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**BELARUS' 2020 PRESIDENTIAL ELECTIONS: INTERNATIONAL HUMAN  
RIGHTS OBLIGATIONS, VIOLATIONS AND REMEDIES**

Master's Thesis

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## INTRODUCTION

The Republic of Belarus has signed and ratified the main conventions in human rights protection, but despite this, Belarusian and other human rights organizations have systematically pointed out the violation of rights and freedoms in the state. Belarus is an authoritarian state,<sup>1</sup> where all power has been concentrated in the hands of one person for 26 years without granting citizens the right to elect the country's ruler fairly. Having consolidated his power over all institutions, Lukashenka completely disregarded the rule of law, not disdain to use totalitarian means. In particular, he made the security and military forces entirely under the control of his dictatorial needs. Law enforcement officers did not hesitate to use brute force during the dispersal of peaceful demonstrations and treat detainees inhumanely. Other human rights violations in Belarus include the lack of a fair and independent judicial system, restrictions on freedom of speech and association, interference in private life, political persecution, enforced disappearances, and others.

The non-governmental organisation, Freedom House, adjudged Belarus 7 points in "Democracy score" and 11 points out of 100 in "Global Freedom score" on a par with such states as Uzbekistan, Yemen, and the Gaza Strip territory.<sup>2</sup> The violations became more severe in August 2020 during and after the presidential election. The apparent falsification of voting results at many polling stations and disproportionate violence against peaceful demonstrators have led to a political crisis.<sup>3</sup> Protests over election fraud, the re-election of Lukashenka, and the violence of law enforcement agencies have launched across Belarus.<sup>4</sup> The situation reached its apogee of violence by the authorities immediately after the elections and continues today. Since then, tens of thousands of citizens have been detained administratively, with subsequent punishment in biased and unfair court decisions in the form

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<sup>1</sup>The Human Rights non-governmental organization «Freedom House». Nations in transit 2020. Belarus. Online. - <https://freedomhouse.org/country/belarus/nations-transit/2020>

<sup>2</sup> *Ibid.*

<sup>3</sup> Human Rights Centre «Viasna», Belarusian Helsinki Committee, Belarusian Association Of Journalists 2020. Belarus' posle vyborov. O situacii s pravami cheloveka v postvybornyj period. Report. Online. - [https://spring96.org/files/book/ru/2020\\_elections\\_tortures\\_ru.pdf](https://spring96.org/files/book/ru/2020_elections_tortures_ru.pdf) (06.11.2021)

<sup>4</sup> OSCE. Report under the Moscow Mechanism on Alleged Human Rights Violations related to the Presidential Elections of 9 August 2020 in Belarus of 05.11.2020. Online. - <https://www.osce.org/files/f/documents/2/b/469539.pdf> (05.11.2021).

of arrests and fines. More than 4690 criminal cases<sup>5</sup> have been initiated against the opposition from the beginning of the election campaign, and about 830 people in Belarus are held in captivity recognised as political prisoners.<sup>6</sup> Only after the elections, more than 60,000 people fled the country which is only according to the official data of the National Statistical Committee.<sup>7</sup> According to unofficial research,<sup>8</sup> more than 110 thousand people were forced to leave their homeland, fearing for their lives and health. The falsification of voting results at many polling stations, the repression of the opposition, and the disproportionate violence by law enforcement agencies against peaceful demonstrators have given rise to a political and migration crisis in the country. The anarchy allowed by the political elite, ostensibly under the pretext of safeguarding the constitutional system and establishing order, inevitably leads to the tragedy of the people.

In the history of modern Belarus, censorship is tightened to the limit; the president enjoys absolute and unquestioned power, creating a kind of military state for the entire regime of his governance. The rule of law is absent due to the corruption of the judicial, executive and legislative authorities, and the laws remain "words on paper" that work exclusively in the interests of Lukashenka. Nevertheless, for the sake of the study, it is necessary to consider national legislation and international obligations, as if they were essential for the government of Belarus.

This thesis aims to conduct a legal analysis of violations of international legal obligations committed by the *de facto* government of the Republic of Belarus, as well as to consider what international mechanisms are available, and to propose subsequent legal recommendations for implementation at the national and international levels to resolve the political crisis in the country. For this purpose, the thesis addresses both the questions of fact and law. The main research questions are: why did the actions of the Belarusian authorities cause a public outcry and condemnation? What are the international and constitutional obligations of Belarus in the context of civil and political rights and what mechanisms are foreseen for their violation?

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<sup>5</sup> Ugolovnoe presledovanie s nachala izbiratel'noj kampanii. Spisok ot pravozashchitnikov "Viasny". [Criminal prosecution since the beginning of the election campaign. List from the human rights defenders of "Viasna".] Online. - the Human Rights Center "Viasna" 18.01.2021. - <http://spring96.org/ru/news/99641>

<sup>6</sup> The Human Rights Center "Viasna". List of political prisoners. Online. - <https://prisoners.spring96.org/ru> (26.09.2021).

<sup>7</sup> V Belarusi na nachalo 2021 goda prozhivalo okolo 9,35 mln chelovek – Belstat. [About 9.35 million people lived in Belarus at the beginning of 2021 – Belstat.] Online. - State media outlet Belta 09.04.2021 - <https://www.belta.by/society/view/v-belarusi-na-nachalo-2021-goda-prozhivalo-okolo-935-mln-chelovek-belstat-436531-2021/>

<sup>8</sup> Skol'ko belarusov mogli za god uekhat' iz strany. [How many Belarusians could leave the country in a year.] Online. - media project Thinktanks 25.08.2021 - <https://thinktanks.by/publication/2021/08/25/skolko-belarusov-mogli-za-god-uehat-iz-strany.html>

What legal actions can be taken to hasten the shift of power and the subsequent criminal prosecution of those responsible?

My focus is in international human rights law, treaty law by also Belarus constitutional law. In terms of methods of research, I use mainly the analytical method in order to get a grasp of the legal obligations and violations in Belarus. The literature used for this purpose is quite vast, ranging from treaty law and Belarus legislation to academic literature, international reports and materials produced by think tanks. Moreover, when I compare the international legal obligations and the current reality in Belarus, both in law and in fact, I also employ the comparative method. As a dictatorship does not respect the law in the same way as a mature democracy would, I also use the lens of law in political context, assuming that in today's Belarus, the letter of law does not necessarily determine the outcome on the ground. Finally, I summarize the results obtained and provide legal recommendations.

## 1. Belarus and its international obligations

Proper implementation and efficient application of international treaties are the keys to the successful development of a state as a subject of international law and its authority on the world scene. Implementing the norms of international law in the State legal order is very topical for the Republic of Belarus. This issue entails large-scale internal consequences of transnationalization, cultural and financial consolidation, accompanied by the growing importance of international law regulating those relations, which also concerned internal governance issues. To mobilize external investment, researchers, know-how, tourists, professionals, business; to become a member of reputable international associations, and not to provoke reasons for discrimination against its citizens in other countries, a state must guarantee an effective mechanism for implementing its international obligations not only in foreign policy but also in the country's internal affairs.<sup>9</sup>

The existence of an effective system for the implementation of international obligations in a state legislation would guarantee residents reliable protection of their privileges and freedoms by international law. At the same time, a practical implementation system would simplify the work of a state apparatus for the creation and implementation of state laws as to the fulfillment of international promises of a state.<sup>10</sup> All this, equally, would dramatically reduce the likelihood of violations of the country's international legitimate interests for the untimely and inappropriate implementation of these obligations. Ultimately, a fruitful system of implementation of international competencies would eliminate the conflict between international and state law and set up proportionate coordination of a state apparatus of the international procedure. The more open the legal system of a state is, the more it is considered to be involved in international relations. As a subject of international legal relations, the problem of defining international obligations and bringing national legislation into line with international standards in Belarus plays a considerable role. The purpose of this chapter is to study the current issues that are raised on the agenda: what is the nature of Belarus' obligations in the processes of law-making and law enforcement, their systemic affiliation, and mainly, in which international legal acts are they enshrined? The implementation of these international obligations depends on how a state has regulated the provisions as mentioned

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<sup>9</sup> Zybajlo, A. Sootnoshenie mezhdunarodnogo i vnutrigosudarstvennogo prava. [The relationship between international and domestic law.] Minsk: Pravo i ekonomika 2007, pp 8 -33.

<sup>10</sup> Lukashuk, I. Globalizaciya, gosudarstvo, pravo, XXI vek. [Globalization, state, law, XXI century.] Moscow: Spark 2000, pp 195-209.

above through the prism of a radical way of fixing international obligations in national legislation.<sup>11</sup>

### 1.1 International ratified treaties and the obligation to comply with them

The Declaration on the State Sovereignty of the Republic of Belarus was adopted in 1990,<sup>12</sup> where a specific emphasis was given to international law. There, the absolute national sovereignty of the State was officially declared in the Preamble of the document "acting under the principles of the Universal Declaration of Human Rights (UNDHR) and other universally recognized international legal acts." It should be noted that later most of its provisions have been implemented in national legislation, along with the regulations of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). I further mention those to which Belarus is a member: the UN Charter (paragraph 2 of Article 2)<sup>13</sup>, the Vienna Convention on the Law of Treaties of 1969 (the Vienna Convention)<sup>14</sup>, and The Vienna Convention on the Law of Treaties between States and International Organizations or Between International Organizations (VCLTIO)<sup>15</sup>. In addition to the above list, the definition of this principle can be found in the Declaration on Principles of International Law of 1970<sup>16</sup> and the Helsinki Final Act OSCE 1975.<sup>17</sup> The principle of good faith performance of obligations contains the main rule created to guarantee the consistency of states' national law with its international obligations.

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<sup>11</sup> Kotuby, Ch. T., Jr., Sobota L. General Principles of Law and International Due Process: Principles and Norms Applicable in Transnational Disputes. New-York: Oxford University Press 2017, pp 3 -39.

<sup>12</sup> RB. Declaration of the Supreme Council. Decree of 27.07.1990 № 193-XII. "On the State sovereignty of the Republic of Belarus' ". - <https://pravo.by/document/?guid=3871&p0=V09000193> (01.11.2021).

<sup>13</sup> United Nations. Charter of the United Nations of 24.10.1945. 1 UNTS XVI. Online. - <https://www.un.org/en/about-us/un-charter/full-text> (01.11.2021).

<sup>14</sup> United Nations. Vienna Convention on the Law of Treaties of 23.05.1969. Online. - [https://legal.un.org/ilc/texts/instruments/english/conventions/1\\_1\\_1969.pdf](https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf) (01.11.2021).

<sup>15</sup> UN General Assembly. Convention on the Law of Treaties between States and International Organizations or between International Organizations of 16.12.1982. A/RES/37/112. Online. - [https://legal.un.org/ilc/texts/instruments/english/conventions/1\\_2\\_1986.pdf](https://legal.un.org/ilc/texts/instruments/english/conventions/1_2_1986.pdf) (01.11.2021).

<sup>16</sup> UN General Assembly. Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations of 24.10.1970. A/RES/2625(XXV). Online. - <https://www.un.org/ruleoflaw/files/3dda1f104.pdf> (01.11.2021).

<sup>17</sup> OSCE. Conference on Security and Co-operation in Europe (CSCE): Final Act of Helsinki of 01.08.1975. Online. - [https://www.cvce.eu/en/obj/final\\_act\\_of\\_the\\_conference\\_on\\_security\\_and\\_cooperation\\_in\\_europe\\_helsinki\\_1\\_august\\_1975-en-26511c7f-1063-4ae9-83e5-16859194a144.html](https://www.cvce.eu/en/obj/final_act_of_the_conference_on_security_and_cooperation_in_europe_helsinki_1_august_1975-en-26511c7f-1063-4ae9-83e5-16859194a144.html) (01.11.2021).

Implementing a state's sovereign rights, including the adoption of domestic legislative acts, must be in harmony with the country's international obligations.<sup>18</sup> A distinctive feature of this principle is the unacceptability of the subjective rejection of obligations previously accepted or the ratification of new ones with third Contracting Parties that diverge from existing obligations. It should also be noted that this area provides for international legal responsibility for the neglect of supranational responsibilities.<sup>19</sup> The country's national legislation is enshrined in Article 33 (1) of the Law of the Republic of Belarus "On International Treaties" of July 23, 2008.<sup>20</sup> According to article 8 (1) of the Constitution of the Republic of Belarus denotes the supremacy of the commonly recognized principles of international law over the Constitution of Belarus.<sup>21</sup> According to Article 8 (3) the ratified international treaties prevail over the rest of the country's normative acts, but they have a lower legal significance than the Constitution. It should be noted that there is a specific legal ambiguity in this hierarchical order of Article 8 of the Constitution, where the wording does not directly mention the possibility of a direct application of international law in Belarus but to declare the priority of international legal principles and about bringing national legislation in line with these principles.<sup>22</sup> For explanatory purposes, the truly prevailing order of principles of international law can be found in other national legislative documents. Per para 4 of Article 1 of the Criminal Procedure Code,<sup>23</sup> it is stated that international acts regulating human rights and freedoms ratified by Belarus are equally applicable to this Code in the course of decisions on criminal cases. It follows that Article 543 of the Code of Civil Procedure<sup>24</sup> imposed the elevation of international norms over the Civil Code; in the event of a law conflict between them, the rules of international treaties should prevail. That actively demonstrates that merely within the framework of Article 116 (5) of the Constitution, Articles 85 of the Constitutional Court of Belarus,<sup>25</sup> the Constitutional Court may consider an international treaty and other guarantees as having deprived legitimacy due to their legal differences with the Constitution and international legal acts ratified by Belarus. In addition to the reasons above, these

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<sup>18</sup> Kolosov, YU., Krivchikova, E. *Dejstvuyushchee mezhdunarodnoe pravo*. Vol.2. Moscow: YUrajt 2007, pp 43-47.

<sup>19</sup> Kolb, R. *Good Faith in International Law*. Oxford: Hart Publishing 2017, pp 40-62.

<sup>20</sup> RB. House of Representatives. Law of 23.07.2008 No. 421-Z. "On International treaties of the Republic of Belarus". Online. - <https://pravo.by/document/?guid=3871&p0=h10800421> (01.11.2021).

<sup>21</sup> RB. Constitution of the Republic of Belarus of 1994 with the amendments and additions adopted at the republican referendums of November 24, 1996 and October 17, 2004. Online. - <https://pravo.by/pravovaya-informatsiya/normativnye-dokumenty/konstitutsiya-respubliki-belarus/> (01.04.2020).

<sup>22</sup> *Ibid.*

<sup>23</sup> RB. House of Representatives. Criminal Procedure Code of the Republic of Belarus of 16.07.1999 № 295-Z. Online. - <https://kodeksy.by/ugolovno-processualnyj-kodeks> (01.04.2021).

<sup>24</sup> RB. House of Representatives. Civil Procedure Code of 11.01.1999 238-Z. Online. - [https://kodeksy-by.com/grazhdanskij\\_protsechnyj\\_kodeks\\_rb.htm](https://kodeksy-by.com/grazhdanskij_protsechnyj_kodeks_rb.htm) (01.11.2021).

<sup>25</sup> RB. House of Representatives. Law of 08.01.2014 № 124-Z "On Constitutional Court proceedings". Online. - [https://kodeksy-by.com/zakon\\_rb\\_o\\_konstitutsionnom\\_sudoproizvodstve.htm](https://kodeksy-by.com/zakon_rb_o_konstitutsionnom_sudoproizvodstve.htm) (01.11.2021).



supranational documents can be recognized as having lost legitimacy if they do not meet the existing legislation or decrees.

The principle of *pacta sunt servanda*, enshrined in Article 26, and Articles 27 and 46 of the Vienna Convention states that Contracting parties should not rely on national legal competence because of the invalidity of their consent in the strictness of the treaty. The deviation is non-compliance with the primary state standards affecting the authority to conclude agreements at the international level. The relevance of the documents of supranational bodies also depends on the compliance of the statutory documents of the state and the Constitutional Court with international norms. Regardless of the will of an individual State, generally recognized international norms should be considered binding. The discrepancy between *jus cogens* and the international norm seems to be the reason for discrediting the agreement by Article 53 of the treaty.<sup>26</sup>

The domestic law of the country plays a requisite role in regulating the process of treaty implementation. The government in the Constitution or other domestic legal documents consolidate the provisions that set up the legal guarantees of international treaties and their national application, regulating the adoption, implementation, and denunciation of international treaties. The procedure for the exercise of the received international powers within the country is established by national law. The norms of international law are connected to the national legal system and need the help of the norms of national law for their implementation. Thus, adopting a new ordinance, decree or law may cancel obligations under an international treaty. It follows that compliance with international standards directly relies on the coherence of the international and domestic legal system, provided for by the presence in the legislation of a legal implementation mechanism through which the implementation of recognized international obligations is provided at the national level.<sup>27</sup>

Article 24 of the Law "On International Treaties" specifies that if the country is considered to be the legal successor, as well as bound by international obligations for international treaties, if the international treaty has not been reserved or is not otherwise agreed, then with the consent of the parties involved Belarus is considered bound by international obligations.<sup>28</sup> The formation of a valid agreement is closely related to expressing the will from the State to

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<sup>26</sup> Henriksen, A. International law. 2<sup>nd</sup> Ed. Oxford: Oxford University Press 2019, pp 23-30, 40-56.

<sup>27</sup> Zybajlo 2007.

