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NOTE VERBALE

The OSCE Office for Democratic Institutions and Human Rights (ODIHR) presents its compliments to the Delegations of OSCE participating States and, in accordance with the second part of paragraph 11 of the Moscow Document of 1991, has the honor to transmit the report of the OSCE rapporteur appointed by 38 OSCE participating States under the Moscow Mechanism invoked in respect of the Republic of Belarus.

ODIHR avails itself of this opportunity to renew to the Delegations of the OSCE participating States the assurances of its highest consideration.

Warsaw, 4 May 2023

Delegations of the OSCE participating States
Vienna

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OSCE fact-finding mission on Belarus (2023)

under paragraph 12 of the Moscow Mechanism Document

Report
on the serious threat to the OSCE human dimension in Belarus since 5 November 2020

by Professor Hervé ASCENSIO, Sole Rapporteur

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Executive Summary

On 23 March 2023, the Moscow Mechanism was invoked by 38 OSCE participating States concerning the situation in Belarus since 5 November 2020 in relation to policies and actions in the field of the OSCE human dimension that led to a growing number of persons detained for politically motivated reasons. Emphasis was put in the mandate on the recent changes in Belarusian criminal law and other circumstances such as the war in Ukraine.

The author of this report was informed on 4 April 2023 that he was appointed as sole rapporteur, and that the report was due on 18 April 2023. Despite his request for cooperation, he did not receive help from the Belarusian government. He benefited from the technical assistance of the Office for Democratic Institutions and Human Rights (ODIHR), and he based his work on documents in the public domain or obtained from reliable sources, previous reports of international organizations, and interviews conducted in person in Warsaw and Vilnius. The main findings are set out below.

In the aftermath of the 2020 massive repression, the Belarusian authorities adopted a set of legislative reforms, including a constitutional reform in 2022. These amendments introduce new criminal and administrative offences, increase liability for vaguely defined acts, extend the death penalty, restrict access to political rights to Belarusians in exile, limit freedom of assembly and association, and widely impact freedom of expression of the entire Belarusian people. The Belarusian government now has a full arsenal of legislation designed to hinder any form of opposition.

As implemented, the reforms form a coherent whole that could be described as "politically motivated repression". One of the main results is the high number of political prisoners in Belarus. The term is basically defined by the deprivation of liberty and by a motive that is in fact essentially political. Based on additional objective criteria, it appears that, as of the 18 April 2023, there are at least 1,486 political prisoners in Belarus. Political detention should, however, be understood as part of a broader pattern of policies aimed at increasing politically motivated repression of the Belarusian people.

Repression took the form of waves of arrests targeting certain categories of people, which suggests a concerted effort within the State authorities to organize them. Those targeted were demonstrators, political opponents, human rights defenders, journalists, trade unionists, and lawyers. Moreover, the Belarusian government launched in the summer 2021 a wave of liquidation of associations, which led to the destruction of large parts of civil society in Belarus. The existence of such policies is confirmed by statements of the highest governmental authorities, including President Lukashenko.

After the outbreak of Russia's war of aggression against Ukraine on 24 February 2022, which was partly launched from the territory of Belarus, repression has been particularly directed at those expressing their opposition to the war or their support for the Ukrainian people. The Belarusian authorities themselves link the war in Ukraine with the policy of repression within the country.

During the last two years, a large number of actions have been taken that pose a serious threat to the human dimension of the OSCE. They infringe political rights and the democratic process, freedoms of assembly and association, freedom of expression and the right of access to

information, rights to liberty and security, the right not to be submitted to torture and other cruel, inhuman or degrading treatment or punishment, the right to a fair trial, and the right to effective remedies.

The Belarusian government has repressed peaceful demonstrations, and targeted independent associations, political parties, and trade unions. Violations of freedom of expression and the right of access to information have affected all types of media. Authorities have blocked the access to websites of most independent media and civic initiatives.

Belarus is implementing a broad policy of arbitrary arrest and detention incompatible with international standards. These include the practice of mass arrests in people's homes, the use of violence to gain access to personal data that will later be used against individuals, the extensive application of criminal offences lacking precision and predictability, and the disproportionality observed between the punishment and the alleged violation.

Torture and inhuman or degrading treatment are occurring on a regular and organized basis in places of detention and are particularly targeted at those perceived as political opponents. Numerous political prisoners are being subject to torture, and various testimonies depicting acts of physical or sexual violence. Political prisoners in all detention centres face severe difficulties in obtaining basic medical care.

The judicial system in Belarus does not offer all guarantees of a fair trial and lawyers defending politically accused persons are in turn subject to persecution. So far, the Government of Belarus has not taken any steps to put an end to this situation, nor to provide effective remedies for the victims. On the contrary, the repressive policy has been steadily increasing over the past two years. It aims to ensure that the Belarusian government controls the whole of society, including when the population wishes to demonstrate its opposition to the war of aggression against Ukraine.

The Rapporteur makes a number of recommendations, as foreseen in his mandate.

Recommendations

Recommendations to the Republic of Belarus:

About political prisoners

- *Immediately* release political prisoners on humanitarian grounds. This should concern as a matter of priority people with serious health issues or chronic conditions, people with disabilities, minors, seniors, people with children or with single parents
- *Immediately* provide the fullest access to necessary medication and care for all persons in places of detention
- Release all political prisoners, and in particular journalists, media workers, trade unionists, attorneys, and human rights defenders
- Ensure decent conditions of detention, and provide training for the personnel of detention centres on the international minimum standards of treatment for prisoners
- Ensure to persons deprived of liberty access to lawyers and visits and communication with their relatives

About legislative reforms

- Undertake a large-scale reform of existing laws in Belarus to bring national criminal legislation and the code of administrative offences in full compliance with international norms and standards
- Implement a moratorium on the death penalty until a comprehensive reform is achieved
- Refrain from implementing the procedure of deprivation of citizenship until a comprehensive reform is achieved
- Return to the notification procedure for public demonstrations, instead of prior authorization

About administrative and criminal proceedings

- Implement a review system of the listing procedures by an independent body
- Reduce the use of closed trials and non-disclosure agreements to cases that are strictly justified under the relevant international norms and standards
- Reintegrate disbarred defence lawyers sanctioned for their involvement in political cases into the bar
- Review the status of the bar to ensure lawyers' independence

About international cooperation

- Resume cooperation with international organizations and allow expert missions to Belarusian territory
- Allow visits of representatives of international organizations and foreign States in detention facilities
- Allow the OSCE to send a mission to Belarus for the next municipal and parliamentary elections
- Ratify again the first Optional Protocol to the ICCPR

- Ensure respect of article 18(2) of the Belarusian Constitution according to which "(t)he Republic of Belarus shall exclude acts of military aggression against other States from its territory"

About Belarusian in exile

- Arrange for the renewal of passports of Belarusians residing abroad
- Refrain from any discrimination against Belarusians in exile

About civil society

- Repeal laws and regulations that restrict the formation and operation of independent organizations, including associations, labour unions, political parties, and other civil society groups
- Ensure that journalists and media outlets can operate freely and independently without fear of censorship or persecution
- Authorize independent media and provide access to diverse sources of information, including online resources

About preservation of Belarusian culture

- Encourage the preservation and documentation of traditional Belarusian language, literature, music, dance, customs, and other cultural practices

Recommendations to OSCE Participating States:

- Provide legal and technical support for necessary reforms in Belarus
- Take all the necessary steps to ensure accountability for the repression in Belarus, through national, regional or international procedures
- Undertake investigations and prosecution under extraterritorial jurisdiction, including universal jurisdiction
- Arrange for visits to detention centres and court hearings to ensure transparency and respect for human rights
- Offer international protection, as well as residence and work permits, to Belarusians in exile, and assist in their integration through relevant programmes
- Deploy an election observation mission for upcoming elections to ensure transparency and fairness

Recommendations to the International Community:

- Support initiatives aimed at reporting and documenting human rights violations in Belarus, and notably the work of the International Accountability Platform for Belarus (IAPB)
- Cooperate in national or international investigations;
- Support solidarity initiatives for victims of the Belarusian repression
- Aid Belarusian organizations, human rights defenders, and journalists in exile to sustain their activities abroad
- Support initiatives aimed at preserving Belarusian language and culture abroad

I. INTRODUCTION

A. Invocation of the Moscow Mechanism

1. The procedure known as the "Moscow Mechanism" was established in 1991 by the participating States of the then CSCE, now OSCE, by the "Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE". It provides for the setting up of missions concerning questions relating to the human rights dimension of the OSCE on the territory of a participating State, either at its invitation, *proprio motu* (paragraph 4) or after a request by another participating State (paragraph 8), or at the request of another participating State with the support of a least nine other participating States (paragraph 12). In the latter case, which corresponds to this mission, the requesting States appoint one person from the resource list, the requested State a second one, and the two rapporteurs choose the third member of the mission. If the requested State does not appoint anyone within six days, the rapporteur appointed by the requesting States shall conduct the mission alone (paragraph 10). In all cases, the State whose territory is affected by the human rights issues raised must "co-operate fully with the mission of experts and facilitate its work" (paragraph 6).

2. The Moscow Mechanism has already been triggered twice in respect of the Republic of Belarus, in both cases under paragraph 12, and with a sole rapporteur in accordance with paragraph 10. The first report, dated 16 June 2011, was submitted by Professor Emmanuel Decaux,[1] and the second one, dated 5 November 2020, by Professor Wolfgang Benedek.[2]

3. These precedents provide a long-term understanding of human rights issues on the territory of Belarus. Moreover, the second report is of particular relevance for the present mission, whose mandate refer to the "developments" that have occurred since 5 November 2020 (see *infra* C). In particular, the human rights violations identified in 2020 have had a lasting effect, because of the criminal proceedings initiated at that time and the sanctions imposed. It also provides a landmark for assessing any "deterioration" in the human rights situation in Belarus, and the impact of subsequent events such as "Russia's war of aggression in Ukraine", as mentioned in the mandate (see *infra* C).

4. The 2020 report on Belarus will therefore serve as the basis for the analysis. Its structure will be repeated with limited adaptations in the third part of this report to facilitate the follow-up. The main finding of the 2020 report was that "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."[3]

5. After 5 November 2020, the OSCE, through its Office for Democratic Institutions and Human Rights (ODIHR), has reacted to a number of events in Belarus affecting the human dimension of the OSCE. On 13 November 2020, ODIHR called on the Belarusian authorities to "end

[1] OSCE Rapporteur's Report on Belarus, 16 June 2011, https://www.osce.org/odihr/78705.
[2] OSCE Rapporteur's Report under the Moscow Mechanism on Alleged Human Rights Violations related to the Presidential Elections of 9 August 2020 in Belarus, 5 November 2020, https://www.osce.org/odihr/469539 (thereafter "OSCE Rapporteur's Report 2020").
[3] *Ibid*., p. 55.

impunity of those responsible to human rights violations (…) and hold them into account";[4] on 16 February 2021, it expressed its concerns about "a wave of concerted police searches of human rights activists throughout Belarus";[5] on 6 April 2021, it voiced serious concerns about "[t]he numerous credible reports of criminal charges, administrative detention, intimidation and harassment targeting Belarusian citizens and human rights defenders simply for going about their lives or carrying out their work";[6] on 4 June 2021, it denounced the televised so-called "confessions" of an independent journalist and his partner;[7] on 1 March 2022, it reacted to "arbitrary arrest and police intimidation" answering peaceful protests against the war in Ukraine.[8] A series of tweets in 2021, 2022, and 2023 also condemned the closure of human rights associations, the repression of anti-war demonstrators, and the criminalization of the work of human rights defenders.[9]

6. On 23 March 2023, the Moscow Mechanism was invoked by 38 OSCE participating States: Albania, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, Germany, Greece, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, North Macedonia, Norway, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Ukraine, the United Kingdom and the United States.[10] This was again a paragraph 12 procedure. By letter of 28 March 2023, the director of ODIHR informed the author of this report of his appointment as rapporteur by the invoking States. Since the Republic of Belarus did not appoint a second rapporteur within the next six days, he was informed by letter of 4 April 2023 of the commencement of the mission under his sole rapporteurship.

7. On 5 April 2023, the Rapporteur sent a letter to the Representative of the Republic of Belarus to the OSCE to request his Government's cooperation, as provided for in paragraph 6 of the Moscow Document. The letter is reproduced in Annex 1 of this report. In particular, he requested to be allowed to visit the country, and to receive information about the implementation of specific legal provisions. He also expressed his wish to know the Government's detailed position on the allegations contained in the mandate.

8. By an email dated 7 April 2023, the Chargé d'Affaires a.i. of the Permanent Mission of Belarus to the OSCE thanked the Rapporteur for his interest in cooperating with Belarus, and he attracted his attention to a letter addressed on 3 April 2023 to ODIHR concerning the invocation of the Moscow Mechanism, and to the official position taken by the Belarus

[4] ODIHR, "Impunity for human rights abuses in Belarus must end, OSCE human rights office says", Press release,13 November 2020, https://www.osce.org/odihr/470274.
[5] ODIHR, "Searches targeting human rights defenders in Belarus of utmost concern, OSCE human rights head says", Press Release, 16 February 2021, https://www.osce.org/odihr/478669.
[6] ODIHR, "OSCE human rights head voices serious concerns over continued rights violations in Belarus, offers monitoring", Press Release, 6 April 2021, https://www.osce.org/odihr/482924.
[7] ODIHR, "Televised "confessions" further example of widespread rights violations in Belarus, OSCE human rights head says", Press Release, 4 June 2021, https://www.osce.org/odihr/488725.
[8] ODIHR, "Peaceful demonstrations to protest attack on Ukraine must be allowed unhindered, OSCE human rights office says", Press Statement, 1 March 2022, https://www.osce.org/odihr/513187.
[9] https://twitter.com/osce_odihr/status/1417839559249907712;
https://twitter.com/osce_odihr/status/1445428670403948548;
https://twitter.com/osce_odihr/status/1498654467964743680;
https://twitter.com/osce_odihr/status/1567461907853987840;
https://twitter.com/osce_odihr/status/1611003709286121473;
https://twitter.com/osce_odihr/status/1631628776546156545.
[10] ODIHR, " OSCE's Moscow Mechanism invoked to examine alleged human rights violations and abuses in the Republic of Belarus", News, 23 March 2023, https://www.osce.org/odihr/539675.

Government during the session of the OSCE Permanent Council on 23 March 2023. The letter states that, in the view of the Belarusian government, there is no valid reason to trigger the Moscow Mechanism and that, for this reason, it would refrain from any cooperation in its implementation. The Rapporteur was thus unable to benefit from the cooperation of the Belarusian government.

9. The second document transmitted to the Rapporteur, namely the reply by the representative of the Republic of Belarus on 23 March 2023 to the invocation of the mechanism by the 38 invocating States, denounces a tactic aimed at pressuring Belarus and forcing its people to share moral values different from their own.

B. Applicable International Norms and Standards

10. At this point, it may be useful to recall briefly what international norms and standards apply in the field of human rights, and what international commitments have been made by Belarus.

11. **At the universal level**, as a member of the international community, Belarus is committed to respect human rights as recognized in the Universal Declaration of Human Rights adopted by the UN General Assembly on 10 December 1948, and reaffirmed in the Vienna Declaration and Programme of Action of 25 June 1993.

12. Belarus is also a party to a number of treaties protecting human rights: the Convention on the Prevention and Punishment of the Crime of Genocide (ratified on 11 August 1954), the International Covenant on Economic, Social and Cultural Rights (12 November 1973), the International Covenant of Civil and Political Rights (12 November 1973), the International Convention on the Elimination of All Forms of Racial Discrimination (8 April 1969), the International Convention on the Elimination of All Forms of Discrimination against Women (4 February 1981), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (13 March 1987), the Convention on the Rights of the Child (1 October 1990), the Convention on the Rights of Persons with Disabilities (29 November 2016), and several ILO Conventions, including the Convention No. 87 on Freedom of Association and Protection of the Right to Organise (6 November 1956) and the Convention No. 98 on the Right to Organise and Collective Bargaining Convention (6 November 1956).

13. Belarus had been a party to the Optional Protocol to the International Covenant on Civil and Political Rights from 30 September 1992 to 8 February 2023 (effective date of its denunciation notified on 8 November 2022). This protocol allows individuals to submit complaints to the Human Rights Committee, a quasi-judicial body responsible for determining possible violations of the Covenant and proposing remedies to the State concerned. Clearly, the denunciation of this Protocol by Belarus deprives its citizens and persons under its control of an important guarantee and must be considered as a deteriorating factor to the situation of human rights on the Belarusian territory. It must be noted, however, that, in accordance with Article 12 of the Protocol, all proceedings in course on 8 February 2023 will continue.

14. It is of interest to this mission to underline the evolution of the number of individual communications sent to the Human Rights Committee against Belarus during the last two years: 63 in 2021, and 60 in 2022, most of them for violations of the freedom of assembly and

expression, arbitrary detention, and unfair trial.[11] This made Belarus the most often implicated State under the individual complaint procedure of the Optional Protocol during this period. For comparison, the number was 47 complaints against Belarus in 2020, 37 in 2019, 36 in 2018, and 21 in 2017. Although the interpretation of such data is always complex, it can be seen that: i/ the number of complaints is increasing for the years 2021 and 2022; ii/ the allegations are concentrated on certain types of violations.

