechanism”, Belta, 18 September 2020, at: <https://eng.belta.by/politics/view/makei-the-belarusian-government-will-not-participate-in-the-osces-moscow-mechanism-133610-2020/>.

¹⁰ See OSCE Rapporteur’s Report on Belarus, by Prof. Emmanuel Decaux, at: <https://www.osce.org/files/f/documents/6/b/78705.pdf>.

¹¹ Article 25 ICCPR, see at: <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

¹² United Nations Committee on Human Rights, General Comment No. 25, at: CCPR/C/21/Rev.1/Add.7, General Comment No. 25, para. 19.

¹³ Article 25 (b) ICCPR.

All the participating states of the OSCE have agreed to respect human rights, democracy and the rule of law. For guaranteeing elections in accordance to OSCE standards, all participating States committed themselves to invite international observers from other OSCE participating States, ODIHR and the OSCE Parliamentary Assembly to their elections¹⁴ in order to promote transparency and accountability. At the core are the election-related commitments included in Paragraphs 6-8 of the Copenhagen document. Next to these a broad range of further human rights, including civil and political rights, rule of law and non-discrimination issues are included, as summarised in the 6th edition of the OSCE/ODIHR election observation methodology handbook:¹⁵

- Regularly held free elections;
- Universal and equal suffrage;
- Passive voting rights;
- Political campaigning is possible freely;
- Unimpeded media access;
- Votes are cast in secret and results reported honestly;
- Candidates receiving necessary number of votes are duly installed in office and remain in power until their term expires.

2. The presidential election of 2020

a. The Issue of the late invitation of an election observation mission by ODIHR

When the Belarusian government called the early Presidential elections on 8 May 2020¹⁶ some four months before the Election Day set for 9 August 2020, the CEC Chairperson already announced that ODIHR would be invited to observe the elections within the coming months but only after the closure of the candidate registration on 14 July 2020.¹⁷

This created a major problem for the election observation, because according to ODIHR election observation standards the invitation has to be issued in a timely manner.¹⁸ Observing the candidate registration is an essential part of the OSCE/ODIHR (long-term) election observation methodology, which generally is considered the “gold standard”. A timely invitation is also necessary in order for ODIHR to decide the format of the election-related activities that should respond to the needs of the participating State.

¹⁴ Article 8 of the Copenhagen Document, 1990, see at: <https://www.osce.org/files/f/documents/9/c/14304.pdf>, reaffirmed in several OSCE documents, including the Charter for European Security, Paragraph 25, Istanbul Summit 1999, <https://www.osce.org/files/f/documents/4/2/17502.pdf> and reconfirmed at the OSCE Ministerial Council on 5 December 2006, Decision No. 19/06, Paragraph 10, see at: <https://www.osce.org/files/f/documents/5/3/23209.pdf>.

¹⁵ OSCE/ODIHR, Election Observation Handbook. Sixth edition, 2010.

¹⁶ See Resolution of the Central Commission of the Republic of Belarus on Elections and Holding Republican Referenda of 8 May 2020 No. 12 “On the Approval of the Calendar Plan of Organizational Measures for Preparation and Holding of the Presidential Elections of the Republic of Belarus”, at: <http://www.rec.gov.by/sites/default/files/pdf/2020/post12.pdf>.

¹⁷ See CEC: Belarus will start inviting international observers once presidential candidates are registered”, Belta, 10 June 2020, at: <https://eng.belta.by/politics/view/cec-belarus-will-start-inviting-international-observers-once-presidential-candidates-are-registered-130970-2020/>.

¹⁸ The requirement of a “timely invitation” means that ODIHR has enough time to organize a Needs Assessment Mission (NAM) that usually lasts three days during which meetings are held with important stakeholders of the upcoming election. Within two weeks ODIHR issues a report deciding if and if yes, what kind of mission to deploy in the upcoming election. If a full-fledged-mission will be deployed, meaning long-(LTO) and short-term election observers (STO) next to the CORE team (experts), the focal points of the Participating states need to be contacted in order to second LTOs and STOs. This takes a week. LTOs get deployed 6-8 weeks before Election Day, STOs 5 days before Election Day until 2 days post this day (1 week in total). Only this long-term observation allows to make a credible assessment possible. Thus, a timely invitation needs to be sent at least 12 weeks before Election Day, or 7 weeks in case a NAM has been deployed/assessed the pre-election environment within the last 12 months.

This has been pointed out to Belarus at several occasions, most notably in several public tweets from the side of former OSCE/ODIHR director Ingibjörg Sólrún Gísladóttir¹⁹ concerning the necessity of a timely invitation to observe the elections.

As a consequence of the delay of the invitation until the end of the registration period, Ingibjörg Sólrún Gísladóttir; announced on 15 July 2020, that ODIHR was not in the position to send an election observation mission. She explained that,

*“the lack of a timely invitation more than two months after the announcement of the election has prevented ODIHR from observing key aspects of the electoral process”, and that “these include areas we have noted in recent observation reports as requiring improvement in Belarus, such as the formation of election commissions and registration of candidates. It is clear from the outcomes of these processes that the authorities have not taken any steps to improve their inclusiveness”.*²⁰

This open statement led to an immediate invitation²¹ by the Belarusian Ministry of Foreign Affairs on the same day. However, with the date for the election being scheduled for 9 August 2020, the invitation to observe the upcoming elections did not arrive timely in line with ODIHR standards, as it did not allow to observe essential parts of the election process, like candidate registration, campaigning, etc.

Since the last organized election observation mission by ODIHR in Belarus had been for the early parliamentary elections on 17 November 2019²² and these presidential elections had been called within a year of the last mission, the Needs Assessment Mission (NAM) of the previous election would have been sufficient and it would have not been necessary to deploy another one. Nevertheless, the timeframe was too short in order to prepare a new election observation mission, regardless the format of the election observation mission.

Furthermore, in the case of the last Parliamentary Elections, Belarus had sent the invitation already on 23 August 2019, almost four months ahead of Election Day on 17 November 2019.²³ This shows that there is a practice to respect the OSCE/ODIHR election rules. However, in 2020 this was not the case, which raises the suspicion that this has been done on purpose in order to avoid international monitoring of part of the pre-election process, in particular the registration of candidates, where numerous problems were observed.

b. Issues related to the preparation of the elections

The Special Rapporteur on the situation of human rights in Belarus pointed out in her report that the current situation in the country does not guarantee equal access to media, transparency in voter registration, voter turnout and counting as well as voter secrecy. Thus, the right to vote is not in line with international standards. The Special rapporteur points out that especially in the areas of related fundamental freedoms, i.e. freedom of media, freedom of assembly, freedom of expression and

¹⁹ For example: <https://twitter.com/ingibjorgsolrun/status/1273659831291953152?s=10> and <https://twitter.com/ingibjorgsolrun/status/1278368110551203840?s=10>.

²⁰ OSCE/ODIHR, ODIHR will not deploy election observation mission to Belarus due to lack of invitation, see at: <https://www.osce.org/odihr/elections/457309>.

²¹ See “MFA invites international observers to monitor Belarus presidential election”, Belta, 15 July 2020, at: <https://eng.belta.by/politics/view/mfa-invites-international-observers-to-monitor-belarus-presidential-election-131769-2020/>.

²² OSCE/ODIHR, ODIHR, Final Report on Early Parliamentary Elections in Belarus on 17 November 2019, see at: <https://www.osce.org/files/f/documents/6/4/447583.pdf>.

²³ See “MFA: Invitation of foreign election observers demonstrates Belarus’ openness”, 23 August 2019, at: https://www.belarus.by/en/press-center/parliamentary-elections-in-belarus/mfa-invitation-of-foreign-election-observers-demonstrates-belarus-openness_i_0000102876.html.

opinion, are not being guaranteed. The Special Rapporteur fully supports the findings by ODIHR by recommending their full implementation.²⁴

After the early parliamentary election on 17 November 2019, ODIHR issued a statement on preliminary findings and conclusions, which concluded that the elections “*proceeded calmly but did not meet important international standards for democratic elections*”. In the final report,²⁵ released on 4 March 2020, 32 recommendations²⁶ were put forth in order to enhance the quality of the elections in Belarus and to bring them in line with the OSCE commitments as well as the international standards on free and fair elections. Those recommendations should be addressed by the government according to Paragraph 25 of the 1999 OSCE Istanbul Document.²⁷ Twenty-five of these recommendations concern the preparation of elections. Three recommendations address the legal framework under which the elections are held.

ODIHR recommended not only to implement the previous recommendations issued after the last elections but to closely review the process of nomination of the election commissions and to guarantee candidacy and observer rights. A focus should be put as well on the safeguards for the voting, counting and tabulation processes. Altogether this should ensure that the electoral law guarantees an equal playing field for all contestants, genuine competition, free expression of the will of the voters, and the integrity of the electoral process. Additionally, the respect of human rights, in particular the freedoms of association, assembly and expression with international standards should be guaranteed.

Six recommendations concerned the registration of candidates. The right of individuals to establish political parties should be guaranteed and the electoral code should provide clear and reasonable criteria and mechanisms for candidate registration. Candidate deregistration should only be regarded as an exceptional measure and verified by a court. Furthermore, individuals should have the guarantee to exercise their civil and political rights without intimidation by authorities. The right to stand as a candidate should not be denied as a matter of fact to individuals with a criminal record without evaluating the proportionality. Candidate registration should adopt measures that guarantee equal conditions for signature collection, verification and the necessary number of supporting signatures for candidate registration.

Media rights have been addressed in five recommendations with the need for freedom of expression, equal access to information for journalists and easier accreditation processes. Judicial oversight would be necessary regarding the restriction of websites. An oversight body could guarantee media rights during electoral campaigns and state-owned media should guarantee adequate coverage of the elections.

Five recommendations have been given to the election administration. This concerns the nomination of CEC members, publicly held CEC meetings concerning important issues, enhancement of the independence of the CEC by adjusting appointing mechanisms and facilitation and equal participation for individuals with disabilities.

Voter registration has been addressed by ODIHR in two recommendations. Prisoners should have the right to vote, with exceptions, as well as individuals in pre-trial detention. A central and computerized, as well as publicly available voter register, in line with data protection regulations should be introduced and also numbers should be provided regarding the registered voters per polling station in order to guarantee transparency.

²⁴ United Nations, General Assembly, Report of Special Rapporteur on the situation of human rights in Belarus, A/74/196, p. 22, see at: <https://digitallibrary.un.org/record/3823684?ln=en>.

²⁵ OSCE/ODIHR, Final Report on Early Parliamentary Elections in Belarus, op.cit., p. 2.

²⁶ Ibid., pp. 30-35.

²⁷ OSCE, 1999 Istanbul Document, Paragraph 25, see at: <https://www.osce.org/files/f/documents/6/5/39569.pdf>.

Four recommendations were given in the area of campaigning and campaign financing. The right to free assembly is to be guaranteed by the authorities regarding all electoral and political stakeholders before, during and after elections. An oversight body should audit campaign finances, which should level the playing field among candidates.

Five recommendation had been given for the election day and will be discussed below.

According to the ODIHR Electoral recommendations database on Belarus,²⁸ to this date no previous recommendations given by ODIHR have been addressed by the Belarusian authorities.

In the following, specific points of concern during the preparation of the presidential election are being discussed.

i. Formation of the election commissions

Articles 34-44 of Chapter 9 of the Electoral Code²⁹ determine the rules for the formation of the election commissions. Additionally, the CEC adopted and published several resolutions in order to clarify the procedures for these elections. Of particular relevance in this regard are the CEC's Resolution No. 13 of 8 May 2020 "On clarification of the application of the provisions of the Electoral Code of the Republic of Belarus on the procedure for forming election commissions for the elections of the President of the Republic of Belarus in 2020",³⁰ the CEC's Resolution No. 24 of 15 May 2020³¹ and the CEC Resolution No. 17 of 8 May 2020 "On the procedure for participation of citizens of the Republic of Belarus outside the Republic of Belarus in the elections of the President of the Republic of Belarus in 2020".³²

Precaution measures due to the COVID-19 pandemic have been addressed in the Resolution No. 13 of 8 May 2020 "On clarification of the application of the provisions of the Electoral Code of the Republic of Belarus on the procedure for forming election commissions for the elections of the President of the Republic of Belarus in 2020".³³ According to its Paragraph 8:

"In order to prevent the spread of coronavirus infection, meetings of the bodies forming the commissions can be held in the absence of representatives of political parties, other public associations, labour collectives, citizens who have nominated their representatives to the commission, the media and other invited persons. At the same time, a live broadcast of the meeting is provided on the website of the relevant executive committee in the global computer network Internet or a full video recording of the meeting is posted on this website."

However, such livestreams of CEC meetings had become optional after amendments to this resolution, according to local sources.³⁴ These amendments thus interfered with the transparency required.

²⁸ ODIHR Electoral recommendations database, see at: <https://paragraph25.odhr.pl>.

²⁹ Electoral Code of the Republic of Belarus, 11 February 2000 (amended as of 4 June 2015), No. 370-Z, see at: <http://law.by/document/?guid=3871&p0=Hk0000370ee>.

³⁰ See at: <http://rec.gov.by/sites/default/files/pdf/2020/post13.pdf>.

³¹ See at: <http://rec.gov.by/sites/default/files/pdf/2020/post24.pdf>.

³² See at: <http://rec.gov.by/sites/default/files/pdf/2020/post17.pdf>.

³³ See at: <http://rec.gov.by/sites/default/files/pdf/2020/post13.pdf> and <http://rec.gov.by/sites/default/files/pdf/2020/post125.pdf>.

³⁴ Human Rights Defenders for Free Elections (Belarusian Helsinki Committee and Viasna), 2020 Presidential Election. Report on election observation, 11 August 2020 (subsequently: Human Rights Defenders Election Report), see at: <http://spring96.org/en/news/98942>, "Observation of elections during a pandemic: What it looks like in practice", Viasna, 19 May 2020, at: <http://spring96.org/ru/news/96997>, ""Video is unavailable". How the formation of the election commission went in Borisov", Viasna, 25 May 2020, at: <http://spring96.org/ru/news/97010>.

Lack of transparency had been criticized already by ODIHR in the final report of the 2019 Parliamentary elections: *“To increase transparency and confidence in the work of the election administration, the CEC should consider discussing all substantive matters in public sessions.”*³⁵

ii. Appointment of CEC members

In a recommendation regarding the process of nominating CEC members ODIHR stressed that:

*“To enhance the independence of election commissions, appointment mechanisms should be adjusted to avoid replicating existing hierarchical relationships in public institutions. In addition, the authorities could consider excluding local executive representatives and other public officials from concurrently serving as election commission member.”*³⁶

iii. Nomination of TEC members

During these elections, the nomination of the TEC members had to be carried out by 17 May 2020 and according to the CEC statistics 2,171 people were nominated to 153 territorial commissions.³⁷ However, the number of TEC members was not in relation to the nominations made. In comparison to the previous Presidential election, the number of representatives of opposition parties in TECs has decreased by 15 times.³⁸

iv. Nomination of PEC members

PECs are formed by local administrations, generally should consist of 5-19 members and should be formed no later than 45 days before the Election Day. According to different sources³⁹ the number of representatives of opposition parties among the PEC members was five times less than for the previous elections.

According to the CEC,⁴⁰ 70,200 individuals have been nominated to 5,723 PECs and 63,347 individuals have been elected.⁴¹ Nevertheless, the lack of the legal requirement of an equal representation led to the result that out of all PECs in only six were members representing the political opposition.⁴²

v. Complaints and appeals

According to various sources 484 appeals concerning the nomination of the election commissions have been filed during the electoral period of which 415 had been directly rejected, whereas 69 remained without consideration. Accordingly, none of the appeals were granted.⁴³ According to a news article from 16 July 2020, some 5,000 complaints had been received by the CEC due to the non-registration of two candidates. The head of the Central Election Commission, Lidia Yermoshina, stated that

³⁵ OSCE/ODIHR, Final Report on Early Parliamentary Elections in Belarus, op.cit., p. 10.

³⁶ OSCE/ODIHR, Final report on Early Parliamentary Elections in Belarus, op.cit., p. 10.

³⁷ See at: <http://rec.gov.by/sites/default/files/pdf/2020/stat1.pdf>.

³⁸ Eastern Partnership, Civil Society Forum: EaP CSF Monitoring Mission: Belarus – political and societal developments after the presidential elections, with recommendations (subsequently: EaP CSF report), September 2020, p. 26, see at: <https://eap-csf.eu/wp-content/uploads/EaPCSF-Monitoring-Mission-report-Belarus-political-societal-developments-elections.pdf>.

³⁹ Human Rights Defenders report, op.cit., p. 13.

⁴⁰ See at: <http://rec.gov.by/sites/default/files/pdf/2020/stat13.pdf>.

⁴¹ See at: <http://rec.gov.by/sites/default/files/pdf/2020/stat14.pdf>.

⁴² Human Rights Defenders Election Report, op.cit., p. 13; EaP CSF report, op.cit., p. 27.

⁴³ Human Rights Defenders Election Report, op.cit., p. 14; EaP CSF report, op.cit., p. 34, see “The Supreme Court will not consider complaints concerning non-recognition of elections”, Sputnik, 25 August 2020, at: <https://sputnik.by/elections2020/20200825/1045550107/Verkhovnyy-sud-ne-budet-rassmatrivat-zhaloby-o-nepriznanii-vyborov.html>, the CEC did not publish the numbers publicly.

*“Two workers worked without raising their heads. We are not even able to sort out and register all these complaints due to the fact that only 9 people work for us, plus two people from the parliament and the center for legislation (...) Therefore, we are not able to accept appeals in this way”.*⁴⁴

This kind of problem has already been addressed in the ODIHR report on the early parliamentary elections⁴⁵ mentioning the lack of a clear procedure as well as a single hierarchical structure for the resolution of electoral disputes. The Venice Commission recommendations⁴⁶ on this issue are of a similar nature and advise that the CEC decisions should be subject to a legal review as an international obligation. In this regard ODIHR had recommended

*“To provide for effective remedy and increase public trust in election dispute resolution, election commissions, courts and law-enforcement bodies, should give thorough and impartial consideration to the substance of all complaints, appeals and reports on violations”.*⁴⁷

vi. Nomination and registration of candidates

The Electoral Code states in its Article 57 that *“a natural-born citizen of the Republic of Belarus at least 35 years of age, who has the right to vote and has resided in the Republic of Belarus for at least ten years immediately before the election, may be elected President of the Republic of Belarus”.*⁴⁸

In order to register as a candidate for the office of President of the Republic of Belarus, the individual needs to submit a set of documents and protocols that prove the support of at least 100,000 signatures.

Nevertheless, Article 68-1 of the Electoral Code states the grounds for refusal of a positive registration, among them “previous convictions”, which was a main issue during this electoral campaign.

Sergey Tikanovski’s (Siarhei Tsikhanouski) candidacy had been refused to be registered by the CEC due to alleged criminal charges.⁴⁹ In reaction, his wife Svetlana Tikhanovskaya became a candidate on behalf of her husband and was duly registered.

In the case of Viktor Babariko, the CEC refused to register him as a candidate on the grounds of Article 48 of the Electoral Code, which concerns violations of the prohibition of direct or indirect participation in financing electoral activities and providing other material assistance of foreign states and organisations (...) as well as alleged false information in his income and property declaration.⁵⁰ The candidacy of Valery Tsapkalo was refused on the grounds of insufficient valid support signatures

⁴⁴ See ““We will not participate in the staged events.” The CEC received more than 5 thousand complaints concerning the non-registration of two candidates”, 16 July 2020, at: <https://news.tut.by/economics/693064.html>.

⁴⁵ OSCE/ODIHR, Final Report on Early Parliamentary Elections in Belarus, op.cit., p. 33.

⁴⁶ See section II.3.3.d of the 2002 Code of Good Practice. See also Article 2 of the ICCPR and paragraph 5.10 of OSCE Copenhagen Document. Venice Commission Opinion No. 192/2002, Code of Good Practice in electoral matters, at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2002\)023rev2-cor-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2002)023rev2-cor-e).

⁴⁷ OSCE/ODIHR, Final Report on Early Parliamentary Elections in Belarus, op.cit., p. 24.

⁴⁸ Article 57 of the Electoral Code of the Republic of Belarus, see at: <http://law.by/document/?guid=3871&p0=Hk0000370ee>.

⁴⁹ See “Blogger Tikhanovsky and ten other people submitted documents to the CEC for the registration of the initiative group”, 14 May 2020, at: <https://news.tut.by/elections/684489.html>.

⁵⁰ Human Rights Defenders Election Report, op.cit., p. 18, see “Babariko and Tsepalo are not registered as presidential candidates. Tikhanovskaya has been registered”, 14 July 2020, at: <https://news.tut.by/economics/692651.html>.

and inaccurate information regarding his declaration of income and property relating to his wife's assets.⁵¹ Their appeals were rejected.