<sup>28</sup> RB. The House of Representatives. Law "On International Treaties" of 23.07.2008 № 421-Z. Online. - <https://pravo.by/document/?guid=3871&p0=h10800421> (01.04.2021).

be bound under the treaty. This position is also recognized by Article 27 of the Law "On International Treaties", where only after an explicit indication of consent to the fulfillment of international obligations does an international treaty enter into force for Belarus.<sup>29</sup> The expression of the will of the State can be either provided by the signing of an international act, or by the exchange of the constituent documents of the agreement, or by the ratification of the treaty, its approval, acceptance, accession to the treaty, or any other procedure. The regulatory mechanism for fulfilling international treaty obligations is reflected in Article 33.<sup>30</sup> A similar rule is contained in Article 6 of the Civil Code of Belarus.<sup>31</sup>

### 1.1.1 Potential improvements in national legislation

Judicial reform should be followed in Belarus, where the Constitutional Court would have jurisdiction to accept petitions from citizens on the contradictions of the legislation of the Constitution and international guarantees of a state. Also, at the request of courts of general jurisdiction, the Constitutional Court would have the right to classify the existence of principles of customary international law, analyze international acts, and interpret international legal norms following the claims of international law. The authority to the Constitutional Court shall be provided to draw up explanatory notes and guidelines for hierarchical lower courts to ensure that the standards of the Constitution and international law are implemented identically. In order to prevent a legal conflict between domestic law and international law, proper constitutional monitoring should be conducted to ensure compliance with both the national law and the supranational obligations of the ratified treaties, the norms of customary international law, the analogical and interstate constituent documents of the interstate entities whose obligations Belarus has assumed. Besides, the Constitutional Court should still not have the power to deprive international legal acts and norms of legal significance since it does not have the competence to resolve issues that also fall under the jurisdiction of other sovereign states and international organizations. Consequently, Article 85 of the Law "On the Constitutional Court Proceedings"<sup>32</sup> and Article 116 of the Constitution<sup>33</sup> one can interpret as authorization of the Court to determine the existence of prerequisites, relieving Belarus from fulfilling some or other international legal obligations, but not allowing the Court to annul the effect of these international obligations.

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<sup>29</sup> Law "On International Treaties" (2008).

<sup>30</sup> *Ibid.*

<sup>31</sup> RB. The House of Representatives. Civil Code of 07.12.1998 № 218-Z. Online. - <https://pravo.by/document/?guid=3871&p0=hk9800218>

<sup>32</sup> Law "On the Constitutional Court Proceedings" (2014).

<sup>33</sup> Constitution of the Republic of Belarus (1994).

## 1.2 Belarus obligations to respect human rights at the international and regional level

Since the adoption of the UN Charter in 1945, the principle of respect for human rights and fundamental freedoms has acquired special significance in international law and subsequently found its normative consolidation and concretization in international treaties that establish states' legal obligations to ensure the protection of human rights. The provisions of international treaties are developed in other acts adopted by international organizations or treaty bodies. These acts have a specific regulatory impact on how states shall behave. The emergence and existence of public international law revealed the need to protect and respect human rights everywhere.<sup>34</sup>

The international legal status was first defined in the UN Charter, in which the Belarusian Soviet Socialist Republic took part. Respect for and observance of human rights, formulated in the UN Charter,<sup>35</sup> is defined further in the Universal Declaration of Human Rights (UDHR)<sup>36</sup>, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)<sup>37</sup>, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)<sup>38</sup>, and the United Nation Convention on the Rights of the Child (UNCRC)<sup>39</sup>. All of the above documents have been ratified by Belarus.<sup>40</sup>

Further, it should be noted that the International Covenant on Civil and Political Rights (ICCPR)<sup>41</sup>, and the International Covenant on Economic, Social, and Cultural Rights (ICESCR)<sup>42</sup> are significant achievements of the United Nations in human rights cooperation.

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<sup>34</sup> Freedman, R. The Human Rights Council. - The United Nations and Human Rights: A Critical Appraisal. Ed. Mégret, F., Ph. Alston. Croydon: Oxford University Press 2020, pp 181-239.

<sup>35</sup> Charter of the United Nations.

<sup>36</sup> UN General Assembly. Universal Declaration of Human Rights of 10.12.1948 217 A (III). Online. - <https://www.un.org/sites/un2.un.org/files/udhr.pdf> (01.11.2021).

<sup>37</sup> UN General Assembly. International Convention on the Elimination of All Forms of Racial Discrimination of 21.12.1965. Online. - <https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx> (01.11.2011).

<sup>38</sup> UN General Assembly. Convention on the Elimination of All Forms of Discrimination against Women of 18.12.1979 A/RES/34/180. Online. - <https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx> (01.11.2021).

<sup>39</sup> UN General Assembly. Convention on the Rights of the Child of 20.11.1989. Online. - <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx> (01.04.2021).

<sup>40</sup> UN.Treaty body database on Belarus. Online. - [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=16&Lang=RU](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=16&Lang=RU) (01.04.2021).

<sup>41</sup> UN General Assembly. International Covenant on Civil and Political Rights of 16.12.1966, Online, - <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> (02.04.2021).

<sup>42</sup> UN General Assembly. International Covenant on Economic, Social and Cultural Rights of 16.12.1966. Online. - <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx> (02.11.2021).

Belarus is a party to those Covenants, therefore it must respect the universally recognized human rights and fundamental freedoms embodied in those Covenants.<sup>43</sup>

Belarus recognizes the functioning of international mechanisms established on the basis of international treaties to monitor the implementation of international obligations in the field of human rights protection, including, among others, the special procedures of the UN Human Rights Council and the monitoring system of the Human Rights Committee.<sup>44</sup> It must undertake to cooperate in ensuring the protection of human rights in accordance with its obligations.<sup>45</sup>

In the regional context of human rights protection, the Organization for Security and Co-operation in Europe (OSCE) is of great importance for human rights. Its Helsinki Final Act,<sup>46</sup> the final documents of the Madrid<sup>47</sup> and Vienna<sup>48</sup> Meetings, set standards that European States must comply with in ensuring human rights. Belarus signed these documents, thereby guaranteeing the fulfillment of its obligations and the promotion of its human rights mechanisms within the framework of human rights protection.<sup>49</sup> Furthermore, it seems that Belarus was signed up to the human rights obligations, but this reality remains only *de jure*; the lack of compliance with international obligations is a clear indicator of incompetence.

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<sup>43</sup> Kälin, W., Künzli, J. *The Law of International Human Rights Protection*. New-York: Oxford 2009, pp 40-51, 115-116.

<sup>44</sup> Freedman, R. 2020.

<sup>45</sup> Smith, Rh. M. *International Human Rights Law*. 9th Ed. Glasgow: Oxford University Press 2020, pp 74-82.

<sup>46</sup> OSCE. Final Act of Helsinki (reference 17).

<sup>47</sup> OSCE. Conference on Security and Co-operation in Europe. Concluding Document of the Madrid Follow-Up Meeting of 06.06.1983. Online. - <https://www.osce.org/files/f/documents/9/d/40871.pdf> (01.11.2021).

<sup>48</sup> OSCE. Conference on Security and Co-operation in Europe. Concluding Document of the Vienna Follow-Up Meeting of 05.01.1989. Online. - <https://www.osce.org/files/f/documents/a/7/40881.pdf> (01.11.2021).

<sup>49</sup> Bayefsky, A., Alexeyeva, L., Kampelman, M., Tabory, M., Maresca, J., Henkin, A. *Human Rights: The Helsinki Process*. - Proceedings of the Annual Meeting (American Society of International Law) 1990/04, Vol. 84. Online. - <https://www.jstor.org/stable/25658533>

## 2. Human Rights violations after elections 2020 in Belarus

In modern realities, the rights and freedoms of the human are regulated not only by national legislation; the fundamental freedoms and rights are the foundation of the modern world order and therefore cause particular interest in the international community.

Considering human rights through the prism of democratization, they should represent a pillar of the country's national law, the non-compliance or total disregard of which leads to an authoritarian regime of power.

### 2.1 The right to freedom of peaceful assembly

The foundations guaranteeing the rights to peaceful assembly are the international legal instruments adopted and ratified by Belarus, namely the UDHR (Article 20 (1)); the ICCPR (Article 21), the UNCRC (Article 15), and the CERD (article 5 (d)).

What does the Belarusian legislation impute? At the outset, the primary national law, the Constitution, shall be examined. The freedom of peaceful assembly, which does not violate the rights of others and complies with the procedure established by law, is protected by article 35 of the Constitution. On the one hand, the Constitution guarantees its citizens the freedom of peaceful assembly, but in reality, it refers to another law that regulates how to legally restrict the right to freedom of assembly, where to gather, and how to rally. In the law "On Mass Events,"<sup>50</sup> - one can find out how free Belarus regards assemblies.

Everyone who wishes to gather is required by law to comply with the following conditions:

- 1) apply for prior authorization:
  - no later than 15 days;
- 2) indicate in the application the purpose, date, and number of participants (including single pickets). The head of the local municipality has the right to make changes to the above categories (the nature of the event)(Article 6);
- 3) pay from one's own budget the costs of protecting public order, medical care, and cleaning the territory (Article 6).<sup>51</sup> Prices can be found in the "Regulations on the

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<sup>50</sup> RB. The House of Representatives. Law of 30.12.1997 N 114-Z "About Mass Events" of 30.12.1997 № 114-Z. Online. - [https://kodeksy-by.com/zakon\\_rb\\_o\\_massovyh\\_meropriyatiyah.htm](https://kodeksy-by.com/zakon_rb_o_massovyh_meropriyatiyah.htm) (02.10.2021)

<sup>51</sup> *Ibid.*

procedure for paying for public order services provided by the internal affairs bodies, expenses related to the provision of medical care, cleaning the territory after holding a mass event on it.”<sup>52</sup>

The law prohibits anyone who wishes to exercise the right to peaceful assembly:

- 1) to encourage and inform in any way, including through the global network, about the planned event until official authorization is obtained (Article 8);
- 2) to set up tents (Article 11);
- 3) to approach within 200 meters to the buildings of television and radio broadcasting media, state institutions of executive power, government institutions, underground pedestrian crossings, metro stations (Article 9);
- 4) to approach closer than 50 meters from the buildings of the republican bodies of state administration, local representative, executive and administrative bodies, diplomatic missions, and consular offices, buildings of law enforcement authorities (Article 9);
- 5) to hold spontaneous assemblies.<sup>53</sup>

During the event, law enforcement officers have the right to fence off the territory of the assembly, check the personal belongings of demonstrators, make video recordings, and perform their duties in civilian clothes.

An especially interesting note in this law is the inhibition of holding mass events near metro stations. It may be pointed out that there are about 33 operating metro stations in Minsk. This actively demonstrates indirect prohibition on holding the events in the capital's center, with few exceptions.

Since Belarus is a member state of the OSCE, it must rely on the " Guidelines on freedom of peaceful assembly" to ensure this right.<sup>54</sup> This document states several principles that shall be applicable in a democratic society to provide the right for peaceful assembly:

- 1) Presumption in favor of assemblies. The meaning is to ensure the implementation of this right by the legislation without direct or indirect obstacles. Besides, what is not

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<sup>52</sup> RB. Council of Ministers. Regulations “On the procedure for paying for public order protection services provided by the internal affairs bodies, expenses related to medical care, cleaning of the territory after holding a mass event on it” of 24.01.2019 № 49. Online. - <https://pravo.by/document/?guid=12551&p0=C21900049&p1=1> (01.11.2021).

<sup>53</sup> Law "About Mass Events" (1997).

<sup>54</sup> OSCE. Venice Commission. Guidelines on Freedom of Assembly of 08.07.2019 CDL-AD(2019)017. 3rd ed. Online. - [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)017-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)017-e) (01.11.2021).

prohibited by law should be considered permitted by default, and the point, if any, on obtaining permission to hold meetings should be abolished in national legislation.

- 2) The positive obligation of the State to facilitate and protect peaceful assemblies. This principle recommends the implementation of an enabling framework for the organizers of meetings and does not allow for the prevention of informing about the upcoming event. This can also include the provision of protection by the State and the provision of the organizer with the choice of the venue.
- 3) Legality. Following these principles, restrictions, if any, should be identified in national legislation. However, these restrictions should not contradict international human rights standards.
- 4) Proportionality. If restrictions are present, they should not be imposed spontaneously but should be proportional, ensuring the lowest level of intervention on the part of the government.
- 5) Equality and non-discrimination. The authorities are obliged to ensure equal conditions for all who wish to exercise their right to freedom of assembly.
- 6) Good administration. The body responsible for making decisions on the administration of freedom of assembly should be enshrined in law, and citizens should be aware of and have the opportunity to contact this administrative body.
- 7) Legal remedies and accountability of the decision-making authority. The meaning of the principle is to ensure the responsibility of the administrative body for any procedural non-compliance or on the merits.<sup>55</sup>

It becomes evident that regulation alone of the national law violates the clear general limits of existing international standards. All the principles except for the 6th are not followed at the official level. The law does not contain provisions on the presumption in favor of exercising the right to peaceful assembly, and the application for authorization for holding an assembly is associated with an onerous process of obtaining a permit for it.

It is worth mentioning that after the 2020 elections in Belarus, the opposition obtained a single authorization when pro-government demonstrators were actively supported by the *de facto* government and sponsored from the state budget.<sup>56</sup>

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<sup>55</sup> *Ibid.*

<sup>56</sup> Opozyciya podala zayavku na prazdnovanie Dnya Voli. [The opposition filed an application for the celebration of Freedom Day.] Online. - media outlet Interfax-Zapad 10.03.2021. - <https://interfax.by/news/obshchestvo/society-different/1293037/>

The Venice Commission, in its opinion on the situation in Belarus, noted the vagueness of national legislation, which gives the authorities the freedom to act in the field of punishing civilians who take part in mass gatherings.<sup>57</sup>

## 2.2 The right to freedom of opinion and expression

The right to freedom of expression is conceptual and vital for forming an individual and developing a democratic society as a whole. In order to protect the right to freedom of expression, the media must have the opportunity to carry out their activities regardless of State control.

However, what shall be done when a person cannot express their thoughts aloud and defend their opinion in creative work, literature, media, politics, and other spheres of activity? Moreover, in Belarus, a case can be initiated entirely based on falsified evidence, and always after a court decision is rendered, a person finds himself behind bars or is forced to pay a fine. That is the price to pay for anyone who wishes to express their opinion in Belarus when the opinion differs from the one encouraged by the authoritarian regime. As a member of the international community, Belarus formally recognizes universal human rights, including the right to express beliefs freely, and must comply with international obligations in human rights protection. Belarus has committed itself at the legislative level to consolidate international principles, values, and guarantees of freedom of expression and ensure their further implementation in everyday practice.

According to the Constitution and the generally recognized standards of customary international law are guaranteed by the State and provide their observance with respect for domestic law. Article 8 of the Constitution includes international legal obligations in the system of national law. Article 21 of the primary law guarantees the rights of citizens not only designated in it but also recognized within the framework of the establishment of international legal obligations.

Respect for the right of every person under international obligations to freedom of opinion and expression (Article 19 of the UDHR; Article 19 of the ICCPR) is considered imperative

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<sup>57</sup> Council of Europe. Opinion of the Venice Commission at its 126th Plenary Session of 19-20 March 2021 on the compatibility with European standards of certain criminal law provisions used to prosecute peaceful demonstrators and members of the “Coordination Council”. - CDL-AD(2021)002-e, pp 1-21. Online. - [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2021\)002-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)002-e) (01.11.2021).



for Belarus. It includes the freedom to hold opinions freely, to work with information, both to disseminate and to receive it and also includes the freedom to share ideas regardless of physical boundaries in any form through artistic or other forms of expression of one's preference.

However, it is worth noting certain restrictions related to freedom of expression. Thus, their executive spectrum can be reduced in the interests of

- 1) the rights or reputation of others,
- 2) the health or morals of the population,
- 3) public order and public welfare (*ordre public*),
- 4) territorial integrity.

Alternatively, this right can be wholly abolished when a national state of emergency is imposed.<sup>58</sup>

It is worth paying attention to their proportionality: the restriction of freedom of expression, in fact, as well as every human right, does not serve for the absolute realization of autocratic power. A state cannot shield with, for example, the "protection of public order" or any other potential reason for the restriction to arbitrarily violate human rights. The necessary procedure is provided to determine whether the right to freedom of expression (or other human rights) can be restricted.

Thus, article 29 of the Universal Declaration of Human Rights and articles 19 and 20 of the ICCPR establish criteria for restricting freedom of expression: a. permissible restrictions must be provided for by law; established for the sake of the interests of other persons, for the protection of State security, public order, public health or morals; and also be necessary for a democratic society.

### 2.2.1 Amendments to the Law on Mass Media

Consequently, international law gives Belarus a positive obligation to protect the right to freedom of expression and ensures the free exercise of this right in Belarus. Nevertheless, is this the case? And what about national legislation? Article 33 of the Constitution of Belarus

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<sup>58</sup> Smith, Rh. 2020, pp 375-390.

and article 5 of the Law of Belarus of 17.07.2008 "On Mass media" guarantees everyone freedom of opinion, belief, and expression.<sup>59</sup>

The provisions of article 7 of the Law on Mass Media are the guarantor of freedom of information, approving a ban on restrictions on the freedom of the media sector. However, with the adoption of amendments to the law of the media sector, a more severe infringement of freedom of speech was presented, contradicting international obligations, the supreme law of the country, and, directly, within the media law itself.