15. Moreover, Belarus has been a member of the United Nations since 24 October 1945, an organization that has as one of its purposes "[t]o achieve international cooperation in … promoting and encouraging the respect for human rights and for fundamental freedoms for all".[12] To reach this goal, a number of specialized bodies have been established, which have taken a position on the human rights situation in Belarus after 2020. On 27 March 2023, a few days after the new invocation of the Moscow Mechanism, the UN Human Rights Council expressed its "deep concerns at the further deterioration of the situation of human rights in Belarus in the aftermath of the presidential election held on 9 August 2020 and the continued impunity and lack of accountability for human rights violations committed in Belarus since 1 May 2020".[13] This statement was based on converging reports of the UN High Commissioner for Human Rights,[14] the Office of the Secretary-General, and special procedure mandate holders – among which a series of reports of the UN Special Rapporteur on Belarus, Ms Anaïs Marin.[15]

16. **At the regional (European) level**, as a member of the OSCE, Belarus has clearly committed to respect human rights, the rule of law, and democracy as its form of government. Adherence to OSCE standards is rooted in the 1975 Final Act of the Conference on Security and Co-operation in Europe, under which "[t]he participating States will respect human rights and fundamental freedoms" and "recognize the universal significance of human rights and fundamental freedoms, respect for which is an essential factor for the peace, justice and well-being necessary to ensure the development of friendly relations and co-operation among themselves as among all States" (Helsinki, 1975, 1(a)VII). These commitments were further developed throughout the CSCE/OSCE process.[16] In the 1990 Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, participating States stated that "the protection and promotion of human rights and fundamental freedoms is one of the basic purposes of government" (I.1). In the 1990 Charter of Paris of for New Europe, they solemnly "undertake to build, consolidate and strengthen democracy as the only system of government of our nations". These commitments were unambiguously reaffirmed in the 1996 Lisbon Document (Lisbon Summit Declaration, para. 3-4), the 1999 Istanbul Document (Charter for European Security: II.7), and the 2010 Astana Commemorative Declaration (para. 2).

17. Lastly, although not a member of the Council of Europe (CoE), Belarus is a party to several treaties adopted by the Council of Europe and open to third States, among which the Europe

[11] In addition, 4 communications were transmitted during the first weeks of 2023. See https://www.ohchr.org/fr/treaty-bodies/ccpr/individual-communications.
[12] Charter of the United Nations, article 3(3). See also article 55 ('…the United Nations shall promote… universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion').
[13] Human Rights Council, *Situation of human rights in Belarus in the run-up of the 2020 presidential election and in its aftermath*, UN Doc. A/HRC/52/L.14, 27 March 2023, para. 2.
[14] See https://www.ohchr.org/en/hr-bodies/hrc/ohchr-belarus/index.
[15] See https://www.ohchr.org/en/special-procedures/sr-belarus.
[16] See OSCE-ODIHR, *OSCE Human Dimension Commitments, Vol. 2, Chronological Compilation*, 3rd ed., 2011, 391 p., https://www.osce.org/odihr/human-dimension-commitments.

Cultural Convention (STE n°18, ratified on 18 October 1993), and the Council of Europe Convention on Action against Trafficking in Human Beings (STCE n°197, ratified on 26 November 2013).

18. Whether at the universal or regional level, the international organizations and conventions mentioned set up monitoring bodies whose general observations and interpretations in individual cases have led to precise standards for the implementation of human rights. It is this set of norms and standards that was taken into consideration when selecting the relevant facts for the present mission.

19. It should be concluded from this section that Belarusian government is committed to respecting human rights, the rule of law, and a democratic form of government, and that this has been part of the civilizational choices and aspirations of the Belarusian people for decades.

C. Mandate

20. The mandate of the mission has been so defined:[17]

> *"to examine the human dimension issues identified above, with a particular emphasis on developments since the conclusion of the 5 November 2020 Moscow Mechanism report, especially the circumstances surrounding the growing number of persons detained for politically motivated reasons, as well as recent legislative amendments to inter alia the Criminal Code and the Law on Countering Extremism."*

21. The term "above" refers to a list of "*policies and actions*" that includes:

> *• detention of nearly 1,500 political prisoners, with numbers continuing to rise;*
> *• intimidation, harassment, arbitrary or unlawful arrest, detention, and imprisonment of human rights defenders, members of the political opposition, journalists and other media actors, lawyers, labour activists, persons belonging to national minorities, and civil society groups;*
> *• labelling of thousands of citizens and organizations as extremist and the shutdown of nearly all independent non-governmental organizations;*
> *• insufficient access to legal and medical assistance for those arrested and/or detained;*
> *• lack of due process and respect for the right to a fair trial as provided for under the International Covenant on Civil and Political Rights. This includes retroactive application of law, and instituting special criminal proceedings (in absentia) against persons who are outside Belarus;*
> *• torture, and other cruel, inhuman or degrading treatment or punishment of persons in custody, including sexual and gender-based violence;*
> *• excessive use of force against peaceful protesters, including those protesting Belarus's support for Russia's war of aggression against Ukraine;*
> *• eradication of independent labour unions;*
> *• efforts to silence independent media and enact severe restrictions on access to information, including through internet surveillance, and censorship;*
> *• systematically tightened legislation limiting political freedoms and imposition of sentences which contravene rule of law standards and are intended to deter and punish dissent;*

[17] OSCE, ODIHR, Letter to Professor Hervé Ascensio, 28 March 2023, with a reference to the Joint Letter of 23 March 2023 from 38 Participating States Invoking Paragraph 12 of the Moscow Document.

• extension of the death penalty to vaguely defined "attempts to carry out acts of terrorism and murders of government officials or public figures"; and
• impunity for the human rights violations and abuses described above.

22. In addition, the terms of reference specify that paragraph 12 of the Moscow Document is invoked "*[t]o underscore [the invoking OSCE participating States'] concerns about the continued deterioration of the internal human rights situation in Belarus and to explore more recent development of serious abuses linked to Russia's war of aggression in Ukraine*."

23. It appears, therefore, that the present mission should cover a range of policies and actions of the Republic of Belarus since 5 November 2020, while continuing the work of the previous mission. The remainder of this report will consequently focus on describing the policies that are particularly at issue (II) and the specific actions that can be described as human rights violations (III). Before doing so, some remarks should be made about the methodology used.

D. Methodology

24. The methodology followed by the Rapporteur was largely determined by the availability of reliable evidence and the short timeframe of his mission.

25. A great deal of information is in the public domain, starting with information on legislation and on prosecutions conducted by the Belarusian government, notably on the basis of the Law against Extremism, to which the official websites of the Belarusian government and its ministries provide access. The Rapporteur has also been able to draw on the work of intergovernmental organizations active in the field of human rights, in particular reports or findings emanating from United Nations bodies or experts, and from the OSCE. The reliability of such sources was considered very high.

26. As with other missions established under the Moscow Mechanism, an e-mail box has been set up by the OSCE for the submission of documents. The Rapporteur received highly valuable documents through this channel, most of them emanating from non-governmental organizations. It is however important here to highlight the difference in context between the 2020 report on Belarus and this report. In 2020, Professor Benedek's report benefited from a considerable number of testimonies submitted to the mailbox set up by the OSCE following a call for co-operation from Svetlana Tsikanovskaia.[18] The victims were eager to give their testimony, in the expectation that positive developments would soon follow in Belarus. However, this did not happen, as will become apparent in the remainder of this report. As one interviewee made clear to the Rapporteur, victims are now "terrified". They and their families are intimidated from providing documents or testifying. Hence the limited number of direct testimonies sent through this channel in 2023.

27. In the meantime, a considerable amount of work has been done in a structured manner by non-governmental organizations to collect testimony safely, and to conduct informed analysis on different aspects of the human rights situation in Belarus. The Rapporteur has taken these documents into consideration after assessing their relevance. Information so received was cross-checked with information in the public domain and information from intergovernmental organizations. The Rapporteur met representatives of the associations concerned, who explained their methodology, either by relying on public Belarussian government sources, such

[18] OSCE Rapporteur's Report 2020, p. 10.

as lists of persons prosecuted for extremism or the register of associations, or by collecting solid testimonies on individual cases, with the best guarantees for data protection and the security of victims and their family.

28. In this regard, the work of the International Accountability Platform for Belarus (IAPB), established in 2021 in response to the last OSCE Moscow Mechanism report[19], should be highlighted. The Rapporteur received precise information on their processes, and he has had personal access to a significant part of the data, corresponding to their work on open-source documents and to a sample of confidential sources on individual cases, including testimonies and decisions of Belarusian courts. He is convinced that the information gathered is highly reliable.

29. As mentioned above, the Rapporteur requested the cooperation of the Belarusian government, but did not receive any assistance and was not allowed to visit Belarus. Thanks to the support of ODIHR, he travelled to Poland (Warsaw) and Lithuania (Vilnius) where he met representatives of associations acting in defence of human rights in Belarus and members of the Belarusian community in exile. He also had discussions in Paris and online. He conducted interviews of several victims of alleged violations committed during the period under review, but he did not consider it necessary to multiply them so as not to duplicate the work done by others or put people at risk. In total, he had 15 meetings, lasting between 45 minutes and 2 hours, with 20 persons. Thanks to the ODIHR, he had the help of a translator from Russian into English in Warsaw and Vilnius when the people he met were more comfortable expressing themselves in Russian or when, speaking in English, they wanted to clarify the meaning of a term.

30. The Rapporteur is grateful to all organizations that assisted his work in sending or providing access to documents, or enabled him to meet representatives in person or in distance, *inter alia*: Amnesty International, the Belarusian Association of Journalists, Belarusian Helsinki Committee, CSO Meter, Center of the Belarusian Solidarity, Center for Constitutionalism and Human Rights, FIDH, Human Constanta, Human Rights Watch, IAPB, International Committee for the Investigation of Torture in Belarus, Legal Initiative, Lawtrend, LegalHub, the Human Rights Center "Viasna", Pen Belarus, Reporter sans Frontières, Right to Defence.

31. The Rapporteur received from a coalition of them a synthesis document dated 13 April 2023 through the OSCE mailbox.[20] This document will be referred to in this report as the "Moscow Mechanism Belarus Joint Contribution". It contains factual elements from documents published individually by these associations, while facilitating an overall understanding. The Rapporteur considers the information to be credible, as it is fully consistent with the findings in intergovernmental organizations' reports, with information and statements on the official websites of the Belarusian government, and with interviews he has conducted.

32. Throughout the mission, the Rapporteur was supported by two assistants whom he would like to thank for their highly competent and efficient work.[21]

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[19] *Ibid*., p. 7, recommendation III.3.

[20] The information contained in the document were provided by the Belarusian Helsinki Committee, the Human Rights Center "Viasna", the Belarusian Association of Journalists, the Human Rights Organization "Legal Initiative", the Human Rights Organization "Lawtrend" under the general coordination of the Belarusian Helsinki Committee.

[21] Ms Coralie Klipfel, Doctor of Law from the University Paris 1 Panthéon-Sorbonne, and Ms Rosanne Craveia, PhD candidate from the University Paris 1 Panthéon-Sorbonne.

II. POLICIES OF THE BELARUS GOVERNMENT

A. Legislative Amendments and Constitutional Reform

33. In the aftermath of the summer 2020 massive repression, Belarusian authorities adopted a set of legislative reforms, including a constitutional reform. These amendments introduce new offences, increase liability for vaguely defined acts, extend death penalty, restricts access to political rights to the Belarusians in exile, limits freedom of assembly and association, and widely impact freedom of expression of the entire Belarusian people.

34. The mandate of the mission expressly refers to amendments to "the Criminal Code and the Law on Countering Extremism", but "*inter alia*". Indeed, the criminalization of so-called extremist behaviour is the core of the reforms aimed at increasing repression and strengthening the authoritarian character of the regime. But they are accompanied by a large number of other legislative developments with the same aim, including amendments to the Constitution. This section will therefore be so structured: amendments to the anti-extremism texts (1), constitutional reform (2), other legislative amendments (3).

1) Amendments to the anti-extremism texts

35. Provisions designed to fight "extremism" appear in various pieces of legislation, notably the Law on Countering Extremism, but also the Law on Countering Terrorism, the Law on Preventing the Rehabilitation of Nazism, the Law on the Genocide of Belarusian people, the "anti-extremist" articles of the Criminal Code[22] and of the Code of Administrative offences,[23] Article 19 of the Law "On Citizenship", and the Council of Ministers Resolution No. 575 "On measures to counter extremism and prevent the rehabilitation of Nazism".

36. The **Law on Countering Extremism** defines the term "extremist activities" as actions that would threaten "independence, territorial integrity, sovereignty, and foundations of constitutional order". Such a formulation can be applied to many forms of expression and is *de facto* used to target political opponents of the Belarusian authorities. As a result of successive laws amending the Law on Combating Extremism, beginning with the Law of 14 May 2021, the notion of extremism has been expanded to cover acts such as deliberately disseminating false information about the political, economic, social, or military situation in Belarus, discrediting Belarus, insulting a representative of power in connection with the performance of his or her official duties, discrediting the public authorities, and obstructing the lawful activities of State bodies. The 2021 amendments led to new incriminations[24] and increased liability.[25]

[22] Articles 124–126, 130–133, 287, 289–290-5, 293, 356, 357, 359–361-3.
[23] Articles 19.10 and 19.11.
[24] The amendments introduced criminal liability for various acts : repeated violations of the procedure for organizing and holding mass events (Article 342-2 of the Criminal Code); calls for restrictive measures (sanctions) against Belarus (Article 361 of the Criminal Code); participation in an extremist formation (Article 361-1 of the Criminal Code, paragraph 3); financing extremist activities (Article 361-2 of the Criminal Code); aiding extremist activities (Article 361-4 of the Criminal Code); preparation for participation in extremist activities (Article 361-5 of the Criminal Code); public calls for organizing or holding illegal assemblies (Article 369-3 of the Criminal Code).
[25] These amendments also increased liability for extremist activities such as insulting a representative of the government (or his/her relatives) (Article 369 of the Criminal Code) or for discrediting the Republic of Belarus (Article 369-1 of the Criminal Code).

37. As part of the implementation of this law, the Ministry of Internal Affairs has published on its website three official lists that the Rapporteur could access: the "List of Extremist Materials", the "List of organizations, formations, individual entrepreneurs involved in extremist activities" (hereinafter "List of extremist formations"), and the "List of citizens of the Republic of Belarus, foreign citizens or stateless persons involved in extremist activities" (hereinafter "List of persons involved in extremist activities"). The lack of precision of so-called "extremism" also affects the notions of "extremist materials", "extremist activity", "extremist organization", etc. It appears that listing procedures lack transparency, and are largely in the hands of the executive, with uneven involvement of the judiciary.

38. The List of Extremist Materials identifies nearly 3,000 materials. Most of the entries are Telegram channels and chats, websites, social networks and resources from political opposition or human rights organizations, hashtags, podcasts, books, journalistic articles, and Belarusian and Ukrainian patriotic songs. Any distribution, storage or cooperation with one of these resources may lead to criminal liability.[26]

39. The List of extremist formations includes at the same time the "extremist formations", which can be a group of individuals, and the "extremist organizations" that are registered organizations. Concerning the former, KGB Services or the Ministry of Internal Affairs would be deciding on the inscription of a "formation" on that list with no judicial review. For the "extremist organization" their addition to the list can only be done after a court decision. This list includes media, channels, online resources, local chats, political movements, solidarity funds, non-profit organizations and groups of citizens.[27]

40. The List of persons involved in extremist activities was first published in March 2022. At the end of March 2023, there were 2,637 individuals on the list. It includes all the individuals found guilty on the basis of one of the "extremist" articles, including foreign nationals (from the Russian Federation, Ukraine, Kazakhstan, Armenia, Azerbaijan, Germany, and Estonia). Political analysts, journalists, political activists, human rights defenders, heads of non-profit organizations, trade union representatives or civil activists can be found in this list. In addition to the deterrence effect and intimidation resulting from such listing, those included face professional and financial constraints.[28]

41. Two other lists exist in parallel and must be considered even though they are not directly labelled as "extremist". First, the List of persons involved in terrorist activities (1,038 entries as of 1 April 2023) is established on the basis of a verdict, or on the basis of the charges brought, within both framework of "terrorist" and "extremist" articles of the Criminal Code. Anyone listed is prohibited from any financial transaction. Secondly, there is a list of Nazi symbols that includes for instance the exclamation "Long live Belarus" and the response "Long live". The addition to the list is made by decree published on the Ministry's official website.

42. Such broad definitions can be used to undermine the realization of the rights to freedom of thought, conscience, religion, or belief, and freedom of expression, association, and peaceful assembly, and to curtail the right to participate in political and public life. The Rapporteur received consistent evidence that the law has been widely used, including retroactively, to punish dissenting views.

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[26] Human Constanta, *Overview of the fight against "extremism" in Belarus for October-December 2022*, https://humanconstanta.org/en/overview-of-the-fight-against-extremism-in-belarus-for-october-december-2022/.
[27] *Ibid.*
[28] *Ibid.*

43. On 14 May 2021 and 5 January 2022 respectively were adopted two laws with an apparent memorial purpose: the **Law "On the Prevention of the Rehabilitation of Nazism"** and the **Law "On the Genocide of the Belarusian People"**. Both introduce new provisions in the Criminal Code: new article 130(1) on rehabilitation of Nazism, providing for a maximum penalty of imprisonment for up to 12 years, and new Article 131(2), establishing criminal liability for "denial of genocide of the Belarusian people", providing for a maximum sanction of imprisonment for up to 10 years. In both cases, definitions appear to be vague, creating a high risk of extensive interpretation. The discourse of the authorities frequently leads them to equate extremism with Nazism or fascism, making those offences usable to repress opposition ideas and movements.

44. On 13 May 2022 was adopted the **Law No. 165-Z "On Amending the Criminal Code of the Republic of Belarus"**. It expands the possibility to pronounce death penalty for "preparing and attempting to commit acts of terrorism". This provision is a departure from international standards that requires not to expand death penalty where it has not been abolished, [29] and to reserve it only for the most serious crimes.[30] This change is all the more worrying as the notion of a terrorist act in Article 289 of the Criminal Code is vaguely and ambiguously worded and could potentially cover activities such as expressing dissent and the defence of human rights. Several UN Special Procedures experts have recently expressed their concerns about a broad interpretation of these provisions.[31] The OSCE expressed various apprehensions regarding the implementation of the death penalty in Belarus, specifically highlighting the absence of transparency and the difficulties faced in ensuring a fair trial and upholding the right to life.[32]

45. On 20 July 2022 was adopted the **Law No. 199-Z "On Amending the Criminal Procedure Code of the Republic of Belarus"**. It allows conducting trials *in absentia* of people charged of extremist or terrorist activities, and who reside abroad and "avoid" visits to the investigative and prosecutorial bodies. It appears from the documents received and the interviews conducted that, in such cases, the attorney is appointed by the investigative body and has to sign a "non-disclosure agreement" that impedes any type of communication around the information of the case.