By 14 July 2020, the CEC had officially registered five presidential candidates:⁵²

- Aleksander Lukashenko
- Hanna Kanapatskaya
- Andrey Dmitriyev
- Sergey Cherechen
- Svetlana Tikhanovskaya.

Regarding the candidate registration, ODIHR, in line with international standards, had recommended in its previous report that *“Restrictions on the right to stand of individuals with a criminal record should be reviewed. Such restrictions should be proportionate to the crime committed”*.⁵³

vii. Election campaign

(1) Freedom of Assembly

The law on Mass Events in the Republic of Belarus⁵⁴ established the basis for gatherings, meetings, street rallies, demonstration, picketing and other mass events. The law provides several options regarding assemblies of the contestants and other election stakeholders.

In addition, for these elections the CEC released a manual,⁵⁵ which explained the application of the relevant legislation. During these elections, there was a decrease in the number of allowed premises for campaigning activities of the candidates like assemblies, which also were criticized as often being inadequate.⁵⁶

There were several incidents reported in the media regarding the restriction, prohibition and use of violence by authorities during assemblies as part of electoral activities (campaigning).⁵⁷ Those actions violated the law on freedom of assembly and was contrary to international standards and OSCE commitments.⁵⁸ This had already been an issue during the Parliamentary elections and ODIHR had recommended *“The right to free assembly should be respected in relation to all electoral and political stakeholders before, during and after elections are held. The authorities should remove fees for holding any public events”*.⁵⁹

The Special Rapporteur criticizes⁶⁰ the law on Mass Events in the Republic of Belarus and points out that even though the amendments⁶¹ slightly improved the notification procedure for assemblies that had been previously criticized by human rights activists and the international community but added another burden concerning the location of assembly places, which are located far from the city centers.⁶²

⁵¹ Human Rights Defenders Election Report, op.cit., p. 18, see at: <https://news.tut.by/economics/692651.html>.

⁵² See at: <http://www.rec.gov.by/sites/default/files/pdf/2020/inf3.pdf>.

⁵³ OSCE/ODIHR, Final Report on Early Parliamentary Elections in Belarus, op.cit., p. 12.

⁵⁴ Law on Mass Events in the Republic of Belarus, No. 114-Z of 30 December 1997, amended as of 20 April 2016 No. 358-3. See also the section on freedom of assembly in this report at II. A.

⁵⁵ See at: http://rec.gov.by/sites/default/files/pdf/2020/ter_pos.pdf.

⁵⁶ Human Rights Defenders Election Report, op.cit., p. 19, EaP CSF report, op.cit., p. 33.

⁵⁷ EaP CSF report, op.cit., p. 33.

⁵⁸ Article 21 of the ICCPR guarantees the right of peaceful assembly. This is stated as well in the 1990 Copenhagen Document in Paragraph 9.2, see at: <https://www.osce.org/files/f/documents/9/c/14304.pdf>.

⁵⁹ OSCE/ODIHR, Final Report on Early Parliamentary Elections in Belarus, op.cit., p. 16.

⁶⁰ United Nations, General Assembly, Report of Special Rapporteur on the situation of human rights in Belarus.

⁶¹ Amendments on the Law on Mass Events in the Republic of Belarus entered into force on 26 January 2019.

⁶² See also under II. B. on Freedom of Assembly.

(2) Campaign Finance

Article 48 of the Electoral Code regulates the issue of campaign financing. This is closely linked to the law and issues regarding mass events as it was local executive committees who selected locations for holding mass events.

The Article provides that the maximum amount of all expenses from the election fund of a candidate during Presidential elections should not be higher than 9,000 basic units (243,000 rubles, or approx. 90,000 Euro).⁶³ However, the current electoral law does not provide for a legal framework in order to verify sources of donations and its use by candidates.⁶⁴

The CEC released a note⁶⁵ on 5 August 2020 in which it listed the received donations of all five candidates. According to this the candidates received the following amounts:

- Aleksander Lukashenko	257,362.87 BYN
- Hanna Kanapatskaya	4,207.00 BYN
- Andrey Dmitriyev	4,467.46 BYN
- Sergey Cherechen	3,300.00 BYN
- Svetlana Tikhanovskaya	271,935.38 BYN

Svetlana Tikhanovskaya received the highest amount of donations during this campaign and allegedly spent about 181,258 BYN. Nevertheless, the published data depend on a CEC statement and are not available for public oversight, which does not guarantee transparency in campaign financing, i.e. especially for details who contributed, what it was spent for, etc.

c. Issues related to the conduct of the elections

Five of the recommendations given by ODIHR in the last observation report⁶⁶ concern election day. To ensure the integrity of the early voting process, such as tamper-resistant, numbered seals that are accounted for and recorded, quorate PECs, and requirements that each day of early voting be conducted without breaks should be considered. Protocols should remain publicly posted until after the end of counting and extended until the deadline for filing complaints. Election staff should receive proper training, and the law should provide for uniform tabulation procedures. Transparency should be obtained by publishing results of the polling stations and these results should be possible to verify with the number of voters and votes cast in the polling station.

Since ODIHR was not able to observe the Presidential election, local and international NGOs organized the election monitoring including many citizens.⁶⁷ Their critique focused on the following issues:

i. Early voting

The Electoral Code provided for early voting in its Article 53.⁶⁸ It is organized in regular PECs and lasts for five days. According to the CEC, early voting had been used more than during the previous elections and had a turnout of 41,7 %.⁶⁹

⁶³ EaP CSF report, op.cit., p. 34, Human Rights Defenders Election Report, op.cit., p. 19.

⁶⁴ EaP CSF report, op.cit., p. 34, Human Rights Defenders Election Report, op.cit., p. 19.

⁶⁵ See at: http://rec.gov.by/sites/default/files/pdf/2020/summ_k05.pdf.

⁶⁶ OSCE/ODIHR, Final Report on Early Parliamentary Elections in Belarus, op.cit., pp. 33-34.

⁶⁷ See in particular Human Rights Defenders Election Report, op.cit. and EaP CSF report, op.cit..

⁶⁸ Electoral Code of the Republic of Belarus, Article 53, see at: <http://law.by/document/?guid=3871&p0=Hk0000370ee>.

⁶⁹ CEC, Information About the (Progress of) Early Voting, at: http://rec.gov.by/sites/default/files/pdf/2020/d_gol.pdf.

According to several NGO reports and testimonies⁷⁰ a full possibility to observe this process had not been granted to observers. As it had been described in various testimonials,⁷¹ observers had been obstructed and threatened by police force. “Human Rights Defenders for Free Elections” as well as other NGOs reported that although some managed to obtain an accreditation with the PECs, they did not get the opportunity to fully observe the early voting process during its five days.⁷² It had been reported⁷³ that 86 observers have been detained during the early voting period.

ii. Election day: Voting and counting

During Election day, which lasted from 8.00 to 20.00, several problems occurred.

(1) Voting

It has been observed⁷⁴ that there were long queues of voters at the polling stations on Election Day. Voters lined up early in the morning and commissions did not manage to cope with the large number of voters. In several polling stations the turnout exceeded 100 %. As the PECs were not sufficiently prepared for the high number of voters, several of them ran out of ballots.⁷⁵ Due to this overcrowding, some voters did not manage to vote.⁷⁶

(2) Counting

Article 55 of the Electoral Code⁷⁷ defines the counting procedure. The Article contains a description of the different steps during the counting process. However, it does not specify the exact way of counting and this resulted in a lack of transparency for observers as well as other PEC members to thoroughly follow the vote count. For example, there are testimonials by observers that when asking to see the Protocol of the result, they had been taken by OMON and then suffered ill-treatment or that they had been expelled from the polling station when pointing out irregularities.⁷⁸

The NGOs Golos/Voice, Zubr and Honest People Initiative had established an online platform⁷⁹ for parallel vote counting and contesting the result of the election. According to their registered data that they obtained by comparing the official data of the CEC with photographs of paper ballots that had been submitted by voters, the election results had been falsified. In particular, they claim that falsifications had been discovered at every third polling station.

In this context, ODIHR had previously recommended that

*“Clear and transparent procedures for counting should be established and strictly implemented so that all present observers are able to verify that the results were counted genuinely and reported honestly. To achieve that, consideration should be given to announcing and displaying the choice on each ballot. The tallying and establishing of results and completion of results protocols should be conducted in an open manner that provides for meaningful observation. Observers should be provided with a copy of the official results protocol”.*⁸⁰

⁷⁰ EaP CSF report, op.cit., Human Rights Defenders Election Report, op.cit..

⁷¹ E-mails received on 1 and 2 October 2020.

⁷² Human Rights Defenders Election Report, op.cit., p. 2.

⁷³ Human Rights Defenders Election Report, op.cit., p. 22.

⁷⁴ Human Rights Defenders Election Report, op.cit., p. 24.

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ Electoral Code of the Republic of Belarus, Article 55, see at: <http://law.by/document/?guid=3871&p0=Hk0000370ee>.

⁷⁸ Submissions received by the rapporteur.

⁷⁹ See at: <https://belarus2020.org> and Final Report on 2020 Presidential Elections in Belarus, at: <https://drive.google.com/file/d/1WnyAfVKDhZQOxxDd2tdi5xcH3eiOng0V/view>.

⁸⁰ OSCE/ODIHR, Final Report on Early Parliamentary Elections in Belarus, op.cit., p. 28.

iii. Election observation by citizens

The Electoral Code provides in its Article 13 for citizen and international election observers.⁸¹ This is in line with international standards and OSCE commitments. However, during the conduct of the Presidential election there were several problems in regard to observation. Citizen observers had problems with being registered during the observation process while observing. Furthermore, they were not allowed to enter the polling stations and could only observe from the outside of the premises. Additionally, some were removed by police during the observation process.⁸²

For example, an accredited election observer, sent by public association “Tell the Truth”, reported that during the early voting period police officers, an educational administrator, the chairmen and members of the commissions of two districts obstructed possible observations in every possible way (documented in a video and photos). The observer was rejected access to the facility to observe the counting of the votes. He witnessed how OMON was beating and detaining a civilian near the same school. The voting results were not publicly made available. When requesting to see the results he was subjected to threats of the use of force by OMON.⁸³

In another case a member of the election commission was requested to sign the empty form on the day before the election took place, which he refused.⁸⁴ In a number of polling stations the curtains were removed from the voting cabins to prevent people from making photos of the ballot and submitting them to the Golos platform. It also was prohibited to take pictures.⁸⁵

d. Issues related to election results

ODIHR recommend in its previous report that

*“Legal and administrative measures should be taken to ensure unrestricted access of observers to all aspects of the electoral process, including verification of signatures and other documents for candidate registration, to inspect voter lists, and to receive certified copies of results protocols”.*⁸⁶

The CEC issued a statement⁸⁷ with the result of elections:

- Alexander LUKASHENKO	4,661,075 votes
- Andrey Dmitriyev	70,671 votes
- Anna KANOPATSKAYA -	97,489 votes
- Svetlana TIKHANOVSKAYA	588,619 votes
- Sergey Cherechen	66,613 votes

However, the election results were contested and the whole electoral process described as fraudulent by the non-governmental observation reports as in particular the reports by (EaP CSF) and Human Rights Defenders.⁸⁸ However, also the international NGOs Memo 98, East Research Center and Linking Media in their International Election Assessment of 10 August 2020 came to the conclusion

⁸¹ Electoral Code of the Republic of Belarus, Article 13, see at: <http://law.by/document/?guid=3871&p0=Hk0000370ee>.

⁸² Human Rights Defenders Election Report, op.cit., p. 24; Testimonials in submissions received.

⁸³ Testimony by A.I., submitted to the rapporteur. See also at: <https://zubr.in/elections/commission/657>.

⁸⁴ Testimony received by the rapporteur.

⁸⁵ Submission with evidence to the rapporteur.

⁸⁶ OSCE/ODIHR, Final Report on Early Parliamentary Elections in Belarus, op.cit., p. 25.

⁸⁷ See at: <http://www.rec.gov.by/sites/default/files/pdf/2020/inf9.pdf>.

⁸⁸ Eastern Partnership, Civil Society Forum (EaP CSF) Monitoring Mission: Belarus – political and societal developments after the presidential elections, op.cit., Human Rights Defenders for Free Elections (Belarusian Helsinki Committee and Viasna), 2020 Presidential Election, Report on election observation, op.cit. and the platforms Voice, Zubr and Honest People initiative, op.cit., see also for the methodology of the Voice platform at: <https://belarus2020.org>.

that the elections fell short of international standards for transparent, free and fair elections.⁸⁹ On the European level the Parliamentary Assembly of the Council of Europe (PACE) pointed to serious shortcomings⁹⁰ and the Venice Commission pointed to the lack of respect for international election standards.⁹¹ The European Parliament declared the elections as seriously flawed,⁹² while the High Representative/Vice-President of the European Commission, Josep Borrell qualified the elections as fraudulent.⁹³

Also, a group of 18 diplomats formally accredited as international observers pointed out a lack of transparency and irregularities observed.⁹⁴

A group of NGOs called on the Supreme Court to consider appeals against the election results,⁹⁵ but to no avail.

According to the Belarusian NGO “Her Rights”, based on the Belarusian law the state authorities were obliged to start criminal investigations on threats and violence against Ms. Tihanovskaya. Moreover, obstruction to the exercise of the right to be elected by the citizens of the Republic of Belarus is a crime that is punished under Article 191 Paragraph 1 of the Criminal Code of the Republic of Belarus. This crime is subject to public prosecution to be initiated by the authorities under Article 26 Paragraph 7 of the Code of Criminal Procedure of the Republic of Belarus. Thus, Belarusian authorities failed to protect Svetlana Tihanovskaya's right to be elected as guaranteed by domestic law and also Article 7 (a) of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

e. Summary of findings on the allegations of election fraud

The allegations around the Presidential Election of Belarus concern amongst others the following areas: 1) non-timely invitation of international observers, 2) shortcomings in the appointments of election management bodies on all levels, 3) restrictions of the right to stand, 4) limitations in election dispute resolution, 5) overall disregard for freedom of assembly, 6) unequal playing field for candidates, including non-transparency in campaign financing, 7) non-transparent early voting process, 8) overcrowding of polling stations, 9) missing checks and balances, lack of possibility for verifying the electoral results, 10) inaccessibility of all steps of the electoral process for observation inhibiting the effective assessment of the elections.

In short, in view of the evident shortcomings of the presidential elections which did not meet the basic requirements established on the basis of previous election monitoring and the observations by citizen the presidential election have to be evaluated as falling short of fulfilling the country's international commitments regarding elections. Allegations that the presidential elections were not transparent, free or fair were found confirmed.

⁸⁹ Memo 98, East Research Center and Linking Media, International Election Assessment, Republic of Belarus – Presidential Elections of 9 August 2020, see at: http://memo98.sk/uploads/content_galleries/source/memo/belarus-2020/campaign-report/m98_by_statement_final.pdf.

⁹⁰ See at: <https://www.coe.int/en/web/portal/-/presidential-election-in-belarus-statement-by-pace-president?inheritRedirect=true>.

⁹¹ See at: <https://www.coe.int/en/web/portal/-/international-electoral-standards-must-be-respected-in-belarus?inheritRedirect=true>.

⁹² See at: <https://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+IM-PRESS+20060321STO06569+0+DOC+PDF+V0//EN&language=EN>.

⁹³ See at: https://eeas.europa.eu/headquarters/headquarters-homepage/85147/belarus-remarks-high-representative-vice-president-josep-borrell-ep-plenary_en.

⁹⁴ Open Letter on Diplomatic Watch Activities during Presidential Elections 2020 in Belarus, see at: <https://pen-centre.by/en/2020/08/15/adkryty-list-pra-dosved-dyplamatau-atrymany-padchas-nazirannya-zapravyadzennem-prezidenczkich-vybarau-u-belarusi.html>.

⁹⁵ See at: <https://humanconstanta.by/en/civil-society-organisations-requested-supreme-court-to-consider-election-results-appeals/>.

B. Freedom of Peaceful Assembly

1. Legal standards of the United Nations and OSCE/ODIHR

According to Article 21 ICCPR the right to peaceful assembly shall be recognized. Restrictions need to be necessary in a democratic society for certain defined purposes like national security, public safety or public order. General Comment No. 37 of the ICCPR of July 2020 clarifies that States have an obligation “to allow such assemblies to take place without unwarranted interference” (Para. 8), meaning “not to prohibit, restrict, block, disperse or disrupt peaceful assemblies without compelling justification, nor to sanction participants or organizers without legitimate cause” (Para. 23).

“Spontaneous assemblies ... are equally protected under article 21” (Para. 14). It further states that “if the conduct of the participants is peaceful, the fact that certain domestic legal requirements have not been met by the organizers or participants, does not, on its own, place the participants outside the protection of article 21” (Para. 16). “Notification requirements must not be required for spontaneous assemblies for which there is not enough time to provide notice.” (Para. 72). “Law enforcement officials involved in policing assemblies must respect and ensure the exercise of the fundamental rights of organizers and participants, while also protecting journalists ...” (Para. 74).⁹⁶

Similar standards are part of the human dimension commitments. According to Copenhagen 1990 (9.2) – everyone will have the right of peaceful assembly and demonstration. Any restrictions, which may be placed on the exercise of these rights will be prescribed by law and consistent with international standards.⁹⁷ The Venice Commission/OSCE/ODIHR Standards on the freedom of peaceful assembly, which in Article 20 include the freedom of assembly online apply.⁹⁸

2. Violations of freedom of assembly

In the run up to the elections several problems with the right to assembly were reported like inappropriate locations, intimidation and detentions. After the elections there were numerous spontaneous protests expressing themselves in peaceful marches and gatherings. Many participants were singing holding flowers in their hands as a sign of the peacefulness of the protest. No reports show any violence from the side of protesters while isolated events should not be excluded. However, there have been numerous reports by a multiplicity of domestic and international sources of very serious violations of the freedom of peaceful assembly. Pictures and videos abound, which show brutal force by police to stop peaceful marches or gatherings arbitrarily arresting people in large numbers.⁹⁹ Also individual picketers were arrested and fined with detention.¹⁰⁰ After the spontaneous protests, assemblies became more organized in particular on Saturdays and Sundays.

In particular, women took on the streets on Saturdays while men and women marched on Sundays. Peaceful assemblies took place all over the country, with the main events happening in the capital, Minsk.

⁹⁶ United Nations, Human Rights Committee, General Comment No. 37 (2020) on the right of peaceful assembly (Article 21), UN Doc. CCPR/C/GC/37 of 17 September 2020, see at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=8&DocTypeID=11.

⁹⁷ OSCE/ODIHR, Human Dimension Commitments, Vol. I, Part. II, p. 122.

⁹⁸ OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly, 3rd edition, 2019, see at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)017-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)017-e).

⁹⁹ See at: <https://www.hrw.org/news/2020/08/11/belarus-violence-abuse-response-election-protests>

¹⁰⁰ Testimonies received by rapporteur.

The number of peaceful protesters was very significant, reaching more than 100,000 every weekend, in spite of the counter-measures by authorities closing local transport and restricting the Internet, police violence and numerous arrests.

In particular, on 6 September 2020, the “March of Unity” was held in Minsk and other cities; on 13 September 2020, it was called the “March of Heroes”, on 20 September 2020 the “March of Justice” and on 27 September 2020 “the People’s Inauguration”, while on 4 October 2020 it took place as “liberation march” under the slogan “Release the political prisoners!” and on 11 October 2020 as “the march of pride”. For this march alone some 600 detentions and increased violence by the security forces were reported.¹⁰¹ In addition, on Mondays it was pensioners protesting like on 12 October 2020 “the protest of Your grandmothers”. The Sunday protests involved hundreds of thousands of participants, but also the highest number of detentions with 774 on 13 September 2020 alone.¹⁰² The spontaneous inauguration march after the secret inauguration of Alexander Lukashenko on 23rd September 2020 in Minsk and other cities saw more than 300 arrests.¹⁰³ On Saturdays, peaceful marches of women took place, which also resulted in hundreds of detentions. The Ministry of Internal Affairs itself for September reported more than 3,500 detentions of which some 2,700 resulted in administrative detentions. Strangely, the representatives of the Ministry of Interior at the march of 4 October 2020 for the release of political prisoners requested participants over loudspeakers not to hide their faces under a mask at mass events, while Belarus is known to have a serious problem with COVID-19.¹⁰⁴ On 11 October 2020 again the security forces used water cannons and stun grenades and arrested some 600 protesters as well as many journalists.¹⁰⁵ Even against the peaceful march of grandmothers on 12 October 2020 tear gas and stun grenades were used, which shows the continuation of excessive and disproportionate means against peaceful protesters. In a further escalation, after the protest of 11 October, the Minister of Interior threatened that the security forces had been authorized to use lethal weapons.¹⁰⁶

The Belarusian law on mass events requires permission for an assembly to be requested 15 days in advance which is not in line with international standards. In any case, it does not regulate spontaneous assemblies and has been ignored by the organizers and participants of the regular marches. However, the sanction for violating this obligation according to the law is a fine or administrative detention, while also criminal cases have been opened.