Thus, from the adopted amendments to the Law on Mass Media, it should be noted that the modification in article 10 (3.4-1) expands the list of those who are not entitled to establish an online edition or an online media outlet. Thus, it is prohibited to create mass media for those legal entities or individuals who previously owned mass media, to which it was decided to restrict access for three years.<sup>60</sup> Further, the amendment to Article 10 (3.4-2) provides the restriction of the right to create mass media for five years for those persons who previously acted as members of an extremist organization. If a media outlet has been liquidated in court, then paragraph 3.3 provides a five-year ban on creating a new media outlet by the same persons. Amendments to paragraphs 3.5 and 3.6 are based on the refusal to register the media of the founder, who is a foreign individual or legal entity. As an exception to this provision, a condition may be provided for the joint media establishment of an institution with Belarus.

The proposed regulation does not seem to have a proper legal justification. It follows from this that the restriction of the right to a fixed and equal term for all founders contradicts the principles of individualization of punishment, fault liability, proportionality, the inadmissibility of double liability, and is fraught with legal dissonance.

Another significant amendment restricting freedom of opinion and expression is the amendment to Article 14. Paragraph 7 was added to Article 14 of the Law on Mass Media, which obliges mass media to undergo re-registration in the event of a change in the domain name of an Internet publication for an authoritarian reason. In the post-election period of 2020, many independent media outlets<sup>61</sup> faced access restrictions<sup>62</sup> on the territory of

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<sup>59</sup> RB. The House of Representatives. Law "On Mass media" of 17.07.2008 № 427-Z. Online. - <https://www.pravo.by/document/?guid=3871&p0=H10800427> (05.11.2021)

<sup>60</sup> *Ibid.*

<sup>61</sup> Blokirovka "Nashej Nivy" i Evroradio, obyski i zaderzhaniya v regionah: hronika za vos'moe iyulya. [Blocking of "Nasha Niva" and Euroradio, searches and detentions in the regions: chronicle for the eighth of July]. Online. – Human Rights Centre "Viasna" - <https://spring96.org/ru/news/104205>

Belarus<sup>63</sup> or complete blocking.<sup>64</sup> To fulfill their functions, online media created copies of their Internet resources to cover events.

These authoritarian changes are also reflected in the amendment to paragraph 1 of Article 11, which establishes the mandatory identity of the name of the registered Internet publication and the name of its domain; otherwise, registration will be refused, according to amendment of Article 15 (1.11) of the law on mass media. Meanwhile, such a requirement imposes arbitrary restrictions on exercising the right to freedom of expression (the media establishment). Another reason for refusal is the resemblance of the name of the media or confusingly similar to the name of the media in respect of which a decision was made to suspend, under Article 15 (1.10). This amendment was introduced to prevent the creation of backup online media outlets.

The addition of burdensome provisions for refusal of state registration is dictated by the intention to fully control freedom of opinion and expression during the restriction of access to independent media and, as a result, to eliminate independent media in the country.

From the point of view of international legal standards of freedom of expression, both the new amendments and the media law itself are subject to revision. It is necessary to abolish the provisions that impose disproportionate restrictions on the founders of new media outlets who were forced to cease their activities based on a judicial and/or administrative decision. The provisions establishing the refusal to register mass media to foreign entities due to the unreasonableness of restrictions should be subject to adjustment. Amendments setting the mandatory oneness of the title of a registered online media outlet with the oneness of its domain name are inappropriate and unnecessarily onerous for a stable media operation process.

In Belarus, an influence not representing the truth is exerted on public opinion through media, dependent on the government. The *de facto* government encourages the media loyal to the regime to propagandize the opinion beneficial to the government. This practice violates the

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<sup>62</sup> Zayavlenie belorusskih pravozashchitnyh organizacij po povodu presledovaniya sotrudnikov TUT.BY. [Statement of Belarusian human rights organizations on the persecution of employees TUT.BY.] Online. – Human Rights Centre "Viasna" 21.05.2021- <https://spring96.org/ru/news/103475>

<sup>63</sup> Ugolovnoe delo protiv Strizhaka i Leonchika, doprosy po "Vesne": presledovanie 12 aprelya. [Criminal case against Strizhak and Leonchik, interrogations on "Spring": prosecution on April 12] Online. – Human Rights Centre "Viasna" - <https://spring96.org/ru/news/102897>

<sup>64</sup> Siloviki prishli k TUT.BY. Hronika presledovaniya 18 maya. [The security forces came to TUT.BY . Chronicle of the persecution on May 18] Online. – Human Rights Centre "Viasna" - <https://spring96.org/ru/news/103404>

right to freedom of expression. A significant component of forming democratic relations between the state and society is the principle of pluralism, in which free and independent media should be protected. It is worth paying attention to that Article 6 of the law on mass media imposes a ban on monopolizing media of any form of ownership. The implemented amendments contradict articles 33, 34 of the Constitution of Belarus, paragraphs 7, 8, 39, and 40 of General Comment No. 34,<sup>65</sup> and hence, the interpretation of paragraph 3 of article 19 of the ICCPR. Attention should also be paid to the innovation in the law on the need for the media to specify a reference or hyperlink to the primary source of information dissemination corresponding to Article 17 (2) and Article 17 (3) of national law. This amendment seems like copyright protection, with such a democratic goal of improving legislation itself. However, it is worth considering the authoritarian intention behind it. Due to the public dissatisfaction with the results of the presidential elections in 2020, many independent online media outlets were included in the list of extremists by the Belarusian authorities.<sup>66</sup> Based on this, disseminating information from media recognized as extremist (online media outlets) entails administrative responsibility. Due to the bill expanding the law on counteraction to extremism,<sup>67</sup> criminal liability was introduced for the public dissemination of information discrediting Belarus under Article 369-1 of the Criminal Code.<sup>68</sup> At the same time, the article does not contain an explicit interpretation of the wording, which information is considered defamatory, and remains at the government's discretion. Therefore, it can be argued that such a modification of the law is intended to affect the prohibition of the dissemination of the free flow of information, which is contradictory with Article 19 of the ICCPR.

Further, the amendment to article 38 forbids the reference to information already prohibited from distribution in the media. At the same time, this amendment establishes a legal conflict with article 17 (3), which obliges journalists to put a hyperlink to another online media outlet or online edition.<sup>69</sup> It is also worth considering that frequently published materials in online media may be subject to future supplementation, which may be qualified as prohibited. Such alterations in the law require clarification; otherwise, they are considered illegitimately

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<sup>65</sup> UN Human Rights Committee. CCPR General Comment No. 34: Article 19 (*Freedoms of opinion and expression*) of 12.09.2011, CCPR/C/GC/34. Online. - <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf> (05.11.2021)

<sup>66</sup> Prokof'eva, E. 2 milliona ekstremistov? V Belarusi raspravlyayutsya s podpischikami Telegrama. [2 million extremists? Telegram subscribers are being dealt with in Belarus] Online. - media corporation Radio Liberty 24.10.2021. - <https://www.svoboda.org/a/dva-milliona-ekstremistov-v-belarusi-raspravlyayutsya-s-podpischikami-telegrama/31527073.html>

<sup>67</sup> RB. House of Representatives. Law of 14.05.2021 No. 104-Z amending the laws "On Countering Extremism". Online. - [https://pravo.by/upload/docs/op/H12100104\\_1621026000.pdf](https://pravo.by/upload/docs/op/H12100104_1621026000.pdf) (05.11.2021).

<sup>68</sup> RB. The House of Representatives. Criminal Code of 09.07.1999 № 275-Z. Online. - [https://kodeksy-by.com/ugolovnyj\\_kodeks\\_rb.htm](https://kodeksy-by.com/ugolovnyj_kodeks_rb.htm) (01.11.2021)

<sup>69</sup> Law "On Mass Media" (2008).

restricting freedom of expression. There is a need to specify the material that can be considered prohibited. For media practitioners to enjoy the freedom of speech and avoid arbitrary punishment, in addition to the adopted amendments to the law, guidance should be presented, which prescribes the signs by which journalists could determine the status of information. Additional amendments may be introduced about the absence of sanctions for the insertion of hyperlinks to the material of another online media outlet, which, after quoting, was declared illegal. It is further recommended that to avoid arbitrary restriction of freedom of speech; prohibited information should be recognized as such only based on a court decision.

Alternative platforms have been created in Belarus for independent and anonymous vote counting during the 2020 presidential elections. For example, one of the most popular among Belarusians was the Golos platform (recognized as an extremist), which was subsequently used for a social survey of citizens of Belarus about political changes in the country.<sup>70</sup> Due to the absence of PACE and OSCE observation missions, independent initiative groups among the Belarusian population revealed many election violations, the data of which were provided to the platform. Such initiatives have become the only mechanism for protecting the right to receive reliable information about the election results, as well as the realization of the political right of citizens to vote following Article 38 of the Constitution. Subsequently, the independent online platforms presented evidence of falsification of election results. The collection of violations and the independent opinion of the population seemed threatening to the authoritarian regime. According to the amendment to article 38, it is now prohibited to conduct public opinion polls and provide their results on the political situation or the executive and legislative authorities without obtaining preliminary accreditation.

Such a ban can be considered groundless and has no legal justification. The purpose of this amendment can be considered the intention to limit the provision of independent information. Amendments to the Law on Mass Media also affected the duties of the owner of the Internet media. Moreover, while some provisions of the amendments in Article 30 (2) repeat the already existing principles on the compliance with professional ethics of journalists (Article 4 of the law on the Mass Media), others are vaguely worded. Clarification is required in Article 30 ( 2.3), which imposes an obligation to prohibit disseminating false information by the media that may threaten state or public interests. Firstly, the law does not establish criteria for analyzing information as possible for causing harm and does not impose obligations on the

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<sup>70</sup> Online Platform "Golos". Official website. - <https://belarus2020.org/home> (05.11.2021).

media to recognize it as such. Further in Article 30, a hierarchy is considered in which the dissemination of false information is not allowed only concerning what may harm the state or public interests. Such a definition contradicts the principle of juridical equality. As a result, the purposeful complication of the work of the media with obligations that are not formulated or repeated from other provisions of this law creates authoritarian requests for press censorship.

Amendments to article 34 supplement the list of duties of a media employee, thereby introducing unjustified restrictions on their activities. Adjustment to the law constitutes discriminatory conditions for the activities of journalists; in the Belarusian realities, these innovations will allow to reclassify any reliable information into forged. The amendments to Article 35 (2<sup>1</sup>) establish a reason for depriving a media employee of accreditation if 1) a media employee or the owner of a media outlet violated the accreditation procedure, or 2) a media employee was found to have committed an intentional and illegal act during the exercise of their official powers, or 3) the requirement was violated, or the duties established in articles 34 and 52 (2) of the law were not fulfilled. Such an extension of the reasons for termination of accreditation is a discriminatory pattern of limitation of rights. Such provisions put a media worker in a position where they cannot assess the likelihood of a violation. Further, the analysis of this article leads to the conclusion that such a norm does not determine which intentional illegal act in the course of journalistic practice falls under this category. Based on the text of the article, it seems that any offense can become a reason for arbitrarily withdrawing accreditation. Thus, this article puts journalists in unequal conditions when those media workers who are inconvenient to the existing regime for political reasons will be deprived of accreditation.

It is worth noting that Article 52 (2) again refers to the issue of discrediting. The article says that before spreading information that could potentially discredit the country or defame the honor, dignity, or business reputation, a media worker is obliged to establish the authenticity of the information and allow explanations from interested parties. Besides, the law does not provide any criteria for information according to which it can potentially fall into the category of "defamatory" does not define the powers of a journalist to evaluate information as potentially defamatory.

The professional activity of a media employee is to provide censorship-free information under paragraph 13 of General Comment No. 34. The same rule allows the mentioned subject of publication to comment before publication, and if the published information is still considered

as discrediting, to deprive the media worker of accreditation. According to the interpretation of article 19 of the ICCPR, the quota should not be comprehensive or discriminatory. The state should consider the diversity of persons interested in exercising the powers of a media employee, and therefore it is an unacceptable requirement to issue such licenses per paragraph 44 of General Comment No. 34.

In the light of the restrictions on freedom of speech under consideration, special attention should be paid to introducing amendments regarding access to online media publications. Amendments to Article 51<sup>1</sup> have expanded the powers of the Ministry of Information and the Prosecutor's Office, where, based on their resolution/decision, an online media publication can be blocked. If now there is no need for a court order to block the activities of the media, the process of restricting access will take place much faster. Such innovation has endeavored at the concealment of just information on the Internet.

Another addition affects the resolutions of the Interdepartmental Commission on Security in the Information Sphere. If this Commission considers the information contained in the online media as threatening national security, it will decide to block this online resource as stipulated in Article 51<sup>1</sup> (2.5). The mechanism and criteria for evaluating information are entirely at the discretion of the Interdepartmental Commission since the law is silent in this regard. The suppression of the operation of the media undermines the enshrined right to freedom of expression. Paragraphs 13-15 and 39 of General Comment №34 declare the right to freedom of the press without censorship and restrictive conditions. The grounds for infringing on the activities of the media should be transferred to an independent judicial instance, and the media representative who has been charged should be given the right to use the mechanism of legal protection. It follows from this that the amendments contradict articles 33 and 34 of the country's supreme law and violate international obligations under article 19 (3) of the ICCPR.

### 2.2.2 Violations of rights to freedom of opinion and expression

In the interests of national security, public order, protection of morality, health, rights, and freedoms of citizens, article 23 of the Constitution provides for possible restrictions on freedom of expression. However, the primary law lacks a critical element of restricting this freedom, namely, "to be applicable in a democratic society." Moreover, this is even though, according to Article 1 of the Constitution, Belarus is declared as a democratic state. So,

against the criteria established by the Universal Declaration of Human Rights and the ICCPR, the Republic of Belarus *de jure* ignores the criteria at the national level.

What other restrictions does Belarus impose within the country? What is the legal taste of the lack of freedom of expression in Belarus? In the post-election period, the authorities enforced restrictions on various forms of expression of opinion on ideological discretion.

Court rulings under the amended Article 23.34 of the Administrative Offences Code<sup>71</sup> (current 24.23) extended their influence to the prohibition of expression of opinion through the display of flags and symbols, including demonstrations on private property. According to this article, hefty fines (up to 1,100 USD) and administrative arrests (up to 30 days) are imposed on citizens. For example, the court found guilty those citizens who hung white-red-white symbols on the windows and balconies of their apartments<sup>72</sup>, painted their own houses in white and red colors<sup>73</sup>, wore clothing with elements of white and red<sup>74</sup>. The made snowman on the personal estate was recognized as a single-person unauthorized picket.<sup>75</sup>

The Venice Commission also expressed concern about the amendments to the Administrative Offences Code of Belarus, which increases the punishment for participation in mass events and restrains the freedoms of citizens.<sup>76</sup>

The color scheme of red and white in clothing must not be used; as for now, these colors are "violating public order," as the Minister of Internal Affairs of Belarus states. The white-red-white flag against which Lukashenka gave his first president's pledge soon could be considered extremist. Also, the citizens can no longer wish prosperity and well-being to their homeland; otherwise, Belarusians will get a fine or an administrative arrest.

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<sup>71</sup> RB. The House of Representatives. Code on Administrative Offences of 06.01.2021 No 91-Z. Online. - [https://kodeksy-by.com/koap\\_rb.htm](https://kodeksy-by.com/koap_rb.htm) (04.11.2021)

<sup>72</sup> Minchanina pryamo iz kvartiry zabrali za flag na balkone. Emu dali 30 bazovyh shtrafa. [The Minsk resident was taken directly from the apartment for the flag on the balcony. He was given a 30-base fine]. Online. – media outlet Onliner.by 01.12.2020. - <https://realt.onliner.by/2020/12/01/zabrali-iz-kvartiry-za-flag>

<sup>73</sup> Polochanina, pokrasivshego svoj dom v cveta nacional'nogo flaga, uvolili posle osvobozhdeniya iz IVS. 38 let on bezuprechno rabotal na zheleznoj doroge. [The Polotsk resident, who painted his house in the colors of the national flag, was fired after being released from the IVS. For 38 years, he worked flawlessly on the railway.] Online. – media outlet Vitebskij kur'er 18.02.2021. - <https://vkurier.by/216742>

<sup>74</sup> ZHitel'nicu Grodno zaderzhali za shtany s belo-krasnymi lampasami, mol, oni «narushayut obshchestvennyj poryadok». [A resident of Hrodna was detained for pants with white and red stripes, saying that they «violate public order».] Online. – media outlet Nasha Niva 20.01.2021. - <https://nn.by/?c=ar&i=266942&lang=ru>

<sup>75</sup> In Gomel, a man will be judged for a "picketing" snowman. [V Gomele muzhchinu budut sudit' za "piketiruyushchego" snegovika]. Online. – media outlet EURORADIO.fm 04.01.2021 - <https://euroradio.fm/ru/v-gomele-muzhchinu-budut-sudit-za-piketiruyushchego-snegovika>

<sup>76</sup> Council of Europe. Opinion of the Venice Commission (reference 57).