46. Adopted on 5 January 2023, the **Law No. 242-Z to amend the law "On Citizenship of the Republic of Belarus"** allows the termination of Belarusian citizenship, even when acquired by birth, after a sentence confirming the participation of a person in "extremist activity" or causing "grievous harm to the interests of the Republic of Belarus". It has moreover a retroactive effect. This new law risk creating cases of statelessness, in disregard to Article 15(1) of the Universal Declaration of Human Rights.

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[29] Human Rights Committee, *General Comment No. 36: Right to life (article 6),* 3 September 2019, UN Doc. CCPR/C/GC/36.

[30] Commission on Human Rights, *Extrajudicial, summary or arbitrary executions, Report of the Special Rapporteur, Ms. Asma Jahangir, submitted pursuant to Commission on Human Rights resolution 2000/31,* 11 January 2001, UN Doc. E/CN.4/2001/9, para. 83.

[31] The Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the situation of human rights in Belarus and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (Special Procedures Communication to Belarus, 23 May 2022, OL BLR 3/2022).

[32] OSCE, ODIHR, *The Death Penalty in the OSCE area*, Background Paper 2022, https://www.osce.org/odihr/527082, pp. 40-45.

47. Lastly, the **Law "On Amendments to Codes on Criminal Liability"** of 9 March 2023 introduces in Belarusian criminal law a series of provisions of interest for the present report. First, it allows the death penalty for high treason under Article 356 of the Criminal Code, when the crime is committed by a state official or a person with the status of member of the armed forces. This incurs the same criticisms as those made above.[33] Considering the possibly extensive interpretation of "high treason" under this provision, it should be reminded that the death penalty should not be imposed on the basis of "vaguely defined penal provisions, the application of which to the individual convicted depends on subjective or discretionary considerations, the application of which is not reasonably foreseeable".[34]

48. The law also amends Article 369-1 of the Criminal Code, on "Discrediting the Republic of Belarus", establishing liability for the dissemination of deliberately false information that discredits the Armed Forces, other troops and military formations, paramilitary organizations of the Republic of Belarus. This provision lends itself to disproportionate interference with freedom of expression, because of the particularly vague nature of "discredit".[35] Yet, imprisonment is never an appropriate punishment for defamation or expression of criticism.[36]

49. The law also introduces new Article 289-1, on "Propaganda of terrorism" that significantly increases the amount of fines as additional punishment for crimes under a number of "terrorist" and "extremist" articles of the Criminal Code.[37] Such a fine may therefore be pronounced for "mass riots," "high treason," "conspiracy," "calls for sanctions", "creation of an extremist formation", or "financing of extremism".

2) Constitutional reform

50. Starting at the end of 2021 and implemented in 2022, the constitutional reform process raised issues of compatibility with international legal standards both on procedure and substance. The process, leading to the constitutional referendum of 27 February 2022, was considered lacking in transparency by the Venice Commission of the Council of Europe (see *infra*, III.A). The substance also raises a number of issues that will be outlined here.

51. The reform has reinforced the authoritative character of the regime, and risks worsening the human rights situation in Belarus[38] The constitutional reform strengthens the power of the President after the challenges to his power by the 2020 protests. It allows President Lukashenko to remain in office until 2035 and grants him immunity from prosecution. It also impedes political opponents in exile to be candidates for the presidential election as the new Article 80 of the Constitution increases from ten to twenty years the number of years during which a citizen must have permanently resided in Belarus in order to be elected to the presidency of the Republic, and prohibits candidacy for persons who previously possessed "a residence permit or other identity documents of a foreign state entitling them to benefits" (see *infra*, III.A).

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[33] UN Doc. CCPR/C/GC/36 (*supra*).
[34] *Ibid.*
[35] Human Rights Council, *Report of the Special Rapporteur on the Situation of human rights in Belarus, Anaïs Marin*, 4 May 2022, UN Doc. A/HRC/50/58.
[36] Human Rights Committee, *General Comment No.* 34*: Freedoms of opinion and expression (article 19)*, 12 September 2011, UN Doc. CCPR/C/GC/34.
[37] From 500 to 50,000 basic units (about $732,000).
[38] See European Commission for Democracy through Law (Venice Commission), *Belarus, Final Opinion on the Constitutional Reform,* adopted at its 132nd Plenary Session, Venice, 21-22 October 2022, CDL-AD(2022)035, p. 7, 18, 20.

52. The reform empowers the All-Belarusian People's Assembly as a "supreme representative body of the power of the people", above the Parliament and other representative bodies, and gives it the power to elect and dismiss the chairmen and judges from the Supreme Court. This structure is mainly composed of representatives of the executive power, including the President.[39]

53. As for human rights concerns, Article 32, as amended, is the most worrying. It creates additional duties for parents to prepare their children for "socially useful work" and to instil in them "culture and respect for the laws and historical and national traditions of Belarus". Failure to do so may result in the removal of their children by court order, as provided for in the unamended provisions of Article 32, according to which "children may be separated from their families against the will of their parents" if the parents "fail to perform their duties". In the same vein, Article 15, on "Preservation of historical truth", indicates that "the State guarantees the preservation of historical truth and the memory of the heroic deeds of the Belarusian people during the Great Patriotic War". While the preservation of historical memory is a legitimate goal, these provisions may severely infringe the freedoms of opinion and expression within the family home and outside, forcing members of society to adhere to a particular historical narrative or viewpoint. It thus contradicts Article 19 of the International Covenant on Civil and Political Rights.[40]

54. The reform also removed the statement that Belarus would be neutral and free of nuclear weapons, allowing Belarus to host nuclear weapons on its territory. This has prepared the increasing alignment of Belarus with Russia in its war against Ukraine (see *infra* II.B.3).

3) Other legislative amendments

55. Other new or amended laws, although not directly labelled "anti-extremist", still serve the same purpose. This applies in particular to freedoms of association, of expression, and of assembly.

56. Concerning associations, the participation in the activities of an unregistered association, previously prohibited as an administrative offence, was criminalized by a January 2022 amendment to the **Criminal Code** (see also *infra*, III.B). More recently, the **Law of the Republic of Belarus "On the foundations of civil society"**, adopted on 14 February 2023, introduced an official definition of "civil society". Although the law does not significantly modify the status of existing associations, it creates special forms of interaction with the State within the framework of the All-Belarusian People's Assembly (APA) (see also *infra* III.B).[41]

57. Another set of legislative amendments involve the risk of serious infringements of freedom of expression. The attention of the Rapporteur was attracted to the following changes in the **Criminal Code**: liability of the owners of internet resources for disseminating prohibited information (new Article 198-1); tightening of criminal responsibility for defamatory statements such as libel (Article 188, up to 3 years in prison), libel or insult against the President (article 367 and 368, up to 6 and 5 years in prison respectively); criminal liability for illegally collecting or obtaining information constituting state secrets for the purpose of their

[39] For a critical analysis of this organ, see *ibid.*, p. 13.
[40] Human Rights Council, *Report of the Special Rapporteur on the Situation of human rights in Belarus, Anaïs Marin*, 4 May 2022, UN Doc. A/HRC/50/58, para. 49.
[41] See the article-by-article commentary by Lawtrend, available at https://www.lawtrend.org/freedom-of-association/analiz-proekta-zakona-ob-osnovah-grazhdanskogo-obshhestva.

dissemination in the absence of signs of State treason or espionage (Article 375-1, up to 5 years).[42]

58. Key changes also appear in the 2021 revised **Law "On Mass Media"**: additional restrictions on the establishment and registration of Belarusian and foreign media (Articles 10 and 15 of the Law); responsibility for foreign media for the presence in their materials any information whose dissemination is likely to harm the national interests of the Republic of Belarus (Articles 17, 51 and 51-1 of the Law); establishment of an extrajudicial procedure to terminate the publication of a media outlet (Article 51 of the Law); additional grounds for withdrawing a journalist's accreditation (Article 35 of the Law)[43]; expanding the list of prohibited information (Article 38 of the Law), in particular the introduction of a ban on the publication of the results of unofficial opinion polls; right of prosecutors to restrict access to internet resources (Article 51-1 of the Law). Moreover, in 2021, by the amendments to the Law "On Mass Events", a ban on real-time broadcasting of "illegal" mass events for the purpose of their promotion and propaganda was introduced in article 11.[44]

59. The right of assembly has been further restricted due to amendments to the **Law on Mass Events** of 24 May 2021. The organization of mass events is no longer submitted to a notification procedure but to a prior approval procedure by local authorities.[45] It provides for the responsibility of political parties, association and their leader in case of public appeals to hold mass events before receiving such authorization. It also prohibits journalists from reporting on unauthorized demonstrations and treats them as participants. This is contrary to the right of peaceful assembly as recognized in article 21 of the ICCPR that enshrines journalists may not be prohibited from reporting on an assembly declared unlawful.[46] The OSCE has already expressed concern about this law, highlighting that some provisions "introduce prohibitive measures".[47]

60. Moreover, the **Code of Administrative Offences** has been amended in 2021 in order to introduce or increase liability for various acts. As will appear later in this report, administrative offences are widely used to limit freedom of expression and freedom of assembly (see *infra*, II.B and III.B). The changes consisted in increased liability for violating the procedure for organizing or holding public events (Article 24.23), and liability for insult to a State official performing his or her official duty particularly in a public speech, in the media or on the Internet (Article 24.4(2)), for violation by the driver of a vehicle of the rules for the use of sound signals at the venue of a public event (Article 18.13(4)), for deliberate blocking of transport communications by the driver of a vehicle at the venue of a public event (Article 18.1(2)). The

[42] Moscow Mechanism Belarus Joint Contribution, 13 April 2023, p. 5. References cross-checked on the National Legal Internet Portal of the Republic of Belarus (http://law.by/databank-business/list-of-legal-acts/?p0=11).
[43] The OSCE has already expressed great concerns about the procedure of accreditation of journalists in Belarus (see OSCE, *Legal Review of the Resolution of the Council of Ministers of the Republic of Belarus of 2 October 2020, No. 578,* January 2021, https://www.osce.org/representative-on-freedom-of-media/481264).
[44] Moscow Mechanism Belarus Joint Contribution, 13 April 2023, p. 5. References cross-checked on the National Legal Internet Portal of the Republic of Belarus (http://law.by/databank-business/list-of-legal-acts/?p0=11).
[45] "The Law on Mass Events has been signed", 24 March 2021, https://president.gov.by/ru/events/podpisan-zakon-o-massovyh-meropriyatiyah.
[46] Human Rights Committee, *General Comment No. 37: Right of peaceful assembly (article 21)*, 17 September 2020, UN Doc. CCPR/C/GC/37, para. 30.
[47] OSCE, *Legal Analysis of the Draft Laws of the Republic of Belarus "On Amending Legislation in the Sphere of Mass Media" and "On Amending the Law of the Republic of Belarus "On Mass Events in the Republic of Belarus"*, June 2021, https://www.osce.org/representative-on-freedom-of-media/490493.

maximum term for participating to a mass event, which is normally 15 days, may be expanded to 30 days in case of repeated participation in unauthorized mass events within a year.[48]

61. Besides, and with transversal effect, the right to a fair trial is undermined by the amendments made to the **Law on the Bar of 27 May 2021** that significantly expanded the powers of the Ministry of Justice to manage the institution of the bar. It was reported to the Rapporteur that, in practice, the Ministry of Justice, through its control on the bars, is in a position to interfere easily in the activities of lawyers.[49]

62. This impressive list of legislative changes shows the extent of the Belarusian government's response to the demonstrations and protests of the year 2020. They provide the government with an unprecedented arsenal of legislation designed to prevent any form of opposition or, more simply, any alternative.

B. Politically Motivated Repression

63. Under the mandate terms, the report should address "the circumstances surrounding the growing number of persons detained for politically motivated reasons". As regards the "surrounding circumstances" of politically motivated detention, the Rapporteur considers that they relate to public policies that would be put in place by the Government of Belarus resulting in an increasing number of political prisoners. Indeed, this phenomenon of detention of persons for political reasons, if confirmed, cannot be seen in isolation.

64. The previous section showed that the Law to Counter Extremism and other related legal instruments contain vaguely defined offences, which makes it usable for widespread political repression, depending on how it would be implemented. In addition, many other legislative changes that took place since 20 November 2020 could be used for the same political purpose. It is therefore worth investigating whether, as implemented, they form a coherent whole that could be described as "politically motivated repression". This inquiry will be articulated in three subsections: the relevant use of the term "persons detained for politically motivated reasons" (1); circumstances related to the internal public policies of the Republic of Belarus (2); circumstances related to the war in Ukraine (3).

1) Relevant use of the term "persons detained for politically motivated reasons"

65. The Rapporteur understands the term "persons detained for politically motivated reasons" as similar to the term "political prisoners". The latter term, which has the advantage of being shorter, is used several times in the UN Human Rights Council's resolution on Belarus of 27 March 2023.[50] However, a preliminary clarification is needed as to its meaning.

66. It is worth noting that in an interview with the BBC on 23 November 2021, President Lukashenko denied that there were any political prisoners in Belarus, as all persons detained

[48] Moscow Mechanism Belarus Joint Contribution, 13 April 2023, p. 7-8. References cross-checked on the National Legal Internet Portal of the Republic of Belarus (http://law.by/databank-business/list-of-legal-acts/?p0=11).
[49] Center for Constitutionalism and Human Rights, *et al.*, *The Crisis of the Legal Profession in Belarus: How to Return the Right to Defense,* 2023, https://drive.google.com/file/d/1cGbBv2r6bt5rCg7fOLAmGFoQLUBQQBvx/view, p. 30.
[50] Human Rights Council, Situation of human rights in Belarus in the run-up of the 2020 presidential election and in its aftermath, UN Doc. A/HRC/52/L.14, 27 March 2023, para. 3, 5, 9.

would be held on the basis of an offence under the law.[51] However, the existence of a legal basis is not necessarily sufficient to rule out the qualification of political prisoner, which is basically defined by the deprivation of liberty *and* by a motive that is in fact essentially political. For this reason, international organizations, NGOs active in this field, and independent media also use the term for cases of detention that may be formally justified by the commission or suspicion of commission of an offence, either criminal or administrative, but whose circumstances demonstrate that it is in fact intended to punish individuals for demonstrating or otherwise exercising their freedom of opinion and expression in a manner critical of the government. This is the sense in which the expression was used, in inverted commas, in the 2020 OSCE report on Belarus, with references to the sources alleging such violations of human rights.

67. An objective definition of "political prisoners" has been developed within the framework of the Parliamentary Assembly of the Council of Europe (PACE), with the following elements of definition:

> "A person deprived of his or her personal liberty is to be regarded as a 'political prisoner':
>
> a. if the detention has been imposed in violation of one of the fundamental guarantees set out in the European Convention on Human Rights and its Protocols (ECHR), in particular freedom of thought, conscience and religion, freedom of expression and information, freedom of assembly and association;
> b. if the detention has been imposed for purely political reasons without connection to any offence;
> c. if, for political motives, the length of the detention or its conditions are clearly out of proportion to the offence the person has been found guilty of or is suspected of;
> d. if, for political motives, he or she is detained in a discriminatory manner as compared to other persons; or,
> e. if the detention is the result of proceedings which were clearly unfair and this appears to be connected with political motives of the authorities."[52]

68. The Rapporteur has used this definition for the present report. He has examined the definitions used by the various NGOs that have drawn up lists of political prisoners in Belarus. Some differences in approach explain variations in the figures. He notes, however, that those on whose work he has relied on usually refer to the definition of PACE. Interestingly, some of them have undertaken to draft *Guidelines* to clarify its elements in the context of the events in Belarus since 2020.[53]

69. In this regard, the Rapporteur wishes to highlight the quality of the work done by the Center for Human Rights "Viasna" in establishing lists of political prisoners by applying high standards. This organization was established in 1996 by the Nobel Prizewinner Ales Bialietksi and is still subject to strong repression in Belarus as several of its members or volunteers are serving politically motivated sentences in prison. The organization lists political prisoners in Belarus in accordance with the criteria of PACE. The list is accessible on their website and

[51] "Belarus leader Lukashenko tells BBC the country may have helped migrants into the EU", BBC News, 23 November 2021, https://www.youtube.com/watch?v=ZdxBOOnVgnY.

[52] Parliamentary Assembly of the Council of Europe*, Resolution 1900 (2012)*, 3 October 2012, para. 3, after the work of a group of experts of the Secretary General set up in 2001 in the context of the accession of Armenia and Azerbaijan, SG/Inf(2001)34 and Addendum 1.

[53] Viasna, "Viasna supports guidelines aimed to define "political prisoner", 14 November 2013, https://spring96.org/en/news/67186.

shows the charges indicated for each inmate, the place of detention, the age, gender and date of detention.[54] Set against those criteria, Viasna judges that, as of 18 April 2023, there are currently 1,486 political prisoners.

70. Viasna also lists all the convicts in political criminal cases, showing the same data as the one used for political prisoners, but also the sentence, the penalty, the name of the judge and of the prosecutor, when available. The Rapporteur found both lists very valuable for his work and expresses his gratitude to this organization for explaining in detail its methodology.

71. These figures are reliable, and so considered in the last report of the UN Special Rapporteur on Belarus.[55] Nevertheless, the Rapporteur would like to stress that the reality of political detention in Belarus is broader. It was clear from the interviews conducted for the report that many political prisoners or their relatives refuse the inscription to the list, or simply do not provide information on their exact situation, as it can have a direct impact on the treatment received by them while in detention. Moreover, the persons held in administrative detention centres are not included in the lists of Viasna, except for those in detention for longer than 70 days. Most of them should also be considered political prisoners (see *infra* III.B, C, D for details).