The UN Human Rights Committee in a recent case against Russia has found that a state if imposing administrative arrest and fines in the case of peaceful spontaneous demonstrations has to demonstrate that this was necessary in a democratic society and proportionate to the possible reasons like national security or public safety as indicated by Article 21 ICCPR.¹⁰⁷ As no such reasons can be demonstrated the repression of the spontaneous assemblies has to be considered a violation of the right to assembly.

In 2012, the Venice Commission of the Council of Europe and ODIHR published a joint opinion on the law on mass events characterizing the existing law as deliberately restrictive, for example by practically outlawing spontaneous assemblies. It made a number of recommendations how the law could be brought in conformity with international standards, for example, to remove unreasonable and burdensome obligations and to ensure that coercive measures are taken only against those individuals,

¹⁰¹ See 600 detained in violent dispersal of Sunday protests, at: <https://spring96.org/en/news/99915>.

¹⁰² Viasna, Human Rights Situation in Belarus: September 2020, see at: <https://spring96.org/en/news/99793>.

¹⁰³ Viasna, 300 detained all over Belarus, see at: <http://spring96.org/en/news/99666>.

¹⁰⁴ Human Constanta, Newsletter for 3-9 October 2020, see at: <https://humanconstantaby/en/newsletters-about-situation-with-human-rights-in-belarus-2/>.

¹⁰⁵ See BelarusFeed, Protests in Belarus, Day 64: Water cannons, stun grenades and detained journalists, at: <https://belarusfeed.com/protests-belarus-day-64-march-pride/>.

¹⁰⁶ See CNN: Belarus allows police to use lethal weapons, at: <https://edition.cnn.com/2020/10/12/europe/belarus-police-crackdown-protesters-intl/index.html>.

¹⁰⁷ ICCPR, Views adopted by the Committee concerning Communication No. 2217/2012 of 6 April 2018, paras. 7.5 and 7.6, UN Doc. CCPR/122/D/2217/2012 of 16 May 2018.

who violate public order or incite to hatred and instigate violence, and not against the whole assembly.¹⁰⁸ Unfortunately, most of these recommendations have not been implemented.

The law on mass events has been subject of criticism for a long time, as can be seen from various reports of the UN Special Rapporteur on Belarus.¹⁰⁹ According to the same rapporteur, the amendments which came into force on 26 January 2019 did not contain the necessary changes to bring the law in conformity with international standards. While the previous requirement of a request 15 days in advance was replaced by a notification procedure, this applies only to pre-approved locations designated by the authorities, reportedly far from city centers, which makes it difficult to reach the intended audience. In practice, authorities frequently deny permission for requested suitable places.¹¹⁰ Spontaneous assemblies are not allowed. In addition, by decree No. 49 of the Council of Ministers of January 2019 organizers of assemblies have to bear all related costs like those of security, cleaning and medical assistance,¹¹¹ which has a chilling effect on the exercise of the right. For example, the costs of so-called “public order protection” for an event involving more than 1,000 people was established by the Council of Ministers as approx. US\$ 2,800. People contravening these rules are usually arrested and have to pay high administrative fines.¹¹²

However, the main complaints relate to the excessive violence employed by the police against peaceful protesters, which seems to have been used in order to intimidate them, but in practice may have stimulated the public protests even more. The cases of ill-treatment and allegations of torture are being analyzed in section II.E.

3. The right of children to assembly and parental rights

According to Article 15 of the UN Convention on the Rights of the Child, children too have the freedom of assembly, which includes also the participation in assemblies.

However, threats were reported against parents not to allow their kids to take part in the demonstrations. According to decree No. 18 of 2006 on supplementary measures for state protection of children in dysfunctional families, there is a possibility that authorities may seize the children.¹¹³ According to the Resolution of the Ministers of Republic of Belarus No. 22 “on the recognition of children in a socially dangerous situation” of 15 January 2019 three criteria indicating the existence of the socially dangerous situation have been established, including the situation when “(2) Parents do not provide supervision over the child’s behavior and way of life, as a result of which the child commits acts containing signs of administrative offence or crime”.¹¹⁴ Moreover, a member of the National Commission on the Rights of the Child, Anatoliy Glinsky, reportedly believes that children’s participation in unauthorized demonstrations “does not bring any parenting/educational message for children’ and ‘is a kind of violence that a child’s mental health is exposed to”.¹¹⁵ According to the

¹⁰⁸ See Venice Commission/ODIHR, Joint opinion on the law on mass events of the Republic of Belarus, paras. 40 et seq, see at: [https://www.venice.coe.int/webforms/documents/?pdf=CDL\(2012\)012-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL(2012)012-e).

¹⁰⁹ See OSCE Rapporteur’s Report on Belarus of 28 May 2011, ODIHR.GAL/39/11/Corr.1 of 16 June 2011, Section III. E. Freedom of Peaceful Assembly and reports of the UN Special Rapporteur on Belarus, op.cit..

¹¹⁰ UN Special Rapporteur on the Human Rights Situation in Belarus, Report to the General Assembly, UN Doc. A/74/196 of 19 July 2019, paras. 63 et seq.

¹¹¹ UN Special Rapporteur on the Situation of Human Rights in Belarus, Report to the Human Rights Council, UN Doc. A/HRC/44/55 of 8 April 2020, paras. 45 et seq.

¹¹² UN Special Rapporteur on the Human Rights Situation in Belarus, Report to the General Assembly, UN Doc. A/74/196 of 19 July 2019, at para. 70.

¹¹³ See Presidential Decree No. 18 “On supplementary measures for state protection of children in dysfunctional families”, at: <https://28vitebsk.schools.by/pages/dekret-no-18-o-dopolnitelnyh-merah-pogosudarstvennoj-zaschite-detej-v-neblagopoluchnyh-semjah>; see also the report by NGO “Our House” (Nash-Dom) at <https://nash-dom.info/campaign/browse/netetskoe-delo>.

¹¹⁴ See Resolution of the Ministers of Republic of Belarus No. 22 “On the recognition of children in a socially dangerous situation”, 15 January 2019, at: <http://government.by/upload/docs/filec51b6f7bb17cedc6.PDF>.

¹¹⁵ See “Agitprop: Participation of children in protests is violence against the child’s psyche”, 9 September 2020, at: <https://afn.by/news/i/280411>. On how children are allegedly exposed to traumatic life events and the alleged negative affect on a child’s personal development as a result of the children’s participation in

news release published on the website of the Pinsk Municipal Executive Committee, by bringing their children to unauthorized mass events parents put children's lives and health in danger since there are no guarantees of their safety at such places, therefore police officers call on parents to protect children from participating in unsanctioned mass events.¹¹⁶ The Commission for Minors' Affairs reportedly believes that there is a need to introduce additional measures that would increase responsibility of and the role in the upbringing of children.¹¹⁷

Alexey Podvoisky, Head of the Department for Supervision over the Implementation of the Legislation on Minors and Youth of the General Prosecutor's Office of Belarus, in an interview threatened the parents to be fined in case if the minors were participating in the demonstrations and in case of "socially dangerous environment in the family" the kids could be taken by the authorities to the orphanage.¹¹⁸ This was argued with the protection of children's rights. The head of the inspectorate for minors' affairs at Kamenets district department of internal affairs/ROVD, Alexander Zhuranyuk, reportedly views the participation of minors in unsanctioned mass events as "a violation of domestic and international legal acts regulating children's rights". Moreover, in this regard: all facts of children's participation will receive a legal assessment, and parents will be brought to liability, with the inspectorate for minors' affairs dealing with each family individually, and the relevant information will be provided to guardianship authorities and the Commission for Minors' Affairs.¹¹⁹

On 24 September 2020 Deputy Prime-Minister announced that 280 protocols on administrative offenses were filed against minor children during the protests. Reportedly, more than 100 parents received warnings.¹²⁰

4. Criminalization of protesters

While participation in unauthorized assemblies has been decriminalized in the past, the reaction of the authorities against the protests show a trend back to criminalization.

The Investigative Committee of Belarus has initiated at least 21 criminal cases against over 80 individuals who were detained during the protests on charges including:

- participating in mass disturbances/riots (Article 293 of the Criminal Code), which normally includes the destruction of properties, setting fire or armed resistance against security forces;
- causing harm to national security (Article 361 Criminal Code);
- resistance and violence or threat of violence against an official of the Ministry of Internal Affairs (Articles 363 and 364 of the Criminal Code);
- hooliganism (Article 339 of the Criminal Code);
- Incitement to hostility or hatred (Article 130 Criminal Code); and
- organization of or participation in the actions violating public order (Article 342 of the Criminal Code).¹²¹

unauthorized rallies, see Liability of legal representatives and minor children for the participation in unauthorized mass events", 25 September 2020, at: <http://www.bobrlife.by/news/otvetstvennost-zakonnyh-predstavitelej-i-nesovershennoletnih-detej-za-uchastie-v-nesankcionirovannyh-massovyh-meropriyatiyah>.

¹¹⁶ See "Police officers urge to protect yourself, your relatives and children from participating in unauthorized mass events", 22 September 2020, at: <http://www.pinsk.gov.by/about/info/news/1939/>.

¹¹⁷ See "Played too much. Children need to be protected instead of being protected by children", 11 September 2020, at: https://grodnonews.by/news/zhizn/zaigralis_detey_nuzhno_zashchishchat_a_ne_imi_zashchishchatsya.html.

¹¹⁸ See at: <http://www.ctv.by/novosti-minska-i-minskoy-oblasti/mogut-rassmatrivat-vopros-o-socialno-opasnom-polozhenii-rebyonka>.

¹¹⁹ Information of 17 September 2020, on file with rapporteur.

¹²⁰ See at: https://www.belta.by/society/view/rassmatrivaetsja-okolo-280-administrativnyh-del-ob-uchastii-nesovershennoletnih-v-nesanktsionirovannyh-408092-2020/?fbclid=IwAR1MHd1wnXTEr8uS8jWINEhtoDzyXLNvP8mAr2zdHCqbo_uQRG8TqiABItE.

This shows an effort of criminalization of the participation in peaceful protests and the use of anti-extremism laws to “silence the society”.¹²² An example in case are the charges against three political activists, i.e. Andrei Voinich, Yoiuhen Afnahel and Pavel Yukhnevich under Article 293 on mass riots, against which a number of human rights NGOs protested asking for their release.¹²³

Viasna keeps a list of more than 280 criminal cases opened by authorities against political activists since the launch of the elections.¹²⁴ For an analysis of this list see in section D. on the right to liberty and security.

5. Freedom of association

The freedom of association is closely linked to the freedom of assembly, but cannot be covered here in detail. According to Article 22 ICCPR “everyone shall have the freedom of association with others, including the right to form and join trade unions for the protection of his interests”. This right can be limited for the usual reasons, if this is “necessary in a democratic society”. In the case of Belarus already the previous report under the “Moscow Mechanism” of 2011 identified several of shortcomings in the implementation of this right related to registration or protection of premises.¹²⁵ Furthermore, the successive reports by the UN Special Rapporteur on the Situation of Human Rights in Belarus showed only minor progress which has been reversed since the presidential election.¹²⁶ She also reported that since the year 2000 no new party has been able to register in Belarus.¹²⁷

There is a legal requirement of registration for associations, which is applied very restrictively in violation of the freedom of association guaranteed by Article 36 of the Constitution of Belarus. Registration as an association is cumbersome and working without registration as many organizations are forced to do means that they can be sanctioned with a fine under Article 23.88 of the Administrative Code of approx. EUR 500. At the same time there exists obligatory membership in certain pro-government organizations like the Belarusian Republican Youth Union. Tightening control over foreign funding is the declared government objective in order to deal with mass protests.¹²⁸ As reported by Legal Transformation Centre (Lawtrend) a new presidential decree on foreign grant aid largely eliminates NGOs from receiving foreign grants, which had already been difficult before.¹²⁹ The president has also ordered financial investigations of NGOs and also the checking of the funding of political parties.¹³⁰ As a result of the restrictive practice of registration many human rights NGOs have to operate without legal authorization, which puts their activities at constant risk.

In addition, there is a long-standing practice of detention for members of civil society associations, which will be addressed further in the section on intimidations and harassment of human rights

¹²¹ Press Release by OMCT of 26 August 2020, see at: <https://www.omct.org/statements/belarus/2020/08/d26045/>.

¹²² See Human Constanta et al., Report on Belarus after the 9 August Elections, at: https://adcmemorial.org/wp-content/uploads/human-rights-review_belarus-1-1.pdf.

¹²³ See Viasna, Human groups ask for to release three opposition activists facing rioting charges, 02.10.2020, at: <https://spring96.org/en/news/99801>.

¹²⁴ See the list at Viasna, “Over 250 criminal cases opened since launch of election”, 22 September 2020, at: <http://spring96.org/en/news/99645>.

¹²⁵ See OSCE Rapporteur’s Report on Belarus, by Prof. Emmanuel Decaux, pp. 21 et seq, at: <https://www.osce.org/files/f/documents/6/b/78705.pdf>.

¹²⁶ See Report of the Special Rapporteur on the Situation of Human Rights in Belarus to the General Assembly of 2020, UN Doc. A/HRC/44/55 of 8 April 2020, paras. 45 et seq.

¹²⁷ Ibid., para. 50.

¹²⁸ See “What Lukashenko instructed the Ministry of Internal Affairs, KGB and other agencies in order to “return a calm country””, 19 August 2020, at: <https://news.tut.by/economics/697311.html>.

¹²⁹ Presidential Decree No. 3 of 20 June 2020, in force since 27 August 2020 on “foreign grant aid”, see at: <https://www.lawtrend.org/freedom-of-association/poluchenie-nekommercheskimi-organizatsiyami-inostranoj-bezvozmezdnoj-pomoshhi-novoe-v-regulirovanii>.

¹³⁰ See “Lukashenko expressed his opinion on party construction in Belarus”, 16 September 2020, at: <https://www.belta.by/president/view/lukashenko-vyskazalsja-o-partijnom-stroitelstve-v-belarusi-407026-2020/>.

defenders and NGOs under II. D. 1. For example, the chairman of one of the most important human rights NGOs, Human Rights Center “Viasna”, Ales Bialiatski, who together with his organization just received the Alternative Nobel Prize of 2020 spent more than three years in detention on politically motivated charges.

The constitution of Belarus in Article 41 also provides the right of citizens to form trade unions which is also guaranteed in Article 22 of the International Covenant on Civil and Political Rights as well as in ILO treaties. However, few independent trade unions have been registered and they are under stress by the government actions. In particular, a number of strikes in state factories and other institutions including theaters and universities protesting against the presidential election were responded to by repressive measures as explained further in the section on intimidation of labour activists under II.D.1.

C. Freedom of Expression and the Media as well as Right of Access to Information

In this chapter, the freedom of expression and information in Belarus is being analyzed with a focus on the presidential election of 9 August 2020. This includes also the online dimension of the freedom and for this purpose the access to the Internet. Specific attention is put on the right to safety of journalists.

1. Freedom of expression and information in the context of the elections

When ODIHR reported on the “media environment” of the national parliamentary elections of 2019 it criticized in particular difficulties in obtaining accreditation and recommended that the practice should be reconsidered.¹³¹ The problem of excessively restrictive rules on accreditation has been pointed out by the United Nations and by OSCE for a long time in the reports of the Special Rapporteur on the Situation in Belarus as well as in the last official visit of the Representative on Freedom of the Media (RFoM) in March 2019.¹³²

However, in the period before the presidential elections the same problems occurred. The authorities did deprive at least 19 journalists of accreditation, whereas some 50 foreign journalists were denied accreditation or deported.¹³³

Several popular bloggers were prosecuted under the Criminal Code, in particular Article 342 during the election campaign, among them Sergei Tikhanovski.¹³⁴ Also after the elections critical bloggers faced persecution like Eduard Palchis.¹³⁵

2. Right of access to information including the problem of internet shutdowns

According to a biannual resolution of the Human Rights Council on the promotion, protection and enjoyment of human rights on the Internet, the freedom of opinion and expression as well as information including the freedom of the media applies online as it does offline. In 2016 it explicitly

¹³¹ See Republic of Belarus, Early Parliamentary Elections, 17 November 2019, ODIHR Election Observation Mission, Final Report, p. 18, at: <https://www.osce.org/files/f/documents/6/4/447583.pdf>.

¹³² See Paragraph 55 of the report of the Special Rapporteur on the Situation of Human Rights in Belarus of 2016, at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/294/67/PDF/N1629467.pdf?OpenElement> and the press release of the RFoM at: <https://www.osce.org/representative-on-freedom-of-media/414905>.

¹³³ See Joint report by group of NGOs for the attention of the rapporteur, Belarus after the Elections, 47 pages (Joint report), p. 41, at: https://spring96.org/files/misc/belarus_after_election_report_2020_en.pdf.

¹³⁴ Joint report, op.cit., p. 42, listing nine bloggers.

¹³⁵ See on his detention for 30 days at: <https://belsat.eu/en/news/blogger-palchys-to-spend-30-days-in-detention-center/>.

condemned measures to prevent or disrupt access to or dissemination of information online and called on states to refrain from such measures.¹³⁶ Similar commitments exist in the framework of OSCE.¹³⁷

Amendments of the law on the mass media introduced on 14 June 2018 to regulate national and foreign media as well as providing the Ministry of Information with strict control over online resources were denounced by the OSCE Representative on the Freedom of the Media as “excessive and disproportionate”. He called on the Belarusian authorities to bring the law in conformity with international and OSCE standards and commitments.¹³⁸ In particular, when visiting Belarus in March 2019 he emphasized the need to ensure access to an unrestricted Internet.¹³⁹

However, his appeal was ignored. During elections on 9 August 2020 a massive blackout of the Internet took place, while restrictions of the Internet were frequent before and after the elections as documented in a detailed report by OONI.¹⁴⁰ The explanation given by president Lukashenko that this was caused by a foreign cyberattack cannot be taken as credible. A group of NGOs issued an urgent appeal against internet service disruptions in the context of the elections.¹⁴¹ This practice is not new as websites like “charter97” have been blocked in the past (2018).¹⁴²

More specifically, there was complete black out of the Internet in the nights of 9-12 September 2020 on landlines and also on mobile phones, while later there were short-term interruptions of services. However, during the protests on the following weekends mobile Internet was restricted outside of houses at specific locations for certain times related to the protests. Mobile Internet service providers had to respond to the “requests from authorized state bodies”. In addition, access to some 70 websites was restricted inside Belarus with both harmful societal and economic consequences. The reason given was that they hosted “articles that provide a negative description of the situation in Belarus after the end of the election campaign ...”. The website of the Belarusian Association of Journalists (baj) was unavailable from 9-27 August 2020 without any legal procedure.¹⁴³ Another example, the sports website “by.tribuna.com” was blocked for Belarus because it had also reported about beatings of sportsmen at the protests.¹⁴⁴ Furthermore, the very informative website of Viasna, “spring96.org”, which also been frequently used in this report is blocked in Belarus since the election protests, while it is like other blocked websites freely accessible from the outside.¹⁴⁵

The Committee to Protect Journalists (CPJ) also reported about threats of blocking and censoring of websites, like “tut.by”, while many remained blocked during the protests. Generally, CPJ lists Belarus among the ten most censored countries worldwide.¹⁴⁶ According to the World Press Freedom Index maintained by Reporters Without Borders Belarus presently ranks 153 out of 180 countries. Freedom

¹³⁶ See Human Rights Council Resolution 32/6 of 30.06.2016, at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/154/33/PDF/G1615433.pdf?OpenElement>.

¹³⁷ See OSCE, Commitments: Freedom of the Media, Freedom of Expression, Free Flow of Information 1975-2017, 4th edition, at: https://www.osce.org/files/f/documents/4/f/99565_0.pdf.

¹³⁸ Legislative amendments further restrict media in Belarus, says OSCE media freedom representative, 18.06.2018, at: <https://www.osce.org/representative-on-freedom-of-media/384786>.

¹³⁹ See the press release after his official visit, at: <https://www.osce.org/representative-on-freedom-of-media/414905>.

¹⁴⁰ See Open Observatory of Network Interference (OONI), Belarus protests: From internet outages to pervasive website censorship, report of 15 September 2020, at: <https://ooni.org/post/2020-belarus-internet-outages-website-censorship/>.

¹⁴¹ See the urgent appeal by Human Constanta and others of 13 August 2020, at: <https://humanconstantia.by/en/urgent-appeal-concerning-internet-service-disruptions-in-belarus-in-the-context-of-the-presidential-elections-of-9-august-2020/>.