Among other amendments to the Law "On Countering Extremism",<sup>77</sup> the Prosecutor General's Office<sup>78</sup> proposed to expand the concept of "extremist materials" and include "symbols and attributes intended for extremist activity and its propaganda." After the amendments, work began recognizing the unofficial state flag of Belarus as extremist, which continues to this day.<sup>79</sup> This is an explicit example of how the resistance to national symbols shall be carried out and what constitutes "extremism" in the opinion of the Prosecutor General's Office on the orders of Lukashenka. It is worth noting that this flag was considered a state flag twice in the history of Belarus: during the declaration of independence of the first Belarusian republic – in 1918 and 1991-1995 after the collapse of the USSR, and until the escalation of Lukashenka's authoritarian power arose. Subsequently, the white-red-white flag became a symbol of the Belarusian opposition movement. The findings of the experts from the Center for Research of Belarusian Culture, Language, and Literature of the National Academy of Sciences conducted a study has concluded that the slogan "Zhyve Belarus!" (Long Live Belarus) is neither offensive nor cynical and that the white-red-white flag is "the national colors of the Belarusian people," which can appear in various forms and expressions.<sup>80</sup>

It shall be noted that the Venice Commission<sup>81</sup> expressed its disapproving opinion regarding the new version of the law "On The Fight Against Terrorism," which toughens control over the peaceful assembly and freedom of expression. In addition to the prohibition of white-red-white symbols, these amendments expand the powers of law enforcement agencies to impose an order towards a physical person, a legal entity, the media if they are seen for extremist activities. Unregistered communities will also be recognized as extremists. Indeed, what is included in the definition of extremist activity is left entirely at the discretion of law enforcement officials; no precise wording is provided. The KGB will control all those involved in a state-disapproved activity. There was KGB control and censorship previously,

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<sup>77</sup> Law amending the laws "On Countering Extremism."

<sup>78</sup> Prosecutor General's Office: Prepared to amend the legislation on the fight against extremism and rehabilitating Nazism. Online. - Prosecutor General's Office 18.03.2021. - <http://www.prokuratura.gov.by/ru/media/novosti/zashchita-sotsialnykh-prav-grazhdan/bezopasnost-zhiznedeyatelnosti-naseleniya/generalnaya-prokuratura-podgotovleny-k-vneseniyu-izmeneniya-v-zakonodatelstvo-o-protivodeystvii-ekst/>

<sup>79</sup> V Belarusi obnaruzheno bolee 100 novyh mest massovyh zahoronenij mirnyh grazhdan v gody VOV. [More than 100 new places of mass graves of civilians during the Second World War have been found in Belarus.] Online. – State media outlet Belta 26.07.2021. - <https://www.belta.by/society/view/v-belarusi-obnaruzheno-bolee-100-novyh-mest-massovyh-zahoronenij-mirnyh-grazhdan-v-gody-vov-452161-2021/>

<sup>80</sup> Inanec, S. Uchenye iz NANBelarusi ob'yasnili, pochemu «ZHYve Belarus» i BCHB — ne «cinichnye i oskorbitel'nye». ["Scientists from the National Academy of Sciences of Belarus explained why "ZHYVE Belarus" and BCHB are not "cynical and offensive".] Online. – EURORADIO.fm 11.11.2020 - <https://euroradio.fm/ru/uchyonye-nan-obyasnili-cto-znachat-belo-krasno-belyy-flag-i-fraza-zhyve-belarus>

<sup>81</sup> Council of Europe. Opinion of the Venice Commission (reference 57).

but it kept this activity quiet. As for now, these undue actions are made officially with no hesitation of public reaction. After adopting the amendments to the legislation, peaceful assemblies, instead of a previous "violation of public order," would be considered "extremist activities." Furthermore, the expression of political opinion that differs from the existing ideology is upgraded to extremism.

In no time, the lack of freedom of speech existed in both *de facto* and *de jure*. Further it is emphasized that one can find the deprivation of citizenship for carrying out "extremist activities" and face the subsequent deportation.<sup>82</sup>

All cases objectionable to the government are examined prejudiced, and the legislation is used biased in the restriction of rights. No freedom of speech or even thought are allowed to the citizen of the 'democratic' state.

In October 2020, against the background of mass violations of human rights in Belarus, the execution of illegal orders, international crimes, the largest opposition informative telegram channel, Nexta, was called an extremist.<sup>83</sup> The Minsk court issued a ruling on the content of the characteristics of extremist activity, namely, the organization and public calls for mass riots. Dissemination of materials with the Nexta (Nekhta) or Nexta LIVE logo will lead to administrative liability under Article 17.11, Part 2 of the Code of Administrative offenses in the form of arrest or fine with confiscation of the object of an administrative offense.<sup>84</sup>

And what about the initiation of criminal cases in the post-election period? Various creative works can appear as an artistic form of the political expression of opinion and popular opposition in the modern world, protest art becomes a part of our future and a memory for the future generation since Article 19 (2) of the ICCPR does not limit the manner of one's expression. The Belarusian legislation will do it for it. Articles 339 and 341-1 of the Criminal Code<sup>85</sup> on the prohibition of freedom of speech became popular in the season of post-election

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<sup>82</sup> RB. House of Representatives. Law of 26.05.2021 No. 112-Z "On the Amendment of Criminal Liability Codes" <https://pravo.by/document/?guid=12551&p0=H12100112&p1=1&p5=0> (05.11.2021)

<sup>83</sup> Vlasti Belarusi ob"yavili kanal Nexta "ekstremistskim". [Belarusian authorities declare Nexta channel "extremist"] Online. - media corporation Radio Liberty 20.10.2020 - <https://www.svoboda.org/a/30903443.html>

<sup>84</sup> Kanal i logotip NEXTA priznany ekstremistskimi materialami. [The channel and the NEXTA logo are recognized as extremist materials] Online. – state media outlet Belta 20.10.2020. - <https://www.belta.by/society/view/kanal-i-logotip-nexta-priznany-ekstremistskimi-materialami-411827-2020/>

<sup>85</sup> The House of Representatives. Criminal Code (reference 68).

repression. The judges churned cases out under these articles hooliganism and desecration of the building, respectively.

Significant is the case of Maria Safonovich<sup>86</sup> under article 341 (desecration of buildings and property damage), who wrote an inscription and depicted the Belarusian national flag on the asphalt. For the first time during the court hearing, the explanation was given about the meaning of the phrase "Long Live Belarus" and the red-white-red symbols.<sup>87</sup> However, despite the conclusion of the experts, the judge handed down a sentence – 2 months imprisonment. This indicative case openly demonstrates the lack of the rule of law, the impartiality of the judicial system, and the ignorance of the obedient servants of the regime.

Under similar circumstances, five people were convicted in the case under article 339 of Part 2 of the Criminal Code, where the punishment ranged from one and a half years of "home arrest" to imprisonment for up to 2 years.<sup>88</sup> Isn't it too cruel punishment for writing on the asphalt? Why is the sentence so harsh? This inscription hides a person's life, namely the first murder committed by the security forces on a deliberately criminal order. (See the sub-chapter the murder of Alexander Taraikovsky)

For the recognized right to freedom of opinion and expression and freedom of peaceful assembly, dozens of students were expelled from universities, underwent administrative arrests, and even criminally prosecuted. Since the beginning of the academic year of 2020, 492 students have been detained, including minors, and 160 of them were expelled, some of whom were forced to flee their motherland and experience life on the run at such a young age.<sup>89</sup> Meanwhile, the pressure on students and teachers at universities was escalating. If a professor in a higher education institution publicly expressed an opinion contrary to the authoritarian regime, supporting students in their political view against the current Belarusian ideology, then the professor would be subjected to dismissal and prosecution. The

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<sup>86</sup> Bublikova, T. Na dome narisovali chlen i napisali «ZHyye Belarus'». Za chto iz etogo sud i arest? [It was painted on the house with a penis and written "Long live Belarus". What is the trial and arrest for?]. Online. - media outlet Naviny.by 12.11.2020. - <https://naviny.online/article/20201112/1605186556-na-dome-narisovali-chlen-i-napisali-zhyve-belarus-za-chto-iz-etogo-sud-i>

<sup>87</sup> Inanec, S. (reference 80).

<sup>88</sup> V Minske 5 chelovek prigovorili k real'nym srokam za nadpis' na asfal'te. [In Minsk 5 people were sentenced to real prison terms for writing on the asphalt.] Online. – media outlet Radio Svoboda 08.12.2020. - <https://www.svoboda.org/a/30990694.html>

<sup>89</sup> Fourth month of the Semester: Repressions against students. Online. - Belarusian Student Association. - [https://zbsunion.by/en/news/pressure\\_on\\_students](https://zbsunion.by/en/news/pressure_on_students) (19.10.2021).

governmental cruelty is in its simplicity; if one desires to hold one's opinion in a public institution, one will express one's opinion while facing repression.<sup>90</sup>

Criminal prosecution was also carried out of all the members of the presidium of the Coordination Council (representative opposition body of the Belarusian society).<sup>91</sup> For reasons of health, safety, and life security, those who remained at large were forced to escape the Republic. All the current opposition leaders are abroad, and the rest of the opposition politicians are in custody.

And how does the regime treat human rights defenders in the context of their right to freedom of speech? The human rights center "Viasna", which has been deprived of registration, has tried several times in the history of its existence to renew the registration, but it was refused. The Human Rights Committee recognized Belarus' violation of Article 22 of the ICCPR, but the government of Belarus ignored their statement.<sup>92</sup>

In March 2021, "Viasna" was charged under Article 342 of the Criminal Code ("organization and active participation in group actions that grossly violate public order"), which the Venice Commission demanded to clarify in its opinion on Belarus. As for now, some human rights defenders of the "Viasna" are in custody. In addition to the human rights center "Viasna", the regime repressed human rights defenders of the Belarusian Office for the Rights of People with Disabilities, two of them also remain in custody for their freedom of speech.<sup>93</sup>

Despite all the horrendous acts of lawlessness and violence, Belarussians keep fighting for their rights and democracy. The dictatorship can deprive people of their physical freedom, but the regime is not able to take away the freedom of their spirit and ideals.

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<sup>90</sup> «Odni ushli sami, drugih uvolili». Vuzy i shkoly Belarusi posle protestov 2020 goda. ["Some left by themselves, others were fired." Universities and schools in Belarus after the 2020 protests.] Online. – media project Krym.Realii of Radio Liberty 09.10.2021. - <https://ru.krymr.com/a/belarus-protesty-vuzy-shkoly-prepodavateli-studenty-uvolneniya-otchisleniya/31500104.html>

<sup>91</sup> Coordination Council. Official website. - <https://rada.vision/en>

<sup>92</sup> FIDH. UN recognizes that Belarus violated the rights of Ales Bialiatski. Press Release 17.11.2014. Online. - <https://www.fidh.org/en/region/europe-central-asia/belarus/16475-un-recognizes-that-belarus-violated-the-rights-of-ales-bialiatski>

<sup>93</sup> Organizacii grazhdanskogo obshchestva Belarusi vystupili v podderzhku PC "Viasna". [Civil society organizations of Belarus have stood out in support of the Human Rights Center "Viasna"]. Online. – the human rights center «Viasna» 09.03.2021. - <https://spring96.org/ru/news/102283>

### 2.2.3 «Freedom of fear». A shootout between a civilian and a KGB officer

Repressions among civil society are ongoing in Belarus. Groups of unidentified persons break into the private dwellings of civilians, offices of non-governmental organizations, and independent media, carry out arbitrary searches and detentions, inebriated with the power granted by the legal anarchy reigning in the country absolute impunity for their actions.

On September 28th, during the raid, a group of unidentified persons broke into Andrei Zeltser's apartment; due to this event, two people were dead: Andrei and one of these intruders. Andrei Zeltser, an IT sector employee, posted several photos with white-red-white symbols on his social page on Instagram, which could have caused close attention from law enforcement agencies.

However, law enforcement officers did not act according to the law. A video published by an independent online media outlet demonstrated the home invasion by a group of unidentified individuals without presenting official identifications or court orders.<sup>94</sup> The principle of inviolability of the home is guaranteed by Article 29 of the Constitution of Belarus, which states that no one has the right to enter the lawful possession of a citizen against their will without a legitimate reason. This recognized international standard is enshrined in article 17 of the ICCPR.

Later, it turned out that KGB agents dressed in civilian clothes carried out such an armed raid.<sup>95</sup> That operation did not look like legally sound actions of law enforcement officers obviously that this dreadful accident could have been avoided by proceeding according to the law (be subject to subpoena).

The shooting incident, which resulted in the death of two people, gave rise to various opinions on social networks. Users expressed their opinions in comments of online publications or individual posts regarding the accident.

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<sup>94</sup> К видео перестрелки сотрудника КГБ и застреленного его человека есть вопросы. Вот они. [There are questions about the video of the shooting of a KGB officer and the man who shot him. Here they are.] Online. – media outlet Zerkalo.io 28.09.2021 - <https://news.zerkalo.io/life/3576.html>

<sup>95</sup> RB. State Security Committee (KGB). Statement of 28.09.2021. Online. - <http://www.kgb.by/ru/news-ru/view/v-xode-provedeniya-spetsialnyx-meroprijatij-po-otrabotke-adresov-v-kotoryx-mogli-naxoditsja-litsa-prichastnye-199/> (05.11.2021)

The Ministry of Internal Affairs of Belarus announced the identification of more than 200 commentators and the launch of a 'special bot for the communications from citizens.'<sup>96</sup> In other words, it is a bot for denunciations of commentators. According to the Human Rights Centre "Viasna", more than 110 identified persons have been detained, being attributed with Article 369 of the Criminal Code (insult of a government official) and Article 130 of the Criminal Code (incitement to hatred against the social group).<sup>97</sup>

Article 369 of the Criminal Code of Belarus provides for up to 3 years of imprisonment with a fine; the maximum penalty under Article 130 is 12 years in prison. Most likely, most detainees under Article 130 will be charged with part 1 of it for incitement to hatred against the social group, where the maximum penalty is imprisonment for up to 5 years. However, it is unpredictable to assess the current legal reality with its double political standards in Belarus. Due to amendments to the Criminal Code of Belarus at the end of 2020, the article for "insult" (Article 189 of the Criminal Code) was repealed. However, criminal liability for insulting a government official was recently introduced in the Law on Amendments to the Criminal Liability Codes.<sup>98</sup> It follows that a prison sentence is threatened for insulting a government official and for insulting an ordinary citizen - an administrative punishment per article 10.2 of the Code on Administrative Offences.

Because Belarus has ratified the International Covenant on Civil and Political Rights and is also a member of the OSCE, it has made commitments that oblige to bring national legislation in line with international standards. The OSCE, within the framework of the Moscow Mechanism, recommended the complete repeal of the law providing for criminal prosecution concerning defamation.<sup>99</sup> General Comment No. 34 in paragraphs 11, 13, 20, and 38 addresses the importance of the right to freedom of expression, including but not limited to comments on personal or political topics. The Committee also expresses concern about the laws on insulting the highest State official, disrespecting government officials, and protecting public officials' honor. The Comment noted the importance of the principle of equality before the law regardless of their official position and a recommendation to ban criticism of the

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<sup>96</sup> Pravoohraniteli ustanovili bolee 200 avtorov kommentarijev o gibeli sotrudnika KGB. [Law enforcement officers have identified more than 200 authors of comments about the death of a KGB officer.] Online. - media outlet Interfax-Zapad 03.10.2021. - [https://interfax.by/news/policy/vnutrennyaya\\_politika/1303861/](https://interfax.by/news/policy/vnutrennyaya_politika/1303861/)

<sup>97</sup> Spisok zaderzhannyh po ugolovnomu delu za kommentarii po povodu gibeli Andreye Zel'cera i sotrudnika KGB. [List of detainees in a criminal case for comments on the death of Andrei Zeltser and a KGB officer]. Online. - Human Rights Centre "Viasna" 04.10.2021. - <https://spring96.org/ru/news/105198>

<sup>98</sup> Law "On the Amendment of Criminal Liability Codes" 2021.

<sup>99</sup> OSCE. The Moscow Mechanism (reference 4).

administrative apparatus. It follows from here that both a civil servant and any other country citizen should be protected equally.<sup>100</sup>

Following the Johannesburg Principles based on international and regional legal norms for the protection of human rights, the exercise of the right to freedom of expression should not be subject to illegal restrictions in order, among others, to impose a specific ideology and prevent the publicity of his unauthorized actions under the auspices of the protection of national security. (Johannesburg Principles 1 and 2 (b))<sup>101</sup>

Due to the inconsistency of national legislation with the implementation of international obligations adopted by Belarus, it is necessary to revise its Criminal Code and decriminalize articles providing for criminal punishment for insults, criticism, and defamation against a representative of the highest political authority, the highest state official, a representative of the government, the administrative apparatus, the state, state symbols. Since the detentions of citizens who commented on the shooting incident took place based on their political beliefs, different from the ideology imposed by the *de facto* government, and the lack of legal grounds for exercising their right to freedom of expression, the use of a measure of restriction of personal freedom by law enforcement officers was carried out illegally.

#### 2.2.4 Freedom of information on the Internet. Repression of the media and journalists.

The situation with freedom of speech and the position of the media became complex after the 2020 elections when absolute arbitrariness in restricting the right of citizens to receive independent information was revealed.

During the first days of the most violent suppression of the civilian confrontation in the history of modern Belarus by the riot police, the country was in an information vacuum without Internet access due to its shutdown by the government. Population lost contact with the outside world, standing against the oppression. After the restoration of stable Internet access, videos of brutal beatings, torture, and harassment of protesters by law enforcement

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<sup>100</sup> CCPR General Comment No. 34 (2011).