2) Circumstances related to the internal public policies of the Republic of Belarus

72. The information available to the Rapporteur shows that the high number of political prisoners in Belarus is part of a pattern of public policies aimed at increasing politically motivated repression of the Belarusian people. This information cover, on the one hand, a consistent set of governmental practices and, on the other hand, a series of statements of the highest governmental authorities.

a) Consistent set of governmental practices

73. The very long list of amendments to the Belarusian law in the recent period (see II.A and Chronology in Annex I) shows in itself a legislative policy oriented towards a mainly repressive objective and aimed at strictly limiting the freedoms of opinion and expression in Belarusian society. This is confirmed by the implementation of this legislation and by the statements of the highest State authorities.

74. According to the 2020 OSCE Rapporteur's report on Belarus, around 13,000 persons were arrested in the immediate aftermath of the presidential election of August 2020 and up to 20 November 2020, but at that time the large majority was released without charges.[56] This attitude did not last. The subsequent penal policy directly targeted those who participated in the demonstrations. In an interview to the program "Panorama" on TV channel Belarus 1, on 7 March 2021, the Deputy Interior Minister and Chief of Criminal Police Gennady Kazakevich declared that "we have already identified persons involved in the so-called protest crimes in

[54] https://prisoners.spring96.org/en.
[55] See Human Rights Council, *Report of the Special Rapporteur on the Situation of human rights in Belarus, Anaïs Marin*, 4 May 2022, UN Doc. A/HRC/50/58, para. 78.
[56] OSCE Rapporteur's Report 2020, p. 32.

over 800 cases".[57] The same policy has been apply continuously since then, and people are still "routinely" prosecuted for their participation in the 2020 demonstrations.[58]

75. Subsequently, attacks on freedom of expression, the right to peaceful protest and freedom of association have taken the form of accusations of extremism, as documented by the Office of the United Nations High Commissioner for Human Rights.[59] It is reasonable to assume that this practice contributes significantly to the official figures for prosecutions for extremism: 11,000 criminal cases involving extremist crimes were open between 9 August 2020 and 1 July 2022 according to the official website of the Investigative Committee.[60]

76. Concordant sources describe "waves" of arrests targeting certain categories of people, which suggests a concerted effort within the State authorities to organize them. In December 2020, in January-February 2021, and in April 2021 occurred waves of arrests and detentions, especially of journalists, human rights defenders and trade unions activists.[61] On 18 and 19 April 2022, trade union premises and the homes of their leaders were searched and more than 20 union leaders were arrested.[62] On 27-28 February 2022, protests against the armed attack by the Russian Federation against Ukraine were repressed, leading to the arrest of about 1,500 people.[63] Most recently, a series of arrests occurred among attorneys defending individuals or associations accused of extremism.[64]

77. Inflicting very poor conditions of detention for those arrested on political grounds also seems to be a constant practice, given the recurrence of testimonies, including those heard by the Rapporteur during his mission. Persons detained for administrative offences all describe very poor conditions, including a high number of detainees in the same cell while other parts of the detention centre are empty. For people who have been convicted by a criminal court, conditions of detention can be harsher than for other detainees, particularly when the prison administration has imposed on them the wearing of a distinctive sign supposed to warn of their dangerousness (see *infra*, III.E). These elements of discrimination have an impact not only on the detainees, but on their relatives too.

78. In Summer 2021, the government decided and implemented a policy to suppress large parts of the civil society for political reasons. This resulted in an unprecedented number of closures of associations, especially those active in the field of human rights' defence, but not only.[65]

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[57] "Kazakevich: we will find and punish everyone involved in the organization of protests in the country", belta.by, 7 March 2021, https://www.belta.by/society/view/kazakevich-my-najdem-i-nakazhem-kazhdogo-prichastnogo-k-organizatsii-aktsij-protesta-v-strane-431671-2021/.

[58] Viasna, *Human Rights Situation in Belarus: March 2023*, https://spring96.org/en/news/111306. For instance, on 13 March 2023, a children's football coach, Aleh Shvaiko, was convicted by the Maskoŭski District Court of Minsk for his involvement in the 2020 protests. He was charged under Part 1 of Art. 342 of the Criminal Code, and sentenced to two years in prison.

[59] OHCHR, *Situation of human rights in Belarus in the run-up of the 2020 presidential election and in its aftermath,* 3 February 2023, UN Doc. A/HRC/52/68, para. 34.

[60] "The Investigative Committee summed up the results of work in the first half of the year", 11 August 2022, https://sk.gov.by/ru/news-ru/view/v-sledstvennom-komitete-podveli-itogi-raboty-za-pervoe-polugodie-11675/.

[61] OHCHR, Situation of human rights in Belarus in the run-up of the 2020 presidential election and in its aftermath, 3 February 2023, UN Doc. A/HRC/52/68, para. 23.

[62] See *infra*, III.B.3.

[63] OHCHR, Situation of human rights in Belarus in the run-up of the 2020 presidential election and in its aftermath, 3 February 2023, UN Doc. A/HRC/52/68, para. 25.

[64] "The names of the attorneys detained on March 20 have become known", defenders.by, 21 March 2023, https://www.defenders.by/news/tpost/0j9p1hd411-stali-izvestni-imena-zaderzhannih-20-mar.

[65] Human Rights Council, *Report of the Special Rapporteur on the Situation of human rights in Belarus, Anaïs Marin*, 4 May 2022, UN Doc. A/HRC/50/58, para. 95.

According to reliable evidence based on open sources, a quarter of the country's associations have since been closed (see details *infra* III. B).

79. Several persons interviewed by the Rapporteur described common police practices of checking people in the street who appeared suspicious for reasons such as the use of the Belarusian language, the wearing of certain clothes or certain attitudes. They then ask to look at their mobile phones, in order to search for traces of opinions that do not conform to government policy, for example by consulting certain Instagram channels or private conversations.[66] The presence of such elements can then lead to an arrest and be used with other elements to initiate criminal or administrative proceedings.

80. The data available to the Rapporteur show that a large number of measures based on criminal charges or administrative offences have been taken against persons or associations that might express or relay political views divergent from those of the government, or against persons who might provide them with assistance, including legal or financial assistance.

81. The repressive policy of the Belarusian government is also characterized by the creation of databases and the publication of information on persons accused of extremism. The Ministry of Internal Affairs has established a database, known as the BESporiadki database, that records participation in unauthorized demonstrations. This system compiles reports on individuals and groups of people. It is used for arrests, police checks, tax inspections, border crossing, access to employment. [67] Several lists of people or associations accused of extremism are also public: they can easily be accessed on the internet (see *supra*, II.A.1). This serves to stigmatize and intimidate the people concerned in the general population.

82. Moreover, the police seem to have a regular practice of filming confessions of suspects, including minors, in circumstances that strongly suggest they were obtained by pressure or coercion. These confessions are regularly posted on pro-government Instagram channels. Such leaks obviously violate the right to image and the dignity of individuals. They aim to create a sense of fear in the population at large.

b) Officials statements

83. The conscious design and implementation of a State's repressive policy also emerges from statements by the highest authorities of the Republic of Belarus.

84. In an interview of 7 March 2021, quoted above, the Deputy Interior Minister said that "law enforcement bodies will find and punish everyone involved in the organization of protests in the country."[68] The use of the criminal law is thus expressly directed against people who would exercise their right of assembly to peacefully oppose government policy.

85. On 9 March 2021, the director of KGB, Ivan Tsertel, speaking on the State's TV channel, warned that "specific individuals were about to destabilise the situation in the country on 25-27 March". He was talking in the context of a request of opposition political parties to the

[66] CSO Meter, *Belarus 2021 Country Report*, https://csometer.info/sites/default/files/2023-04/CSO%20Meter%20Belarus%20Country%20Report%20ENG%200-2_0.pdf, p. 67.
[67] *Ibid*., p. 76.
[68] "Kazakevich: we will find and punish everyone involved in the organization of protests in the country", belta.by, 7 March 2021, https://www.belta.by/society/view/kazakevich-my-najdem-i-nakazhem-kazhdogo-prichastnogo-k-organizatsii-aktsij-protesta-v-strane-431671-2021/.

municipality of Minsk to authorize a rally on so-called Freedom Day of March 2021. The authorization was later refused on the pretext of the covid-19 pandemic.[69]

86. On 10 April 2021, the Minister of Foreign Affairs of Belarus, Vladimir Makei, referring to Belarusians in exile calling for sanctions against the regime, warned that "[a]ny further tightening of sanctions will lead to the fact that civil society they 'care' about will cease to exist". The forthcoming wave of liquidation of associations is therefore presented as a possible retaliatory measure to external pressure, and hence politically motivated.[70]

87. The policy directed towards civil society for political purposes was assumed by the President of the Republic himself. On 30 July 2021, he held a meeting with senior local government officials that was reported on the website of Belta. On this occasion, he made a series of remarks that link the targeted associations to foreign influence and fascist ideology and describes the activity of these associations as subversive.[71] Belta reports the following figures: the investigation revealed the existence of 185 "destructive organizations posing a potential threat to national security".[72]

88. In an interview with the BBC on 23 November 2021, President Lukashenko readily admitted that violence was committed at a well-known detention centre called Okrestina: "I admit, I admit... People were beaten in Okrestina, but there were police beaten up too".[73] Such a statement by the highest State official is likely to encourage the disproportionate use of violence against perceived opponents at the time of arrest as well as in all detention facilities. The same interview is equally clear about the associations targeted for closure. To a question from the journalist explaining that 270 NGOs have been closed since July, he replied that "We'll massacre all the scum that you have been financing (...) If we haven't liquidated them already, we will do so in the near future".[74] The link with foreign funding seems here to be the only motivation for the attack on those associations.

89. On 19 April 2022, a meeting was organized by the President of the Republic on "ensuring law and order in the country". It was presented as the first of its kind since the changes in the heads of the various State agencies after the 2020 presidential election. A report is available on the official website of the Presidency of the Republic. According to it, Interior Minister Ivan Kubrakov, who was speaking about extremist crimes including terrorism, said: "[t]he so-called traditional preventive measures have not prevented the commission of these crimes. Rough

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[69] CSO Meter, *Belarus 2021 Country Report*, p. 46.

[70] "FM slams 'pseudo-patriots' calling for sanctions against Belarus", belta.by, 12 April 2021, https://eng.belta.by/politics/view/fm-slams-pseudo-patriots-calling-for-sanctions-against-belarus-138984-2021/.

[71] "Lukashenko: NGOs serve foreign political interests disguised as charitable causes", belta.by, 30 July 2021, https://eng.belta.by/president/view/lukashenko-ngos-serve-foreign-political-interests-disguised-as-charitable-causes-142089-2021/. Quotes of President Aleksandr Lukashenko: "[a] clear-cut pattern has been revealed: the growing number of NGOs is the writing on the wall saying that color revolutions are in the works. Under the guise of charitable causes, socially important projects, they are serving someone else's political interests. This is what happened here". He added that "Each structure has tens and hundreds of activists; thousands of people have fallen under their influence. In fact, a legal instrument was created to run destructive activities of foreign coordinators who selected personnel and trained them in psychology of communication (not all, managers), the skills of uniting people at protest actions. We saw it in August. We know who handpicked people having the potential to lead the protest movement, who built their public profile and financed their activities".

[72] *Ibid*.

[73] "Belarus leader Lukashenko tells BBC the country may have helped migrants into the EU", BBC News, 23 November 2021, https://www.youtube.com/watch?v=ZdxBOOnVgnY.

[74] *Ibid*.

detentions of criminals have had a rather effective and even sobering effect."[75] Rough detention is thus conceived as an element of the State's criminal policy on countering extremism.

3) Circumstances related to the war in Ukraine

90. The outbreak of Russia's war of aggression against Ukraine on 24 February 2022, which was partly launched from the territory of Belarus,[76] had a direct impact on the living conditions of its population, including the enjoyment of human rights. It also highlighted the intertwining of domestic and international policies pursued by the Belarusian government. In line with the OSCE's human dimension approach, the policy of politically motivated repression should be analysed in the broader context of regional security, as was requested in the mandate of the present mission.

91. The connection between the war in Ukraine and the situation of human rights in Belarus appeared clearly at the time of the constitutional referendum of 27 February 2022, because of the substance of the proposed amendments to the Constitution, and because of the anti-war protests that occurred at this occasion.

92. The constitutional referendum was organized under particularly questionable conditions and was held on 27 February 2022, a few days after Russian troops entered Ukrainian territory. This proximity of the two dates was probably not the most fortunate circumstance to ensure a smooth voting process. One of the proposed amendments took on a particular connotation: the one allowing the presence of nuclear weapons on Belarusian soil (see *supra* II.A). This came to fruition on 25 March 2023, when Russian President Vladimir Putin announced on Russian public television that tactical nuclear weapons would be deployed in Belarus, in agreement with President Alexander Lukachenka, which was officially confirmed by Belarus authorities only three days later.[77] According to media reporting, President Putin added that President Lukachenka "had long raised the issue of stationing tactical nuclear weapons in Belarus".[78] Lastly, on 6 April 2023, Belarus and Russia "agree to extend some military agreements".[79] This was announced during a meeting of the Union State of Belarus and Russia – an interstate association created in 1996 – in presence of the two heads of State.

93. Ironically, the constitutional revision adopted by referendum on 27 February 2022 introduced a new provision that "[t]he Republic of Belarus shall exclude acts of military aggression against other states from its territory" (Article 18(2)). As the Venice Commission of

[75] "Meeting on ensuring law and order in the country", 19 April 2022, https://president.gov.by/ru/events/coveshchanie-po-voprosu-obespecheniya-zakonnosti-i-pravoporyadka-v-strane?openVideo=true.

[76] In resolution A/RES/ES-11/1 of 2 March 2022, the General Assembly of the United Nations "*Deplores in the strongest terms* the aggression by the Russian Federation against Ukraine in violation of Article 2 (4) of the Charter" (para. 2), and "*Deplores* the involvement of Belarus in this unlawful use of force against Ukraine, and calls upon it to abide by its international obligations (para. 10).

[77] A. Osborn, "Belarus says it will host Russian nuclear weapons to counter NATO", Reuters, 28 March 2023, https://www.reuters.com/world/europe/belarus-says-it-decided-host-russian-nuclear-weapons-after-nato-pressure-2023-03-28/.

[78] "Putin: Russia to station nuclear weapons in Belarus", *BBC News*, 26 March 2023, https://www.bbc.co.uk/news/world-europe-65077687.

[79] News reported on the official website of the Republic of Belarus ("Belarus, Russia agree to extend some military agreements", 6 April 2023, https://www.belarus.by/en/government/events/belarus-russia-agree-to-extend-some-military-agreements_i_0000155082.html).

the Council of Europe noted, this provision was grossly violated as soon as it came into force,[80] because acts of aggression by Russian forces against Ukraine subsequently took place from the territory of Belarus, as is widely documented. Such a discrepancy in the respect or violation of constitutional provisions can only undermine the idea of a State governed by law and suggests that the Constitution is only an instrument in the hands of the authorities.

94. Some Belarusian citizens took advantage of the referendum to gather spontaneously outside the polling stations to protest against the Russian war of aggression against Ukraine. These protests, which also took place the following day, were severely repressed by the Belarusian authorities. Hundreds of persons were reportedly arrested in different cities in Belarus on 27 February alone.[81] In total, the number of arrests would be around 1,500 during these days.[82] Most of them were arrested and detained for expressing an anti-war position under article 24.23 of the Code on Administrative Offenses for "Violation of the procedure for organizing or holding mass events".

95. Moreover, numerous arrests and detentions have subsequently taken place, with different degrees of involvement.[83] Many cases concern the mere expression of ideas hostile to the war in Ukraine. Some persons were prosecuted with heavy charges such as "inciting enmity" (Article 130 of the Criminal Code), for simply posting anti-war tags on social networks, or giving an interview criticizing government policy towards Ukraine in an independent media. These are clear violations of freedom of expression (see also *infra*, III.B).

96. In addition, there are citizens or groups of citizens who have engaged in more directly pro-Ukraine actions by seeking to publish information about Belarusian involvement. This has been the case for filming aircraft in flight, charged as "aiding extremist activities" (Article 361-4 of the Criminal Code), or photographing military installations, charged as "high treason" (Article 356 of the Criminal Code). Those cases led to sentences of several years in prison.

97. At a higher level of involvement, those who damage railway tracks to slow down Russian troops and equipment (so-called "rail partisan") or sabotage Russian military installations are prosecuted as acts of terrorism and face many years in prison or even the death penalty. The Investigative Committee announced on 26 November 2022 that some 30 criminal cases had been opened under the article criminalizing "acts of terrorism".

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[80] European Commission for Democracy through Law (Venice Commission), *Belarus, Final Opinion on the Constitutional Reform,* adopted at its 132nd Plenary Session, Venice, 21-22 October 2022, CDL-AD(2022)035, para. 32.

[81] Estimated figures for that day differ depending on sources and, probably, on information gathered over time. See Human Rights Council, *Report of the Special Rapporteur on the Situation of human rights in Belarus, Anaïs Marin*, 4 May 2022, UN Doc. A/HRC/50/58, para. 90 (around 500); Amnesty International, *Report 2022/23*, https://www.amnesty.org/en/documents/pol10/5670/2023/en/, p. 90 (around 700); Moscow Mechanism Belarus Joint Contribution, 13 April 2023, p. 15 (around 900). The total for the two days is more consensual. For details, see: Viasna, "Crackdown on antiwar protests in Belarus cities and small towns", 9 April 2022, https://spring96.org/en/news/107597.

[82] OHCHR, Situation of human rights in Belarus in the run-up of the 2020 presidential election and in its aftermath, 3 February 2023, UN Doc. A/HRC/52/68, para. 25.