¹⁴² See at: <https://bydc.info/en/news/767-joint-statement-of-belarusian-human-rights-organizations-on-blocked-access-to-belaruspartisan-org-and-charter97-org>.

¹⁴³ Joint report, p. 40.

¹⁴⁴ See the report “Belarus after the 9 August Presidential Elections”, op.cit.

¹⁴⁵ See “Viasna site still on the blacklist”, 9 October 2020, at: <https://spring96.org/en/news/99886>.

¹⁴⁶ See alert by Committee to Protect Journalists of 14 September 2020, at: <https://cpj.org/2020/09/authorities-block-local-news-websites-amid-belarus-protests/>.

House categorizes the Internet in Belarus as “not free”, because of obstacles to access, limits on content and violations of user rights.¹⁴⁷

As a recent example, the Ministry for Information of Belarus suspended the status of one of the most popular internet news portals, i.e. TUT.BY which had the status of mass media for a period of three months starting from 1 October 2020.¹⁴⁸ The status of mass media outlet enables the ‘lawful presence’ at mass events and in areas of emergency situations, and to transmit information from there. The relevant lawsuit on the termination reportedly has been filed by the Ministry of Information on 18 September 2020.¹⁴⁹ The Economic Court of Minsk opened the case on 25 September 2020, while the first hearing was scheduled for 8 October 2020.¹⁵⁰ The legal claim is based on four earlier warnings (reportedly, on publishing ‘inaccurate information’)¹⁵¹ of the Ministry of Information under Article 4 ‘Basic principles of mass media activity’ and Article 49 ‘Written warning’ of the Law on Mass Media.¹⁵² According to the press-release of the Ministry of Information of Belarus from 29 September 2020 the relevant measures were taken by the Ministry of Information “(...) on requests of state bodies that revealed within their competence the information, the distribution of which is prohibited. (...)”.¹⁵³ The final decision is to be taken by the court, which so far has postponed the hearing.

The blockades of the Internet also prevented people to meet online and thus violate the freedom of assembly online as part of the freedom of assembly.¹⁵⁴

3. Safety of journalists

The OSCE Ministerial Council in 2018 adopted an important decision on safety of journalists.¹⁵⁵ Other international organizations like the United Nations Human Rights Council have adopted similar resolutions.¹⁵⁶ However, the case of the presidential elections in Belarus on 9 August 2020 shows very serious violations of the commitments contained in these commonly adopted standards.

Already during the election process there were many reports on violations and harassments of media workers, altogether 91 violations according to the Belarusian Association of Journalists.¹⁵⁷ When they covered the protests many were attacked and detained like several photo journalists.¹⁵⁸ Detentions took also place when covering the marches like the march of justice.¹⁵⁹ International NGOs like Article 19

¹⁴⁷ Freedom House, Freedom on the Net 2019, see at: <https://freedomhouse.org/country/belarus/freedom-net/2019>.

¹⁴⁸ See “Information Ministry Deprives TUT.BY Of Mass Media Status For Three Months”, at: <https://belarusfeed.com/information-ministry-tut-by-mass-media-status/>.

¹⁴⁹ See “TUT.BY may lose the status of the media due to the law suit filed by the Ministry of Information”, 25 September 2020, at: <https://news.tut.by/society/701850.html>.

¹⁵⁰ See “The Ministry of Information issued a warning to two information resources. Igor Lutskiy named the reason”, 10 August 2020, at: <http://mininform.gov.by/news/all/mininform-vynes-preduprezhdenie-dvum-informatsionnym-resursam-igor-lutskiy-nazval-prichinu/>.

¹⁵¹ Ibid.

¹⁵² See See Press release on the situation with the online edition “tut.by”, 29 September 2020, at: <http://mininform.gov.by/news/all/press-reliz-o-situatsii-s-setevym-izdaniem-tut-by/>.

¹⁵³ Ibid.

¹⁵⁴ On the freedom of assembly online see above at II. B.1.

¹⁵⁵ See Ministerial Council Decision No. 3/18 of 7 December 2018, at: <https://www.osce.org/files/mcdec0003%20safety%20of%20journalists%20en.pdf>.

¹⁵⁶ See Human Rights Council, Resolution 33/2 (2016) on safety of journalists.

¹⁵⁷ Interview with BAJ representative.

¹⁵⁸ See Radio Free Europe/Radio Liberty: Photojournalist Uladz Hrydzin, Jailed in Belarus for Covering Post-Election Protests, 17 September 2020, at: <https://www.rferl.org/a/uladz-hrydzin--photojournalist-belarus-jailed-rfe-rl-protests-english/30843607.html>; See also at: <https://www.rferl.org/a/two-photojournalists-including-one-from-rfe-rl-jailed-in-belarus-after-covering-anti-government-rally/30842505.html>; Committee to Protect Journalists, 21 September 2020, at: <https://cpj.org/2020/09/belarus-authorities-continue-to-arrest-detain-journalists-amid-protests/>.

¹⁵⁹ See at: <https://baj.by/en/content/sunday-dzianis-borshch-siarhei-kazlovich-and-mikalai-maminau-were-detained-minsk>.

reported on the crackdown on journalists.¹⁶⁰ In many cases the equipment and footage was destroyed. Individual citizens documenting police brutality with photos or videos, so-called citizen journalists were arrested and sentenced to several days of detention.¹⁶¹

The Association of Belarusian Journalists keeps a list of some 250 journalists arrested in 2020.

According to the data collected as of 29 September 2020, there had been 344 incidents in Belarus related to repression against journalists and violations of journalists' rights, conducted by the authorities within the period from 10 January 2020 until 27 September 2020.¹⁶² Notably, the total number of journalists involved in these incidents is 254 including 81 foreign and 170 domestic journalists, three cases remaining unspecified. For clarification, foreign journalists are those journalists who work for foreign media, such as Belsat, Reuters, Ukrainian TV, RFE/RL, BBC, TASS, Agence France-Presse, ARD, and others.

Furthermore, in comparison to the “pre-elections period” most of the relevant incidents occurred within the “after elections period”. Relevantly, within the pre-elections period (i.e. starting from 10 January 2020 until the day of presidential election, 9 August 2020), at least 62 journalists, including 46 domestic and 16 foreign journalists have reportedly experienced repression and violations of journalists' rights in Belarus. As for the after elections period, at least 178 journalists, including 113 domestic and 65 foreign journalists, have experienced repression and violations of journalists' rights in Belarus. While at least 14 foreign journalists have reportedly received injuries, the total number of those domestic journalists who have been injured from 10 January 2020 until 27 September 2020 in Belarus reaches at least 28. At least two domestic journalists have been reportedly injured by a rubber bullet.

Overview as of 29.09.2020

Totals	Amount
<i>All journalists</i>	254
<i>Domestic journalists</i>	170
<i>Before elections</i>	46
<i>After elections</i>	113
<i>Criminal charges</i>	2
<i>Administrative charges</i>	144
<i>Adm. Charge Art. 23.34 CAO</i>	59
<i>Adm. Charge Art. 22.9 CAO</i>	20
<i>Administrative charges – released without a report</i>	62
<i>Number of injured individuals</i>	28
<i>Number of foreign journalists involved</i>	81
<i>Before elections</i>	16
<i>After elections</i>	65
<i>Criminal charges</i>	1
<i>Administrative charges</i>	14
<i>Adm. Charge Art. 23.34 CAO</i>	10

¹⁶⁰ See at: <https://www.article19.org/resources/crackdown-freedom-of-expression/>.

¹⁶¹ Testimonies received by rapporteur. See, for example, the video on the arbitrary arrest of N.D., when riding home on his bicycle on 11 October 2020, at: <https://www.youtube.com/watch?v=Ir2XmohmFIk&feature=youtu.be>.

¹⁶² Belarusian Association of Journalists, Repression against Journalists, Chart of 2020, see at: <https://baj.by/en/analytics/repressions-against-journalists-belarus-2020-chart>; By 6 October 2020, the number of incidents was 369.

<i>Adm. Charge Art. 22.9 CAO</i>	7
<i>Administrative charges - released without a report</i>	21
<i>Number of injured individuals</i>	14

(Source: <https://baj.by/en/analytics/repressions-against-journalists-belarus-2020-chart>)

As of 29 September 2020, at least 144 domestic journalists have been subjected to detention under administrative charges while at least two domestic journalists have been detained on criminal charges. Specifically, 59 domestic journalists have been detained on charges under Article 23.34 of the Code of Administrative Offences ('Violation of the procedure for organizing or conducting mass events') of the Republic of Belarus whereas 20 domestic journalists have been facing charges under Article 22.9 of the Code of Administrative Offences ('Violation of legislation on mass media'). As for foreign journalists, 10 have been detained on charges under Article 23.34 of the Code of Administrative Offences ('Violation of the procedure for organizing or conducting mass events') of the Republic of Belarus whereas 7 have been facing charges under Article 22.9 of the Code of Administrative Offences ('Violation of legislation on mass media'). Also, as of 29.09.2020 at least one foreign journalist has been detained by authorities of Belarus on criminal charges (under Article 342 Criminal Code of Belarus 'Organization and preparation of actions that grossly violate public order, or active participation therein'). Consequently, the Belarusian Association of Journalists appealed to "stop pressure on the press".¹⁶³

At the same time, it should be noted that at least 21 foreign journalists and 62 domestic journalists had been detained and later released without a police report. Thus, the legal basis of the detentions of at least 83 journalists¹⁶⁴ remains unclear since no charges have been officially filed against those journalists by Belarus authorities in connection with their detention and their later release. Moreover, domestic journalists have been jailed for up to 12 days for participation in unsanctioned mass events. This proves allegations according to which journalists doing their work are sanctioned based on laws which are related to the events they are reporting about like demonstrations, which constitutes a major violation of the rights of journalists, who have a right to report on the events. Detentions of journalists continued after the period examined, in particular during weekends, when covering demonstrations. For example, on 4 October 2020 16 journalists were detained all over the country, most of them were released later without being charged or sentenced to a fine.¹⁶⁵

The worst violations were reported from the period 9 to 12 August 2020, where some journalists were beaten and detained like protesters in spite of pointing out their press status. For example, senior TASS correspondent Yuri Shamshur was beaten and assaulted in the detention vehicle but managed to get away before being detained with swollen hands.¹⁶⁶ Others were not so lucky: they ended up in detention and suffered serious ill-treatment. However, violation of their rights and safety also took place at later occasions. For example, on 27 August 2020 some 47 journalists, including foreign ones, who had reported on events were detained in Minsk and Brest. No detention reports were drawn up and the police arbitrarily destroyed part of the footage and threatened to destroy also the equipment. On 1 September 2020 several journalists were detained when reporting on events. Some were detained in CIP Akrestsina detention center and tried for participation in an unauthorized rally. According to one NGO report, out of 57 interviewed journalists whose rights were violated in the post-election period until 22 September 2020, 16 reported that law enforcement officers had used violence against

¹⁶³ See Belarusian Association of Journalists et al., at: <https://spring96.org/en/news/99924>.

¹⁶⁴ The total number of 83 journalists includes 62 administrative detentions of domestic journalists (who were detained and later released without a police report) and 21 administrative detentions of foreign journalists (who were detained and later released without a police report).

¹⁶⁵ See the chart of the Belarusian Association of Journalists, at: <https://baj.by/en/analytics/repressions-against-journalists-belarus-2020-chart>.

¹⁶⁶ See his story in: "'We will not let you ... break up our country.'" TASS correspondent told how he was detained and beaten on 11 August 2020.", 23 August 2020, at: <https://baj.by/ru/analytics/my-ne-dadim-vam-piy-razorvat-nashu-stranu-korrespondent-tass-rasskazal-kak-ego>.

them after detention, as well as intentionally caused severe pain or suffering, both physical and moral.¹⁶⁷

With regard to foreign journalists there are special sanctions like deprivation of accreditation and deportation in combination with a ban from reentering Belarus. Foreign journalists need for their professional activities an accreditation of the Foreign Ministry which is difficult to obtain. Accordingly, several media were not allowed to report on the elections from Belarus. As a response to the EU sanctions, president Lukashenko announced to withdraw all accreditations of foreign journalists which took effect on 2 October 2020. These journalists can reapply for accreditation, which allows the authorities to withhold accreditation in case of critical reporting. If they work without accreditation the authorities can deport them with a ban on re-entry. In addition, local collaborators are prohibited to work for foreign media, which do not have accreditation. Otherwise, they risk high fines. According to NEXTA three TASS correspondents were arrested in Minsk on 11 October 2020.

There were protests from journalists of the state media against the elections and mistreatment of protesters who went on strike. Some 300 signed a statement not to recognize the election, to release all political prisoners and to abolish censorship.¹⁶⁸ A number of media workers resigned or stopped working and were partly replaced by Russian professionals.¹⁶⁹

D. Right to Liberty and Security

This chapter demonstrates wide-spread violations of the right to liberty and security contained in Article 9 ICCPR. It shows that intimidation, persecution and harassment is systematically used against all sectors of population in opposition to the government of Belarus, from civil society organizations, women and labour activists to religious leaders, sports and culture. This was particularly the case for oppositional candidates and their supporters at the presidential election, but also for oppositional lawyers and protesting students and academics. The situation of journalists has already been covered in chapter II.C. In many cases the treatment has to be qualified as torture and therefore is covered in chapter II.E.

1. Intimidation, persecution and harassment of political activists and candidates, lawyers, companies, labour activists and human rights defenders

According to UN Special Rapporteur some 1,500 persons were arrested before the election and more than 10,000 after the election in the repression against peaceful protests,¹⁷⁰ which shows the massive scale of arrests of protesters. At the time of reporting, the total figure is already around 13,000. According to the Ministry of Internal Affairs some 6,700 people were arrested during the mass protests in Minsk and other cities on 9 to 12 August 2020 alone.¹⁷¹ Because of the circumstances, most detentions have to be qualified as “arbitrary detentions”. Reports show that people were generally not informed on the reasons of detention, then often under beating they had to sign protocols of detention, families were not informed and no access to lawyers was granted.¹⁷² The large majority was released without criminal charges within the 72 hours foreseen as the maximum and had to sign a document

¹⁶⁷ Joint report, op.cit., pp. 37 et seq, see at:

https://spring96.org/files/misc/belarus_after_election_report_2020_en.pdf.

¹⁶⁸ See “The employees of Belteleradiocompany went on strike again. Entrance and access to the building are blocked by people in civilian clothes”, 18 August 2020, at: <https://news.tut.by/economics/697060.html>.

¹⁶⁹ See “How the Russian propaganda captured the Belarusian TV, and how this is related to the journalists from Russia”, 3 September 2020, at: <https://baj.by/ru/analytics/kak-rossiyskaya-propaganda-zahvatila-belorusskoe-tv-i-prichem-tut-zhurnalisty-iz-rossii>.

¹⁷⁰ UN Special Rapporteur on the Situation of Human Rights in Belarus, Anais Marin in her address to the urgent debate of the Human Rights Council on 18 September 2020, see at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26261&LangID=E>.

¹⁷¹ See Joint report, op.cit., referring to Official Telegram channel of the Ministry of Internal Affairs of Belarus, at: <https://t.me/pressmvd>.

¹⁷² Confirmed by various sources like reports (see for example the joint report) and testimonies.

committing not to participate in further unsanctioned mass events.¹⁷³ This situation is ongoing because of the persecution of people participating in the weekly demonstrations.

The arbitrariness can be demonstrated by the testimonial of a couple that went to the police station to look for their son and then were detained themselves together with other people waiting and severely ill-treated. All of them were hit and kicked, had to undress, the wife had to watch the beating of her naked husband and people were even hit in the cell.¹⁷⁴

The existence of UN and OSCE/ODIHR standards for the Protection of Human Rights Defenders,¹⁷⁵ like the UN Human Rights Defenders' Declaration of 1998¹⁷⁶ and the OSCE/ODIHR *Guidelines on the Protection of Human Rights Defenders* of 2014¹⁷⁷ did not have any impact.

Amnesty International already before the elections denounced a full-scale attack on human rights.¹⁷⁸

Even earlier, an OSCE/ODIHR report found that Belarus had record of intimidation and persecution of Human Rights Defenders.¹⁷⁹

According to a report received by the rapporteur from several human rights experts and initiatives¹⁸⁰ following the massive crackdown and intimidation after the protests all independent social institutions of Belarus are under attack, from the opposition leaders and human rights defenders to the media and including lawyers, critical representatives of the business community, organizers and participants of strikes, students and academics, religious leaders and churches as well as other public voices considered disloyal to the regime like artists or sportspeople. As much as the protests come from all sectors of society also the repression affects all layers of society.

Intimidation and persecution of labour activists and workers

In reaction to numerous strikes in state-owned factories as well as petitions¹⁸¹ to articulate the political protest, the authorities threatened to close factories and to dismiss protesting workers, which actually resulted in numerous dismissals and persecutions.¹⁸² For example, heads of strike committees were detained.¹⁸³ The independent Belarusian Congress of Democratic Trade Unions (BKDP) complained about the recent amendments to the rules on mass events by resolution of Council of Ministers, as they further restrict them in their public activities and could lead to the liquidation of a Union in case of a violation found. It reports about enormous pressure being put on members strike committees.

¹⁷³ See at: <https://www.hrw.org/news/2020/09/15/belarus-systematic-beatings-torture-protesters>.

¹⁷⁴ Human Rights Center Viasna, 29.09.2020: "They took away my bra with a breast prosthesis", see at: <https://spring96.org/en/news/99732>.

¹⁷⁵ See OSCE/ODIHR, *Guidelines on the Protection of Human Rights Defenders*, at: <https://www.osce.org/files/f/documents/c/1/119633.pdf>.

¹⁷⁶ See at: <https://www.ohchr.org/Documents/Issues/Defenders/Declaration/declaration.pdf>.

¹⁷⁷ See the text at: <https://www.osce.org/files/f/documents/c/1/119633.pdf>.

¹⁷⁸ See at: <https://www.amnesty.org/en/latest/news/2020/06/belarus-fullscale-attack-on-human-rights-ahead-of-presidential-election/>.

¹⁷⁹ See OSCE/ODIHR Study on "The Responsibility of States": *Protection of Human Rights Defenders in the OSCE Region (2014-2016)*, at: <https://www.osce.org/files/f/documents/d/d/341366.pdf>.

¹⁸⁰ See "Human Rights Crises in Belarus: Independent Institutions Under Attack", report received on 5 October 2020, 13 pages, at: https://supolka.net/osce/?fbclid=IwAR2sS7DcMiw-kx1WGJo-uNSAC-sUYGwY4MyCEx0y2_jv6PgRGQq6XhDArHA.

¹⁸¹ For example, 500 workers of Belarusian Railway signed a joint petition, see at: https://humanconstantia.by/wp-content/uploads/2020/10/Belarus-Human-Rights-25_08_2020-1.pdf.

¹⁸² See at: <https://www.belta.by/president/view/lukashenko-ekonomike-vnimanie-prezhde-vsego-402936-2020/> and <https://www.svaboda.org/a/30821301.html> or.

¹⁸³ See for example, "In Minsk, the head of the strike committee of Minsk Automobile Plant was detained", 20 August 2020, at: <https://babel.ua/ru/news/49732-v-minske-zaderzhali-rukovoditelya-zabastovki-na-maz> and https://humanconstantia.by/wp-content/uploads/2020/10/Belarus-Human-Rights-24_08_2020-1.pdf.

Against some of them criminal cases were opened.¹⁸⁴ The Director-General of ILO, Guy Ryder called on president Lukashenko to ensure respect for workers and drop charges against unionists.¹⁸⁵

Intimidation and persecution of companies – case of PandaDoc

An example is the politically motivated arrest of four leading employees of PandaDoc, a high-tech company with its seat in the USA, but some 150 employees in Belarus. As a reprisal to the public offer by its CEO Mikita Mikado to assist security officers who quit their service for not becoming involved in the repression with jobs, training and financial support, which was widely noticed, a criminal case was opened against the company and four employees, who were unrelated to the initiative, but detained and charged with fraud. They were recognized by Belarusian NGOs as “political prisoners”.¹⁸⁶ After a meeting of president Lukashenko with several political detainees in KGB prison two were released on bail, one of them the director of PandaDoc.¹⁸⁷

Intimidation of women activists with the threat of removal of their children

There are several reports that women have been threatened with the removal of their children, starting well before the election.¹⁸⁸ The most well-known are threats against presidential candidate Svetlana Tikhonovskaya and her children. Accordingly, on 16 June 2020 during her visit to Gomel she received an anonymous phone call with threats against her and her minor children and demands to stop her presidential campaign.¹⁸⁹ Ms. Tikhonovskaya repeatedly expressed that she was constantly worried about her children’s safety, whom she then felt necessary to send abroad. On 11 August 2020 Ms. Tikhonovskaya was taken to the Belarusian border with Lithuania by the authorities where she was forced to cross the border to Lithuania because of the situation of her children and pressure by the authorities.¹⁹⁰

A similar case relates to Veronika Tsepikalo, wife of ex-candidate Valeri Tsepikalo and one of the women leaders of the united election team of Ms. Tikhonovskaya. She left Belarus on 8 August 2020 out of safety concerns. Her husband Valeri Tsepikalo had left Belarus already earlier with their children after he allegedly was informed that the Prosecution office was going to take their children away and put him on trial.¹⁹¹

According to a report in Gomel, two children of the Snezhkovy family were taken to the orphanage, following arrests of their parents despite two other adult siblings living together with them. After the trial, the mother managed to return the children to the family.¹⁹² In August in Minsk, Ms. Alena Lazarchuk, the activist of the European Belarus initiative was detained, and although there were adult

¹⁸⁴ Report on file with the rapporteur.