<sup>101</sup> Article 19. The Johannesburg Principles on National Security, Freedom of Expression and Access to Information of 01.10.1995. Online. - <https://www.article19.org/wp-content/uploads/2018/02/joburg-principles.pdf> (05.11.2021)

officers were widely posted on the Internet, which led to an escalation of discontent with the regime among the demonstrators.<sup>102</sup>

Shortly after announcing the falsified election results, Lukashenka met with whom he believed to be his electorate, the plant workers. However, it did not go as expected; instead of eulogies, the workers chanted: "Resign!" Moreover, again the Internet was shut down so that Belarusians could not contemplate Lukashenka's disgrace. The inglorious video of this spread across the Internet after the meeting, shattering the remnants of his illusory authority.

The Special Rapporteur on promoting and protecting the right to freedom of opinion and expression noted that such measures, which were not established following the law, constitute a violation of Article 19 (3) of the ICCPR.<sup>103</sup> Subsequently, there were also periodic interruptions to the Internet, especially during street marches and protests. Violating the right of citizens to freedom of peaceful assembly are Internet outages due to the lack of the possibility of informing and immediately involving different groups of the population.<sup>104</sup>

In the joint declaration on freedom of expression and response to conflict situations, experts spoke about the inadmissibility of absolute deprivation of citizens' access to freedom of information on the Internet, as it is an unconditional violation of human rights. Any restrictions must be proportionate to the threat and implemented following the law.<sup>105</sup>

Independent news portals that inform socio-political issues were not available by the decision of the Ministry of Information of Belarus. Paragraph 43 of General Comment No. 34 does not allow restrictions on the operation of websites for not allowing criticism of the Government. Deliberate restriction on receiving or disseminating information by shutting down Internet access constitutes a violation of human rights. Such a ban has a detrimental effect on both the right to express an opinion and receive information, mainly when state-controlled media propagate controlled information. Throttling Internet access can be

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<sup>102</sup> Belarus: Internet Disruptions, Online Censorship Authorities Restrict Internet Traffic over Continuing Protests. Online. - Human Rights Organization "Human Rights Watch" 28.08.2020. - <https://www.hrw.org/news/2020/08/28/belarus-internet-disruptions-online-censorship>

<sup>103</sup> UN. The Human Rights Council. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression of 30.03.2017 A/HRC/35/22. Online. - <https://undocs.org/pdf?symbol=en/a/hrc/35/22> (05.11.2021)

<sup>104</sup> UN. The Human Rights Council. Report of the United Nations High Commissioner on impact of new technologies on the promotion and protection of human rights in the context of assemblies, including peaceful protests of 24.06.2020 A/HRC/44/24. Online. - <https://undocs.org/A/HRC/44/24> (05.11.2021)

<sup>105</sup> Article 19. Joint Declaration on Freedom of Expression and Responses to Conflict Situation of 04.05.2015. Online. - <https://www.osce.org/files/f/documents/a/0/154846.pdf> (05.11.2021).



considered, among others, as a violation of the right to peaceful assembly, freedom of association and movement, and the right to privacy.<sup>106</sup>

After Lukashenka's election loss and failure to recognize reality,<sup>107</sup> several politically independent journalists lost their accreditation. This list includes journalists from the news outlet "Radio Liberty", the Associated Press, Agence France-Presse, ARD, RFI, "Nastoyashchee vremya."<sup>108</sup> Some journalists were also denied accreditation; however, some of them, relying on Belarus' international obligations on freedom of the media<sup>109</sup> came to Belarus to cover the situation as freelancers where during brutal crackdowns, they were have been subjected to police violence.<sup>110</sup> Reverting to the national legislation according to part 4 of Article 35 of the law "On Mass Media," a journalist without accreditation has no right to carry out his professional activity.

The restriction of the right of journalists, inter alia, to cover human rights events, restrictions on the entry of foreign journalists into the State, to prevent journalistic investigations on human rights violations is unacceptable in the light of paragraph 3 of article 19 of the ICCPR. (para 45 of General Comment No. 34)

In connection with the adoption of the autocratically modernized regulation on the accreditation of foreign journalists<sup>111</sup> due to the previous events related to the 2020 presidential election, obtaining accreditation has become more burdensome. This Regulation is aimed at restricting the rights and freedoms of journalists. Therefore, the accreditation of foreign journalists is a requirement for permission to enter the country in a visa-free regime. This is a violation of the OSCE's commitment to freedom of the media, of which Belarus has

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<sup>106</sup> *Ibid.*

<sup>107</sup> OSCE. The Moscow Mechanism (reference 4).

<sup>108</sup> Pochti 20 zhurnalistov lishili akkreditatsii v Belarusi. [Almost 20 journalists were deprived of accreditation in Belarus.] Online. – media outlet Interfax-Zapad 29.08.2020. - <https://interfax.by/news/policy/raznoe/1282159/>

<sup>109</sup> OSCE 2016. Accreditation of foreign journalists in the OSCE region. Online. - <https://www.osce.org/files/f/documents/2/8/245146.pdf> (05.11.2021).

<sup>110</sup> Zaharova ukazala na zaprosy na akkreditatsiyu u zaderzhannykh v Minske zhurnalistov. [Zakharova pointed to requests for accreditation from journalists detained in Minsk]. Online. – media outlet iz.ru 10.08.2020. - <https://iz.ru/1046363/2020-08-10/zakharova-ukazala-na-zaprosy-na-akkreditatsiyu-u-zaderzhannykh-v-minske-zhurnalistov>

<sup>111</sup> RB. The Council of Ministers. Resolution of 02.10.2020 No. 578 on the amendment of the of the Law "On mass media" of 17.07.2008 No. 427-Z. Online. - [https://pravo.by/upload/docs/op/C22000578\\_1601672400.pdf?fbclid=IwAR2xRGWs\\_zD\\_xSugnYwISLPL4aojUPNdrP2YcDsCTPQLNOg3eaBzful5Cko](https://pravo.by/upload/docs/op/C22000578_1601672400.pdf?fbclid=IwAR2xRGWs_zD_xSugnYwISLPL4aojUPNdrP2YcDsCTPQLNOg3eaBzful5Cko)

been a full member since 1992.<sup>112</sup> In the Communiqué of the OSCE Representative on Freedom of the Media, this requirement is unacceptable.

Another point of careful analysis was the clause in this Regulation about the withdrawal of accreditation based on "the presence of information, the dissemination of which in the media is restricted or prohibited." The proposed list of prohibited information is not proposed in the Regulation, which unleashes the revocation of accreditation if the media content becomes too independent and objectionable to the *de facto* government.

Under Article 19 (2) of the ICCPR, the right to disseminate and receive information must be granted to all journalists without discrimination. To fulfill the international obligation to guarantee the right to receive information, the Republic of Belarus should have provided simplified accreditation for journalists to carry out their journalists' activities to inform the community. The explanatory commentary of the UN Human Rights Committee on Article 19<sup>113</sup> explained the need to provide legal remedies to those journalists who were denied accreditation. Furthermore, the refusal to work as a journalist without accreditation violates the freedom to disseminate information.<sup>114</sup>

One of the trusted and respectable oppositional online news outlets – TUT.by, was subjected to repression and deprived of its media status based on the dissemination of defamatory information, translating from the corrupted regime language, and spreading the truth,<sup>115</sup> and it was subsequently blocked. The closure and blocking were caused by the government's rejection of the dissemination of independent information by free media. Such measures are extreme and disproportionate in a democratic society, the adoption of which should not be justified.<sup>116</sup>

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<sup>112</sup> OSCE. Dunja Mijatović. Communiqué No.4/2016 on Freedom of the Media on the accreditation of foreign journalists for implementing the right to freedom of information of 08.06.2016. Online. - <https://www.osce.org/files/f/documents/4/5/245466.pdf> (04.11.2021)

<sup>113</sup> HRC. Communication № 1985/2010 : Human Rights Committee : views adopted by the Committee at its 111th session. 26.08.2014. CCPR/C/111/D/1985/2010. Online. - <http://hrlibrary.umn.edu/undocs/1985-2010.html> (01.11.2021).

<sup>114</sup> HRC. Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2955/2017 of 10.12.2019. CCPR/C/127/D/2955/2017. Online. - <https://undocs.org/en/CCPR/C/127/D/2955/2017> (01.11.2021).

<sup>115</sup> Ekonomicheskij sud lishil TUT.BY statusa SMI. [The Economic Court deprived TUT.BY media status.] Online. – media project REFORM.by 03.12.2020. - <https://reform.by/184786-jekonomicheskij-sud-lishil-tut-by-statusa-smi>

<sup>116</sup> Article 19 (reference 105).

Besides, some newspapers that objectively covered peaceful demonstrations of the civilian population against election fraud became inaccessible to readers because the State Press House refused to publish them.<sup>117</sup>

Mass detentions of journalists marked the post-election period. According to the Belarusian Association of Journalists, 58 journalists were subjected to physical violence by law enforcement officers, including brutal detention, beating, injury, physical injury, including with the use of less-lethal weapons, 495 journalists were detained, 28 are in custody, four were received an actual prison term of 6 months to 2 years, and another 37 are incriminated with the criminal acts.<sup>118</sup> This is the freedom of speech in Belarusian. Any dissident can end up behind bars, and the imputed article does not matter – what is the most important is to limit the ability to inform the public towards those who are particularly objectionable to the dictator's regime. So one of the convicts, journalist Katsiaryna Barysevich, was sentenced to 6 months in prison under Part 3 of Article 178 of the Criminal Code of Belarus ("disclosure of medical secrets that entailed serious consequences») for revealing the truth in the criminal case on the death of Roman Bondarenko (read in the chapter «Murder of Roman Bondarenko»). In her article, she wrote that no alcohol was detected in Bondarenko's blood. Thus, she exposed the investigative committee and Lukashenka, as their version was based on the opposite statement.<sup>119</sup>

According to Article 178 (3) of the Criminal Code, serious consequences should follow concerning the individual or his relatives against whom it was disclosed. In addition, this article will apply if the information was disclosed without the actor's consent or his legal representatives. It is worth noting that the deceased's family members approved the journalist's actions before her publication.<sup>120</sup>

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<sup>117</sup> «CHitateli pechatayut na svoih printerah». Kak vyzhivayut nezavisimye gazety v usloviyah informacionnoj blokady. ["Readers print on their printers." How do independent newspapers survive in the conditions of the information blockade.] Online. - Belarusian Association of Journalists 18.01.2021. - <https://baj.by/ru/analytics/chitateli-pechatayut-na-svoih-printerah-kak-vyzhivayut-nezavisimye-gazety-v-usloviyah>

<sup>118</sup> Represii suprac' zhurnalistaŭ u 2021 godze. [Repression of journalists in 2021.] Online. - Belarusian Association of Journalists 10.02.2021. - <https://baj.by/ru/analytics/represii-suprac-zhurnalista-u-2021-godze>

<sup>119</sup> «On byl p'yanym»: Lukashenko cinichno rasskazal svoyu versiyu ubijstva Romana Bondarenko. ["He was wasted": Lukashenka cynically told his version of the murder of Roman Bondarenko.] Online. – media outlet the Village 13.11.2020. - <https://www.the-village.me/village/city/news-city/285825-byl>

<sup>120</sup> Sud nad vrachom i zhurnalistkoj: sestra Bondarenko govorit, chto Katerina Borisevich soglasovyvala s nej publikaciyu. [The trial of a doctor and a journalist: Bondarenko's sister says that Katerina Borisevich agreed with her publication.] Online. - Belarusian Association of Journalists 24.02.2021. - <https://baj.by/ru/content/sud-nad-vrachom-i-zhurnalistkoy-sestra-bondarenko-govorit-chto-katerina-borisevich>

The disclosure of veracious information about the circumstances of Bondarenko's death was aimed at preventing the general public from hiding information about the circumstances of his death (paragraph 30 of General Comment No. 34).

Equality under a dictatorship: when the *de facto* president and the Investigative Committee, obedient to him, wanting to conceal the facts of abuse of power, disclose medical secrets to the whole country, there are no judicial claims for this; however, as soon as the exposure of their deliberately false information (para 2 article 401 of the Criminal Code of Belarus) follows, a criminal case is immediately opened, but only against innocent dissidents.

Criminal liability through the dissemination of information caught up with two other criminally convicted journalists, Katsiaryna Andreyeva and Daria Chultsova, who were sentenced to 2 years imprisonment in a penal colony for covering a peaceful assembly in memory of the murdered Roman Bondarenko, in other words, they were sentenced for carrying out their professional activities. The official charge was the organization of mass disturbances under part 1 of Article 342 of the Criminal Code.<sup>121</sup>

The Law on Mass Media of Belarus provides for the right of a journalist to cover socially important events following paragraph 2.2 of Article 34. It follows from the protocol that the accused were wearing vests with the title «Press», which excludes their direct participation in mass gatherings.<sup>122</sup>

Under paragraph 47 of General Comment No. 34, deprivation of liberty is an unacceptable measure of punishment for disseminating information that has been reclassified as illegal and violates the right to freedom of expression. Criticism of the government or the political system cannot serve as a basis for restricting the right to freedom of speech and the use of punitive measures for media workers, according to paragraph 42.

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<sup>121</sup> «V kazhdom iz vas skryta velikaya sila, kotoraya smetet vse pregrady na puti k peremenam». ["There is a great power hidden in each of you, which will sweep away all obstacles on the way to change»] Online. - media outlet Charter-97 11.03.2021. - <https://charter97.org/ru/news/2021/3/11/414405/>

<sup>122</sup> Kozenko, A. Prestuplenie putem ozvuchivaniya informacii". Kak v Minske sudyat osveshchavshih protesty zhurnalistok "Belsata." [A crime by voicing information." How Belsat journalists covering protests are judged in Minsk.] Online. – media outlet BBC News/Russian service 09.02.2021. - <https://www.bbc.com/russian/features-55999718>

On 12th March 2021, the journalist Denis Ivashin, who conducted a journalistic investigation about Ukrainian Berkut<sup>123</sup>, the former special unit of the Ministry of Internal Affairs of Ukraine, was involved in special operations on the territory of Belarus, was detained.<sup>124</sup> Now the journalist is facing up to three years in prison under Article 365 of the Criminal Code under "Interference in the activities of an employee of the internal affairs bodies."

The military presence of citizens of another country can be considered as a mercenary for military occupation. Failure to comply with the condition of paragraph 47 of General Comment No. 34, namely arrest, as an unacceptable measure of punishment for spreading information, constitutes disproportionate restrictions on freedom of speech. Following paragraph 30 of the same comment, it states that the withholding information, the receive of which is lawful in the interests of the public and which does not endanger the national security of the country, as well as the persecution of media workers contradicts the principle of publicity and constitutes a violation of article 19 of the ICCPR. All of them were recognized as political prisoners.<sup>125</sup>

Mercenary activity is criminally punishable under the national law, namely under article 132 and article 133 of the Criminal Code, for up to 15 years. Here it is necessary to note the mandatory characteristics of mercenaries, according to national legislation: 1) is not a citizen of the Republic of Belarus, 2) and not a member of the armed forces (Article 133), 3) acting without the state of citizenship informed, 4) for material remuneration.

In Denis Ivashin's research, he proved that these soldiers were not of Belarusian origin<sup>126</sup> and were involved in the internal affairs of Belarus. Based on the journalist's investigations, the ex-Berkut members were accepted for service in the security forces,<sup>127</sup> which guarantees them a material reward in the form of a salary at the expense of the state budget. Riot police officers are also paid extra for the "favorable" suppression of peaceful demonstrators,

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<sup>123</sup> Ivashin, D. Special'noe rassledovanie: chto zashchishchaet «Berkut» v Belarusi. CHast' I. [Special Investigation: what does the "Berkut" protect in Belarus? Part I.] Online. - International Volunteer Community InformNapalm 04.12.2020. - <https://informnapalm.org/49580-specialnoe-rassledovanie-berkut/>

<sup>124</sup> Zhurnal'ist Denis Ivashin v statuse podozrevaemogo po ugolovnomu delu. [Journalist Denis Ivashin in the status of a suspect in a criminal case.] Online. – BAJ 15.03.2021. - <https://baj.by/ru/content/zhurnal'ist-denis-ivashin-v-statuse-podozrevaemogo-po-ugolovnomu-delu>

<sup>125</sup> The Human Rights Centre "Viasna" (reference 6).

<sup>126</sup> Ivashin, D. Special'noe rassledovanie: chto zashchishchaet «Berkut» v Belarusi. CHast' II. [Special Investigation: what does the "Berkut" protect in Belarus? Part II.] Online. - International Volunteer Community InformNapalm 23.12.2020. - <https://informnapalm.org/49645-specialnoe-rassledovanie-chto-zashchishh/>

<sup>127</sup> Ivashin, D. Special'noe rassledovanie: chto zashchishchaet «Berkut» v Belarusi. CHast' III. [Special Investigation: what does the "Berkut" protect in Belarus? Part III.] Online. - International Volunteer Community InformNapalm 24.03.2021. - <https://informnapalm.org/50081-specialnoe-rassledovanie-chto-zashchishh-2/>

according to a former Belarusian riot police officer. I wonder if this transaction is legal or still carried out "under the table," - considering that they receive remuneration for executing illegal orders, specifically using police violence, killing, and torturing peaceful civilians.<sup>128</sup> Relations between Lukashenka and official Kyiv ceased to exist after peaceful demonstrations against the apparent falsification of the election and Lukashenka's counter-action in the form of the bloody suppression of these protests. President Vladimir Zelensky did not recognize Lukashenka as legitimately elected president and subsequently joined the sanctions aimed against the regime.<sup>129</sup> So that the third characteristic, "without the state of citizenship informed," should be considered met.