[83] On the cases mentioned in this paragraph and the following ones, see in particular Human Constanta, *Overview of the fight against 'extremism' in Belarus for October-December 2022* (https://humanconstanta.org/en/overview-of-the-fight-against-extremism-in-belarus-for-october-december-2022/); The International Committee for Investigation Torture in Belarus, *"We went out for peace but ended up in prison" – Anti-War Actions of Citizens and the Reaction of the Belarusian Regime*, Seventh Interim Report, 43 p., https://torturesbelarus2020.org/en/belarusian-participation-in-the-war-in-ukraine-regime-and-people/; Viasna, "Shot in knees and jailed: what Belarusians risks for their anti-war stance", 24 January 2023, https://spring96.org/en/news/110533.

98. There were reports of torture of those who supported ideas hostile to the war and the official government position, regardless of the degree of involvement.

99. The Belarusian authorities themselves seem to link the war in Ukraine with the policy of repression within the country. President Lukashenka made this point at an official meeting of the Government on a law and order of 19 April 2022.[84] As reported on the official website of the Presidency of the Republic of Belarus, he said that "[t]he issue of countering terrorist and extremist threats remains a pressing one", and that complacency would be misplaced; he then reminded "what happened in 2020", and added that "Maybe today someone wants to go to war, as it is happening in Ukraine? Well, this is the way - of carelessness, bureaucracy, and lack of action. It is you who probably just don't know much about what happens as a result of modern warfare. And I am well immersed in this war and see what is going on. It is better to be away from war, it is better that we do not have it here, on our soil". Although the logic of the speech is not entirely clear, it would seem that the president justifies the wave of repression within Belarus by the threat of an extension of the war on Belarusian soil if pro-democracy movements could express themselves as they did in 2020. However, Belarus is already involved in the war, while massively limiting the human rights of its population.

100. Lastly, the context of the war in Ukraine seems to have had another effect, that of triggering a reflection on conscription and the duration of military service. A draft law amending the 1992 conscription law started to be discussed in the Belarusian parliament on 23 June 2022 and passed its first reading on 12 October 2022. The length of compulsory service would be increased from 24 to 60 months and the grounds for exemption would be reduced.[85] While the law has not yet been finally adopted, the health requirements related to military duty have already been lowered.[86] In addition, in practice, eligibility checkups for military service would be strengthened.

101. The implementation of all the texts relating to so-called "extremism" thus led to a co-ordinated policy of the Belarusian government, which targeted different categories of the population and used a wide range of means to suppress any form of opposition in the country. These methods, supported by clear statements from the highest authorities, continued at the time of the outbreak of the war in Ukraine in such a way as to stifle any criticism of the regime's foreign policy and even any expression of sympathy for the Ukrainian people. This overall policy was constantly reinforced between 2020 and 2023. It is the framework within which the Belarusian government has carried out a large number of actions that violate human rights.

[84] "Meeting on ensuring law and order in the country", 19 April 2022, https://president.gov.by/ru/events/coveshchanie-po-voprosu-obespecheniya-zakonnosti-i-pravoporyadka-v-strane?openVideo=true.
[85] See https://pravo.by/document/?guid=3941&p0=2022044009.
[86] Decree of the Ministry of Defense of the Republic of Belarus and the Ministry of Health of the Republic of Belarus, No. 1/10, 18 January 2023, https://pravo.by/document/?guid=12551&p0=W22339478&p1=1&p5=0.

III. Actions of the Belarus Government: Alleged Violations of Human Rights

102. The actions of the government that may be classified as human rights violations are outlined below in seven sections, following the structure of the 2020 OSCE Rapporteur's report on Belarus with few adaptations. The aim is to ensure continuity in the assessment of the situation, in conformity with the mandate of the present mission. Developments will therefore be devoted to political rights and the democratic process (A), freedoms of assembly and association (B), freedom of expression and the right of access to information (C), rights to liberty and security (D), torture and other cruel, inhuman, or degrading treatment or punishment (E), fair trial (F), and impunity and lack of effective remedies (G). They reveal a very large number of actions that pose a serious threat to the human dimension of the OSCE.

A. Political Rights and Democratic Process

103. The 2020 OSCE Rapporteur's report on Belarus analysed in depth the violations of political rights in relation to the presidential elections of 2020, which was marred by fraud.[87] During the period under review in the present report, the political rights of Belarusian citizens and the prospect of democratization continued to deteriorate. The general climate of repression and the increase in human rights abuses have restricted civic life, in contradiction to the commitments taken under the framework of the OSCE human dimension. In order to appreciate the compatibility of the actions of the Belarusian government with democratic standards, regular reference will be made in this subdivision to the work of the European Commission for Democracy through Law of the Council of Europe, also known as "Venice Commission", whose expertise in this field is particularly well established. Three points will be particularly emphasized: changes to the status of political parties (1), the conduct of the constitutional referendum of 27 February 2022 (2) and limitation or loss of political rights (3).

1) Political Parties

104. During the period under review in the present report, the extensive effort to amend Belarusian law to weaken any form of political opposition has also affected the status of political parties. On 14 February 2023 was adopted the Law "On amending laws on the activities of political parties and other public associations".[88] The conditions for setting up a new party have been tightened: the initiative must now come from 5,000 people instead of 1,000, and the party must have offices in all regions of the country and in the capital, as well as in at least one third of the districts within each region and in the capital. In the current climate in Belarus, it is highly unlikely that 5,000 citizens would dare to create a party that does not have the approval of the authorities. In addition, the law provides for the need to re-register all political parties. Pre-existing parties should be automatically re-registered, but refusal is possible if the conditions are not met. The process is not yet complete, given the recent adoption of the law. It will therefore be necessary to observe the practice.

105. Regardless of this new law, the life of political parties is likely to be hampered by the set of rules limiting freedom of expression (see *infra*, C). In particular, opposition political parties are likely to face a new constitutional provision, introduced by the 2022 reform. According to Article 4 of the Constitution as amended, "Democracy in the Republic of Belarus shall be

[87] OSCE Rapporteur's Report 2020, pp. 10-21.

[88] "Aleksandr Lukashenko signs laws on civil society, political parties", 14 February 2023, https://president.gov.by/en/events/aleksandr-lukashenko-podpisal-zakon-ob-osnovah-grazhdanskogo-obshchestva-i-popravki-v-zakony-o-deyatelnosti-partiy-1676453248.

exercised on the basis of the ideology of the Belarusian state as well as on the diversity of political institutions and opinions." Commenting on this provision, the Venice Commission expressed its concerns that this could be used as a "a tool for limiting democratic freedoms", because all public life would be placed within the framework of a State ideology.[89]

2) The constitutional referendum of 27 February 2022

106. As part of its reassessment of Belarusian law after 2020, the Belarus government engaged a constitutional reform that led to the referendum of 27 February 2022. The content and the process of the amendments to the Constitution have been analysed in detail by the Venice Commission. Its conclusion is that "the constitutional amendments fail to correct the strong unbalance of powers which already existed in the Constitution of 1996 as amended, and indeed even aggravate it, facilitating the operation of an authoritarian regime", and that "the constitutional amendments were adopted in disregard of the basic democratic principles".[90]

107. As for the process, the Venice Commission noted several problems: the limited involvement of the Parliament, the lack of openness of the Constitutional Commission in charge of drafting the amendments, the context of violations of human rights and repression against political opposition forces within the country, the fact that the referendum took place at the beginning of the conflict in Ukraine in which Belarus was involved. Concerning the internal context in Belarus, its opinion notably pointed out the "imprisonment of opposition politicians and crack-down of oppositional political forces and civil society."[91]

108. The UN Special Rapporteur on Belarus also underlined that, according to Article 138 of the Belarus Constitution, constitutional reform is a prerogative of the Parliament, while the involvement of the Parliament was very low and the main part of the project was drafted by an *ad hoc* commission placed under the administration of the presidency.[92] Moreover, Belarusians living in other countries, including those in exile, could not exercise their right to vote, since no polling station was set up in Belarus consulates.[93] Other sources criticized the composition of electoral commissions throughout the country for their lack in transparency and in diversity of political opinions.[94]

3) Limitation or loss of political rights

109. Legislative and constitutional changes also affected the right to vote and stand for election of certain persons. According to new Article 64(2) of the Constitution, "Citizens who are deemed incapable by a court or kept in places of confinement in accordance with a court sentence shall not have the right to elect and be elected". Such a general restriction was

[89] European Commission for Democracy through Law (Venice Commission), *Belarus, Final Opinion on the Constitutional Reform,* adopted at its 132nd Plenary Session, Venice, 21-22 October 2022, CDL-AD(2022)035, para. 28.
[90] *Ibid.*, para. 96.
[91] *Ibid*., para. 19-22.
[92] Human Rights Council, *Report of the Special Rapporteur on the Situation of human rights in Belarus, Anaïs Marin*, 4 May 2022, UN Doc. A/HRC/50/58, para. 41-42.
[93] *Ibid*., para. 43.
[94] Belarusian Helsinki Committee and Viasna, *Preliminary Analytical Report of the Expert Mission to Assess the 2022 Nationwide Referendum on Amendments to the Constitution of the Republic of Belarus*, 28 February 2022, https://spring96.org/files/misc/referendum_2022_observation_report_en.pdf.

considered excessive by the Venice Commission as it does not take into account the seriousness of the offence and risks depriving all detained opponents of political rights.[95]

110. The right to stand for presidential elections has been limited by the introduction of a new condition that the candidate should not have had "citizenship of a foreign state or a residence permit or other document of a foreign state that entitles one to benefits and other privileges" (Article 80). This will lead to the exclusion of any Belarusian citizen outside Belarus with a residence permit or equivalent. Although the scope of application potentially covers all Belarusians living abroad, it will particularly affect political opponents in exile.

111. But the most extreme measure is the one that allows a person's Belarusian nationality to be terminated, with the consequence that he or she loses all political rights. This was made possible by an amendment to Article 10 of the Constitution.[96] This provision has recently been specified by Law No. 242-3 to amend the law "On Citizenship of the Republic of Belarus", adopted on 6 January 2023. Under Article 19 of this law, loss of nationality would be decided "in connection with existing and entered into legal force sentence of a Court of the Republic of Belarus confirming participation of this person in extremist activities or causing serious harm to the interests of the Republic of Belarus, – if such a person is outside the Republic of Belarus". No cases have been brought to the attention of the Rapporteur, which is normal given the recent entry into force of the law. However, it is to be feared that it will be used in the future against political opponents facing such charges and exiled abroad. The implementation of this law risks creating stateless persons, since it applies to persons who received their nationality at birth. This would be in direct contradiction with Article 15(1) of the Universal Declaration of Human Rights.

B. Freedoms of Assembly and Association

112. The relevant facts about freedom of assembly and association during the reporting period are the repression of peaceful demonstrations (1), the destruction of a large part of civil society (2), and the targeting of independent trade unions (3). They form a coherent whole revealing an overall policy (see *supra*, II.B). This section will seek to report on specific actions of the Belarus government and of the methods used.

1) Repression of peaceful demonstrations

113. During the last two years, no permission to demonstrate was granted by the Belarusian authorities to associations or movements advocating pro-democratic ideas or perceived as political opponents. Spontaneous rallies, which took place on the margins of public events or on symbolic dates, were dispersed and numerous arrests took place. This occurred for instance during the Freedom Day on 25 March 2021, during the day of the annual demonstration Čarnobyĺski šliach ("Chernobyl Way") on 26 April 2021, and during the protests against the launch of a war of aggression against Ukraine that took place on the sidelines of the referendum on 27 February 2022.[97]

[95] European Commission for Democracy through Law (Venice Commission), *Belarus, Final Opinion on the Constitutional Reform,* adopted at its 132nd Plenary Session, Venice, 21-22 October 2022, CDL-AD(2022)035, para. 44.
[96] See OHCHR, Situation of human rights in Belarus in the run-up of the 2020 presidential election and in its aftermath, 3 February 2023, UN Doc. A/HRC/52/68, para. 51.
[97] Moscow Mechanism Belarus Joint contribution, 13 April 2023, p. 15. See also *supra* II.B.

114. The authorities made extensive use of Article 24.23 of the Code on Administrative Offences, which deals with "[v]iolation of the procedure for organizing or holding mass events". [98] The penalties for the various offences defined in this article are "the imposition of a fine in the amount of (...), or community service, or administrative arrest". The latter option has been widely used.

115. According to the information sent to the Rapporteur by a coalition of NGOs and based on cases collected by the Human Rights Centre "Viasna", at least 6,443 persons were arrested in 2021, among which at least 3,060 were convicted under administrative procedures; among these, 2,186 were sentenced to short terms of administrative imprisonment, and 836 received an administrative fine. In 2022, "Viasna" recorded 6,381 arrests, leading to at least 3,272 convictions under administrative procedures; among these, 2,274 were sentenced to short terms of administrative imprisonment and 938 were fined.

116. In addition, some individuals have subsequently been criminally prosecuted, either on the basis of the same facts or with additional elements. The practice of the police seems to be to seek additional information to trigger a criminal investigation by searching flats or seizing mobile phones. During arrests, there are regular reports of requests for passwords to access the contents of mobile phones and computers. The Rapporteur heard two victims of such incidents explain the pressure to obtain such passwords.

117. The right to assembly has also been seriously infringed for meetings that some associations tried to organize indoors, in private locations such as venues, halls, centres and creative spaces. This happened for example in March 2021 for a meeting of the League of Student Associations in Minsk, and a meeting of the Belarusian language association Mova Nanova in Volkovysk, where a number of participants very arrested. Some of these venues were subsequently closed and their owners and managers were criminally charged and prosecuted.[99]

2) Destruction of large part of civil society

118. A campaign targeting a large number of associations has been decided at the highest level of the State in 2021, as was expressed in a series of speeches of members of the Government and the President himself (see *supra*, II.B).

119. Apart from groups with specific status such as political parties and trade unions, there are three types of associations. The first one is "establishments", for which there is no need for a court decision to be liquidated; the decision of a registration board suffices, with possible review by a court. It was reported to the Rapporteur, and confirmed by a witness, that, usually, an order from KGB agencies or from tax offices would be enough for such administration deregistration. An interviewee testified that her association was liquidated on the basis of a classified order, which, according to the officials of the register office, makes judicial review useless. The second type is public associations; here the registration board needs to file a case in court. The last type, and less commonly used, is foundations, for which a court decision is also needed.

120. In practice, there have always been unregistered associations, and some of the recently deregistered associations have tried to pursue their activities without a legal status. But such behaviour has been re-criminalized through recent amendment to the Criminal Code (Article

[98] Code available at: http://law.by/document/?guid=3871&p0=HK2100091.
[99] CSO Meter, *Belarus 2021 Country Report*, p. 42-43. The report cites, for example, the names of Pavel Mazheika in Hrodna, Viktor Klimus in Brest, Pavel Belavus in Minsk.

193). According to the last report on Belarus of the UN High Commissioner on Human Rights, criminal proceedings have been initiated in 2022 on this basis.[100]

121. To the knowledge of the Rapporteur, no official figures on the overall number of liquidated civil society groups are published on official websites of the Belarus Government. He therefore finds it reasonable to rely on the data collected by the NGOs Lawtrend and the Office for European Expertise and Communication, whose methodology consists in looking at public registers of associations and court decisions. They keep an up-to-date list of associations wound up since 2021, which the Rapporteur was able to consult.

122. On this basis, since September 2020 and until the end of February 2023, at least 797 non-profit organizations have been forced to close, either through judicial proceedings for forced liquidation or through forced remove from the Unified State Register of Legal Entities and Individual Entrepreneurs (USR). In addition, the number of associations which decided to self-liquidate would be 432. The total number would therefore be 1,129, including public associations, trade unions, foundations, non-governmental institutions and associations.[101] The type of associations concerned is not limited to those specialized in human rights advocacy. There were also ecological associations, children's rights organizations, or even organization working on social issues.

123. The number of liquidated non-profit organizations from civil society would amount to at least one quarter of civil society organized groups. This estimation does not take into account organizations that are currently subject to legal proceedings.[102]

124. The Belarusian government is now trying to control the remaining associations by integrating them into parastatals, under condition on their full adherence to official policy. The new Law "On amending laws on the activities of political parties and other public associations" of 14 February 2023 creates a special category for a limited number of very large associations which will benefit from special forms of interaction with the State. Those which satisfy the conditions are the Federation of Trade Unions of Belarus (over 4 million people), Belaya Rus (over 188,000 people), the Belarusian Republican Youth Union (over 380,000 people), the Belarusian Union of Women (140,000 people), and the Association of Veterans (over 2 million people). These associations interact through the election of delegates from civil society to the All-Belarusian People's Assembly (APA).[103] It is probable that those ones would, in practice, be privileged to receive public funding.

3) Trade Unions

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[100] OHCHR, Situation of human rights in Belarus in the run-up of the 2020 presidential election and in its aftermath, 3 February 2023, UN Doc. A/HRC/52/68, para. 37.

[101] Lawtrend, *Monitoring the situation of freedom of association and civil society organisations in the Republic of Belarus*, February 2023, https://www.lawtrend.org/english/monitoring-the-situation-of-freedom-of-association-and-civil-society-organisations-in-the-republic-of-belarus-february-2023, p. 1. See also the figures quoted in the report of the UN High Commissioner for Human Rights, *Situation of human rights in Belarus in the run-up of the 2020 presidential election and in its aftermath*, 3 February 2023, UN Doc. A/HRC/52/68, para. 37 (as of December 2022).

[102] Moscow Mechanism Belarus Joint Contribution, 13 April 2023, p. 21. According to this source, as of 1 January 2023, the total number of officially registered civil society organizations in Belarus consist of "20 trade unions (minus five as for the beginning of the previous year), 2,544 public associations (213 international, 668 national and 1,663 local) and an unknown quantity of foundations and private institutions".

[103] Lawtrend, *Monitoring freedom of association*, February 2023, p. 6.

125. In 2022, the Belarussian trade union movement supported unprecedented pressure. Concordant sources describe "waves" of searches, followed by arrests and detention targeting trade union activists. Most notably, on 18 and 19 April 2022, raids and searches were undertaken at several independent trade unions' offices and trade union leaders' homes. Among those specifically targeted were the Belarusian Congress of Democratic Trade Unions and its affiliates, the Belarusian Independent Trade Union of Mineworkers, Chemists, Fuel and Energy Workers, Transport Workers, Workers and Other Workers, the Belarusian Radio-Electronic Manufacturing Workers' Trade Union, the Free Trade Union of Belarus, and the Free Trade Union of Metalworkers.