¹⁸⁵ See ILO calls on Belarus president to respect workers’ rights and freedoms amid protests, 9 September 2020, at: https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_754965/lang--en/index.htm

¹⁸⁶ Based on various sources. See the list of “political prisoners” at: <https://spring96.org/en/news/49539>.

¹⁸⁷ See “Two prisoners released on bail”, Viasna 12 October 2020, at: <https://spring96.org/en/news/99917>.

¹⁸⁸ See “I’m afraid that they will take the child away. In Grodno, the guardianship authority came to the wife of the detainee in the “Tikhonovsky case””, 17 June 2020, at: <https://news.tut.by/society/689229.html>.

¹⁸⁹ Tut.by, “Tikhonovskaya: I received threats, I am facing a choice – children or further struggle. The choice is clear”, 16 June 2020, <https://news.tut.by/elections/688946.html>.

¹⁹⁰ The Guardian, “Belarus opposition candidate implies threat to children after leaving country”, <https://www.theguardian.com/world/2020/aug/11/belarus-opposition-candidate-lithuania-protests-svetlana-tikhonovskaya>.

¹⁹¹ Reuters, “Belarus opposition leader flees abroad with two sons ahead of election”, 24 July 2020, <https://www.reuters.com/article/us-belarus-election/belarus-opposition-leader-flees-abroad-with-two-sons-ahead-of-election-idUSKCN24P1MV>.

¹⁹² Radio Free Europe/Radio Liberty, A mother of four, whose husband was arrested and children were taken away was fined, 30 September 2020, <https://www.svaboda.org/a/30866136.html>.

siblings, Alena's son was taken to an orphanage. He spent two days there before returning to the family.¹⁹³

Human Rights Watch reported similar cases where pressure was put on women that their children could be taken into state custody in order to intimidate them not to participate in protests.¹⁹⁴

Harassment and intimidation of NGOs/civil society and business

Civil society organizations complain about increased harassment and intimidation since the election period. One form is financial harassment, as already shown in the section on freedom of association, at II.B.6. Pressure is often put on critical NGOs by detaining some of their members or searching their houses and apartments as in the case of Tatiana Reviaka, a coordinator with Belarusian Human Rights House.¹⁹⁵

The founder of the Center for the Promotion of Women's Rights – “Her Rights”, Ms. Aleksandra Dzikan and the director of the Center, Ms. Tatiana Stryzheuskaya felt forced to leave the country after the husband of Ms. Dzikan was detained in the context of the case of PandaDoc and the Center was accused on state TV of financing women's marches.¹⁹⁶ Accusations against ‘Her Rights’ Centre has also to be seen as a violation of Article 7(c) CEDAW, which stipulates the right of women to participate in NGOs and associations concerned with the political and public life of the country because this is the only women's rights organisation in Belarus focusing specifically on gender discrimination.

A particular example for the harassment and intimidation of NGOs as reported also for other civil society organizations is the case of Marfa Rabkova. Working as coordinator of the volunteer services of Human Rights Center “Viasna” she was arrested on 18 September 2020, the day of the urgent debate in the UN Human Rights Council on Belarus by masked officers of the Main Department for Combating Organized Crime and Corruption (GUBAZiK) of the Ministry of Interior. She was accused of “training or other preparation of persons for the participation in mass riots, or financing of such activities” under Article 293 Paragraph 3 of the Criminal Code of Belarus. Her activities related to coordinating volunteer help to victims of police violence, monitoring peaceful assemblies and documentation of inhuman treatment of protesters seem to have been the real reason for her detention.¹⁹⁷

However, all her activities are fully legitimate under the UN Human Rights Defenders Declaration of 1998 and the OSCE/ODIHR *Guidelines on Human Rights Defenders* of 2014, which therefore have been violated by the authorities of Belarus.

On 7 October 2020 rights groups led by FIDH went public requesting the authorities to stop the persecution of civil society in Belarus and to engage in a dialogue.¹⁹⁸

¹⁹³ Radio Free Europe/Radio Liberty, “She was said that no one took a child away”. Two days later her 6-years-old son was returned to Alena Lazarchuk, 19 September 2020, see at: <https://www.svaboda.org/a/30847321.html>.

¹⁹⁴ Human Rights Watch, Belarus uses Children to Pressure Dissenting Parents, Judicial Harassment, Threatened Loss of Custody, Case of Oksana Barovskaya, 8 October 2020, see at: <https://www.hrw.org/news/2020/10/08/belarus-uses-children-pressure-dissenting-parents>.

¹⁹⁵ See at: <https://www.frontlinedefenders.org/en/case/taciana-reviakas-home-searched-yevhenii-vasyliiev-and-konstantin-reutski-arrested>.

¹⁹⁶ See “How Belteleradiocompany linked PandaDoc to “financing women's marches””, 12 September 2020, at: <https://news.tut.by/economics/700239.html>.

¹⁹⁷ OMCT urgent action on behalf of Maria Rabkova, see Belarus: arbitrary arrest of Ms Maria Rabkova, Viasna Coordinator of Volunteer Services, at: <https://www.omct.org/human-rights-defenders/urgent-interventions/belarus/2020/09/d26078/>.

¹⁹⁸ See at: <https://www.fidh.org/en/region/europe-central-asia/belarus/40-rights-groups-belarus-authorities-must-stop-persecuting-civil>.

Intimidation and harassment in sports

According to reports some 650 athletes and industry workers signed an open letter to authorities.¹⁹⁹ As a result many faced pressures of dismissal, expulsions from clubs, refusal of contracts or were forced to leave the country. The website “by.tribuna.com” which reported about some of the events was taken offline and still is not visible in Belarus.²⁰⁰

On 30 September 2020 the famous Belarusian basketball player Elena Levchenko was sentenced to 15 days imprisonment. She was found guilty by Leninsky Court of Minsk for “Violation of the established procedure for organizing or conducting mass events” and “Disobeying the police officers”. Levchenko is an active participant in the independent sportsmen movement [SOS.by](https://www.sos.by/), which strongly condemned the violence committed by the riot police and she took part in peaceful protests.²⁰¹

After the arrest of Levchenko, FC Torpedo (Minsk) suspended its participation in the football championship of Minsk in protest against several persecutions of sportspeople for their political opinions like the disqualification of Handball Club Vityaz-Leon for expressing its position and threats against other signatories of sportlers’ appeals. In reaction, the Belarusian Handball Federation disqualified Vityaz-Leon Handball club from the championship because the club refused to play the match against Masheka to express its support of the basketball player Elena Levchenko.

Strong protests also came from the cultural sector, where artists or television hosts went on strike or protested in a variety of ways. The reaction by the authorities were dismissals, non-prolongation of contracts, detentions and administrative arrests like in the case of Andrey Drobysh, artist at the famous Yanka Kupala Theatre or Sergei Kurylenka, director of the Hrodna Regional Drama Theatre. 800 Belarusian cultural workers signed an open letter protesting against the violence and falsifications.²⁰²

2. Detention of candidates and political activists in the context of the presidential elections

According to the UN Special Rapporteur on Human Rights in Belarus about 1,500 persons were detained in the period before the elections since April 2020. Among them were also several members of Human Rights Center “Viasna”, who monitored various protests, which can be considered as harassment and intimidation by the authorities.²⁰³ Also, international human rights NGO Front Line Defenders denounced the judicial harassment of human rights activists in the lead-up to the presidential elections.²⁰⁴

Several opposition figures were detained and put on trial like Victor Babariko, who was detained on 18 June 2020 with his son for politically motivated multiple criminal charges (Article 243 ‘Tax evasion’, Article 235 ‘Money laundering’, Article 210 ‘Theft by abuse of authority’, Article 209 ‘Fraud’, Article 430 ‘Receiving a bribe’ and Article 431 ‘Bribing’ of the Criminal Code of Belarus) by law enforcement agents.²⁰⁵ Later several members of his team were also arrested, two were forced to leave the country after the elections. A number of oppositional bloggers were also detained as in

¹⁹⁹ See ““We demand that the elections be declared null and void”. More than 650 athletes and industry workers signed an open letter making demands on the authorities”, 18 August 2020, at: <https://www.pressball.by/pbonline/other/87900>.

²⁰⁰ Based on report: Belarus after the 9 August Presidential Elections, op.cit..

²⁰¹ See “Basketball player Elena Levchenko was detained at the airport”, 30 September 2020, at: <https://sport.tut.by/news/aboutsport/702297.html>.

²⁰² See Human Constanta, Newsletter of 03.-09.10.2020, at: <https://humanconstanta.by/en/newsletters-about-situation-with-human-rights-in-belarus-2/>.

²⁰³ See “Viasna insists on immediate release of its arrested members”, 12 May 2020, at: <https://spring96.org/en/news/96877>.

²⁰⁴ See at: <https://www.frontlinedefenders.org/en/statement-report/judicial-harassment-human-rights-defenders-lead-presidential-elections>.

²⁰⁵ See “Belarus: Rival of President Lukashenko arrested ahead of election”, 18 June 2020, at: <https://www.bbc.com/news/world-europe-53102353>.

particular Sergei Tikhanovski arrested on 29 May 2020.²⁰⁶ His detention has already been extended twice because the prosecutor felt unable to complete the investigation in the two months foreseen. Nine members of his team were also arrested at certain times.²⁰⁷

The government used arbitrary arrests and forced expulsions against leading opposition figures.²⁰⁸ There have been at least three persons who were forcibly deported from Belarus after the elections, the most prominent case being the failed attempt at a forcible deportation of Maria Kolesnikova described below. Another case is member of the presidium of the Coordination Council, Volha Kovalkova, who was first detained under Article 23.34 of the Administrative Code for organization and participation in a unauthorized mass event and forcibly deported under the threat of lengthy imprisonment.²⁰⁹ A criminal case was initiated against Valery Tsepka, which forced him and Veronika Tsepka to leave the country.²¹⁰

The presumed winner of the elections, Svetlana Tikhanovskaya, in August 2020 initiated the creation of a “Coordination Council for the Transfer of Power” with a presidium of seven members: all of them have since either been arrested under criminal charges and/or deported, i.e. Maria Kolesnikova, Sergei Dyleuski, Volha Kovalkova, Paval Latushka, Lilia Ulasava, and Maxim Znak. Also, other members of the Coordination Council faced mostly administrative arrest.²¹¹

Intimidation of the last remaining member of the presidium of the Coordination Council, Svetlana Alexievich allegedly forced her to leave Belarus. She had been called for interrogation and there was an attempt to detain her or conduct a search in her house, which she prevented with the help of international diplomats. She left Belarus on 28 September 2020 for medical treatment in Germany.

The case of Maria Kolesnikova

Maria Kolesnikova, a political activist, who had been the head of the team of Viktor Babarika, became prominent for her role in the peaceful demonstrations and because of her resistance to efforts by the authorities to forcibly deport her from Belarus to Ukraine. She was abducted on 7 September 2020 by masked men in Minsk and allegedly prevented her deportation by destroying her passport. Consequently, she was detained for several days in an unknown place without access to her family or her lawyer.²¹² Amnesty International on 23 September 2020 issued an urgent appeal for Maria Kolesnikova as a prisoner of conscience²¹³ after her abduction and arrest.²¹⁴ On 25 September 2020 eight special procedures of the United Nations involving 16 UN-appointed human rights experts called for her release, which can be considered as a case of temporary enforced disappearance.²¹⁵

²⁰⁶ Joint report, op.cit., p. 42.

²⁰⁷ Report on Human Rights Crisis in Belarus, Social Institutions under Attack, p. 6, see at: https://supolka.net/osce/?fbclid=IwAR2sS7DcMiw-kx1WGJo-uNSAC-sUYGwY4MyCEx0y2_jv6PgRGQq6XhDArHA.

²⁰⁸ Amnesty International, “They are stealing the best of us”, Arbitrary arrests and forced expulsions of leading opposition activists, 10 September 2020, see at: <https://www.amnesty.org/download/Documents/EUR4930402020ENGLISH.pdf>.

²⁰⁹ Report by Centre for the Promotion of Women’s Rights and ADC Memorial, see at: <https://adcmemorial.org/en/news/adc-memorial-violations-of-the-rights-of-vulnerable-groups-in-belarus/> and https://supolka.net/osce/?fbclid=IwAR2sS7DcMiw-kx1WGJo-uNSAC-sUYGwY4MyCEx0y2_jv6PgRGQq6XhDArHA.

²¹⁰ See at: <https://www.svaboda.org/a/30785585.html> and <https://www.svaboda.org/a/30786301.html>.

²¹¹ See for the details the Report on Human Rights Crisis in Belarus, op.cit., pp. 7 and 8.

²¹² See ““Belarus 1”: Maria Kolesnikova was detained at the Ukrainian border” at: <http://mediazona.by/chronicle/zaderjaniya-ks#35462>.

²¹³ See at: <https://www.amnesty.org/en/documents/eur49/3106/2020/en/>.

²¹⁴ See at: <https://www.amnesty.org/en/latest/news/2020/09/belarus-authorities-subject-opposition-leader-maryia-kalesnikava-to-abductionstyle-arrest/>.

²¹⁵ UN OHCHR Press Release of 25 September 2020, see at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26296&LangID=E>.

After her detention the General Prosecutor opened a legal case against her under Paragraph 3 of Article 361 of the Criminal Code of the Republic of Belarus (“Public calls for actions aimed at causing harm to the national security with the use of mass media or Internet”). According to Paragraph 3 of Article 361 such crimes are punishable with two to five years of prison. The detention was explained as a preventive measure.

Maria Kolesnikova, through her lawyer, requested to open criminal proceedings against the law enforcement agents (KGB and the Main Directorate for Combating Organized Crime and Corruption of the Ministry of Internal Affairs of the Republic of Belarus) and to bring perpetrators to justice under Articles 182 (Abduction of a person), 183 (Unlawful deprivation of liberty) and 186 (Threat of assassination, causing serious bodily harm or destruction of property) of the Criminal Code of Belarus.

The list of “political prisoners”

A group of NGOs led by Viasna is keeping a list of “political prisoners”, who are people arbitrarily detained on political charges.²¹⁶ The definition is based on guidelines developed by a working group of Human Rights Defenders from several European countries based on work done by the Parliamentary Assembly of the Council of Europe.²¹⁷

An analysis of this list for certain criteria, like whether persons have been imprisoned before or after the elections and on what charges shows the following: Since 7 June 2020 in Belarus there have been at least 75 individuals,²¹⁸ including human rights activists, opposition leaders and those politically active, who are considered by civil society as “political prisoners”, because the individuals concerned reportedly faced repression by law enforcement agents while exercising their human rights, including political rights, as well as the right to freedom of expression, particularly in the context of elections.

In many cases, the individuals concerned faced detention under criminal charges after their alleged participation in election pickets and mass events in Belarus.

In this context, most of the individuals concerned (37 persons) were detained under Article 293 of the Criminal Code of Belarus (‘Mass Riots’) while 18 persons were subjected to detention under Article 342 (‘Organization and preparation of actions grossly violating public order, or active participation therein’) of the Criminal Code of Belarus. At the same time, at least two persons (Aliaksei Karatkou, Mikalai Statkevich) reportedly faced criminal charges (under Article 293 para. 3 and under Article 342 para. 1 of the Criminal Code, respectively) immediately after their release from arrest (on the expiration of 8 days of administrative charges under Article 23.34 Code of Administrative Offences of Belarus (‘Violation of the procedure for organizing or conducting mass events’); and on the expiration of the total of 30 days of administrative detention on an unknown legal basis, respectively).²¹⁹ On 7 October 2020, 20 new names have been added to this list.²²⁰

According to the dates available, which are not complete, 29 individuals concerned were detained before the 2020 presidential elections in Belarus while detentions of 25 individuals concerned were carried out by law enforcement agents within the post-election period. Notably, at least 4 individuals (Viachaslau Rahashchuk, Aleh Rubets, Ihar Yarmolau, Andrei Pazniak) were reportedly injured as a result of beatings by law enforcement agents during their pre-trial detention or arrest.

²¹⁶ See Viasna, “As of 3 October 2020, there were 77 political prisoners in Belarus”, with details on all cases, at: <https://spring96.org/en/news/49539>.

²¹⁷ See PACE Resolution 1900 (2012) on the definition of political prisoner and the guidelines at: <https://memohrc.org/ru/specials/guidelines-definition-political-prisoner>.

²¹⁸ As of 29 September 2020, the list concerns 75 individuals, plus Mikhail Zhamchuzhny who was reportedly detained on 10.07.2015 and later sentenced to 6.5 years in jail on charges under Article 431 (Bribing) of the Criminal Code of Belarus.

²¹⁹ Viasna, List of political prisoners, see at: <https://spring96.org/en/news/49539> (as of 29.09.2020).

²²⁰ See Viasna, “20 new names on list of political prisoners”, at: <https://spring96.org/en/news/99857>.

Also, within the before-election period in Belarus at least two foreign citizens (Andrei Novikau, a Russian national, as well as Dmitry Popov, a Russian national) faced detention on criminal charges under Article 342 of the Criminal Code. Dmitry Popov was sentenced to 15 days of arrest and is being reportedly held in custody (also known as one of the figurants in the so-called “Tikhanovski case” involving Siarhei Korshun, Aliaksandr Kabanau and four critical bloggers Uladzimir Niaronski, Uladzimir Tsyhanovich, Siarhei Piatrukhin and Ihar Losik, who were reportedly detained and later charged with a criminal offence or face charges under Article 342 of the Criminal Code (‘Organization and preparation of actions grossly violating public order, or active participation therein’).²²¹

Overview as of 29.09.2020

Total	Number
Detained	76
Criminal charges	67
Art. 293 CC	37
Art. 342 CC	18
Administrative charges	1
Pre-election	29
Post-election	25
Injured	4

3. Detention of lawyers

Case of lawyers Ilya Salei and Maksim Znak active for the political candidates and the coordination council

Both lawyers were detained on 9 September 2020 and an investigation of the criminal case was opened by the General Prosecutor’s Office of the Republic of Belarus under Paragraph 3 of Article 361 of the Criminal Code of the Republic of Belarus. It argued that evidence had been obtained that individuals of a non-governmental organization called the Coordination Council undertook actions aimed at destabilizing the socio-political, economic situation and public awareness in the country, causing harm to the national security of the Republic of Belarus. These actions allegedly were carried out using the media and internet resources and therefore Paragraph 3 of Article 361 was applied.

Ilya Salei acted as a lawyer of Maria Kolesnikova while Maksim Znak acted as lawyer of Victor Babariko, a candidate for the presidential elections who was not allowed to register and detained on several criminal charges. He also served as a lawyer for presidential candidate Svetlana Tikhanovskaya and helped creating the Coordination Council becoming one of the members of its presidium. He reportedly went on hunger strike in protest against the political charges.

The detention of the two lawyers was criticized as politically motivated. The Helsinki Committee of Belarus protested calling for the immediate release of the lawyers and for respecting the independence of the Bar.²²² The Belarusian Helsinki Committee appealed to the UN Special Rapporteur on the Independence of Judges and Lawyers²²³ pointing to the need to comply with the UN Basic Principles on the Role of Lawyers according to which governments must ensure that lawyers can perform all of their professional functions without intimidation, hindrance, harassment, or improper interference²²⁴ and an international call for the immediate release of the lawyers was signed by 77

²²¹ See “Four critical bloggers charged in Tikhanovski case”, at: <http://spring96.org/en/news/97867>.

²²² See the statement in support of the colleagues, “Unprecedented pressure is underway”, 9-10 September 2020, at: <https://news.tut.by/economics/699922.html>.

²²³ See The UN Special Rapporteur on the Independence of Judges and Lawyers was informed about the situation with lawyers Maksim Znak and Ilya Saley, 9 September 2020, at: <https://belhelcom.org/be/node/1244>.