The international community condemns the involvement of mercenaries during conflicts. Thus, the Declaration of the UN General Assembly "On Principles of International Law concerning Friendly Relations and Cooperation among States concerning the Charter of the UN" claims that "States should avoid the involvement of mercenaries to encroach on the territory of another State."<sup>130</sup> The 61st session of the UN General Assembly notes the role of mercenaries in threatening the observance of human rights, including the right of peoples to self-determination.<sup>131</sup> At the 949th plenary Session of the OSCE Forum, the US Delegation noted the necessity of criminal prosecution of persons convicted of mercenary activities.<sup>132</sup>

In addition to the fighters of the former Ukrainian "Berkut," there is the potential presence of officers from Rosgvardiya, the National Guard of the Russian Federation, in suppressing protests, to carry out orders to preserve the opposition regime in Belarus under the agreement<sup>133</sup> between the Rosgvardiya and MIA of Belarus. Even if, while on the territory of Belarus, the soldiers of the Russian National Guard did not participate in the suppression of

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<sup>128</sup> Vyyasnilos', kak oplachivaetsya vernost' belorusskogo OMONa: pribyl'naya professiya. [It turned out how the loyalty of the Belarusian OMON is paid: a profitable profession.] Online. - media outlet MK.ru 17.08.2020. - <https://www.mk.ru/politics/2020/08/17/vyyasnilos-kak-oplachivaetsya-vernost-belorusskogo-omona-pribyl'naya-professiya.html>

<sup>129</sup> Rzhetskaya, L., Dorohov, V. "Rodstvennik, stavshij vragom". Pochemu ssoryatsya Ukraina i Belarus'? ["A relative turned enemy." Why do Ukraine and Belarus quarrel?'] Online. - media outlet DW.com 26.03.2021. - <https://www.dw.com/ru/u-lukashenko-novyj-vrag-pochemu-ssorjatsja-ukraina-i-belarus/a-57003916>

<sup>130</sup> UN General Assembly (reference 16).

<sup>131</sup> UN General Assembly. Resolution 61/151 of 14.02.2007. Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Right of Peoples to Self-determination A/RES/61/151. Online. - <https://undocs.org/en/A/RES/61/151> (05.11.2021)

<sup>132</sup> OSCE. 949th Plenary Session of the Forum 17.06.2020. FSC.JOUR/955. Online. - <https://www.osce.org/files/f/documents/3/1/455845.pdf> (05.11.2021)

<sup>133</sup> RB. National Legal Internet Portal. Agreement on cooperation between the Ministry of Internal Affairs of the Republic of Belarus and the Federal Service of the National Guard of the Russian Federation No. 3/3849 of 18.12.2020. Online. - <https://pravo.by/document/?guid=12551&p0=I02000029&p1=1&p5=0> (05.11.2021)

protests, after the signing of this document, Russian troops can legally invade the territory of the Republic of Belarus at any time.

### 2.3 Freedom of association

Article 22 of the ICCPR guarantees the right to freedom of association without restrictions and discrimination. Belarus is obliged to comply with international obligations to ensure this right for everyone equally within its jurisdiction and in the absence, *inter alia*, of infringement of the right by the criterion of political affiliation.<sup>134</sup> Restrictions may be imposed if necessary in a democratic society but may represent exceptions rather than a recognized norm. The *de facto* government continues its policy of absolute totalitarianism. Lukashenka does not seek civilized negotiations but is taking revenge on civil society for the sanctions imposed by Western countries, demonstrating that he does not intend to have an actual democratic dialogue. In July 2021, the government began the process of the mass liquidation of NGOs.

The list of closed non-governmental organizations<sup>135</sup> includes: the human rights, the media sectors environmental, educational, research, social, charitable, sports and other organizations have fallen under the authoritarian crackdown.

According to Human Rights Centre “Viasna”, at present, more than 250 non-governmental and non-profit organizations have already been shut down; some others are in the process of liquidation. According to the Belarusian law, liquidation is carried out by order of the Prosecutor's Office or by filing a lawsuit with the Supreme Court - it depends on what organizational and legal form the legal entity exists in.<sup>136</sup> For instance, the Ministry of Justice has filed a lawsuit to the Supreme Court to liquidate the Belarusian Association of Journalists and the Belarusian PEN Center.<sup>137</sup>

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<sup>134</sup> UN. The Human Rights Council. Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association of 21.05.2012 A/HRC/20/27. Online. - <https://undocs.org/A/HRC/20/27> (05.11.2021)

<sup>135</sup> Legal Transformation Center "Lawtrend" and OEEC. Monitoring of NGOs in forced liquidation. Excel spreadsheet. Online. - [https://docs.google.com/spreadsheets/d/1qHDjDaoq1Fz9TnVsbTlh-sFbWP\\_4U1faraytI8AuKXM/edit?fbclid=IwAR3U7UTOI5ZSRRZL0TRXD3pjoHRErIkGbZfoSoxvuSj05Zr5mWxL7JiQRak#gid=0](https://docs.google.com/spreadsheets/d/1qHDjDaoq1Fz9TnVsbTlh-sFbWP_4U1faraytI8AuKXM/edit?fbclid=IwAR3U7UTOI5ZSRRZL0TRXD3pjoHRErIkGbZfoSoxvuSj05Zr5mWxL7JiQRak#gid=0) (06.11.2021)

<sup>136</sup> RB. The President. Decree “On state registration and liquidation (termination of activity) of business entities” of 16.01.2009 № 1. Online. - <https://pravo.by/document/?guid=3871&p0=Pd0900001> (06.11.2021)

<sup>137</sup> Authorities liquidating dozens of NGOs. Online. - Belarusian Association of Journalists 23.07.2021. - [https://baj.by/en/content/authorities-liquidating-dozens-ngos?fbclid=IwAR0fvIrsOz4BFQb\\_AipLlcKdUqJxDPHQsew0WHoesLMYY0vmS3d\\_kvOeZfM](https://baj.by/en/content/authorities-liquidating-dozens-ngos?fbclid=IwAR0fvIrsOz4BFQb_AipLlcKdUqJxDPHQsew0WHoesLMYY0vmS3d_kvOeZfM)

In an authoritarian state, such as Belarus itself, the deprivation of legality for a non-governmental organization only formally changes the organization's status, since the right to freedom of association, as well as other rights and freedoms for human beings, have never been fully protected. Thus, deprived of its legal status, the Human Rights Center "Viasna" has been working since 2003.<sup>138</sup>

However, there may be risks after the formal liquidation of the organization:

- 1) increasing surveillance from the law enforcement agencies;
- 2) threat of administrative responsibility;
- 3) inadmissibility to interact with government agencies;
- 4) repression by the authorities;
- 5) obstacles to helping vulnerable groups;
- 6) financial obligations for outstanding projects, before employees, and others.

However, NGOs have faced all the listed risks in "independent" Belarus, even holding the legal status. In the current Belarusian realities, both a legal and a person can fall under repression, regardless of their activity. It will all depend on how "inconvenient" the *de facto* government considers them.

Not only the liquidation of non-profit associations marked the ongoing season of repression in Belarus against non-governmental organizations.<sup>139</sup> For example, criminal cases have been opened against seven human rights defenders and volunteers of the Viasna Human Rights Center. Detentions, intimidation, and arrests were accompanied by pressure on civil society.<sup>140</sup> Thus, a well-known opposition figure, Ales Bialiatski, has been a human rights activist in Belarus since the beginning of its formation. In 1996, he founded the Human Rights Center "Viasna", which provided human rights assistance to victims of repression and monitored human rights violations in Belarus. During his activism, he was repeatedly attacked by the authoritarian authorities of Belarus and, in the post-election period of 2011, was

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<sup>138</sup> Human Rights Centre "Viasna". Review-Chronicle of human rights violations in Belarus in 2003. Online. - [https://spring96.org/files/reviews/ru/2003\\_review\\_ru.pdf](https://spring96.org/files/reviews/ru/2003_review_ru.pdf) (06.11.2021)

<sup>139</sup> Zlobina, A. «Zachistka» pravozashchitnikov v Belarusi. ["Cleansing" of human rights defenders in Belarus.] Online. - Human Rights NGO Human Rights Watch 08.10.2021 - <https://www.hrw.org/ru/news/2021/10/08/380101>

<sup>140</sup> Human Rights Centre "Viasna". Analytical review of 02.08.2021. Situaciya s pravami cheloveka v Belarusi. Iyul' 2021. [The human rights situation in Belarus. July 2021.] Online. - <https://spring96.org/ru/news/104506> (05.11.2021)



sentenced to a term of 4.5 years of arrest with confiscation of property.<sup>141</sup> The trial that one may call politically motivated.

On July 14, 2021, Ales Bialitski was again detained for defending human rights, and after 72 hours (the legal period in Belarus during which a detainee must be released or a preventive measure must be applied), he was never released. Together with him, other human rights defenders of "Viasna", Valiantsin Stefanovich, Uladzimir Labkovich, and his wife were detained.<sup>142</sup>

The right to freedom of association imposes a positive obligation on Belarus to take all appropriate measures to prevent, *inter alia*, threats of intimidation or acts of violence, enforced disappearances, arbitrary arrests or detentions, torture or cruel, inhuman or degrading treatment or punishment against trade union activists.<sup>143</sup>

## 2.4 Evidence of torture and other cruel inhuman or degrading treatment or punishment

### 2.4.1 International legal instruments and national legislation

States must ensure that all persons deprived of their liberty are treated with the respect and dignity inherent in the human person and that they are not subjected to torture or other cruel, inhuman, or degrading treatment or punishment.

Belarus ratified the ICCPR<sup>144</sup> and the UNCAT<sup>145</sup> and is legally bound to comply with the obligations set out therein. The concept of "torture"<sup>146</sup> is enshrined in the Criminal Code in Article 128 and corresponds to the concept established by the Convention against torture and recognized by the world community. Where according to Article 128 of the Criminal Code,

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<sup>141</sup> Spustya chetyre goda posle prigovora vlasti reshili lishit' Alesya Belyackogo mesta zhitel'stva. [Four years after the verdict, the authorities decided to deprive Ales Bialitski of his place of residence] Online - Human Rights Centre "Viasna" 18.01.2016. - <https://spring96.org/ru/news/81931>

<sup>142</sup> Posle obyskov u pravozashchitnikov v Belarusi bolee desyatka zaderzhannyh. [After searches of human rights defenders in Belarus, more than a dozen detainees.] Online. - media corporation Radio Liberty 14.07.2021 - <https://www.svoboda.org/a/posle-obyskov-u-pravozaschitnikov-v-belarusi-bolee-desyatka-zaderzhannyh/31358603.html>

<sup>143</sup> Report of the Special Rapporteur (reference 134).

<sup>144</sup> RB. Presidium of the Supreme Council. Law of 05.10.1973 "On the ratification of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights". Online. - <http://pravo.levonevsky.org/bazaby/org460/sbor3/text2021.htm> (10.11.2021).

<sup>145</sup> RB. The Presidium of the Supreme Council. Decree No. 1302-XI of 29.01.1987 "On the ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment". - <http://pravo.kulichki.com/zak/year19xx/doc49078.htm> (03.11.2021).

<sup>146</sup> UN. General Assembly of the UN. Convention of 10.12.1984 Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art.1 (1). Online. - <https://www.ohchr.org/en/professionalinterest/pages/cat.aspx> (02.11.2021).

crimes against the security of humanity are "deportation, unlawful detention, enslavement, mass or systematic execution without trial, kidnapping followed by their disappearance, torture or acts of cruelty committed in connection with the racial, national, ethnic origin, political beliefs, and religion of the civilian population" and are punished by imprisonment for a term of up to twenty-five years, or life imprisonment, or the death penalty.<sup>147</sup> According to Article 25(1) and (3) of the Constitution, the state guarantees the individual's freedom, inviolability, and dignity.<sup>148</sup>

Except for the necessary restrictions imposed by deprivation of liberty, the rights of detainees and prisoners must be respected and guaranteed (principle 5 of the Basic Principles for the Treatment of Prisoners).<sup>149</sup> Law enforcement officials and others, including medical professionals, lawyers, and judges, should be trained to identify signs of all forms of torture and ill-treatment and to prevent them (para 5 of UN Committee Against Torture<sup>150</sup>, para 25 General comment No. 2<sup>151</sup>). The State should have accessible and independent mechanisms to which individuals can complain about treatment during the deprivation of liberty, and the norms of national legislation should recognize this right for them (para 13 of the General Comment No. 2; para 14 of the General Comment No. 20)<sup>152</sup>.

All persons deprived of their liberty have the right to humane treatment and respect for human dignity (Article 10 of the ICCPR, principle 1 of the Basic Principles for the Treatment of Prisoners). This right is a norm of general international law, which is in force permanently, including during a state of emergency (para 3 of General Comment No. 20). It is important to emphasize that per Article 3 of the Criminal Code, the penal enforcement legislation of Belarus is based on its Constitution, generally recognized principles and norms of international law, international treaties relating to the execution of sentences and the treatment of convicted persons. In the event of a legal conflict in applying national or

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<sup>147</sup> The House of Representatives. Criminal Code (reference 68).

<sup>148</sup> Constitution of the Republic of Belarus (1994).

<sup>149</sup> UN General Assembly. Basic Principles for the Treatment of Prisoners. Resolution of 14.12.1990 A/RES/45/111. Online. -

<https://www.ohchr.org/en/professionalinterest/pages/basicprinciplestreatmentofprisoners.aspx> (01.11.2021).

<sup>150</sup> UN Committee Against Torture (CAT). Observations of the Committee against Torture on the revision of the United Nations Standard Minimum Rules for the Treatment of Prisoners of 16.12.2013 CAT/C/51/4. Online. [https://www.unodc.org/documents/justice-and-prison-reform/EGM-Uploads/IEGM\\_Brazil\\_Jan\\_2014/CAT\\_observations\\_to\\_SMR\\_-\\_18.12.2013\\_FINAL.pdf](https://www.unodc.org/documents/justice-and-prison-reform/EGM-Uploads/IEGM_Brazil_Jan_2014/CAT_observations_to_SMR_-_18.12.2013_FINAL.pdf) (01.11.2021)

<sup>151</sup> UN Committee Against Torture (CAT). General Comment No. 2. Implementation of Article 2 of 24.01.2008 CAT/C/GC/2. Online. - <https://undocs.org/CAT/C/GC/2> (01.11.2021).

<sup>152</sup> UN Human Rights Committee (HRC). CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment) of 10.03.1992. Online. - <https://uniteforhumanrights.org/wp-content/uploads/2018/01/453883fb0.pdf> (01.11.2021).

international legislation, the norms of international law shall prevail. (According to Article 8 of the Constitution)

#### 2.4.2 Physical abuse

After the presidential election period, more than 25 700<sup>153</sup> people were arbitrarily detained by Belarusian security forces, among them, 638 people<sup>154</sup> were criminally convicted for political reasons, and thousands of people<sup>155</sup> were and continue to be subjected to systematic torture and other ill-treatment.<sup>156</sup>

During the first day of demonstrations after the violent crackdown, civilians were taken to hospitals with injuries of varying severity due to the use of less-lethal weapons. Among other things, medical workers with recurring frequency recorded gunshot penetrating wounds, traumatic brain injuries, including open head injuries, bruises of the soft tissues of the head, traumatic shock, mine-explosive injuries, bone fractures, penetrating comminuted wounds of different parts of the body, open chest injuries, chemical burns of the conjunctiva of the cornea of both eyes, lacerations, and others.<sup>157</sup>

It should be noted that the data was obtained from an unofficial document on an anonymous basis for fear of reprisals by the Belarusian *de facto* authorities. More than 2500 complaints about the use of physical violence by law enforcement officers were filed with the preliminary investigation bodies during the suppression of protest demonstrations.<sup>158</sup> None of the allegations were thoroughly investigated.