126. On 19 April 2022, more than 20 trade union leaders and members – including Alexander Yaroshuk, who is also a member of the ILO Governing Body – were arrested on unclear grounds, then charged under article 342 of the Criminal Code ("organizing or preparing activities that gravely breach public order") and, for some of them, under Article 130 of the same Code (incitement of enmity).[104] This arrest campaign raised the attention of the International Labour Organization: its Director-General Guy Rider expressed deep concern and called for the release of the detainees and the adoption of "all necessary measures to ensure that they can carry out their trade union activities in a climate free from violence, intimidation, or threat of any kind".[105] In November 2022, there were still 23 trade unionists in prison or under house arrest.[106]

127. After a series of trials behind closed doors between 12 and 18 July 2022, the Supreme Court of Belarus ordered the dissolution of the Belarusian Congress of Democratic Trade Unions, and its four members. According to the Prosecutor General's Office, it was established during the trial that "instead of protecting the labor and socio-economic rights of the trade union members, preventing illegal strikes, downtime, escalation in society, the leaders and a number of members of these trade unions took an active part in destructive activities, mass events violating public order, disseminated the extremist content. Criminal cases were initiated over all the facts of their illegal activities, and adverse governmental action was taken."[107] It had the effect of "effectively quashing the independent trade union movement in the country."[108]

128. Before that, some independent trade unions, such as the Belarusian Radio-Electronic Manufacturing Workers' Trade Union on 7 April 2022, had been declared "extremist organizations" by the Belarussian State Security and put on the *List of organizations, formations, individual entrepreneurs involved in extremist activities.*

129. In March 2023, the ILO Governing Body took note that the Government "ha[d] not apprised of any step to revoke the legislative and other measures directly or indirectly having

[104] Special Procedures Communication to Belarus, 10 November 2022, AL BLR 6/2022, p. 1-2; OHCHR, Situation of human rights in Belarus in the run-up of the 2020 presidential election and in its aftermath, 3 February 2023, UN Doc. A/HRC/52/68, para. 38.
[105] ILO, "Freedom of association rights: ILO Director-General calls for the release of Belarusian trade union leaders", press release, 21 April 2022, https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_842821/lang--en/index.htm.
[106] ILO Governing Body, *Consideration of any further measures, including those foreseen in the ILO Constitution, to secure compliance by the Government of Belarus with the recommendations of the Commission of Inquiry,* 31 October 2022, GB.346/INS/13 (Rev.1), para. 8.
[107] "The so-called independent trade unions were terminated at the suit of the Prosecutor General", 19 July 2022, https://www.belta.by/incident/view/po-iskam-genprokurora-prekraschena-dejatelnost-tak-nazyvaemyh-nezavisimyh-profsojuzov-514326-2022/?ysclid=l64x29tae5212987184.
[108] OHCHR, *Situation of human rights in Belarus in the run-up of the 2020 presidential election and in its aftermath*, 3 February 2023, UN Doc. A/HRC/52/68, para. 38.

the effect of outlawing independent trade unions or employers' organizations," despite urgent calls made by the same Body in November 2022.[109] Having exhausted all ILO supervisory mechanisms,[110] it therefore adopted a decision requesting the Director-General to suspend all forms of technical cooperation or assistance with Belarus and to ensure that no invitation to attend events organized by the ILO is extended to Belarus, and addressed, under article 33 of the ILO Constitution, a draft resolution to the International Labour Conference for adoption, containing measures to secure Belarus' compliance with the recommendations of the 2004 Commission of Inquiry.[111] This is only the second time in ILO's history that article 33, allowing the Governing Body to recommend the adoption of coercive measure against a State Party refusing to comply with the recommendations of a Commission of Inquiry or the International Court of Justice, has been used.[112]

C. Freedom of Expression and Right of Access to Information

130. Violations of freedom of expression and the right of access to information have been widespread in Belarus since 5 November 2020. They have affected all types of media.

131. On 23 May 2021, the authorities compelled the landing of Ryanair flight FR498 and arrested passenger Roman Protasevich, the co-founder of Telegram channel NEXTA and chief editor of Telegram channel Belarus of the Brain, and his partner Sofia Sapega. Mr. Protasevich was charged under article 293-1, 342-1 and 130-1 of the Criminal Code and Ms. Sapega under article 130-1, facing up to 15 and 6 years of prison, respectively. This arrest and detention was found to be arbitrary by the Working group on Arbitrary Detention of the UN Human Rights Council.[113]

132. These events took place in a context of broader restrictions on media freedom. Actions of the Belarusian government such as searches carried out in media offices and journalists' homes, seizure of professional equipment and criminal prosecutions of journalists and media personnel have been the subject of several communications from UN Special Rapporteurs since August 2020.[114] The year 2021 was especially marked by a wave of criminal prosecutions of unprecedented magnitude against journalists: more than 60 media representatives were

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[109] ILO Governing Body, *Decision concerning the options for measures under article 33 of the ILO Constitution, as well as other measures, to secure compliance by the Government of Belarus with the recommendations of the Commission of Inquiry in respect of Conventions Nos 87 and 98*, 20 March 2023, GB.347/INS/14(Rev.1)/Decision, para. 4.

[110] Including, in 2003, the referral of a complaint against Belarus to a Commission of Inquiry, appointed under article 26 of the ILO Constitution, to examine the observance by the Government of Belarus of the Conventions No. 87 (on Freedom of Association and Protection of the Right to Organise Convention, 1948) and No. 98 (on the Right to Organise and Collective Bargaining Convention, 1949) to which Belarus is Party (since 6 November 1956). The Commission of Inquiry issued a very detailed report in July 2004 containing numerous recommendations relating to freedom of association and collective bargaining, which was then submitted to the Governing Body at its 291st Session in November 2004 (available at: https://www.ilo.org/public/english/standards/relm/gb/docs/gb291/pdf/ci-belarus.pdf).

[111] ILO Governing Body, *Decision concerning the options for measures under article 33 of the ILO Constitution, as well as other measures, to secure compliance by the Government of Belarus with the recommendations of the Commission of Inquiry in respect of Conventions Nos 87 and 98*, 20 March 2023, GB.347/INS/14(Rev.1)/Decision.

[112] Before that, the Governing Body only used the authority bestowed on it by article 33 against Myanmar.

[113] Working Group on Arbitrary Detention (HRC), *Opinion No. 50/2021 concerning Raman Pratasevich (Belarus)*, 15 November 2021, UN Doc. A/HRC/WGAD/2021/50.

[114] Special Procedures Communication to Belarus, 2 June 2021, UA BLR 6/2021; Special Procedures Communication to Belarus, 7 September 2021, AL BLR 8/2021; Special Procedures Communication to Belarus, 19 March 2021, AL BLR 1/2021.

criminally prosecuted[115] and more than 30 journalists were imprisoned, including representatives of foreign-based media.[116] At the moment, 34 journalists remain in detention.[117]

133. Journalists have most often been charged under Article 342 (organization and preparation of actions seriously violating public order or active participation in them), Article 361-1 ("establishment or participation in an extremist formation"), Article 130 (incitement to enmity), Article 361-4 ("aiding extremist activities"), and Article 361 ("calls for actions aimed at harming the national security of the Republic of Belarus") of the Criminal Code. Sometimes, but more rarely, even Article 356 of the Criminal Code (high treason) was used. Article 243 (tax evasion) has also been used as a tool of repression of journalists: Tut.by's editor-in-chief Maryna Zolatva and director Liudmila Chekina were sentenced on this ground to 12 years in prison on 17 March 2023.

134. During the last two years, Belarusian authorities have blocked the access to websites of most independent media and civic initiatives, notably through mass recognition of online content as "extremist materials". In 2021, "there were more decisions to recognize materials as extremist each month as there were total number of decisions previously recorded per year."[118] As of 23 February 2023, the *List of Extremist Materials* contained 2,954 materials.[119] This status allows the authorities to block access not only to original source of "extremist materials," but also any resource containing hyperlinks to these materials. Most of the entries are oppositional Telegram channels and chats. The list also includes the websites and social networks of almost all independent Belarussian media as well as political opposition resources, blogs and podcasts of political independent analysts.[120] The list further includes websites of solidarity funds, such as BYSOL, and websites dedicated to the protection of human rights.[121] In addition, the *List of Extremist Materials* contains banned names of some resources, hashtags, watermarks of opposition resources. In addition to online resources, the list includes seized postal parcels with hoodies, phone cases, and other items and books, featuring opposition symbols, printed journalistic articles published in the 1990s, Belarusian and Ukrainian patriotic songs.

135. Moreover, a number of major opposition channels and local chats, non-profit organizations (including the Belarussian Association of Journalists BAJ), channels with political satire, one media (TUT.BY) and 13 independent media outlets (such as Charter 97, Euroradio, Nasha Niva, Radio Free Europe/Radio Liberty …) have been put on the *List of organizations, formations, individual entrepreneurs involved in extremist activities*. On 22 October 2022, the main opposition slogans and most popular national patriotic Belarussian mottos, "Long live Belarus" and "Long Live," labeled by authorities as "collaborationists," were added to the *List of Nazi symbols*.

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[115] Human Rights Council, *Report of the Special Rapporteur on the Situation of human rights in Belarus, Anaïs Marin*, 4 May 2022, UN Doc. A/HRC/50/58, para. 102.
[116] CSO Meter, *Belarus 2021 Country Report*, p. 53.
[117] Belarussian Association of Journalists, "Repressions against journalists in Belarus 2023, list of colleagues in prison", https://baj.by/en/analytics/repressions-against-journalists-belarus-2023-list-colleagues-prison.
[118] CSO Meter, *Belarus 2021 Country Report*, p. 54.
[119] Available at: https://www.mvd.gov.by/ru/news/8642; Human Constanta, *Deepening human rights crisis in Belarus: submission to the OSCE Moscow Mechanism*, 7 April 2023, p. 9-10.
[120] For instance podcasts of political analyst Sergei Chaly, profiles of people who published anti-government information and mobile applications "Digital Solidarity" and "New Belarus".
[121] For instance, the website of Human Rights Watch, blocked two days after publication of a report on war crimes by Russian forces in Ukraine. See A. Kruope, "Belarus Blocks Human Rights Watch Website", Human Rights Watch, 6 April 2022, https://www.hrw.org/news/2022/04/06/belarus-blocks-human-rights-watch-website.

136. One may face administrative responsibility in the form of arrest for up to 15 days for the distribution or storage of "extremist" materials (Article 19.11 of the Code of Administrative Offences). Given that almost all independent media and opposition resources are recognized as "extremist materials," courts routinely sentence people with 15-day administrative arrests and, in rare cases, impose fines for circulating "extremist" information. Each repost of materials may represent a separate offence, which then allows the courts to sentence people to consecutive 15-days administrative arrests.[122] In addition, any form of cooperation with "extremist" formations or organizations may result in criminal liability under article 361-1 of the Criminal Code ("creation or participation in an extremist formation"), which provides sanctions of up to 10 years in prison, or article 361-4 of the Criminal Code ("aiding extremist activities"). The cooperation with pro-democratic organizations recognized as terrorist in the territory of Belarus, which includes the administration and moderation of their social networks and instant messengers, is punishable under article 290-4 of the Criminal Code ("creation of an organization for carrying out terrorist activities or participation in it").

137. Critical online comments have regularly been qualified as incitement to enmity under article 130 of the Criminal Code, and discord and expression of disagreement with the government policies and actions have been punished under defamatory legislation (articles 367, 368, 369, 369-1, 370 and 391 of the Criminal Code). Some people who left critical comments on the internet or distributed personal data of security forces, a number of journalists and bloggers as well as former employees of Tut.by were put on *the List of persons involved in terrorist activities*, along with international terrorists and a number of representatives of the opposition and human rights defenders. They are therefore prohibited from any financial transactions. The names of people convicted of any form of opposition activity (including through critical comments) as well as those of some journalists and other civil society representatives were added to the *List of citizens of the Republic of Belarus, foreign citizens or stateless persons involved in extremist activities*. They face professional and financial constraints. In August 2022, the General Prosecutor's Office announced the initiation of the first criminal proceedings under article 130-2 of the Criminal Code (denial of genocide of the Belarussian people) against several individuals for their publications on the websites "Flagstaff" and "Zerkalo."[123]

138. Against the background of the war in Ukraine, there is a new wave of repression against those who express disagreement with the actions of authorities of Russia and Belarus, publish information that go against the state agenda and oppose the war. Some people were charged with very serious crimes (see *supra*, II.B.3), and were added to the *List of persons involved in terrorist activities*. In March 2022, a number of Belarussian lawyers were disciplined for signing an open letter "Appeal of Belarussian lawyers and jurists regarding the war in Ukraine".

D. Rights to Liberty and Security

139. Belarus is implementing a broad policy of arbitrary arrest and detention. According to the Working Group on Arbitrary Detention, the concept of "arbitrary" includes not only adherence to the relevant law and procedure but also proportionality, reasonableness, and necessity. "Arbitrariness" should be interpreted broadly to encompass elements of impropriety, injustice,

[122] See "Anastasiya Krupenich-Kandratsyeva left in prison for eighth time", belsat.eu, 5 November 2021, https://belsat.eu/en/news/05-11-2021-anastasiya-krupenich-kandratsyeva-left-in-prison-for-eighth-time.
[123] https://t.me/prokuraturabelarus/2970.

unpredictability, and lack of due process.[124] The right to personal liberty, as defined by Art. 9 of the ICCPR, specifies the conditions that make detention arbitrary, notably: (i) the victim was not informed of the reasons for their arrest; (ii) the victim's procedural rights were disregarded; and (iii) the victim was not brought before a judge within a reasonable time frame.

1) Arbitrary arrest

140. The issue of arbitrary arrests continues to be a major concern in Belarus. As of 17 April, there are 1488 political prisoners, according to data from Viasna.[125] The criminalization of any form of dissent has worsened, leading to the imposition of new or stricter charges against those perceived as a threat to the government. Individuals who engage in peaceful protests, express critical opinions on social media, or participate in human rights work or political activism are particularly targeted. Moreover, these arrests deter the population from exercising their rights.[126]

141. Several waves of arbitrary arrests and detentions took place in Belarus since the mass arrests in 2020. They occurred in December 2020, January and February, July 2021, and April 2022. In July 2021, dozens of individuals were arrested and charged for displaying symbols such as white paper in their windows, engaging in the work of non-governmental organizations, or distributing materials labelled as "extremist." During these arrests, individuals were threatened, and their phones and other belongings were confiscated. Many were subjected to beatings, and some were even given electric shocks. Apartment searches frequently occurred without a search warrant and often with the use of force. On 27 and 28 February 2022, approximately 1,500 individuals were arbitrarily arrested and detained for participating in anti-war demonstrations in the sidelines of the constitutional referendum. Some displayed anti-war signs and banners while chanting pro-Ukrainian slogans following the armed attack by the Russian Federation against Ukraine. During the arrests and at police stations, some individuals reported being subjected to beatings and threats. They were later charged with violating the procedure for organizing or holding mass events. Ahead of the national holiday Freedom Day, from 15 March to 25 March 2023, at least 166 people were detained. Local police inspectors have also become actively involved in visiting citizens who were previously held accountable for committing extremist and protest offences.[127]

142. In addition, the Belarusian population as a whole is facing routine arbitrary arrests. Security forces are conducting systematic raids in regional cities and state-owned enterprises, targeting local residents who are deemed "disloyal" to the regime. They inspect their electronic devices and confiscate them as "means of committing offences" with these individuals being routinely sentenced to administrative arrests. These raids have occurred in various cities across Belarus in 2023, including Lepel, Svetlogorsk, Lyakhovichi, Miory, Oktyabrsky, Brest, Gomel, Dzerzhinsk, Polotsk, and others. For instance, in February 2023, security forces detained four individuals for accessing websites that were considered "extremist materials" from their work computers. Subscription to prohibited resources is also punishable, and in November 2022,

[124] Working Group on Arbitrary Detention (HRC), "About arbitrary detention", https://www.ohchr.org/en/about-arbitrary-detention.
[125] This list does not include political prisoners in administrative centres detained for less that 70 days are not being taken into account.
[126] IAPB, *Second Progress Report 09/21-01/22*, 22 February 2022, https://iapbelarus.org/wp-content/uploads/2022/04/IAPB_SecondReport_Public_FINAL_2022.pdf.
[127] Human Constanta, Submission to the OSCE Moscow Mechanism, 7 April 2023, p. 11.

security forces conducted mass arrests in the Buda-Koshelevsky district, with the local court sentencing 17 people for subscribing to "extremist resources".[128]

143. In most cases, the officers used forceful methods to enter homes and conducted searches and questioning, often accompanied by threats and coercion to obtain access to phones and other mobile devices protected with passwords. The Rapporteur had access to several testimonies indicating that violence, including threats of sexual violence or the loss of parental custody, was used to coerce access. The police also confiscated computers and other items without giving any explanation. In some cases, communications with other individuals led the police to detain those individuals as well.

2) Arbitrary detention

144. The number of detentions is continuously growing since November 2020 even though some people are being released for serving their sentences. The detention of political prisoners can be classified as arbitrary detention, taking into consideration the arbitrary nature of the arrests, the limits to a fair trial (see *infra*, III.F), and the political motives. In this respect, the Rapporteur draws on various reports by UN Special Rapporteurs detailing numerous instances of arbitrary detention in Belarus.[129]

145. Since November 2020, Belarusian authorities have intensified the crackdown against human rights defenders and their family members. In July 2021, President Lukashenko announced a "purge" of civil society,[130] resulting in the arrest of 11 human rights defenders. Among them was Ales Bialiatski, leader of Viasna and winner of the 2022 Nobel Peace Prize, who was convicted on charges of "smuggling by an organized group" and "financing of group actions grossly violating the public order". He is now serving a 10 year sentence in prison. Another example is human rights defender Nasta Lojka, who was charged with "inciting hatred" and "organizing mass riots" in December 2022 as a reprisal for her human rights work.