²²⁴ See the UN principles at: <https://www.ohchr.org/en/professionalinterest/pages/roleoflawyers.aspx>.

organizations.²²⁵ The text also referred to Article 62 of the Constitution of Belarus according to which everybody has the right to the assistance of lawyers in various state bodies and that “opposition to the rendering of legal assistance shall be prohibited in the Republic in Belarus”.²²⁶

However, more detentions of lawyers took place as in particular of Ludmila Kazak, a lawyer acting on behalf of member of the Coordination Council Maria Kolesnikova detained on 24 September 2020 and liberated after protests²²⁷ on 27 September 2020. The Partisanski District Court of Minsk had ordered her arrest as a preventive measure with the allegation that she took part in an “unauthorized mass event” (Articles 23.34 and 23.4 of the Administrative Code) which she denied. Human Rights Center Viasna suspected that the detention had the purpose to prevent her from doing her legal work on the case of Ms Kolesnikova.²²⁸ From the circumstances this appears to be very plausible.

4. Repression of academic and student protests

Reports on protests by students and academics show various forms of repression ranging from arrests, administrative detentions and criminal charges to exclusions from universities and laying off of teachers. One documented case happened at the state university of Minsk.²²⁹ For example, some 3,000-5,000 students from different universities protested on so-called “Knowledge Day” on 1 September 2020.²³⁰ Peaceful student protests also took place in several other cities of Belarus. As a result, many faced detention and punishment.²³¹ Some 150 of them were detained and 55 of them charged.²³² Also the European Student Union (ESU) reports on detention of students and firing of academic staff.²³³

In particular, it was reported by the student union that activists, members of student strike committees, administrators of student chats and protestors are under tremendous pressure from universities. This includes invitations to personal conversations with the dean, direct and indirect threats of problems with studies, threats of losing scholarships, dormitory space and other benefits, pointed checks of class attendance (as possible basis for a reprimand), invitations to talk to the police or the KGB in the university and pressure on students from leaders of youth organizations.²³⁴

Teachers who “did not agree with the state ideology” were threatened by the president himself with dismissal.²³⁵ For example, on 28 August 2020, police reportedly arrested Belarusian State University (BSU) professor Svetlana Volchek and her husband in apparent retaliation for their alleged participation in nationwide protests. She had been a leader of the strike committee at the Belarusian

²²⁵ See the Open Statement in connection with the detention of the Belarusian lawyers of 10 September 2020, Human rights organizations call for immediate release of detained Belarusian lawyers, at: <http://www.civicsolidarity.org/article/1684/human-rights-organisations-call-immediate-release-detained-belarusian-lawyers>.

²²⁶ See the text of the Constitution at: https://www.constituteproject.org/constitution/Belarus_2004.pdf?lang=en.

²²⁷ See the urgent appeal by the Observatory of FIDH and OMCT and human rights defenders regarding Belarus, Belarus: Arbitrary arrest and judicial harassment of human rights lawyer Ms Liudmila Kazak, at: <https://www.fidh.org/en/issues/human-rights-defenders/belarus-arbitrary-arrest-and-judicial-harassment-of-human-rights>.

²²⁸ Ibid.

²²⁹ See the video at: <https://www.youtube.com/watch?v=7UV74WOo5pk>.

²³⁰ See for a photo and video documentation at: <https://belsat.eu/en/news/offbeat-knowledge-day-students-march-omon-detain-protesters-photos-video/>.

²³¹ See at: <https://www.svaboda.org/a/30817551.html>.

²³² Viasna, Human Rights Situation in Belarus: September 2020, see at: <https://spring96.org/en/news/99793>.

²³³ European Student Union, Student Arrests in Belarus, at: <https://www.esu-online.org/?policy=student-arrests-in-belarus>; see also Minsk State Linguistic University students taken from campus and arrested, at: <https://telegraf.com.ua/rossiya-i-sng/5553793-situatsiya-v-belarusi-v-minske-studentov-zhestko-zaderzhivayut-pryamo-v-universitete.html>.

²³⁴ Communication to rapporteur, on file, see also at: https://zbsunion.by/pressure_on_students.

²³⁵ See at: <https://www.svaboda.org/a/30799630.html>.

State University.²³⁶ On 18 September 2020 she learned that she had been fired like some other teachers. Some were arrested and had to pay fines. The rector of the Belarusian State University of Culture and Art was also fired²³⁷ as were rectors of other universities and academies.²³⁸

According to the Academic Freedom Index already before the repression of the protests Belarus was in the second lowest category.²³⁹

E. Prohibition of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

According to Article 1 of the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of 1984, of which Belarus is a party since 1987:

“the term “torture” means any act by which severe pain and suffering, whether physical or mental, is intentionally inflicted on a person ... for obtaining from him or a third person information or a confession, punishing him ... or intimidating or coercing him...when such pain or suffering is inflicted by or at the instigation or with the consent or acquiescence of a public official or other person acting in an official capacity”.

In Belarus, torture appears in Article 128 of the Criminal Code among several violations of “*the security of mankind*”.

1. The Facts

In the period 9 to 12 August 2020 as a reaction to spontaneous demonstrations after the announcement of the victory of Alexander Lukashenko in the presidential elections, the security forces deployed excessive violence against the protesters. Several local and international NGOs, among them the World Organization against Torture (OMCT) and the International Federation for Human Rights (FIDH) based on data by Human Rights Center “Viasna” and other NGOs denounced the practice of arbitrary arrests and torture of peaceful protesters to the international community. They collected some 500 cases of torture or ill-treatment, both physical and psychological, which are well-documented with testimonies, photographs and videos.²⁴⁰ The testimonies showed a systematic nature of torture, and cruel, inhuman and degrading treatment prohibited without exception by Article 7 of the International Covenant on Civil and Political Rights.²⁴¹ In particular, the group of NGOs reported the existence of:

“bodily injuries – fractures, bruises of various sizes, some of them covering the entire surface of the thighs, bruises on the torso, as well as mental trauma from beatings in the premises or on the territory of internal affairs departments, in detention facilities, and in other facilities used to hold detainees” as well as that “the detainees were forced to take a certain, usually humiliating position, shout slogans, read prayers, and sing the national anthem. The transportation of the detainees was accompanied by ill-treatment and beatings; often the detainees were stacked one on top of the other. Some detainees were

²³⁶ See report by Scholars at Risk based on local sources, at: <https://www.scholarsatrisk.org/report/2020-08-28-belarusian-state-university/>.

²³⁷ See at: <https://www.svaboda.org/a/30813002.html>.

²³⁸ Information received from confidential sources, on file with the rapporteur.

²³⁹ See Katrin Kinzelbach et al., Putting the Academic Freedom Index into Action, Global Public Policy Institute and Scholars at Risk 2020, p. 24, at: https://www.gppi.net/media/KinzelbachEtAl_2020_Free_Universities.pdf.

²⁴⁰ Viasna, Belarusian Helsinki Committee, Belarusian Association of Journalists, Belarus after Election, 5 October 2020, Report on “Belarus after the Elections” (referred to as Joint report), see at: https://spring96.org/files/misc/belarus_after_election_report_2020_en.pdf.

²⁴¹ Letter of several NGOs to UN Special rapporteur on Situation of Human Rights in Belarus of 24 August 2020, see at: <https://www.fidh.org/en/region/europe-central-asia/belarus/belarus-human-rights-ngos-call-on-torture-and-arbitrary-arrests-of>.

*forced to maintain a motionless, uncomfortable position for several hours, after which the limbs became completely numb; the hands of the detainees were tied with self-locking plastic zip ties, causing particular suffering.*²⁴²

The beatings usually started with the arrest, continued in the police cars on the way to detention and also took place in the detention facilities, like police stations or courtyards of detention centers. There were also reports of the use of electroshocks by stun guns. Pepper spray or tear gas was used even in closed rooms. Rubber bullets were fired at short distance creating serious violations²⁴³ and even death. The brutal violence seems to have had the purpose of punishment and humiliation, but in particular of intimidation of potential other protesters. The security forces by beating and threats forced people to unlock their phones to gain information and to admit that they were part or organizers of the protests. People with long hair or dreadlocks had their hair cut with knives. Those with tattoos or piercings were more severely beaten. The beatings did not only happen on arms, hands, legs or buttocks, but also on the head and on cheeks with the result of damaging teeth. They were always accompanied by humiliation. Many were marked with colour for particular treatment. The element of punishment for taking part in protests was also very pertinent in the form of detention in totally overcrowded cells, with insufficient food and water, sanitary needs or clothing. These detention conditions, by themselves have to be qualified as torture. Some, men and women had to stand naked for several hours in the cold. Before being released they had to sign protocols without reading on their alleged offences or on committing not to participate in demonstrations again.²⁴⁴ Pertinent standards like the UN Standard Minimum Rules for the Treatment of Prisoners are being fully neglected.²⁴⁵

There are hundreds of testimonies which all confirm similar stories like the ones reported by Human Rights Watch.²⁴⁶ A couple having been detained after protests reported: “We were subjected to insults, threats with the words ‘such as you should be killed’; initially no grounds were given for the detention as well as no access to a lawyer was provided; mobile phones were seized; due to beatings the husband lost consciousness after which he was brought to his senses with an electro shocker, and was later forced after beatings to say on camera that ‘he had no claims to law enforcement agents’; no food or water were provided to him in detention; meanwhile the wife was separately brought to the KGB facility where attempts were undertaken to force her ‘to make confessions’.”²⁴⁷

*S.M.: “People in balaclavas checked the presence of Telegram app on phones. If someone refused to unlock his phone, they threatened to break his fingers. If they didn't like Telegram channels that were on the phone, they beat people. They also asked who people voted for in the elections and looked for white bracelets.” M.B. reported, “While searching backpacks and bags, the police beat people for stuff that could at least hint at the fact that people were affiliated with the opposition or took part in the rally, including protective equipment, medicines, white ribbons, and white-red-white flags.”*²⁴⁸

K.R.: “When riding his bicycle home on 11th August at about 5 pm was detained in Minsk by riot police. He was not involved in any protests, there were no protests going on in this area. He was beaten, his shorts and underwear were cut, a policeman inserted a baton with a condom on it about 5 cm in his anus, he had to stay for four hours in the police bus, was brought to the Zavodskoy police station, where he had to go through a police

²⁴² *Ibid.*

²⁴³ See the case of U.D. ““They took a bullet out of the lung.” The wounded during the protest actions told what they had experienced”, 18 August 2020, at: <https://news.tut.by/society/697092.html>.

²⁴⁴ Based on large number of reports and testimonies collected by the rapporteur.

²⁴⁵ See the UN Standard Minimum Rules for the Treatment of Prisoners, at: https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf.

²⁴⁶ Tanya Lokshina, Human Rights Watch, 15 September 2020, Witness: Tortured in Belarus, What Detained Protesters Endured at the Hands of the Police, see at: <https://www.hrw.org/news/2020/09/15/witness-tortured-belarus>.

²⁴⁷ Testimony directly received by rapporteur, details on file.

²⁴⁸ Joint report, op.cit., p. 18.

corridor for further beating, had to lie handcuffed in uncomfortable position for about 9 hours on the ground before being delivered to Okrestina detention center, where the kicking and beating continued and he was held in an outdoor yard of about 5x5 meters with about 120 people with many injuries forced to stand without food and water for about a day. Because of his serious injuries he was finally taken to a hospital where the following was diagnosed: subcutaneous perineal hematoma, subcutaneous hematoma in the upper third of the right thigh, intramucosal hemorrhages (3 foci) of the rectal ampulla, mild closed-head injury, head concussion, paraorbital hematoma on the left side, chest injury on the left side. He was able to leave the hospital only after 5 days. He was sentenced to a fine of 30 units, which was appealed by his lawyer who also brought a complaint against the mistreatment. Although evidence was taken nothing happened so far. On the contrary he learned that the police wanted to bring a case against him, which forced him to leave the country.²⁴⁹ A number of similar cases are on file with the rapporteur.²⁵⁰

Testimonies were received from different cities, like this one from Brest of M.N.:

"The detention was done by OMON while he was standing in the 'chain of solidarity' and had a flag in his hands; beatings (was hit in the head with the fist; injuries were medically documented) followed by insults; ill-treatment (after conducting the search one of OMON agents ripped off a white rubber bracelet from his hand and started shoving this bracelet and the flag in his mouth with the words "eat, bitch ... This is for you for [supporting] Tikhanovskaya"); mobile phone was searched and seized; no contact/info with/to relatives was provided; was held in IVS/jail 3 days after which he was sentenced to a fine; upon release was threatened to be next time detained on criminal charges; has left the country."²⁵¹

Detained and arrested people further suffered from witnessing acts of torture and cruel treatment of other people they heard and observed. Some underwent psychological torture in the form of (sexual) threats or when having to sing "I love OMON", some suffered mental problems as a result of the inhuman treatment. The cruelty of the treatment can also be seen in the fact that most detainees were handcuffed with plastic ties as they are used in the construction business, which cause particular pain and suffering. Furthermore, the conditions of detention aggravated the suffering.

One testimony is by Anton Efremov, who was arrested on 10 August 2020 in Minsk and held in Okrestina Detention Center till 12 August 2020. He was picked up because he was walking in the street with a backpack containing a respirator and swimming goggles. His testimony confirms others regarding beatings by OMON forces and the ill-treatment of detainees. In particular he reports about the conditions in detention cells which made people become unconscious. People who carried the bodies out where beaten with truncheons. In one cell he counted more than 120 people. People were summarily beaten without a particular reason.²⁵²

According to the testimony of victims, the most inhuman treatment took place in the detention centre at Okrestina in Minsk, where the OMON policemen were especially cruel. Medical assistance was denied in many cases as were basic sanitary needs. According to A.H.:

"After we reached Okrestina detention center, they started throwing us out of the police van like cattle, not even allowing us to step properly on the steps. All this, of course, was accompanied by blows to the stomach, back, legs and head. Then we were taken to the

²⁴⁹ Evidence obtained from the Committee against Torture and through personal interview.

²⁵⁰ A comprehensive overview of typical cases of torture and cruel or inhuman treatment can be found in the joint report submitted to the rapporteur by a group of NGOs, op.cit..

²⁵¹ Testimony on file with the rapporteur.

²⁵² Testimony by Anton Efremov, see at: <https://www.iwm.at/chronicle-from-belarus/witness-and-participant-testimonies/>; Other witness and participant testimonies can be found at: <https://www.iwm.at/chronicle-from-belarus/witness-and-participant-testimonies/>.

yard, where we saw two rows of riot policemen. They made us run to the building through the rows and hit us with batons while we were running. Next to me there was a guy who was severely injured by a shrapnel, he was given medical assistance only after we took off our belts and got our laces off shoes."²⁵³

Women were also tortured by way of beating and threats of sexual violence. For example,

*"Ms Hanna Saroka was detained when she was returning home. She was severely beaten in the prisoners' vehicle by 6-10 policemen. The interrogation was conducted without a lawyer, and she was forced by the police to admit that she was an organiser of the protests. When the police were not satisfied with her answer, they beat her".*²⁵⁴

2. The case for excessive violence

Reports based on observation, testimonies of victims and witnesses all do confirm the allegations of excessive violence, in particular in the period of 9 to 13 August 2020. In particular, a fact-finding mission to Belarus by several NGOs in the period of 10 to 18 August 2020, immediately after the elections, produced a comprehensive report based on the testimonies of some 40 victims and witnesses concluding a total violation of international standards.²⁵⁵ Many more reports and testimonies are available through reports on the media²⁵⁶ or in reports by specialized NGOs made available to the rapporteur who also received several hundreds of e-mails with individual testimonies as well as pertinent reports.²⁵⁷

The excessive violence was also characterized by the use of disproportionate means against peaceful protesters like water cannons, rubber bullets and stun grenades. According to the law the latter in Belarus are considered as weapons which must be used only under certain conditions provided by the law, which in the case of peaceful demonstrations do not apply.²⁵⁸ In particular, the law prohibits the use of weapons, *inter alia*, "in a significant crowd of people, when this may cause damage to bystanders".²⁵⁹ However, serious injuries have been reported from the use of stun grenades and rubber bullets, which leads to the conclusion that such weapons were used arbitrarily and disproportionately leading in some cases like the case of Alexander Taraikovski and others to violations of the right to life.²⁶⁰

This resembles the crackdown after the presidential elections of 2010, which became the subject of the first report on Belarus under the Moscow mechanism.

There have been several phases of violence against protesters. The first round of demonstrations was met with particular brutality. After the following international outcry, the security forces softened their

²⁵³ Ibid., p. 21.

²⁵⁴ See at: <https://www.svaboda.org/a/30812638.html>.

²⁵⁵ See International Partnership for Human Rights (IPHR), Truth Hounds and Civic Solidarity, Belarus on Hold: Crackdown on Post-Election Protests, Findings of a Fact-finding Mission to Belarus, 38 pages, September 2020, at: <https://www.iphronline.org/wp-content/uploads/2020/09/Belarus-report-field-mission-protests-final-1.pdf> and the presentation of the report of 25 September 2020 at: <http://www.civicsolidarity.org/article/1687/belarus-hold-crackdown-post-election-protests-findings-fact-finding-mission-belarus>; other video reports with testimonies are available online like at: [https://www.youtube.com/channel/UCA81EVL8M2tXf1F9zC13ebQ/featured%20\('Alexievich%20help'\)](https://www.youtube.com/channel/UCA81EVL8M2tXf1F9zC13ebQ/featured%20('Alexievich%20help')).

²⁵⁶ See for example the report on channel 4 of 20 August 2020, at: <https://www.channel4.com/news/anti-government-protesters-detained-in-belarus-accuse-regime-of-brutality>.

²⁵⁷ See "Minsk is beaten, how security officials mutilated protesters", a documentary report by Mediazona, 13 October 2020, at: <https://mediazona.by/article/2020/10/13/minsk-beaten>.

²⁵⁸ Law of the Republic of Belarus "On Bodies of Internal Affairs", No. 263-Z of 17 July 2007, see at: <https://pravo.by/document/?guid=3871&p0=h10700263>.

²⁵⁹ Ibid.

²⁶⁰ See Joint Report, op.cit., p. 8.

approach to be hardened again after the meeting between presidents Lukhashenko and Putin in Sochi, after which the police resumed the violence although in a more reduced form seemingly reconfirmed by the president in their tough approach.

For example, a report by Human Rights Watch of 15 September 2020 confirmed that this practice continued on a lower scale referring also to inhuman detention conditions.²⁶¹ These conditions still give reason for serious concern. For example, according to a new decision of the administration of detention center on Okrestina street parcels from relatives are only accepted once a week.²⁶² People detained, like women in summer clothes, cannot receive warm clothes which aggravates the already bad conditions.

Human Rights Center Viasna has published a number of testimonies with pictures showing the impact of torture like the one of 18-year old “Illya” under the title “survivor stories”.²⁶³ They fully correspond with several hundreds of testimonies the rapporteur has received from different sides and in particular through the more than 700 submissions made to the Moscow Mechanism. Many reports tell about withholding of medical assistance and denial of medical drugs needed by people with chronic diseases. Most people were taken from the street, but a significant number also from their homes if they were suspected of belonging to the opposition. The mistreatment took many forms, like that riot police forced a young guy to eat the protest leaflets they found on him until he was vomiting. Many were forced by the police to confess what they had not done, like a 16- year old minor who was made to confess in front of the TV that he carried a molotov cocktail in his back-back while in reality this had been planted by the police.²⁶⁴ A significant number of people reported that they felt forced to leave the country because they were threatened by criminal cases to be brought against them after having deposed complaints on their treatment. This also shows that there is no trust in the administration of justice.

The perpetrators in the security forces were identified as the riot police (OMON) and other units as in particular Special Designation Forces (Spetznaz), special forces from combating organized crime and corruption by the Ministry of Internal Affairs, staff of the district police departments, military units of internal troops of the Ministry and other formations, like men in dark green uniforms or in sport trousers.

That serious cases of torture seem to go on can be seen from the case of Denis Kuznetsov, who on 3 October 2020 died in the intensive care unit of an ambulance hospital having been admitted to the hospital on 29 September 2020 from the detention center in Okrestina street with many injuries: fractures of the skull bones, numerous hematomas, open craniocerebral trauma of moderate severity, rib fractures, fractures of the right ilium and other injuries. Police officers reported that he fell from the second tier of the bed, which does not explain the multiplicity of injuries. Also, according to doctors, he himself said that he was beaten by the police.²⁶⁵

The most recent case was the owner of a flower shop, who used to provide flowers to protesting women on Saturdays but was not involved in protests himself. On 13 October 2020 he was taken to the police station and so brutally beaten that he had to be taken to the hospital. He was not even able to recognize his wife.²⁶⁶

²⁶¹ See the report by Human Rights Watch of 15 September 2020, Belarus: Systematic Beatings, Torture of Protesters, at: <https://www.hrw.org/news/2020/09/15/belarus-systematic-beatings-torture-protesters>;

²⁶² See Newsletter of Human Constanta for period 03.-09.10.2020, at: <https://humanconstantia.by/en/newsletters-about-situation-with-human-rights-in-belarus-2/>.