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<sup>153</sup> Human Rights Centre "Viasna". Statistics on the application of articles of the Code of the Republic of Belarus on Administrative Offenses for the purpose of politically motivated persecution of citizens. Online. - <https://spring96.org/persecution?DateFrom=2020-08-09&DateTo=2021-11-01> (05.11.2011)

<sup>154</sup> Human Rights Centre "Viasna". List of convicts in political criminal cases. Online. - <https://prisoners.spring96.org/be/table-convicted>

<sup>155</sup> Human Rights Centre "Viasna". Analytical Review of 30.12.2020. Situaciya s pravami cheloveka v Belarusi. Dekabr' 2020. [The human rights situation in Belarus in 2020.] Online. - <https://spring96.org/ru/news/101195>

<sup>156</sup> EU. Joint Statement by the Missions of the United States, the United Kingdom, Switzerland and the European Union on behalf of the EU Member States represented in Minsk on the use of violence and repression in Belarus of 28.08.2020. Online. - [https://eeas.europa.eu/delegations/belarus/84521/joint-statement-missions-united-states-united-kingdom%20switzerland-and-european-union-behalf-eu\\_en?fbclid=IwAR1Ybn6u5Eh-41aJ8onXTCrIvAP\\_N0AtIhLRatOfIzPRkpcTMaYQ6slfubE](https://eeas.europa.eu/delegations/belarus/84521/joint-statement-missions-united-states-united-kingdom%20switzerland-and-european-union-behalf-eu_en?fbclid=IwAR1Ybn6u5Eh-41aJ8onXTCrIvAP_N0AtIhLRatOfIzPRkpcTMaYQ6slfubE) (06.11.2021)

<sup>157</sup> The International Strategic Action Network for Security (iSANS). A brief assessment of the actions of the Belarusian law enforcement agencies against the participants of the protest actions in Minsk on August 9-13, 2020 of 18.08.2020. Online. - [https://isans.org/wp-content/uploads/2020/08/belarus\\_police\\_violence.pdf](https://isans.org/wp-content/uploads/2020/08/belarus_police_violence.pdf) (05.11.2021)

<sup>158</sup> Belarus: after one year of persecution, civil society hovers between hope and despair. Online. - Human Rights NGO OMCT 24.09.2021 - <https://www.omct.org/en/resources/blog/belarus-after-one-year-of-persecution-civil-society-hovers-between-hope-and-despair>

The UN High Commissioner for Human Rights, Michelle Bachelet, announced these data at the 46th session of the UN Council on the situation in Belarus. Most notably, that information about the number of complaints to the UN was received from the Belarusian *de facto* government.<sup>159</sup>

Under human rights organizations that conduct to witness the use of torture or cruel and inhumane treatment, former prisoners in custody during administrative punishment or pre-trial detention reported being beaten, prolongedly held in stressful positions, tasered, raped with a baton, or threatened with rape. Due to this ill-treatment, severe injuries included fractures, broken teeth, electric shock burns, soft tissue injuries and lacerations, genital injuries, and various degrees of traumatic brain injuries. Some had their kidneys knocked out.<sup>160</sup> The conditions in which people were held in cells for several days were unsanitary, and the cells were highly overcrowded.<sup>161</sup>

After detention, people were taken to the district office of internal affairs and other pre-trial and temporary detention facilities, where, regardless of age and gender, people were beaten with batons, kicked, and punched, forced to stand for hours, kneel or lie in stressful positions, and kept for days in cells that were overcrowding, laid on the floor while police officers walked over them.<sup>162</sup> People were doused with ice water, gas (propane) from a portable cylinder, or engine oil. From the testimony of the victims, about 30 people were in the 5x4 m<sup>2</sup> cell of the Center for Isolation of Offenders (CIO).<sup>163</sup> However, this response is not the limit: more than 70 people could be in four-person cells simultaneously.<sup>164</sup> According to General Comment No. 20, paragraph 11, persons deprived of their liberty should only be held in places officially recognized as places of detention<sup>165</sup>.

Therefore, detainees were kept, regardless of gender and age, in various buildings and premises that were not adapted for this purpose: assembly and sports halls, at the open-air

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<sup>159</sup> UN Human Rights Council. UN High Commissioner. Statement by Michelle Bachelet for Human Rights at the 46th session of 26.02.2021. Online. - <https://belarus.un.org/en/node/113765>

<sup>160</sup> Svidetel'stva zaderzhannyh v Belarusi. Dokazatel'stva pytok i izbivenij. Online. - Radio Svoboda. - <https://www.svoboda.org/a/30804185.html> , 30.08.2020.

<sup>161</sup> Human Rights Centre «Viasna», Belarusian Helsinki Committee, Belarusian Association Of Journalists 2020 (reference 3).

<sup>162</sup> Human Rights Watch. Belarus: Systematic Beatings, Torture of Protesters. Online. - <https://www.hrw.org/news/2020/09/15/belarus-systematic-beatings-torture-protesters> , 15.09.2020.

<sup>163</sup> Human Rights Centre «Viasna», Belarusian Helsinki Committee, Belarusian Association Of Journalists 2020 (reference 3).

<sup>164</sup> Bezpyatchuk, ZH. "My mogli stat' kameroy trupov". Realii "minskih zastenok" na Okrestina. ["We could have become a corpse chamber." The realities of the "Minsk dungeons" on the Okrestina.]Online. – BBC Ukraine 19.08.2020. – <https://www.bbc.com/ukrainian/features-russian-53833572>

<sup>165</sup> HRC. General Comment No. 20.

police departments, in convoy rooms, car washes for departmental cars, military units, and parking lots. According to the testimony of the respondents, physical force, torture, bullying, combined with beating, prisoners lying on the floor were used as punishment. They were forced to sing opposition songs and shout slogans, where afterward, a more robust series of punishments followed. There were also cases when symbols or "board games" (tic-tac-toe) were scratched on the bodies of some victims with a sharp object. When the detainees were admitted to the CIO, they were beaten in a so-called "corridor" made up of riot police and policemen, often accompanied with insults, threats of murder.<sup>166</sup>

#### 2.4.3 Psychological abuse

Subjecting an innocent person to arrest or illegal detention after a kidnapping already harms the person's mental health and provokes possible future mental disorders. Besides, psychological abuse in places of pre-trial and temporary detention consisted of threats to life and health, rude, contemptuous, humiliating treatment, and the use of obscene language. The detainees were forced to pray, sing the national anthem, and shout pro-dictatorial slogans. The detainees were forced to look at bullying and acts of torture against other people, where later, the victims claimed to be traumatized with various psychological and psychosomatic disorders.<sup>167</sup>

Among the interviewees conducted by Human Rights Centre «Viasna»/ Belarusian Helsinki Committee/Belarusian Association Of Journalists,<sup>168</sup> there were shreds of evidence of forced cutting or shaving of hair in the form of crosses on the scalp, as well as being forced to pull out their hair where death threats in cases of disobedience followed. The detainees were also forced to dialogue on politics and provide information about their work, salary, and sexual preferences. Periodically, the acts of torture, the cruel and degrading treatment described above were accompanied by the threat of rape (threats of gang-rape or use of special means, "Rubber Stick," in the act of rape) for refusing to comply with some of the tormentors' demands.<sup>169</sup> Such a sadistic psychological torture method can be qualified as violence, the purpose of which is to show the dominant position of the rapist (supporters of the regime)

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<sup>166</sup> Human Rights Centre «Viasna», Belarusian Helsinki Committee, Belarusian Association Of Journalists 2020 (reference 3).

<sup>167</sup> *Ibid.*

<sup>168</sup> *Ibid.*

<sup>169</sup> Lokshina, T. Justice Is Needed for Belarus. International Scrutiny Is the Way to Get it. Online. - The Moscow Times 16.09.2020. - <https://www.themoscowtimes.com/2020/09/16/justice-is-needed-for-belarus-international-scrutiny-is-the-way-to-get-it-a71454>

over the victim. Women were also forced to strip in the presence of males, and naked men were forced to run through the corridors of places of detention in front of women, along with humiliating treatment with physical violence. Food was provided once a day, at best one loaf of bread for several dozen people, and drinking water was not provided. Some told about the psychological consequences when detainees experienced auditory and visual hallucinations due to starvation and dehydration.<sup>170</sup>

#### 2.4.4 National law: offense and criminal procedure

Per article 3 para 3, the Penalties Enforcement Code "guarantees protection from torture, violence and other cruel or degrading treatment of convicted persons."<sup>171</sup> According to article 40 of the Penal Code, the person responsible is the person who gave a statutory order to execute an order that contradicts the Criminal Code of Belarus and is illicit.<sup>172</sup> However, if the person who executed the order is aware of its illegality, this person is criminally liable (a general principle of criminal law that both *actus reus* and *mens rea* must be present at once).

Under article 426 of the Criminal Code, if the abuse of official authority is a deliberate action that caused physical damage or harm to the legal interests or rights of the victim, the act is punishable by a fine or imprisonment for up to 3 years; in the case of personal gain - from two to six years with or without fine; when the actions of the offender attracted to severe consequences, coupled with violence, torture or insult of the victim or use of arms or special means – shall be punishable by deprivation of liberty for a term of three to ten years.<sup>173</sup>

Succeeding article 455 of the Criminal Code, abuse of the official position committed out of personal gain, as well as inaction resulting in damage, using violent methods or using weapons, in wartime or a combat situation, or resulting in severe consequences, is punishable by imprisonment for a term of five to twelve years with or without a fine.<sup>174</sup>

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<sup>170</sup> Human Rights Centre «Viasna», Belarusian Helsinki Committee, Belarusian Association Of Journalists (reference 3).

<sup>171</sup> RB. The House of Representatives. Penalties Enforcement Code of 11.01.2000 №365-Z. Online. - [https://kodeksy-by.com/ui\\_kodeks\\_rb.htm](https://kodeksy-by.com/ui_kodeks_rb.htm) (23.11.2020).

<sup>172</sup> The House of Representatives. Criminal Code (reference 68).

<sup>173</sup> *Ibid.*

<sup>174</sup> *Ibid.*

The limitation period for bringing to criminal responsibility under parts 3 of articles 426 and 455 of the Criminal Code is ten years from the date of the act. According to article 128 of the Criminal Code, exemption from criminal liability or punishment due to the expiration of the statute of limitations does not apply.

Analyzing the information under the research, the actions of law enforcement officers towards participants of peaceful protests in pre-trial and temporary detention facilities were disproportionate, representing acts of torture and inhumane treatment. These actions are systemic and widespread, threatening the health and lives of thousands of people. Many victims appear to have suffered significant and irreversible physical damage.<sup>175</sup> The exact number of victims<sup>176</sup> as a result of the actions of law enforcement agencies is hushed up<sup>177</sup>; at the moment, it is known that about 12 victims with a fatal outcome<sup>178</sup> from illegal actions<sup>179</sup> of law enforcement agencies.<sup>180</sup> People were subjected to enforced disappearances, some of whom were found dead.<sup>181</sup>

UN human rights activists have called for a thorough investigation of all reported cases of torture by law enforcement agencies. It should be noted that during the post-election period, no criminal cases were initiated to bring law enforcement agencies to justice.<sup>182</sup>

'Qualified executioners,' law enforcement officers, feel complete impunity because so far, these 'people without faces' in plain clothes have not only been brought to justice but are

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<sup>175</sup> Human Rights Centre «Viasna», Belarusian Helsinki Committee, Belarusian Association Of Journalists 2020 (reference 3).

<sup>176</sup> V Minske 18-letnij paren' pokonchil zhizn' samoubijstvom iz-za presledovaniya za massovye besporyadki. [In Minsk, an 18-year-old boy committed suicide due to persecution for mass riots.] Online. - Human Rights Centre «Viasna» 26.05.2021. - <https://spring96.org/ru/news/103565>

<sup>177</sup> Isachenko, A. "Vashego brata sluchajno uronili": blizkie umershego v tyur'me belorusa Vitol'da Ashurka ishchut pravdu o ego gibeli. ["Your brother was accidentally dropped": relatives of Belarusian Vitold Ashurk, who died in prison, are looking for the truth about his death.] Online. - media outlet BBC News/Russian service 29.06.2021 - <https://www.bbc.com/russian/features-57642388>

<sup>178</sup> «Haceu strelic' u peradplechcha». Vajskovec, yaki zabi u Hienadzja Shutava, dau pakazan'ni u sudze. ["I wanted to shoot him in the forearm." The soldier who killed Hienadz Shutau testified in court.] Online. - media corporation Radio Liberty 16.02.2021. - <https://www.svaboda.org/a/31105418.html>

<sup>179</sup> V bol'nice skonchalsya 41-letnij Denis Kuznecov, s tyazhelymi travmami privezennyj s Okrestina. [41-year-old Denis Kuznetsov, who was brought from the Neighborhood with severe injuries, died in the hospital.] Online. - media outlet Nasha Niva 03.10.2020. - <https://nashaniva.com/?c=ar&i=260139&lang=ru>

<sup>180</sup> European Parliament. Joint Resolution 2020/2882(RSP) on the continuous violations of human rights in Belarus, in particular the murder of Raman Bandarenka of 25.11.2020. Online. - [https://www.europarl.europa.eu/doceo/document/RC-9-2020-0389\\_EN.html](https://www.europarl.europa.eu/doceo/document/RC-9-2020-0389_EN.html) (05.11.2021)

<sup>181</sup> UN. The human rights experts. Belarus must stop torturing protesters and prevent enforced disappearances. Online. – UN news 01.09.2020. - <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26199> (05.11.2021)

<sup>182</sup> UN. V OON prizvali Minsk rassledovat' smert' Romana Bondarenko i vse soobshcheniya o pytkah. [The UN called on Minsk to investigate the death of Roman Bondarenko and all reports of torture.] Online. - UN News 13.11.2020. - <https://news.un.org/ru/story/2020/11/1390382> , 13.11.2020.

strongly encouraged to use physical violence, torture, intimidation, and murder against peaceful demonstrators - oppositionists of the usurping regime.

## 2.5 Disproportionate use of force

It all started with the brutal suppression of protests on August 9-13, 2020, immediately after announcing the election results, which the citizens of Belarus considered rigged. Spontaneous peaceful demonstrations in the form of protests swept through the cities of Belarus, which were met with the disproportionate force of law enforcement agencies.<sup>183</sup>

Over time, people who were out in the streets in these bloody protests breathed a word about the use of stun grenades, water cannons, tasers, rubber bullets, brutal beatings, but service weapons by OMON against peaceful demonstrators armed only with their desire for changes in the political system.<sup>184</sup>

Therefore, the Internet shutdowns were beneficial only to the *de facto* authority to shelter their violent deeds from the democratic world based on the available facts. In the aftermath, these shutdowns extended further following the same pattern - Lukashenka rapidly transformed Belarus into somewhat of European North Korea, striving to shelter his cruel orders during peaceful protests.

Minister of Internal Affairs still denies the danger to life and the use of service weapons, claiming the measures applied had been proportionate. However, even aside from firearms, all of the above can result in severe injuries and death. So, stun grenade left a young man disabled, depriving him of his heel; with police batons, women and men were raped, and a rubber bullet shot caused an injury incompatible with life. Unfortunately, there are a lot of appalling stories like these.<sup>185</sup>

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<sup>183</sup> Human Rights Watch. Belarus: Internet Disruptions, Online Censorship. – News Release 28.08.2020. – Online. - <https://www.hrw.org/news/2020/08/28/belarus-internet-disruptions-online-censorship>

<sup>184</sup> Belyaninov, K. Neletal'noe, no smertonosnoe. CHem opasny specsredstva, kotorye primenyali belorusskie pravoohraniteli. [Non-lethal, but deadly. What are the dangers of special equipment used by Belarusian law enforcement officers.]- Online. - Information and news portal BBC.com 19.08.2020 - <https://www.bbc.com/russian/features-53832698>

<sup>185</sup> Edinaya Kniga Registracii Prestuplenij. [Unified Book Of Crime Registration]. - An online platform for collecting, storing and analyzing case files of crimes committed by officials of the Republic of Belarus. - <https://ekrp.org/ekrp/>



After the presidential election only on August 9 alone, at least 62 cases of physical violence against media employees were registered. During the entire post-presidential period of the protest movement initiated due to the falsification of the presidential elections, more than 400 journalists were subjected to repression.<sup>186</sup>

The use of force during the dispersal of demonstrations should always be the rarest, proportionate and extreme measure; even if individual protesters are responsible for one-time acts of violence, the demonstration should not be qualified as violent. Contrary to international obligations, all peaceful protests were brutally suppressed. The law enforcement agencies of Belarus used unjustified force, including the use of batons, chemical agents, rubber bullets, water cannons, and stun grenades.<sup>187</sup>

## 2.6 Failure to provide a fair trial and legal aid

If I had to describe the entire meaning behind the judicial system in Belarus in one sentence, it would be as follows: “since August 2020, no criminal proceedings have been initiated against the use of disproportionate force, violence, torture, and murder by the security forces.”

The UDHR, in articles 7 and 8, proclaims the right to a fair trial and enshrines the equality of all before the law without discrimination on any grounds. This right extends to restoring human rights before a competent local court if human rights have been violated. Further, this principle, with a broader specification of guarantees ensuring a fair trial, is stipulated in Article 14 (1) of the ICCPR. The Human Rights Committee in General Comment №32, para 28 clarified that the establishment of justice, in addition to the above, must be carried out in public.<sup>188</sup>

This principle is also reflected in the national legislation of many countries, and Belarus is no exception. Echoing international human rights acts, Article 22 of the Constitution prohibits discrimination and guarantees equal protection of rights and interests. Based on this principle,

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<sup>186</sup> Belarusian Association of Journalists (reference 120).

<sup>187</sup> The Human Rights Council. Report of the United Nations High Commissioner for Human Rights on situation of human rights in Belarus in the context of the 2020 presidential election of 15.02.2021 A/HRC/46/4. Online. - <https://undocs.org/A/HRC/46/4> (05.11.2021)

<sup>188</sup> UN Human Rights Committee. General Comment No. 32: Article 14: Equality before courts and tribunals and the right of everyone to a fair trial of 23.08.2007, CCPR/C/GC/32. Online. - <https://undocs.org/CCPR/C/GC/32> (02.04.2021).

in the interests of justice in implementing the law, court employees must refrain from any discrimination and provide equal access and treatment by the court to absolutely everyone.