146. Political opposition members and their supporters have also been prosecuted and detained, both before and after the 2020 presidential elections. In July 2021, Viktar Babaryka, a former presidential candidate, was sentenced to 14 years in prison on charges of "grand bribery" and "large-scale laundering of illicit funds" by the Supreme Court.

147. The Belarusian government seems to have now intensified the repression on lawyers who spoke out against human rights violations, represented clients in politically motivated cases, or opposed the war in Ukraine. They become subject to various forms of harassment, including searches, and criminal or administrative charges.[131] On 6 February 2023, a dozen attorneys are still being held on politically motivated criminal charges, which range from "calls for actions damaging to Belarus's national interests" to "organizing mass riots".[132]

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[128] *Ibid.*

[129] Special Procedures Communication to Belarus, 12 March 2021, AL BLR 4/2021, p. 5; Special Procedures Communication to Belarus, 7 September 2021, AL BLR 8/2021, p. 2-4; Special Procedures Communication to Belarus, 8 August 2022, UA BLR 4/2022, p. 1.

[130] Tanya Lokshina, "Belarus Authorities Launch Purge of Civic Groups," commentary, Human Rights Dispatch, July 23, 2021, https://www.hrw.org/news/2021/07/23/belarus-authorities-launch-purge-civic-groups.

[131] Human Rights Watch, *Submission for the report of the OSCE's Moscow Mechanism on alleged human rights violations and abuses in Belarus*, April 2023.

[132] "Criminal prosecution of lawyers in the Republic of Belarus," defenders.by, 6 February 2023, https://www.defenders.by/criminal_prosecution_2020.

148. Viasna considers that as of 13 April 2023 at least 3109 people have been convicted in political criminal cases, compared to only 70 before November 2020. The most common charges against these individuals are: organization and preparation of actions that grossly violate public order, or active participation in them;[133] insulting a government official;[134] insulting the President of the Republic of Belarus;[135] incitement to hatred;[136] participation in riots;[137] violence or threat of violence against an employee of the internal affairs bodies[138] and desecration of state symbols.[139]

149. In addition to criminal charges, authorities also use administrative offences to detain individuals. Under Article 19.11 of the Code of Administrative Offences, hundreds of people are detained each month for distributing "extremist materials", including by reposting or liking "prohibited" publications or sending them in private messages and group chats. Since most independent media and opposition resources are recognized as "extremist materials", disseminating any information critical of the authorities can be considered an offence. Each repost can be considered a separate offence, allowing courts to sentence individuals to consecutive 15-day administrative arrests, resulting in long periods of arbitrary detention, sometimes up to 80 days.[140]

150. Furthermore, the Belarusian government is using article 290-4 of the Criminal Code to prosecute individuals for any form of collaboration with pro-democratic organizations deemed terrorists in the country. This includes activities such as moderating their social networks and instant messaging platforms.

151. Additionally, Belarusian security forces have identified individuals who made donations to the "BYSOL" and "BY_help" solidarity funds during 2020-2021. The security forces have interpreted these money transfers as "financing extremist activities" under Article 361-2 of the Criminal Code, as the funds were designated as "extremist formations" by the end of 2021. Even individuals who donated to the funds long before they were designated as "extremist" are being persecuted by the security forces, in clear violation of the non-retroactivity principle.[141]

E) Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

152. In the period from 30 November 2020 to the date of this report, violations of the right not to be subjected to torture or inhuman or degrading treatment occurred on a regular and organized basis in places of detention and particularly targeted at those perceived as political opponents.

153. Different types of detention centres coexist in Belarus. Once arrested, people are brought to pretrial detention centres. The issue of lengthy pretrial detention remains unresolved, especially for those facing politically motivated charges who are often held for uncertain

[133] art.342 of the Criminal Code, not less than 100 people.
[134] art.369 of the Criminal Code, not less than 758 people.
[135] art.368 of the Criminal Code, not less than 429 people.
[136] art.130 of the Criminal Code, not less than 314 people.
[137] art.293 of the Criminal Code, not less than 215 people.
[138] art. 364 of the Criminal Code, not less than 215 people.
[139] art.370 of the Criminal Code, not less than 130 people.
[140] Human Constanta, *Submission to the OSCE Moscow Mechanism*, 7 April 2023.
[141] *Ibid.*

periods without any knowledge of when their cases will be heard.[142] Moreover, additional charges are often brought against individuals based on their supposed behaviour during pretrial detention, causing further delays in the trial process. Depending on the nature of the charges, the accused may be tried in either a criminal or administrative court.

154. Administrative trials often take place in the pretrial detention centres *via* video conference. Such a setting infringes on the rights of the defence as individuals are denied confidentiality with their attorney, who commonly sits with the judge. Moreover, there are difficulties with internet connection or deficient equipment in many centres.[143] Thereafter, detainees are held in administrative detention centres, where conditions are more severe.

155. For criminal offences, detainees may be held: i/ in settlement colonies, the mildest form since detainees are free of movement during the day; or ii/ in corrective colonies, where detainees work in the daytime and the regime of detention may vary from one centre to another; or iii/ in prisons, where the detainees face the strictest detention condition and are only allowed a one-hour walk per day, depending on the severity of the charges. Wrong behaviour of detainees in each type of detention centre can lead to a transfer to a stricter centre and may result in new convictions in case of recidivism. Political prisoners are also sometimes interned in medical centres, where detention can be prolonged on medical opinion alone.

156. Numerous political prisoners are being subject to torture, and the Rapporteur could access various testimonies depicting acts of physical or sexual violence,[144] with in some instances medical certifications showing marks of torture.[145] In addition to physical torture, psychological torture is also rampant, with inmates being forced to listen to screams of terror and being threatened with violence or rape.[146]

157. Furthermore, conditions of detention amount to an inhumane and degrading treatment,[147] Political prisoners are being deprived of adequate food, water, and medical assistance, and subjected to constant beatings, overcrowded and unheated cells, and sleep deprivation. Besides, political prisoners are discriminated against as they are forced to wear a coloured tag indicating their level of dangerousness. As a direct consequence, they are being subject to different treatment. Conditions of detention in administrative centres for political prisoners are especially harsh as they appear to be denied access to basic hygienic products, walks, correspondence, and any personal belongings. They are held in cells with no beds, linens, mattresses, or pillows.

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[142] US Department of State, Belarus 2022 Human Rights Report, https://www.state.gov/wp-content/uploads/2023/03/415610_BELARUS-2022-HUMAN-RIGHTS-REPORT.pdf, p. 11.

[143] Viasna, *Politically motivated administrative cases in Belarus: standards and reality in 2021-2022*, https://spring96.org/files/book/en/politically_motivated_administrative_cases.pdf.

[144] Human Rights Council, *Report of the Special Rapporteur on the Situation of human rights in Belarus, Anaïs Marin*, 4 May 2022, UN Doc. A/HRC/50/58; Special Procedures Communication to Belarus, 17 November 2022, AL BLR 7/2022, p. 3 ; Viasna, "Human Rights Situation in Belarus: March 2023", 4 April 2023, https://spring96.org/en/news/111306.

[145] Special Procedures Communication to Belarus, 19 March 2021, AL BLR 1/2021, p. 3-4.

[146] International Committee for the Investigation of Torture in Belarus, *Mass torture in Belarus 2020-2021, Fourth Interim Report on Condition of Detention in Places of Detention from August 2020 to May 2021*, https://torturesbelarus2020.org/wp-content/uploads/2022/12/ictb_report_4_eng-1.pdf.

[147] Special Procedures Communication to Belarus, 19 March 2021, AL BLR 1/2021, p. 2-4; Special Procedures Communication to Belarus, 17 November 2022, AL BLR 7/2022, p. 2-3.

Concerning temporary detention facilities, there are credible reports of solitary isolation in cells with open windows, public humiliation, and sexual violence.[148]

158. The Rapporteur was informed by experts that political prisoners in all detention centres face severe difficulties in obtaining basic medical care. The process for obtaining medicines is complex and often does not function properly, while access to medical staff is practically impossible. This situation results in important deterioration of the general health of political prisoners. An illustration of this phenomena is the widely publicized case of Maria Kalesnikova, who was hospitalized due to the conditions in her punishment cell.[149] During the Covid-19 pandemic, political prisoners were forced to share cells with infected individuals. To receive medical attention, some detainees have resorted to self-harm, while hunger strikes are often ignored by the authorities.[150] The Rapporteur expresses great concern that there are no investigations into cases of inmate deaths.[151]

F. Fair Trial

159. Documents and testimonies gathered for the present report indicate that administration of justice has worsened during the reporting period, with repeated infringements of the rights of the defence (1), and intimidation and repression of lawyers (2).

1) Infringements of the rights of the defence

160. In the context of arrests and deprivation of liberty, there are consistent testimonials of delays in access to legal counsel. Very often, individuals have not been given access to legal assistance at the police interrogation stage even though the person's behaviour during the interrogation is often included in the charges as an offence against authority.

161. For administrative cases, an attorney is appointed to the individual except in instances where the accused already have an attorney. For criminal cases, an ex-officio lawyer will be assigned to the accused, but if found guilty the latter will have to pay for the defence fees. Such a setting does not correspond to the criteria for access to legal assistance as a guarantee of a fair trial. While in pretrial detention, there are few possibilities of confidential communication of a client with his/her lawyer and the attorney-client privilege seems not respected.

162. In 2020-2022, the number of cases where lawyers have signed a non-disclosure agreement on preliminary investigation data has significantly increased.[152] Those agreements include the charges, the procedural status of the client and the name of investigator. As a result, lawyers have been limited in their ability to build a defence, as they cannot, for example, collect the opinion of a specialist about one item. The situation also infringes the principle of equality of the parties, because the prosecutor can disclose the material for example to State media for

[148] Special Procedures Communication to Belarus, 19 March 2021, AL BLR 1/2021, p. 6; OHCHR, Situation of human rights in Belarus in the run-up of the 2020 presidential election and in its aftermath, 3 February 2023, UN Doc. A/HRC/52/68.
[149] Special Procedures Communication to Belarus, 6 November 2020, AL BLR 9/2020; Amnesty International, "Belarus: Whereabouts of prisoner of conscience Mariya Kalesnikava must be disclosed amid reports of hospitalization", 30 November 2022, https://www.amnesty.org/en/latest/news/2022/11/belarus-whereabouts-of-prisoner-of-conscience-mariya-kalesnikava-must-be-disclosed-amid-reports-of-hospitalization/.
[150] Special Procedures Communication to Belarus, 8 August 2022, UA BLR 4/2022, p. 2.
[151] Moscow Mechanism Belarus Joint Contribution, 13 April 2023.
[152] Center for Constitutionalism and Human Rights, et al., *The Crisis of the Legal Profession in Belarus: How to Return the Right to Defense*, 2023, p. 49.

diffusion where the attorney will not have the opportunity to respond. Here, the presumption of innocence is also affected. Finally, judicial hearings in such cases are held behind closed doors, rendering more difficult to access the judicial materials in the aftermath of the hearings.

163. In the vast majority of cases, hearings relating to freedom of expression or involving political issues are held in closed courts.[153] Among the reasons for closure, the court has most often indicated the presence of personal data in the case files and ensuring the security of participants in the proceedings.

164. It was reported that individuals appearing before courts have generally been unable to defend themselves effectively or to be assisted by the lawyer of their own choice. In many cases, the only documents used as evidence have been the records prepared by law enforcement; judges have relied upon these records at trial when issuing their decision, even though they often contain factual or legal errors and false information. The interviews conducted with former political prisoners confirmed that false allegations were retained in police reports and that defence requests to access materials useful for the defence, such as video footage, would simply be rejected.

165. It was also reported that the majority of administrative trials are held using video communication systems, without satisfying justification. The possibility of holding a hearing by video conference is not provided for in the legislation applicable to administrative hearings, but has developed since the Covid-19 pandemic. Defendants are tried by video conference in just a few minutes, in front of the other inmates waiting in the corridor and all the guards. No private communication is possible with the lawyer who is in the same room as the judge. Moreover, the reports show a problem of inequality before the law, since significant technical difficulties have been reported in some centres.

166. The prosecution's case has often been based primarily on the written testimony of police officers who cannot be cross-examined, or witnesses with redacted personal information or false identities. This non-disclosure is allegedly to protect prosecution witnesses or for reasons of state security, but largely infringes the possibility for the accused to have a suitable defence. Legal counsels have been unable to call or cross-examine witnesses and to present additional evidence. When such evidence has been presented, it has not been given due consideration by the tribunal.

167. The right to appeal a decision lacks effectiveness. Reports show that the procedural appeals of a non-disclosure agreement are not successful.[154] Regarding court decisions on liquidation, organizations are deprived of the right to appeal as the first court of appeal for this category of cases is the Supreme Court, whose decisions come into force immediately and are not subject to appeal.[155] Concerning the possibilities of appealing politically-motivated decisions, it appears from the documentation received and the interviews conducted that appeals tends not to be granted as the initial decisions is based on "classified information".

2) Intimidation and repression of lawyers

[153] Right to defence, *Right to Defense is under attack: submission to the OSCE Moscow Mechanism*, 10 April 2023, p.1, referring to https://www.defenders.by/rezultaty_ogranicheniya#zakr.
[154] *Ibid.*
[155] CSO Meter, *Belarus 2021 Country Report*, p. 24.

168. Lawyers have faced various forms of intimidation ranging from psychological pressure, to unfair and groundless disciplinary proceedings, disbarment, and even, in some cases, criminal prosecution and arbitrary detention and searches, merely for performing their professional functions and duties. UN Special Rapporteurs have expressed their concern on several occasions in this regard.[156] Since the 2020 elections, around a hundred lawyers have been deprived of their licence and forced to stop practicing law in Belarus;[157] hundreds have left the profession.[158] At the moment, 10 lawyers are in custody in connection with the exercise of their professional duties.[159] This seriously undermines the "right to a lawyer," which requires that the lawyer is able to act freely without interference or pressure of any kind.

169. As the evidence shows, lawyers providing legal support in politically-sensitive cases (most notably those who defend prominent opposition figures) have indeed been targeted as a result of the legitimate exercise of the legal function, sometimes the same day or just a few days before a hearing, with the objective to deprive their clients of the right to be assisted by the lawyer of their own choice, and to deter lawyers from defending opposition figures. For example, four lawyers who defended the opposition politician Viktar Babaryka were disbarred within a year, from October 2020 to October 2021, under one pretext or another.[160]

170. Depending on the situation, lawyers have lost their license either for "showing a low level of knowledge of the current legislation, which indicated [their] insufficient qualification" or their "inability […] to fulfill [their] professional duties due to insufficient qualification".[161] Similarly, several charges have been used to arrest and detain lawyers: among others, their participation in an unauthorized mass event (article 23.4 of the Code of Administrative Offences), disobedience to a police officer (article 23.4 of the Code of Administrative Offences), calls for actions aimed at causing harm to the national security of the Republic of Belarus (article 361.3 of the Criminal Code).[162]

171. In a few cases, the exercise of professional duties itself has been regarded as a crime, as in the case of Maksim Znak who was arrested and detained by the Investigative Committee on 9 September 2020 and sentenced to 10 years in prison on 6 September 2021. Before his arrestation, he provided legal counselling to the leaders of the opposition movement Viktar Babaryka, Maria Kalesnikava and presidential candidate Sviatlana Tsikhanouskaya. The Working group on Arbitrary Detention of the UN Human Rights Council found that M. Znak's detention was arbitrary.[163]

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[156] Special Procedures Communication to Belarus, 6 November 2020, AL BLR 9/2020; Special Procedures Communication to Belarus, 18 May 2021, AL BLR 5/2021; Special Procedures Communication to Belarus, 14 December 2021, AL BLR 11/2021.
[157] Moscow Mechanism Belarus Joint Contribution, 13 April 2023, p. 26.
[158] Interview p. 14.
[159] Moscow Mechanism Belarus Joint Contribution, 13 April 2023, p. 26.
[160] Human Rights Council, *Report of the Special Rapporteur on the Situation of human rights in Belarus, Anaïs Marin*, 4 May 2022, UN Doc. A/HRC/50/58; Center for Constitutionalism and Human Rights, *et al., The Crisis of the Legal Profession in Belarus: How to Return the Right to Defense*, 2023, p. 60.
[161] Special Procedures Communication to Belarus, 18 May 2021, AL BLR 5/2021; Special Procedures Communication to Belarus, 14 December 2021, AL BLR 11/2021.
[162] Special Procedures Communication to Belarus, 6 November 2020, AL BLR 9/2020; Center for Constitutionalism and Human Rights, *et al., The Crisis of the Legal Profession in Belarus: How to Return the Right to Defense*, 2023, p. 51-57.
[163] Working Group on Arbitrary Detention (HRC), *Opinion No. 24/2022 concerning Maksim Znak (Belarus)*, 4 April 2022, UN Doc. A/HRC/WGAD/2022/24.

172. There is also a tendency to sanction lawyers, through disciplinary proceedings, for public statements or internet publications relating to violations of human rights and the rule of law during the political crisis in the country or containing criticism of State bodies. These statements and publications have been regarded as "actions that discredit the title of a lawyer and the legal profession" or "misdemeanour incompatible with the title of lawyer".[164] On 5 February 2021, Deputy Head of the Department of Licensing of Legal Practice of the Ministry of Justice, Elena Radabolskaya, distinctly voiced a threat against lawyers who publicly express their opinion: "Those lawyers who publish some kind of incorrect, unethical, illiterate, unprofessional appeals, publications in the media—such lawyers have no place in the bar, and we believe that such, such ballast should be disposed of."[165]

G. Impunity and Lack of Effective Remedies

173. The situation of impunity and lack of effective remedies in Belarus is a concerning issue. One of the most significant factors contributing to the impunity in Belarus is the lack of an independent judiciary.[166] This lack of independence means that victims of human rights violations often do not receive a fair trial, and perpetrators of abuses are not held accountable for their actions.