²⁶³ See Viasna, Survivor stories, at: <https://spring96.org/en/news/99846>.

²⁶⁴ Based on various testimonies received by the rapporteur.

²⁶⁵ See “Denis K., who was beaten to death at Okrestina [jail], died today”, 3 October 2020, at: <https://belsat.eu/ru/news/izbityj-na-okrestina-denis-k-segodnya-umer/> and <https://belsat.eu/news/sluzhyu-va-unutranyh-vojskah-10-gadou-adpratsavau-u-turme-novyya-fakty-pra-dzyanisa-k-yaki-pamyor-paslyakrestsina/>.

²⁶⁶ See for the details with video footage at: <https://people.onliner.by/2020/10/13/vladelca-cvetochnogo-magazina-vyveli-iz-ruvd-v-shokovom-sostoyanii>.

Representatives of the international community clearly denounced the overwhelming evidence of torture and called for justice for the victims:

“The treatment meted out to large numbers of Belarusians, which clearly constitutes torture, is revolting in its magnitude. Considering its systematic and large-scale occurrence, it clearly suggests crimes against humanity.” Gerald Staberock, OMCT Secretary General.²⁶⁷

Furthermore, in a joint statement of UN special procedures the human rights experts appealed on Belarus to stop torture and release all persons who participated in peaceful assemblies. They emphasized that the prohibition of torture is absolute and cannot be justified for any reason. They requested to bring police officers involved to justice. Referring to mistreatment of children and sexual violence against women they requested that the state must do everything in its power to investigate the abuses.²⁶⁸

3. Ill-treatment of women and sexual or gender-based violence

According to a report by the Center for the Promotion of Women’s Rights “Her Rights” in August and September 2020 approx. 1270 women have been detained, most of them for short periods. Many of them experienced disproportionate use of force when arbitrarily detained.²⁶⁹ According to a report by a group of NGOs of 24 August 2020, *“the detained women claim that the behaviour towards them was extremely sexist and humiliating. There are witness reports of rape by officers of the Ministry of Internal Affairs using rubber truncheons, targeting both men and women”*.²⁷⁰

The allegations of rape can hardly be substantiated because women, but also men, in most cases are not ready to testify, however threats of sexual violence are widely reported. For example:

*Aliaksandra, 20, was detained in Minsk. She was severely beaten during the detention. In the police transport she was humiliated and threatened to be raped and killed. According to her testimony: “He [policeman] took my phone and sat on me. He started to look at what I have in my phone. (...) He took a vaseline from his pocket and said “Do you know what we are going to do with you? We are simply going to rape you.” (...) They threatened me with death. (...) They stopped the car close to the forest and said: “And? Be ready. Prepare yourself.”*²⁷¹

Women play a significant role in the protests. The UN Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) noted that “the fight for democracy in Belarus has a female face”. It declared that it stood by the protests against police brutality by the “Women in White

²⁶⁷ OMCT Press Release of 14 August 2020, “Belarus: Widespread torture of protesters suggests crimes against humanity”, see at: <https://www.omct.org/statements/belarus/2020/08/d26028/>.

²⁶⁸ OHCHR, “UN human rights experts: Belarus must stop torturing protesters and prevent enforced disappearances”, 1 September 2020, see at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26199&LangID=E>.

²⁶⁹ Report by Center for the Promotion of Women’s Rights “Her Rights” on “The Situation of Women in Belarus following the presidential elections of 2020”, at: <https://adcmemorial.org/en/news/adcmemorial-violations-of-the-rights-of-vulnerable-groups-in-belarus/>.

²⁷⁰ Letter of several NGOs to UN Special Rapporteur on Situation of Human Rights in Belarus of 24 August 2020, see at: <https://www.fidh.org/en/region/europe-central-asia/belarus/belarus-human-rights-ngos-call-on-torture-and-arbitrary-arrests-of>.

²⁷¹ Radio Free Europe/Radio Liberty, ““Now we will rape you”, a 20-years-old girl about torture”, 18 August 2020, <https://www.svaboda.org/a/30789965.html>.

Movement”.²⁷² Authorities failed to exercise due diligence with respect to investigating and punishing persons responsible for the acts of violence as required under CEDAW.²⁷³

In spite of the peaceful nature of the protests many women were arrested and detained, often experiencing inhuman and degrading treatment. The worst time was reportedly the period right after the election when mainly men, but also women were arrested. Women became witness to the ill-treatment of men, whom the police suspected to be part of the opposition.²⁷⁴ A detailed testimony was given by Ekaterina Novikova at the urgent debate of the Human Rights Council on 18 September 2020, which confirms the allegations in this respect.²⁷⁵ Another one reported by the media is from a young woman, Karina Malinovskaya, suspected to be involved in the demonstrations, who lost her unborn child because of her rough treatment in detention.²⁷⁶

Reportedly, the spontaneous women’s solidarity rally on 12 August 2020, when women came out in white dresses and with flowers in their hands was not interfered with by the police. Consequently, women’s demonstrations which took place each Saturday were first tolerated. However, this changed with the student’s demonstration on 1 September 2020 and since the solidarity march with Mariya Kolesnikova of 8 September 2020 in Minsk the police are reported to have used brutal violence also against the women’s marches. For example, during the large peaceful protest march by women with flowers in their hands of 19 September 2020 some 400 were detained of which most were released the same night some facing charges of “illegal protesting”.

Women also often reported violations of their right to privacy as they had to undress in the presence of men, cameras observing their cells and toilets were operated by men and there was a general lack of women guards. When being kept in police vans after arrests they were often denied a toilet. Women also complained that they were not provided with sanitary pads by the prison administration and thus depended on those brought by Red Cross volunteers, while there are also reports that in Okrestina detention center there were cases when sanitary pads were denied at all.²⁷⁷

Women also experienced mental suffering due to the arbitrary arrests and violence against their relatives, which in some cases led to health problems and even contributed to death. For example, in the case of the minor Timur who has been mistreated and detained twice, the mother died allegedly also because of grief about his treatment.²⁷⁸

Amnesty International reported the case of an LGBT+ activist, Victoria Biran, who has been detained on her way to a women’s demonstration and sentenced to 15 days of administrative detention. Amnesty saw her to be specifically at risk and adopted her as a prisoner of conscience.²⁷⁹

Belarus is not a party to the Istanbul Convention of the Council of Europe on preventing and combating violence against women of 2011, which has several provisions protecting women against

²⁷² See “Belarus: UN committee hails role of women in political process and protests”, 3 September 2020, at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26206&LangID=E>.

²⁷³ CEDAW, General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, para. 24.

²⁷⁴ See the report by Tanya Lokshina of Human Rights Watch, A Carpet of Bodies: One Woman’s Ordeal in Detention in Belarus, at: <https://www.hrw.org/news/2020/08/18/carpet-bodies-one-womans-ordeal-detention-belarus>.

²⁷⁵ The video of the testimony is available at: <http://webtv.un.org/search/urgent-debate-on-belarus-9th-meeting-45th-regular-session-human-rights-council-/6192194462001/?term=&lan=english&cat=Human%20Rights%20Council&sort=date&page=2#player>.

²⁷⁶ Narodnaya Volya: “As a result I lost my pregnancy”, 25 September 2020, at: <https://www.nv-online.info/2020/09/25/u-vyniku-ya-stratsila-tsyazharnasts.html#>.

²⁷⁷ See report by “Her Rights”, op.cit.

²⁷⁸ See “The mother of Timur, a beaten and missing from the hospital teenager, died.”, 25 September 2020, at: <https://news.tut.by/society/701781.html>.

²⁷⁹ Amnesty International: Free LGBT+ activist Victoria Biran, see at: <https://www.amnesty.org/en/documents/eur49/3143/2020/en/>.

physical and sexual violence (Articles 35 and 36). According to its Article 76 Belarus could be invited also as a non-member of the Council of Europe to join this Convention if it expresses such a request.

4. Ill-treatment of minors

There are also numerous reports of inhuman and degrading treatment of minors who participated or were found in the proximity of demonstrations. For example, in the case of Raman, a 15-year old boy, he was detained on 11 August 2020 by the security forces together with other minors in a garage in Brest and severely beaten the whole night.²⁸⁰ The cases so far have not led to criminal charges against the perpetrators. On the contrary, parents were threatened not to file complaints with the loss of parental rights.²⁸¹

In some cases, the ill-treatment reached the level of torture. An example in case is what happened to Timur M.:

Timur M. is a 16-year old minor, who happened to be picked up by the security forces on August 12th under the suspension to be part of the protesters. He was allegedly heavily beaten at the police station and tortured with electric shocks and mistreated in other ways in spite of pointing out his age. When he fell into a coma, he was transported to intensive care unit in City Children Hospital. He was found to have suffered multiple injuries, i.e. a concussion, an open fracture of the zygomatic-orbital complex, rhinosinusitis of the right maxillary sinus, convulsive syndrome, periorbital hematoma, multiple bruises of soft tissues and limbs, and traumatic erosion of the cornea of both eyes. Despite wide media coverage nobody has been held accountable. On September 3rd, he was detained for questioning for alleged participation in mass riots based on Article 293 of the Criminal Code of the Republic of Belarus. As a result, he suffered a post-traumatic attack and had to be hospitalized again.²⁸² Allegedly, in the mean-time he was able to leave the country.

Conclusions on torture and ill-treatment

In conclusion, the first period of post-election violence by the security forces has to be qualified as a period of systematic torture and ill-treatment with the main purpose to punish demonstrators and to intimidate them and potential other protesters. To a lesser extent, the infliction of pain and suffering served the purpose of gaining information or confessions. The torture or inhuman and degrading treatment was intentional as it was wide-spread and systematic as well as targeted at the opposing protesters although some accidental bystanders also became victims of the crackdown. It followed a systematic and wide-spread pattern including Minsk and other cities.

People affected not only sustained physical but also mental injuries, which need to be well documented by forensic services to be used in cases against the perpetrators or the state, which did not protect the victims. Health and other consequences need to be addressed providing compensation and rehabilitation. Post-traumatic stress syndromes like PTSD may well develop at a later stage and require treatment. If Belarus is not living up to its obligations, the international community should step in and provide assistance.

²⁸⁰ See report in media of 13 August 2020 at: <https://www.svaboda.org/a/30781512.html>.

²⁸¹ See Report on Belarus after 9 August 2020, which also provides details on a number of cases, at: https://adcmemorial.org/wp-content/uploads/human-rights-review_belarus-1-1.pdf.

²⁸² See for the evidence Voice of Belarus of 6 September 2020: “How to save Timur? An Innocent Victim of Torture Turned into the Accused”, at: https://www.voiceofbelarus.com/how-to-save-timur/?fbclid=IwAR2qkZ1k7DBcIk3ZajXXirX_r-YUAcw-PnkIRaXR0ccpexBs1cXH0PMKuec.

F. Protection from Abductions and Enforced Disappearances

There have been reports about several disappearances in the aftermath of the election and respective protests, which was mainly due to the fact that relatives were usually not informed about the whereabouts of their detained family members. However, most of those could be found and in the few remaining cases involving also people found dead, investigations could so far not prove that the security forces were involved.²⁸³ The main form of disappearances seem to have taken place in the way people were taken from their homes or workplaces as well as off the street without informing anybody what was happening with them.²⁸⁴

A special case is the abduction and disappearance of prominent opposition leader Maria Kolesnikova, who has been abducted and since been detained by the authorities. In a joint appeal of eight special UN human rights rapporteurs and working groups, the human rights experts stated that Ms. Kolesnikova had been forcefully disappeared after her abduction for three days. They pointed out that

*“Belarus must strictly comply with fundamental legal safeguards to prevent enforced disappearances. These include immediate registration, judicial oversight of the detention, notification of family members as soon as an individual is deprived of liberty, and the right to hire a defense lawyer of one’s choice”.*²⁸⁵

III. Impunity and the Lack of Effective Remedies

In their joint appeal to release Maria Kolesnikova the eight special procedures also pointed to unresolved cases from 1999 and 2000 still pending with the UN Working Group on Enforced Disappearances and the Special Rapporteur on extrajudicial, summary or arbitrary Executions²⁸⁶ and expressed concern about a culture of impunity.

All sources converge in the finding that in spite of the obvious excessive violence against protesters after the elections and numerous complaints by citizens and their lawyers to the competent authorities nobody from the security forces and other actors involved has been put on trial so far. This raises the question of accountability for the massive human rights violations and the existence of effective remedies in the absence of which allegations of a general impunity of those responsible would be confirmed.

A. Principle of accountability

The principle of accountability requires that perpetrators of human rights violations and international crimes, like torture, must be brought to justice. According the UN Basic principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law of 2005 victims have to be provided with remedies and reparation.²⁸⁷ As requested by an appeal of Amnesty International, police in Belarus must be held accountable for the violence.²⁸⁸ However,

²⁸³ International Partnership for Human Rights (IPHR), Truth Hounds and Civic Solidarity, Belarus on Hold: Crackdown on Post-Election Protests, Findings of a Fact-finding Mission to Belarus, op.cit..

²⁸⁴ For recent examples see the newsletter of Human Constanta of 03.-09.10.2020, at: <https://humanconstanta.by/en/newsletters-about-situation-with-human-rights-in-belarus-2/>.

²⁸⁵ See UN human rights experts: Belarus must release opposition leader Maria Kolesnikova, 25 September 2020, at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26296&LangID=E>.

²⁸⁶ Letter by several UN special procedures of 12 February 2020, at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25035>.

²⁸⁷ See at: <https://www.ohchr.org/en/professionalinterest/pages/remedyandrepairation.aspx>.

²⁸⁸ Amnesty International, 31.08.2020: Police must be held accountable for violence, see at: <https://www.amnesty.org/en/latest/news/2020/08/belarus-police-must-be-held-accountable-for-violence/>

reports by Human Rights Center Viasna and other human rights organizations claim that from 1,800 known complaints not in a single case a judicial procedure has been opened.²⁸⁹ The Center for the Promotion of Women's Rights – "Her rights" also reports that it has brought numerous cases to the authorities for investigation, but not a single criminal case was initiated by the prosecutor's office on the facts of torture and arbitrary detention of women.

To avoid accountability by the security forces, attacks on and arrests of presumed demonstrators were regularly performed by masked men (wearing a so-called "balaclava") without any identification signs. Security forces also acted in civilian clothes and sometimes used civilian cars without identification plates to prevent being identified. They reacted violently against any documentation of their behavior by citizens with their smart phones or camera. A similar attitude could be observed in the treatment of journalists, who were put under an obligation to keep a distance from police activities and persecuted in large numbers. Allegedly, the video recordings from detention center in Okrestina street for the period of 9 to 13 August 2020 have been deleted so that they cannot be used as evidence. Still a number of the presumed perpetrators could be identified, and could be tried easily. However, although there has been some recognition of excessive violence, even by those politically responsible, their main concern was the protection of the security forces.²⁹⁰

The World Organization against Torture (OMCT) called on the international community, in particular the United Nations and the European Union to conduct a full, thorough and independent international investigation based on the standards enshrined in the Istanbul Protocol, a manual on the effective investigation and documentation of torture and other cruel, degrading or inhuman treatment or punishment.²⁹¹ This would also be required by the law of Belarus as according to Article 425 of the Criminal Code "inaction of an official" is punishable as a crime.

B. Right to fair trial

The right to a fair trial according to Article 14 ICCPR requires the presumption of innocence until proved guilty and includes a number of minimum guarantees like to communicate with a counsel chosen by oneself. The "right to a lawyer" requires that the lawyer is able to act freely without interference or pressure of any kind. In the administration of justice, the judges and to a lesser extent the prosecutors have to perform their role in full independence. All these guarantees laid down in more detail in the "Basic Principles on the Role of Lawyers"²⁹² and the "Guidelines on the Role of Prosecutors"²⁹³ as well as the "Basic Principles on the Independence of the Judiciary"²⁹⁴ are not provided by the system of justice in Belarus as demonstrated by a recent report of the UN Special Rapporteur on the Situation of Human Rights in Belarus²⁹⁵ and scientific observers.²⁹⁶ In particular, she observed the existence of selectively and discriminatorily enforced criminal and administrative

²⁸⁹ Information from various sources reaching up 5 October 2020.

²⁹⁰ The Minister of Interior spoke about "accidental victims" and expressed regret for the beatings of citizens, see ""Guys are paid 30 rubles, young girls – 60". The head of the Ministry of Internal Affairs - about his resignation, Taraikovskiy and the injured law enforcement officers.", 16 August 2020, at: https://www.youtube.com/watch?v=UKg-SrGvDes&feature=emb_title and https://news.tut.by/economics/696888.html#ua:main_news~2.

²⁹¹ See at: <https://www.omct.org/statements/belarus/2020/08/d26028/>; for the Istanbul Protocol see at: <https://www.ohchr.org/documents/publications/training8rev1en.pdf>; see also the OMCT statement at the occasion of UN the Human Rights Council urgent debate of 18 September 2020; Belarus: Human Rights Council must act to prevent torture, see at: <https://www.omct.org/statements/belarus/2020/09/d26076/>.

²⁹² See at: <https://www.ohchr.org/en/professionalinterest/pages/roleoflawyers.aspx>.

²⁹³ See at: <https://www.ohchr.org/EN/Professionalinterest/Pages/RoleOfProsecutors.aspx>.

²⁹⁴ See at: <https://www.ohchr.org/en/professionalinterest/pages/independencejudiciary.aspx>.

²⁹⁵ Report to the General Assembly of 17 July 2020 on Situation of Human Rights in Belarus, Paragraphs 19 and seq., see at: <https://undocs.org/A/75/173>.

²⁹⁶ See Kanstantsin Dzehtsiarou, "Justice: Where are the independent courts?", at: <https://naviny.by/article/20200902/1599058935-konstantin-degtyarev-pravosudie-gde-vy-nezavisimye-sudy> and Alexander Vashkevich, Judicial Independence in the Republic of Belarus, in: Seibert-Fohr A. (ed.), *Judicial Independence in Transition*, Springer 2012, pp. 1065-1118.

sanctions against and judicial harassment of human rights defenders, journalists and bloggers, which significantly increased in the pre-presidential election period.²⁹⁷ As the evidence shows, the judicial system does not work independently in particular when political cases, in the wide sense, are at stake. In such times, there is no rule of law, but only a rule by law as interpreted by the authorities.

Although Article 62 of the Constitution of Belarus provides for the right to legal assistance, including the assistance of lawyers “at any time”, the situation in practice is quite different. For example, in the case of the protests of 9 to 12 August 2020, it was reported that victims generally claimed that they were denied access to a lawyer. Trials partly took place in detention centers and lawyers did not have access, sometimes with reasons advanced like lack of space or protection of health. Those sentenced to administration detention or fines, often on fabricated evidence, were not given the possibility to appeal quickly enough to review the decisions in a meaningful way.²⁹⁸ It was also reported that in dealing with protesters detained on 27 September 2020, judges at a particular court only had ten minutes for each case.²⁹⁹ In the case of famous basketball champion Levchenko, who was detained at the airport when travelling abroad to treat her knee, her lawyer was given only ten minutes to study the file of two alleged offences. He was not able to see her before in the detention center Okrestina.³⁰⁰ The practice of detaining people for administrative offences by the security forces and then putting them on trial, which usually confirms the allegations, is not in conformity with standards of fair trial, in particular the assumption of innocence.

Serious concerns about the situation of lawyers in Belarus have been expressed already in a report of 2018, but according to different sources the situation remains unchanged or is aggravating.³⁰¹ While Article 17 of the Criminal Procedure Code foresees the right to defense and Article 45 Paragraph 2 provides that the defense lawyer should be admitted from the moment of initiation of the criminal case or from the moment of detention or arrest, on request. In the case of specific vulnerable groups the practice is different. Whether and how the lawyer is given access to her/his client may depend on the judge or investigator, which clearly is against international standards. In addition, the right is further undermined by bureaucratic obstacles, like the absence of adequate space to meet with clients in detention centers or long waiting periods before seeing a client. For example, at the KGB detention facility which holds some 80 people there is only one room made available for relatives and lawyers to see their clients. They have to wait in long lines and only few have the chance to see their clients. Their conversations with clients are videotaped and thus can be followed by the administration.³⁰² This violates the right to fair trial.