174. Furthermore, the Belarusian government has taken steps to limit access to justice and restrict the ability of civil society groups to hold it accountable. This includes the legislative amendments and the listing procedures that makes it difficult for independent organizations to operate and for journalists and human rights defenders that speak out against the government.

1) Absence of effective remedies at the national level

175. Complaints of victims were addressed to the Investigative Committee. On 26 August 2021, the Committee announced that it had investigated 5,000 complaints of abuse but dismissed them as unfounded.[167] This outcome is all the more surprising that President Lukashenko himself admitted in an interview to the BBC that people were beaten in Okrestina, a well-known detention centre in the South-West of Minsk (see *supra*, II.B.2). According to the UN Office of the High Commissioner for Human Rights, "[t]he conclusions of the Investigative Committee, taken together with the discourse of officials, provide reasonable grounds to believe that allegations of torture have not been effectively investigated".[168] On the contrary, it would appear that detainees about to be released from administrative detention are strongly intimidated and encouraged to sign a document preventing any further complaints.[169] The Rapporteur was further informed of police practices requiring released persons to report to the police station at

[164] Center for Constitutionalism and Human Rights *et al.*, *The Crisis of the Legal Profession in Belarus: How to Return the Right to Defense*, 2023, p. 63-64.
[165] "Human rights activists report that the Ministry of Justice is preparing to clean up the law corporation"; defenders.by, 9 February 2021, https://www.defenders.by/news/tpost/a7s9hnjae1-pravozaschitniki-soobschayut-chto-minyus.
[166] A/HRC/49/71, para. 89; Center for Constitutionalism and Human Rights, *et al.*, *The Crisis of the Legal Profession in Belarus: How to Return the Right to Defense,* 2023, p. 83, https://drive.google.com/file/d/1cGbBv2r6bt5rCg7fOLAmGFoQLUBQQBvx/view.
[167] OHCHR, UN Doc. A/HRC/49/71, para. 56.
[168] OHCHR, UN Doc. A/HRC/49/71, para. 57.
[169] Committee against Torture, List of Issues prior to the Submission of the Sixth Periodic Report of Belarus, CAT/C/BLR/QPR/6, 17 June 2021, p. 4, para. 12.

regular intervals, outside any legal framework. The threat to initiate criminal proceedings later is regularly used to deter complaints, and it has become reality in a number of cases.[170]

176. The conclusion is similar in the last report on Belarus of the OHCHR: "The authorities failed to prosecute and punish acts of torture and ill-treatment committed in the aftermath of the 2020 presidential election and have been unable or unwilling to investigate similar allegations since".[171]

177. The continuing impunity for crimes committed during the period of protests against the 2020 election results falls within the temporal scope of this report, as it is a continuing violation of international law. These serious human rights violations have been reported to the highest authorities in Belarus, including by international organizations such as the OSCE. By not reacting to them, they have failed in their duty to prevent or punish the behaviour of their subordinates.

2) Ineffectiveness of the international remedies

178. Access to international remedies has moreover been diminished. With the Law "On Denunciation by the Republic of Belarus of the Optional Protocol to the International Covenant on Civil and Political Rights" adopted in October 2022, Belarus withdrew from the procedure of consideration of individual complaints by the UN Human Rights Committee. This has deprived people under Belarusian jurisdiction of one of the few opportunities to appeal against the actions of the authorities to international bodies.

179. The cases brought to international supervision mentioned in the last Moscow Mechanism report on Belarus are still being ignored by Belarusian authorities. The Rapporteur expresses regret that despite the decisions made by international human rights bodies, such as the UN Human Rights Committee, there is no mechanism in place to ensure their enforcement in Belarus. The OSCE has already raised concerns over Belarus' execution of two prisoners sentenced to death in 2021 and 2022 while their cases were still under review by the Human Rights Committee.[172]

180. The Rapporteur regrets that Belarus does not co-operate with international organizations that establish procedures to monitor human rights situations. In this respect, Belarus' refusal to cooperate with the ILO and the OSCE on monitoring the internal state of compliance with its international commitments is particularly worrisome. The Rapporteur also notes with concern that Belarus has suspended its participation in the Eastern Partnership initiative of the European Union as of June 2021. Overall, the lack of cooperation of Belarus with international organizations has contributed to its isolation from the international community.

181. Finally, impunity and lack of effective remedies in Belarus pose a significant threat to the human dimension of the OSCE. Without accountability and justice, there can be no security and stability in the long run on the European continent.

[170] OHCHR, UN Doc. A/HRC/52/68, 2023, para. 21
[171] OHCHR, UN Doc. A/HRC/52/68, 2023, para. 21.
[172] OSCE, ODIHR, The Death Penalty in the OSCE area, Background Paper 2022, https://www.osce.org/odihr/527082, pp. 40_41.

Annex 1: Letter addressed by the rapporteur to His Excellency Ambassador Andrei Dapkiunas, representative of Belarus to the OSCE, on 5 April 2023

Professor Hervé Ascensio
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Paris, 5 April 2023

To His Excellency
Ambassador extraordinary Andrei Dapkiunas
Permanent Mission of the Republic of Belarus to the OSCE

Cc : Mr. Matteo Mecacci
Director of the Office of Democratic Institutions and Human Rights (ODIHR)

Cc : Representatives of 38 invoking Participating States

Your Excellency,

As you are aware, the OSCE informed me by letter of 28 March 2023 of my appointment as member of a fact-finding mission of experts to be established according to paragraph 12 of the 1991 Moscow document, following the invocation of the mechanism by 38 OSCE participating States.

Since Belarus has not appointed a second member, I will fulfil this mission as a sole rapporteur, in complete independence and impartiality.

The mandate of the mission has been so defined:

'to examine the human dimension issues identified above, with a particular emphasis on developments since the conclusion of the 5 November 2020 Moscow Mechanism report, especially the circumstances surrounding the growing number of persons detained for politically motivated reasons, as well as recent legislative amendments to inter alia the Criminal Code and the Law on Countering Extremism.'

The term 'above' refers to a list of concerns that includes:

- *detention of nearly 1,500 political prisoners, with numbers continuing to rise;*
- *intimidation, harassment, arbitrary or unlawful arrest, detention, and imprisonment of human rights defenders, members of the political opposition, journalists and other media actors, lawyers, labour activists, persons belonging to national minorities, and civil society groups;*
- *labelling of thousands of citizens and organizations as extremist and the shutdown of nearly all independent non-governmental organizations;*
- *insufficient access to legal and medical assistance for those arrested and/or detained;*
- *lack of due process and respect for the right to a fair trial as provided for under the International Covenant on Civil and Political Rights. This includes retroactive application of law, and instituting special criminal proceedings (in absentia) against persons who are outside Belarus;*
- *torture, and other cruel, inhuman or degrading treatment or punishment of persons in custody, including sexual and gender-based violence;*

• excessive use of force against peaceful protesters, including those protesting Belarus's support for Russia's war of aggression against Ukraine;
• eradication of independent labour unions;
• efforts to silence independent media and enact severe restrictions on access to information, including through internet surveillance, and censorship;
• systematically tightened legislation limiting political freedoms and imposition of sentences which contravene rule of law standards and are intended to deter and punish dissent;
• extension of the death penalty to vaguely defined "attempts to carry out acts of terrorism and murders of government officials or public figures"; and
• impunity for the human rights violations and abuses described above.

In addition, the terms of reference specify that paragraph 12 of the Moscow document is invoked '*[t]o underscore [the invoking OSCE participating States'] concerns about the continued deterioration of the internal human rights situation in Belarus and to explore more recent development of serious abuses linked to Russia's war of aggression in Ukraine*.'

To better understand the situation in Belarus and the position of your Government, I would be grateful if you could help me to organize a visit to Belarus, to meet officials who could provide me with relevant information, and to visit individuals detained on charges of extremism. This stay in Belarus would also allow me to meet privately with members of civil society.

As for information especially relevant to my mission, I would appreciate to receive clarifications and details on the implementation of the Law on Countering Extremism, of certain articles of the Criminal Code such as Articles 67(2), 130, 361, 369, and of the new article of the Criminal Procedure Code on proceedings *in absentia*. In this respect, it would be very useful for me to have access to the criminal policy guidelines for dealing with these offences, and to official statistics on the number of cases and pronounced sanctions.

Information about the laws concerning the financing of terrorism, the dissolution of associations, the closure of media companies and trade unions, as implemented during the last two years, would be relevant too. It would also be very useful to me to receive information on the organization and conduct of the referendum that led to the 2022 Constitutional reform.

In order to shed light on all these issues, I would like to know the detailed opinion of your Government on the allegations contained in the mandate.

As you know, under the Moscow mechanism my report is due on 18 April 2023, which means that I should be permitted to come to Belarus very soon. If such a visit is not possible, I am available to conduct interviews by video conference. In addition, I also request any documents relating to the above-mentioned points. They can be sent to the email address created by the ODIHR for this purpose (moscowmechanism-belarus2023@odihr.pl).

I very much hope that it will be possible for me to obtain the widest possible cooperation from your Government, as provided for in paragraph 6 of the Moscow document.

Yours sincerely,

[signed] Hervé Ascensio

Annex 2: Chronology

Legislative and constitutional amendments (non-exhaustive)

2 October 2020: Resolution No. 578 of the Council of Ministers of the Republic of Belarus

- New accreditation conditions for foreign journalists in Belarus

30 October 2020: Resolution No. 153-1 of the Ministry of Justice "On information about the activities of public associations and foundations"

- New obligations for associations and foundations

6 January 2021: new Code of Administrative Offences (Law No. 91-Z), entered into force 1st March 2021

- New concept of "public danger"
- New administrative offences
- Increased liability for several existing administrative offences

14 May 2021: amendments to the Law "On Countering Extremism" (Law No. 104-3), entered into force 14 June 2021

- Broadened definition of "extremism"
- Increased liability for "extremist" activities

14 May 2021: Law "On the Prevention of the Rehabilitation of Nazism" (Law No. 103-3), entered into force 16 June 2021

- "Rehabilitation of Nazism" punishable by up to 12 years in prison

17 May 2021: amendment to the Law No. 263-Z of 17 July 2007 "On the Internal Affairs Bodies of the Republic of Belarus" (Law No. 106-3), entered into force 19 June 2021

- Law enforcement officials absolved from any responsibility for the harm caused as a result of the use of force if carried out in accordance with that Law
- Authorization of the use of firearms in cases of danger to "health" and "in other cases determined by the President"

24 May 2021: amendments to the Law "On Mass Media" (Law No. 110-3) and to the Law "On Mass Events in the Republic of Belarus" (Law No. 108-3), entered into force 26 June 2021

- Interdiction of all protests without official permission (eliminating the notification procedure)
- Liability of political parties and public associations for public appeals to organize and hold a mass event before receiving authorization to hold it
- Restrictive measures in respect to the activities of the media

26 May 2021: amendments to the Criminal Code (Law No. 112-3), entered into force 19 June 2021

- Several new "counter-terrorism" crimes
- Harsher criminal penalties for existing crimes

27 May 2021: amendments to the Law on the Bar (Law No. 113-3), entered into force in November 2021

- Expansion of the Ministry of Justice's powers to manage the institution of the bar
- Increased possibility for the Ministry of Justice to interfere in the practice of law

28 May 2021: amendments to the Labour Code (Law No. 114-3), entered into force 30 June 2021

- New grounds for dismissal of employees at the employer's initiative (*e.g.* participation in "illegal strike" or absence from work in connection with an administrative arrest)

30 September 2021: new edition of the Rules of Professional Ethics of a Lawyer, adopted by the Ministry of Justice, entered into force 30 November 2021

- Additional restrictions to the lawyers' freedom of expression

12 October 2021: Resolution No. 575 of the Council of Ministers of the Republic of Belarus on "Measures to combat extremism and rehabilitation of Nazism"

- Specification of processes for managing the *List of organizations, formations, individual entrepreneurs and citizens involved in extremist activities*

14 December 2021: amendments to the Criminal Code (Law No. 133-Z), entered into force 1 January 2022

- Criminalization of the expression of opinions which support the restrictive measures (sanctions) applied to Belarus by foreign States

4 January 2022: amendments to the Criminal Code (Law No. 144-Z), entered into force 22 January 2022

- Criminalization of the organization and participation in activities of an unregistered or liquidated organization, punishable by up to 2 years in prison

5 January 2022: Law "On the Genocide of Belarussian People" (Law No. 146-3), entered into force 22 January 2022

- State monopoly on the Interpretation of the historical events of 1941-1951
- "Denial of genocide of the Belarussian people" punishable by up to 10 years in prison

27 February 2022: referendum – constitutional reform, entered into force 15 March 2022

- New concept of "state ideology"
- New obligation of the state: to preserve the historical truth and memory about the heroic deed of the Belarusian people during the Second World War
- New duty of every citizen: to preserve the historical memory of the heroic past of the Belarussian people
- Strengthening of Lukashenko's power
- Suppression of Belarus's nuclear-free zone status

13 May 2022: amendments to the Criminal Code (Law No. 165-Z), entered into force 29 May 2022

- Extension of the application of the death penalty to persons found guilty of "preparing and attempting to commit a crime of terrorism"

20 July 2022: amendments to the Criminal Procedure Code (Law No. 199-Z), partially entered into force in July 2022

- Introduction of trials *in abstentia* "in criminal cases in relation to accused who are outside Belarus" for 34 crimes in the category of threats to national security and the defense of state interests.

18 October 2022: Decree No. 368 of the President of the Republic "On the interaction of telecommunication operators, telecommunication service providers, and owners of Internet resources with bodies carrying out operational-search activities"

- Data surveillance: obligation of online services (mail providers, instant messengers, stores…) to store user data and provide authorities with direct access to the gathered information

27 October 2022: Law "On Denunciation by the Republic of Belarus of the Optional Protocol to the International Covenant on Civil and Political Rights" (Law No. 217-13), entered into force 30 October 2022

- Withdrawal from the individual complaint procedure before the Human Rights Committee

5 January 2023: amendments to the Law "On Citizenship of the Republic of Belarus" (Law No. 242-Z), will enter into force 11 July 2023

- Deprivation of citizenship of Belarussians living abroad as a sanction of "participation in extremist activity or infliction of grievous harm to the interests of the Republic of Belarus"
- Retroactive application of the Law expressly provided

14 February 2023: Law "On the foundations of civil society" (Law No. 250-Z), will enter into force 19 May 2023

- Official definition of "civil society"
- New definition of the main tasks of civil society (including the promotion the state ideology)

14 February 2023: Law "On amending laws on the activities of political parties and other public associations" (Law No. 251-Z), entered into force in February 2023

- Additional restrictions to the activities of associations

9 March 2023: amendments to the Criminal Code (Law No. 256-Z), entered into force 25 March 2023

- Extension of the application of the death penalty to State officials and military personnel convicted of high treason (previously sanctioned with imprisonment)
- Criminalization of the dissemination of deliberately false information that discredit the Armed Forces, other troops and military formation, paramilitary organizations of the Republic of Belarus
- New crime: "propaganda of terrorism"
- Increase in the maximum amount of fines as an additional punishment for crimes related to "terrorism" and "extremism"

Notable events

9 August 2020: presidential election

9-14 August 2020: peaceful protests in Minsk and other cities across Belarus, heavily repressed by security forces, who arrested and detained a large number of people

December 2020: wave of arbitrary arrests and detentions, especially of journalists, human rights defenders and trade unions activists

January-February 2021: wave of arbitrary arrests and detentions, especially of journalists, human rights defenders and trade unions activists

- Most notably, **16 February 2021**: simultaneous raids undertaken at headquarters of the Belarussian Association of Journalists (BAJ) and the human rights organization Viasna in Minsk, and homes of the organizations' representatives and several freelance journalists

23 May 2021: forced landing of Ryanair flight FR498, arrestation and detention of the Belarussian journalist Roman Protasevich and his partner Sofia Sapega.

13 July 2021: adoption of the UN Human Rights Council Resolution 47/19 on the situation of human rights in Belarus and renewal of the mandate of the Special Rapporteur on the situation of human rights in Belarus

- The Resolution urges the Belarussian authorities to respect, protect and fulfill all their international human rights obligations including by releasing all persons arbitrarily or unlawfully detained.

July 2021: vigorous campaign of repression of non-governmental organizations and so-called "Western mass media"

- Application of the concept of "extremist formations" to target hundreds of social media groups and channels and private chats
- Wave of arbitrary arrests and detentions, especially of journalists, human rights defenders and trade unions activists
- Liquidation of numerous non-governmental organizations
- Most notably, **14-15 July 2021**: around 50 raids undertaken at offices and homes of human rights defenders; 20 persons arrested and detained, including Ales Bialiatski, the head and founder of Viasna, who was awarded the 2022 Nobel Peace Prize.

December 2021: Siarhiej Tsikhanouski, who intended to run in the 9 August presidential election, is sentenced to 18 years in prison

24 February 2022: military attack of the Russian Federation on Ukraine

27-28 February 2022: protests in connection with the constitutional referendum and the armed attack by the Russian Federation against Ukraine

- Mass arrests and detention of participants (around 1,500 persons)

April 2022: wave of arbitrary arrests and detentions, especially of journalists, human rights defenders and trade unions activists

- More notably, **18-19 April 2022**: raids and searches undertaken at offices of several independent trade unions and private homes of trade union leaders
- **19 April 2022**: arrest of more than 20 trade union leaders and members, facing criminal prosecution

July 2022: dissolution of the Belarusian Congress of Democratic Trade Unions and its four members by order of the Supreme Court of Belarus after a series of trials behind closed doors, between 12 and 18 July

August 2022: initiation of the first criminal case under the new "extremist" article 130-2 of the Criminal Code (denial of genocide of the Belarussian people) in connection with the publications in the independent media "Flagshtok" and "Zerkalo".

December 2022: first trials *in abstentia*