Under the pretext of the COVID-19 virus, lawyers were not allowed to see their clients in detention and a number of trials are now organized via Skype, which is not foreseen in the administrative procedure law. Also, policemen as witnesses were allowed to testify under a pseudonym and with their faces covered, allegedly for need of protecting them. Furthermore, lawyers often have to commit themselves not to speak in public on investigations, although the secret of attorney is meant to protect them against inquiries by the authorities. There are cases where the Ministry of Justice issues warnings to lawyers not to communicate about their cases in public because this would be unethical behavior leading to the loss of their license. Lawyers who take their role seriously, also in political cases, may be faced with pressures and disciplinary sanctions as can be seen in the recent case of Alexander

²⁹⁷ Ibid., at Paragraphs 13, 14 and 67 et seq.

²⁹⁸ Report on Belarus after 9 August 2020, op.cit..

²⁹⁹ See at: <https://t.me/viasna96/2604>.

³⁰⁰ See the account of his experience as a defense lawyer in this and other cases: “Judges make their careers in prison terms.” How do I protect Belarusians when each of us can be made a criminal”, at: <https://kyky.org/hero/sudi-delayut-karieru-na-tyuremnyh-srokah-kak-ya-zaschischayu-belarusov-kogda-kazhdogo-iz-nas-mogut-sdelat-prestupnikom>; for speaking out about his experience he was threatened with withdrawal of his license by the Ministry of Justice.

³⁰¹ See Observatory for the Protection of Human Rights Defenders et al., “Belarus. Control over Lawyers Threatens Human Rights”, http://spring96.org/files/book/en/2018-control-over-lawyers_en.pdf.

³⁰² Based on several reports received and interviews with lawyers by the rapporteur.

Pylchenko.³⁰³ These and more problems for the independence of the legal profession have already been identified in a recent report by the Helsinki Federation.³⁰⁴

C. Right to effective remedies

The right to an effective remedy forms part of the right to a fair trial and is also part of the commitments under the OSCE Copenhagen document.³⁰⁵ According to Articles 12 and 13 of the UN Convention against Torture and other Cruel, Inhuman and Degrading Treatment and Punishment there is a state obligation and a corresponding right of the victim to a prompt and impartial investigation, according to Article 14 also to obtain redress like a compensation. However, the institutional dependence on the president and the strong influence of the executive on the judiciary as described in the report of the UN Special Rapporteur on the Situation of Human Rights in Belarus can be seen as a reason why, in particular in politically sensitive cases, there are hardly any cases opened based on the complaints of victims of violence or repression.

According to a report by the Committee on Investigation of Torture in Belarus, which is a coalition of several human rights NGOs from Belarus and other countries on the state's reaction and measures taken to investigate the mass torture of 9 to 13 August 2020,³⁰⁶ there have been numerous complaints and cases brought to the authorities by citizens and NGOs. The responsible Investigative Committees have started to collect evidence but the procedure stalled for political reasons before opening any court cases. Some complainants were notified that the investigation was suspended. Accordingly, the legal remedies have proven to be ineffective if they challenge the security forces, which are under the protection of the state.

With regard to journalists in Belarus, there were also numerous complaints to the authorities on violations against them. So far there is no a single criminal case opened based on journalists' complaints. The relevant examinations are being prolonged over and over. In a number of cases journalists were released without a police report. Those who filed complaints against unlawful detention were answered that their staying at the police station had not been a detention, despite the Belarusian Code on Administrative offence and the Criminal Code which provide that a detention is defined as a short-term restriction of liberty.³⁰⁷

According to NGO reports some of the applications for the initiation of criminal cases complaining about the use of violence, ill-treatment and torture have also been brought by specialized NGOs, like the Belarusian Helsinki Committee and Human Rights Center Viasna.³⁰⁸ On their instigation, at the end of August an Interdepartmental Commission was created under the Office of the General Prosecutor.³⁰⁹ No results are known so far. As of 9 October 2020, no single case was known where a criminal case has been opened against any of the law enforcement agents, neither in the torture nor the death cases. This practice sends a signal of impunity to the security forces involved.

Even worse, there are several reports that citizens who submitted complaints about torture and ill-treatment were as a reprisal themselves threatened with criminal investigations, for example for participation in mass riots (Article 293 Para. 3 Criminal Code) or wrongly accusing a police officer. As a result for fear of reprisals several citizens reported that they decided not to file a complaint.³¹⁰

³⁰³ See "The Ministry of Justice will consider terminating the license of the lawyer of political prisoners Barbariko and Kolesnikova", 8 October 2020, at: <http://spring96.org/ru/news/99874>.

³⁰⁴ See Helsinki Federation and OMCT, FIDH and IPHR, "The independence of the legal profession", at: <https://www.osce.org/files/f/documents/4/0/73405.pdf>.

³⁰⁵ See Paragraphs 5.10 and 11 of the Copenhagen document of 1990 and Article 14 ICCPR.

³⁰⁶ Committee on Investigation of Torture, Report of 25 pages on file with the rapporteur.

³⁰⁷ Interview with Belarus Association of Journalists.

³⁰⁸ See Joint report by NGOs, op.cit., p. 35 for details.

³⁰⁹ Official telegram channel of the General Prosecutor's Office of Belarus: see at: <https://t.me/s/prokuraturabelarus>.

³¹⁰ Submissions on file with the rapporteur.

The Minister of Internal Affairs, Jury Karayeu, is on record to have promised to deal with the cases of violence and abuse of the security forces once everything has calmed down. According to him, he did not want to demoralize the police now.³¹¹

There is also no possibility for citizens to bring a constitutional complaint for violations of fundamental constitutional rights like under other constitutions.

D. Question of impunity

Despite numerous and consistent reports on torture and ill-treatment, as well as other human rights violations, according to all sources available the judiciary has not opened a single criminal case on any case of torture and ill-treatment, not detained or suspended any of the persons who were directly involved in the organization and commission of the crimes, in particular the excessive violence against demonstrators. In spite of the fact that the security forces in most cases used masks and did not wear any insignia in order to hide their identity, which is very problematic in terms of accountability by itself, in cases where the identity of alleged perpetrators could be established, they were not held accountable. This proves allegations of a general state of impunity for most serious human rights violations. Because of the fact that the security forces acted on orders from superiors, not only the members of the riot police and other forces involved need to be held accountable, but also those who gave the orders or their consent to the massive human rights violations.

Where the UN Convention against Torture and other Cruel, Inhuman and Degrading Treatment and Punishment applies, it provides for universal jurisdiction. If the responsible state is not bringing perpetrators to justice it is the obligation of all other state parties of the convention to prosecute the perpetrators or to extradite them for prosecution.

IV. International Reactions to Allegations

Besides the special meeting of the Permanent Council of the OSCE and the invocation of the Moscow Mechanism reported above, there were a number of other international reactions to the events in Belarus resulting in pertinent activities.

The UN High Commissioner for Human Rights, Michelle Bachelet condemned the violence against the protesters requesting that the call for grievances be heard.³¹² Five special rapporteurs who are part of the UN special procedures requested Belarus to stop attacking protesters.³¹³

The Human Rights Council of the United Nations, on the request of several human rights NGOs³¹⁴ during its session in Geneva, organized an urgent debate resulting in a resolution on human rights in Belarus that asked the UN High Commissioner for Human Rights to monitor closely the situation in the context of the presidential election and to produce a report on the situation of human rights in Belarus with recommendations in two steps: till the end of 2020 as a basis for an inter-active dialogue and a written report on the situation of human rights in Belarus before, during and after the presidential election at the next session of the Human Rights Council in 2021 for an enhanced interactive dialogue.³¹⁵ It should be noted that the forthcoming Universal Periodic Review of Belarus

³¹¹ Interview of the Minister of Internal Affairs with tut.by of 16 August 2020, see Joint report, op.cit., p. 31.

³¹² See her statement of 12 August 2020 at: <https://news.un.org/en/story/2020/08/1070112>.

³¹³ See the statement of 13 August 2020 at:
<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26164&LangID=E>.

³¹⁴ See at: <https://www.fidh.org/en/region/europe-central-asia/belarus/belarus-a-strong-international-reaction-is-needed-to-prevent-further>.

³¹⁵ See the resolution of the Human Rights Council of 18 September 2020, at:
<https://undocs.org/A/HRC/45/L.1> and
[https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26262&LangID=E#:~:text=In%20the%20resolution%20\(A%20FHC,for%20human%20rights%20law%2C%20including](https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26262&LangID=E#:~:text=In%20the%20resolution%20(A%20FHC,for%20human%20rights%20law%2C%20including).

planned for 2 November 2020 could create another opportunity to review the situation of human rights in Belarus in its entirety.³¹⁶

In a joint statement of the presidency of the Committee of Ministers, the President of the Parliamentary Assembly and the Secretary-General of the Council of Europe, Belarus was requested to immediately release all detained protesters, to stop all ill-treatment and to investigate acts of law enforcement brutality. At the same time, the Council of Europe offered its assistance to support, together with other international partners, the needed dialogue and necessary constitutional reforms.³¹⁷ In several statements, the Secretary General showed herself gravely concerned about the human rights violations in Belarus.³¹⁸ The Standing Committee of the Parliamentary Assembly (PACE) expressed the urgent need for a broad-based, democratic and inclusive political process in Belarus, which it was ready to support.³¹⁹ PACE also called for the “establishment of an international investigative body by several organizations to collect information and secure evidence on human rights crimes in Belarus”.³²⁰

Furthermore, the European Commissioner for Human Rights made a very strong statement that the human rights violations had to stop immediately.³²¹

The High Representative for External Affairs and Vice-President of the Commission European Union, Josep Borrell, declared the elections as neither free nor fair,³²² while the European Parliament found them “seriously flawed”.³²³ It also denounced the escalation of violence and the intimidation against members of the Coordination Council.³²⁴ The European Parliament (EP) with a very large majority adopted a comprehensive resolution on the situation in Belarus rejecting the results of the presidential elections, condemning the violent repression of peaceful protests and the ongoing intimidation, calling for the immediate release, in particular, of the members of the Coordination Council and calling for sanctions against responsible individuals. It also welcomed the efforts of the OSCE Chairperson-in-office to assist Belarus in establishing a dialogue process.³²⁵ Already in 2018, the EP has commissioned a study on human rights in Belarus, which found that no systemic progress has been made in the post-2016 period.³²⁶ High Representative Borrell announced that the European Union would neither recognize the result of the elections nor the reelection of Alexander Lukashenko. He

³¹⁶ See the respective reports from Belarus, the United Nations and stakeholders at: <https://www.ohchr.org/EN/HRBodies/UPR/Pages/BYindex.aspx>.

³¹⁷ See their joint statement of 26 August 2020 at: <https://www.coe.int/en/web/portal/-/belarus-joint-statement-by-committee-of-ministers-presidency-pace-president-and-secretary-general>.

³¹⁸ See the statement by the Secretary General of the Council of Europe of 14 August 2020 at: <https://www.coe.int/en/web/portal/-/secretary-general-comments-on-the-situation-in-belarus?inheritRedirect=true> and of 8 September 2020 at: <https://www.coe.int/en/web/portal/-/secretary-general-gravely-concerned-by-human-rights-violations-in-belarus>.

³¹⁹ See the declaration of PACE of 15 September 2020 at <https://pace.coe.int/en/news/8005/declaration-on-an-urgent-need-for-a-democratic-broad-based-and-inclusive-political-process-in-belarus>.

³²⁰ PACE Committee on Legal Affairs and Human Rights, Statement on the human rights situation in Belarus, 09.09.2020, at: <https://pace.coe.int/en/news/7992>.

³²¹ See the Statement of European Commissioner Dunja Mijatovic of 21 September 2020 at: <https://www.coe.int/en/web/commissioner/-/human-rights-violations-in-belarus-must-stop-immediately>.

³²² See at: <https://www.consilium.europa.eu/en/press/press-releases/2020/08/11/belarus-declaration-by-the-high-representative-on-behalf-of-the-european-union-on-the-presidential-elections/>.

³²³ See at: <https://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+IM-PRESS+20060321STO06569+0+DOC+PDF+V0//EN&language=EN>.

³²⁴ Declaration of 11 September 2020, see at: <https://www.consilium.europa.eu/en/press/press-releases/2020/09/11/belarus-declaration-by-the-high-representative-on-behalf-of-the-european-union-on-the-escalation-of-violence-and-intimidation-against-members-of-the-coordination-council/>.

³²⁵ See the resolution on the situation in Belarus of 17 September 2020, at: https://www.europarl.europa.eu/doceo/document/TA-9-2020-0231_EN.pdf.

³²⁶ European Parliament, Study requested by the DROI Committee, Human Rights in Belarus: The EU’s role since 2016, June 2018, see at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2018/603870/EXPO_STU\(2018\)603870_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2018/603870/EXPO_STU(2018)603870_EN.pdf).

also declared that because the elections of 9 August had not been free and fair, the so-called inauguration of the president lacked political legitimacy.³²⁷

At the Special European Council in Brussels of 1 October 2020 sanctions were adopted against some 40 Belarusian individuals who were found particularly accountable for falsifying the results of the presidential elections and for the violent repression against peaceful demonstrators.³²⁸ In response, the government announced that it would cancel the accreditation of foreign journalists, which it did on 2 October 2020.

The United States, on 2 October 2020, also introduced sanctions against 25 Belarusians allegedly involved in election falsification and human rights violations.³²⁹

The United Kingdom introduced sanctions against president Lukashenko, his son and six other senior officials for rigging the elections and suppressing subsequent street protests.³³⁰

All these reactions show the seriousness of the case of the election fraud and the human rights violations in Belarus for the international community.

V. Conclusions

In response to the mandate the rapporteur has received from the 17 invoking states under the “Moscow Mechanism”, the results of his fact-finding mission have been presented in this report in some detail. As a general conclusion there is overwhelming evidence that the presidential elections of 9 August 2020 have been falsified and that massive and systematic human rights violations have been committed by the Belarusian security forces in response to peaceful demonstrations and protests. There is a denial of many, but not all allegations by the Belarusian authorities, but the facts assembled in this report speak for themselves. In a few cases, the evidence has been comprehensive and clear, as in the case of the massive crackdown on any opposition in Belarus. The authorities themselves do publish the high numbers of arrests, while they are denying the high number of the ill-treatment claims of protesters, which, however is proven by the vast number of testimonies supported with pictures and videos, in spite of attempts by the authorities to prevent independent reporting by journalists, citizens and NGOs, as well as their shut down of the Internet and some 70 webpages, publishing a great part of the available evidence.

By all international standards, in particular of the United Nations and OSCE, the alleged human rights violations as indicated in the mandate of the rapporteur, i.e.:

“Intimidation and persecution of political activists, candidates, journalists, media actors, lawyers, labour activists and human rights defenders, as well as the detention of prospective candidates; election fraud; restriction on access to information, including internet shutdowns; excessive use of force against peaceful protesters; arbitrary and unlawful arrests or detentions; beatings; sexual and gender violence; abductions and enforced disappearances; torture and other cruel, inhuman or degrading treatment or punishment, and widespread impunity for all of the above.”

³²⁷ Declaration of 24 September 2020, see at: <https://www.consilium.europa.eu/en/press/press-releases/2020/09/24/belarus-declaration-by-the-high-representative-on-behalf-of-the-european-union-on-the-so-called-inauguration-of-aleksandr-lukashenko/>.

³²⁸ See “EU imposes sanctions on Belarusians officials but not on Lukashenko, The Guardian of 2 October 2020, at: <https://www.theguardian.com/world/2020/oct/02/belarus-officials-eu-sanctions-lukashenko>.

³²⁹ See the statement by the U.S. Secretary of State: <https://www.state.gov/the-u-s-action-against-belarusian-individuals-involved-in-efforts-to-undermine-belarusian-democracy/>.

³³⁰ See The Guardian, 29.09.2020: UK imposes sanctions on Belarus president Alexander Lukashenko, at: <https://www.theguardian.com/world/2020/sep/29/uk-imposes-sanctions-on-belarus-president-alexander-lukashenko>.

have been proven beyond doubt with the qualifications made in the specific findings.

The violations found are systematic and have already been observed in the past at various occasions like in the first report of a rapporteur under the “Moscow Mechanism” in 2011. They have been aggravated by the violent response of the government of Belarus to the protests against the falsified presidential elections.

For any activities of public participation, whether in the form of assemblies, the establishment of associations or the work of the media including Internet platforms, permissions are required which allows the government to prohibit or control any activity. This includes the administration of justice which largely depends on the will of the executive.

The many testimonies of police brutality, torture and ill-treatment received from citizens of Belarus in good faith raise the question how to deal with the abundant evidence in order for those citizens to see that justice is done, instead of confirming the general impression of impunity. This material could be made available to an independent international investigation mechanism, which is given the time and the necessary resources to fully document what has happened and still is happening in Belarus these days.

In the section on recommendations at the beginning of this report, the rapporteur has attempted to provide advice about what the authorities in Belarus should do in order to achieve a significant improvement of the situation of human rights. The need to bring perpetrators to justice is key after the violence of the security forces has been stopped.

However, the legal system of Belarus today can be characterized as based rather on the “rule by law than the rule of law”, which would be a precondition for the effective implementation of the human rights commitments contained in the constitution of the Republic of Belarus and related legislation.

As proven by past reforms, without democratic and structural changes it cannot be expected that the suggestions for legal reforms as contained in the recommendations will have the desired effects.

The Republic of Belarus, being a European country surrounded by member states of the Council of Europe could benefit most from a process of accession to this organization, which, with the Venice Commission for Democracy through Law and the European Committee for the Prevention of Torture and in particular the European Convention on Human Rights as well as the European Court of Human Rights, has all the instruments needed in order to jointly with OSCE/ODIHR assist Belarus on its path to human rights and democracy.

Annex – Request by the rapporteur to facilitate a visit to Belarus and response by the Permanent Representation of the Republic of Belarus

Univ.-Prof. em. Dr. Wolfgang Benedek
Graz, Austria

September 30, 2020

His Excellency
Ambassador Andrei Dapkiunas
Permanent Representation of the Republic of Belarus to OSCE

cc Katarzyna Gardapkhadze
First Deputy Director / Alternate to the Director of ODIHR
Representatives of 17 invoking Participating States

Your Excellency,

By letter of September 29, 2020 from ODIHR I have been appointed to serve as single rapporteur under the Moscow Mechanism in the case of the 17 Participating States invoking the Mechanism on several issues related to the Republic of Belarus, which has decided not to appoint an expert herself.

I will undertake this mission in full independence and impartiality, based on the rules of the Moscow Mechanism, which provide in Paragraph 6 that the requested State will fully cooperate with and facilitate the work of the expert(s).

In an effort to hear also the position of Your government as well as the voices of other actors I would ask You to facilitate my visit to Belarus, which I plan to take place as soon as possible.

I also ask Your government for its detailed opinion on the allegations contained in my mandate which You have already received from ODIHR. I intend to do interviews with relevant persons in Belarus and therefore invite You to provide me with a list of persons to be contacted for pertinent information.

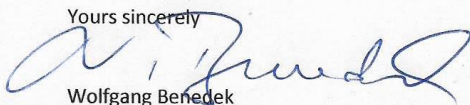
In this context I would like to highlight that Paragraph 6 of the Moscow document provides that the requested State will *“allow the mission, for the purpose of carrying out its tasks, to enter its territory without delay, to hold discussions and travel freely therein, to meet freely with officials, non-governmental organizations and any group or person from whom it wishes to receive information.”* Paragraph 6 further clarifies that *“the mission may receive information in confidence from any individual, group or organization on questions it is addressing”* and that *“the participating States will refrain from any action against persons, organizations or institutions on account of their contacts with the mission of experts.”*

As the time for my mission is limited with 14 days, I ask You to respond to my request at Your earliest convenience.

I thank You for Your understanding and cooperation.

Please, acknowledge receipt of this letter.

Yours sincerely



Wolfgang Benedek

October 2, 2020

University Professor Dr. Wolfgang Benedek
Graz, Austria

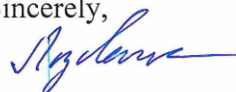
Sir,

As indicated in the letter of Permanent Representative of Belarus to the OSCE A. Dapkiunas dated September 28, 2020 in response to 17 OSCE participating States, which had invoked the 'Moscow Mechanism' pertaining to my country, the Belarusian authorities regard the attempt to present Belarus as a special case of non-compliance with the OSCE obligations as biased and far-fetched. There are no valid reasons for launching the 'Moscow Mechanism' with regard to Belarus. Therefore, the Government of Belarus has refrained from participating in the implementation of this one-sided and biased tool.

We also do believe that the 'Moscow Mechanism', designed at the dawn of the CSCE process almost 30 years ago, is an outdated instrument, since all current issues are being regularly discussed at the OSCE Permanent Council's meetings. Moreover, in the course of those discussions Belarus has already provided all necessary explanations on the issues of concern to some participating States.

In view of the above and with all due respect to you personally, we are not in a position to arrange your visit to Belarus as an appointed rapporteur under the 'Moscow Mechanism'.

Sincerely,



Andrei Lozovik,
Minister Counsellor