As for a fair trial, the first necessary criterion is the court's independence, according to the 1st standard of the Bangalore Principles of Judicial Conduct.<sup>189</sup> This concept of Independence applies not only to each judge but also entirely to the national judicial system. Further, according to the 3rd and standard: judges must act without external influence and rely in their decisions on the law and the facts and arguments provided. The Bangalore Principles regulate judges to practice their knowledge of the law and rely on ethical principles. That is, in their decisions, judges must be sovereign from the interference of other state authorities, as well as officials or private persons acting: both in personal interests and in obligations under illegal order. Any non-compliance or contradiction of the principle of independence in national legislation should be reviewed and brought to international standards.

Article 110 of the Constitution also guarantees the principle of the independence of judges: "Judges in the administration of justice are independent and subject only to the law. Any interference in the activities of judges in the administration of justice is unacceptable and entails responsibility under the law." However, the guarantees of impartiality come with a reservation, which is determined by the restriction in Article 84 and gives the President of the the right to appoint a judge and dismiss one from the office. They are not so independent, and in fact, they obey the will of one person, which created the absolute corruption of the judicial system in the country. Back in 2001, a UN expert reported on the independence of judges and lawyers in Belarus, where he noted that "the concentration of power in the hands of the president has turned the system of state power into authoritarian governance."<sup>190</sup>

A person may be lawfully deprived of his or her liberty only on legal grounds and following procedures established by law, under article 3 of the Universal Declaration of Human Rights and Article 9 (1) of the ICCPR. This obligation is reflected in national legislation, namely, article 25 (1) of the Constitution, which guarantees personal inviolability until the legal grounds are applicable in the interests of restricting freedom. An individual may be lawfully deprived of his or her liberty only on legal grounds and following procedures established by law, following article 3 of the UDHR and Article 9 (1) of the ICCPR. This obligation is reflected in national legislation, namely, article 25 (1) of the Constitution, which guarantees

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<sup>189</sup> UN. ECOSOC. The Bangalore Principles of Judicial Conduct of 26.11.2002. Online . - [https://www.un.org/ru/documents/decl\\_conv/conventions/bangalore\\_principles.shtml](https://www.un.org/ru/documents/decl_conv/conventions/bangalore_principles.shtml) (02.04.2021).

<sup>190</sup> UN Commission on Human Rights. Addendum to the Report of the Special Rapporteur on the Independence of Judges and Lawyers: Report on the Mission to Belarus of 08.02.2001 E/CN.4/2001/65/Add.1. Online. - <https://undocs.org/E/CN.4/2001/65/Add.1> (02.11.2021).

personal inviolability until the legal grounds are applicable in the interests of restricting freedom.

International law has formulated the concept of a "fair trial." The UDHR in article 10 defined the equality of every person to a fair and free trial in the interests of justice. A relatively detailed list of procedural protections is provided in article 14 of the ICCPR to guarantee a fair trial "based on full equality." The basic principle of the impartiality and autonomy of the court was also set out by the UN Human Rights Committee in the Basic Principles of the Independence of the Judiciary.<sup>191</sup>

After the presidential elections, the trials of those taken into custody were conducted directly in temporary detention, where judges arrived to make decisions. Since there are no courtrooms in such places, the trial could have taken place both in simple offices and in the corridors of pre-trial detention centers. The principle of publicity set out in paragraph 28 of General Comment № 32 on informing the place and time of the court session was utterly violated. Thus, a prisoner in custody could be brought to his court session a few minutes before it began without prior warning and notification of the subject's movement. Undoubtedly, there could be no question of communication with a lawyer, preparation for the defense, and advocacy for their rights. Not to mention the fact that there was a factor of intimidation involved: threats to life and health were received from the guards. The most likely reason for holding court sessions in temporary detention facilities in the first days after the election is that all the courtrooms were occupied with other court hearings. In the first days of the announcement of the falsified results, there were more than 6,700 people detained.<sup>192</sup>

In their opinion on Belarus, the experts of the Venice Commission called on the Belarusian authorities to review the penalties for unauthorized protest actions, taking into account the non-violent nature of mass events, considering the punishment is disproportionate. Belarus has to consider its opinion since it has been an associate member of the Venice Commission since 24 November 1994.

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<sup>191</sup> UN Human Rights Office of the High Commissioner. Basic Principles on the Independence of the Judiciary adopted at the 7th UN Congress on the Prevention of Crime and the Treatment of Offenders on 06.09.1985. Online. - <https://www.ohchr.org/en/professionalinterest/pages/independencejudiciary.aspx> (02.04.2021).

<sup>192</sup> Skol'ko lyudej byli zaderzhany v Belarusi posle prezidentskih vyborov? [How many people were detained in Belarus after the presidential election?] Online. - Belarusian research platform Thinktanks 03.11.2020. - <https://thinktanks.by/publication/2020/11/03/skolko-lyudey-byli-zaderzhany-v-belarusi-posle-prezidentskih-vyborov.html>

Furthermore, the Basic Principles concerning the Role of Lawyers<sup>193</sup> obliges the government to guarantee equal access to legal aid, and if a citizen cannot afford to pay for the services of a lawyer, the state must provide a free public defender (principles 2 and 3). This right protects against torture and other forms of inhuman treatment in places of temporary detention, per paragraph 11 of General Comment No. 20. Pre-trial legal assistance includes both confidential meetings with the defense lawyer and his presence during the interrogation.

Because of the mass nature of cases, decisions were made biased and without proper consideration. The average time spent per defendant was about 10 minutes.<sup>194</sup> It is impossible to rely on legal assistance in such stressful and oppressive conditions, but there was no proper verification of the explanations of the witnesses involved due to the negligence of the judges. The decisions, indeed, were made without taking into account the explanations of the defendant, which were most likely made even before the start of the trial on the orders of someone who has hierarchical authority over the judicial branch of the board.

By article 14 para 3 of the ICCPR, the defendant must be guaranteed the right to communicate with his lawyer. Paragraph 32 of the General comment № 32 is supplemented by the need to familiarize oneself with all the documents relating to the defendant, which will be used during the trial. As noted earlier, prisoners were not allowed to meet with their defense counsel, were restricted or entirely deprived of access to case files, and were forced to sign reports on violations under duress.<sup>195</sup> It is noteworthy that even with the utter absurdity, the apparent falsification of the charges, and the contradictory testimony of the prosecution, the defendant could not use the right to defend himself. When pointing out discrepancies in the prosecutor's words during the court session, the judge corrected the prosecutor, and later this discrepancy was excluded from the record of the court session.

In fact, under the international obligations of article 14, paragraph 5, of the ICCPR, every convicted person has the right to appeal to a higher court per national law. Paragraph 49 of the General comment № 32, the Human Rights Committee explains that exercising this right is possible only if the convicted person or his proxy has access to the case file in court. The national legislation also has the right to appeal. However, the deadline for filing an

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<sup>193</sup> United Nations. Basic Principles on the Role of Lawyers of 07.09.1990. Online. <https://www.refworld.org/docid/3ddb9f034.html> (02.04.2021).

<sup>194</sup> OSCE. The Moscow Mechanism (reference 4).

<sup>195</sup> Human Rights Centre «Vyasna»/ Belarusian Helsinki Committee/Belarusian Association Of Journalists (reference 3).

administrative arrest is five days from the moment of the decision<sup>196</sup> ( Article 13.5 of the Procedural and Executive Code of Belarus about Administrative Offenses). Most of the time, the convicted persons were not provided with any decisions in possession, so *de jure* the right to appeal exists, *de facto* it is almost wholly abolished, and therefore the decision is not subject to review in higher instance courts.

Belarus is obliged to comply with international standards for the observance of these guarantees, among other international documents, the provision of article 9 (3) of the ICCPR, as well as paragraph 34 of General Comment 35<sup>197</sup>, article 2 of the UNCAT<sup>198</sup>, resolution 13/19<sup>199</sup>.

In addition, judicial obligations are interpreted in the «Combating torture handbook: a manual for judges and prosecutors.» This manual sets aside a specific part for the role of judges, lawyers, and prosecutors in the prevention of torture. The judge's responsibility is indicated for the due process of all claims and the examination of the situation, if there are any features of ill-treatment, even if the prisoners did not openly report it. Judges must guarantee respect for the right to communicate with third parties (including lawyers, family, friends, doctors, letters, etc.). This should be done as a protective measure and to ensure that no isolation relates to ill-treatment or even torture. Ensuring that judges, in the case of the practice of torture, bring the perpetrators to justice. Judges should not ignore the constant potential for torture or other ill-treatment of the defendant. In the case of a request for the use of torture against a prisoner on his initiative, his claim must be registered, a forensic medical examination established, and measures taken for a full investigation. If the complaint has not been filed, but a person was being subjected to torture, the procedure must be carried out equally.<sup>200</sup>

The document of the UN Human Rights Council appeals to the States to review national legislation, guidelines, norms and further to ensure compliance with international obligations

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<sup>196</sup> RB. The House of Representatives. Procedural and Executive Code On Administrative Offenses of 06.01.2021 92-Z. Online. - [https://kodeksy-by.com/pikoap\\_rb.htm](https://kodeksy-by.com/pikoap_rb.htm) (01.04.2021).

<sup>197</sup> UN HRC. General comment № 35, Article 9 (Liberty and security of person) of 16.12.2014. CCPR/C/GC/35. Online. <https://www.refworld.org/docid/553e0f984.html> (02.04.2021)

<sup>198</sup> UN General Assembly. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10.12.1984. Online - <https://www.refworld.org/docid/3ae6b3a94.html> (02.04.2021).

<sup>199</sup> UN Human Rights Council, Resolution adopted by the Human Rights Council on on Torture and other cruel, inhuman or degrading treatment or punishment: the role and responsibilities of judges, prosecutors and lawyers of 15.04.2021. A/HRC/RES/13/19. Online. - <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/129/70/PDF/G1012970.pdf?OpenElement> (02.04.2021)

<sup>200</sup> Foley, C. The Torture Reporting Handbook: Combating torture handbook: a manual for judges and prosecutors. Human Rights Centre. Colchester: University of Essex 2003. Online. <https://www.refworld.org/docid/4ec0e9062.html> (02.04.2021).

in the field of protection against torture. In implementing these preventive measures, states should define standards based on which cases of torture are subject to notification by law enforcement officials to a higher authority. In the case of failure to comply, a penalty measure must be imposed against these employees. Moreover, to empower independent authorities to monitor compliance with all preventive measures to avoid the use of torture.<sup>201</sup>

The courts in Belarus ignored all the defendants' statements about their painful condition and requests for medical assistance. Also, the judges did not react to the apparent signs of the use of violence or improper treatment of the detainees; they did not heed the signs of the inhumane treatment of the defendants during their interactions, they did not respond to statements about the use of violence.<sup>202</sup>

## 2.7 Right to kill: Murder of Alexander Taraikovsky and Roman Bondarenko

The use of force concerning both violent and peaceful illegal gatherings is regulated by international reference standards, which describe in detail the necessary mechanisms of suppression in the event of such occurrence<sup>203</sup>. The UN document on the "Basic Principles on the Use of Force and Firearms by Law Enforcement Officials" establishes requirements for officials not to use force in the interests of establishing law and order. If it is impossible to avoid the use, then reduce it to the mandatory minimum.<sup>204</sup> Due to non-compliance with this standard in Minsk alone, during the first days of the protests, more than 1,300 injured, who were affected by the violence of law enforcement officers, sought medical help.<sup>205</sup>

Article 6 of the ICCPR considers the premeditated murder and the circumstances in which the use of disproportionate force can lead to death. First of all, ensuring the right to life is

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<sup>201</sup> UN Human Rights Council. Torture and other cruel, inhuman or degrading treatment or punishment: safeguards to prevent torture in police custody and pre-trial detention. A/HRC/31/L. 26/Rev. 1 of 23.03.2016 Online. - [https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/31/L.26/Rev.1](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/31/L.26/Rev.1) (02.04.2021).

<sup>202</sup> Human Rights Centre «Vyasna»/ Belarusian Helsinki Committee/Belarusian Association Of Journalists (reference 3).

<sup>203</sup> OSCE. Guidelines on Freedom of Peaceful Assembly: 2nd Edition of 25.10.2010. Online. - <https://www.osce.org/odihr/73405> (02.04.2021).

<sup>204</sup> HR Office of the High Commissioner. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials at the 8th UN Congress on the Prevention of Crime and the Treatment of Offenders of 07.09.1990. Online. - <https://www.ohchr.org/en/professionalinterest/pages/useofforceandfirearms.aspx> (02.11.2021).

<sup>205</sup> Litavrin, M., Frenkel', D., Skovoroda, E., Bojko, A. Minsk izbityj. Kak siloviki kalechili protestuyushchih — issledovanie «Mediazony». [Minsk is beaten up. As the security forces are maimed protesters — the study of "media zones"]. Online.- Information and news portal Mediazona Belarus' 13.10.2020. - <https://mediazona.by/article/2020/10/13/minsk-beaten>

proportionality about the final result: Is there an obligation to use violence to suppress the process?

General comment No. 36, paragraph 14, emphasizes the particular need to pay attention to additional independent control of less-lethal weapons, as well as to assess their risks of exposure to a threat to human life.<sup>206</sup> This is because, despite the supposedly lowest probability of causing lethal damage, the frequency of use of these weapons by law enforcement officers and military personnel to resolve unauthorized mass gatherings increases. Even in the case of illegal mass events, international standards regulate to refrain from using less deadly weapons and to use alternative non-life-threatening methods, especially for peaceful demonstrations.<sup>207</sup>

### 2.7.1 The murder of Alexander Taraikovsky

A peaceful demonstrator, Alexander Taraykovsky, was killed on the evening of August 10, with his hands raised in the air, demonstrating disarmament; he was standing in front of riot police officers when one of them fired a rubber bullet, after which death occurred instantly. The "Basic Principles on the Use of Force and Firearms by Law Enforcement Officials" require governments to refrain from using less-lethal weapons to disperse mass events.<sup>208</sup> A criminal case against the security officer who committed the fatal shot for Alexander was not opened. The Investigative Committee said that the actions of law enforcement officers were "within the framework of the instructions available to them."<sup>209</sup>

### 2.7.2 Murder of Roman Bondarenko

"Square of Changes" is one of the main courtyard of the opposition courtyard movement against the results of rigged elections and the regime of Alexander Lukashenka. There, the transformer booth was first depicted as one of the symbols of the cultural opposition movement—a mural of DJs who included the song Tsoi "Peremen" at a forced dictatorial rally,

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<sup>206</sup> HRC. General comment № 36, Article 6 (Right to Life) of 03.09.2019. CCPR/C/GC/36. Online. - <https://undocs.org/CCPR/C/GC/36> (02.11.2021).

<sup>207</sup> Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (reference 204).

<sup>208</sup> *Ibid.*

<sup>209</sup> Demidova, O. SK Belarusi priznal, chto Aleksandra Tarajkovskogo ubili siloviki. [The Investigative Committee of Belarus has admitted that Alexander Tartakovsky was killed by security forces.] Online. - media outlet DW.com 19.02.2021. - <https://www.dw.com/ru/sk-belarusi-priznal-ubijstvo-aleksandra-tarajkovskogo-silovikami/a-56628175>

after which the DJs were imprisoned, repressed, and threatened. This "Square of Changes" is where weekly concerts with opposition artists of Belarus gather people from this neighborhood and Minsk and other cities to support the cult protest on the legendary street.<sup>210</sup>

Roman Bondarenko, the author of the mural mentioned above, was kidnapped from this courtyard and later tortured to death. Unknown persons, without identification marks and officers' certificate (in this manner, Belarusian law enforcement officers are operating), detained Roman and took him by a car without license plates to the pre-trial detention facility (district militia department), from where he was taken to the hospital in a coma with a traumatic brain injury, brain edema, bruises, and abrasions.<sup>211</sup> This act can and must be qualified as the execution of a criminal order to use disproportionate force and ill-treatment against a civilian, by order of the head of the district police department or by his tacit consent, punishable up to the death penalty under Article 128 of the Criminal Code of Belarus. UN and Belarusian human rights defenders demanded that the Investigative Committee and the Prosecutor General's office launch an impartial investigation into the circumstances of Roman Bondarenko's death and that the police immediately identify and track down those involved in the crime.<sup>212</sup> Violence and the worsening human rights crisis in the country can only be avoided if the principle of the inevitability of punishment is strictly observed.

A criminal case was opened in connection with the death of Roman Bondarenko; however, the authorities denied the involvement of law enforcement officers in the death of Roman even before the actual investigation began.<sup>213</sup> In mid-September 2021, the Prosecutor General's Office announced the suspension of the investigation into the death of Bondarenko due to the absence of a potential accused person.<sup>214</sup>

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<sup>210</sup> Vasyukovich, R. Bitva za "dvor peremen". ZHiteli Minska kazhdyy den' risuyut protestnyj mural vo dvore, a vlasti kazhdyy den' ego zakrashivayut. [The battle for the "Square of Changes". Minsk residents draw a protest mural in the yard every day, and the authorities paint it over every day.] Online - Nastoyashchee vremya 16.09.2020. - <https://www.currenttime.tv/a/minsk-dvor-peremen-mural/30841839.html>

<sup>211</sup> Vyshlo novoe rassledovanie o gibeli Bondarenko. V nem — «slivy» razgovorov do i posle gibeli Romana na «Ploshchadi peremen». [A new investigation into the death of Bondarenko has been released. In it — the "spread" of conversations before and after the death of the Novel on the "Square of Changes"] Online. – media outlet Zerkalo.io (former TUT.BY) 24.09.2021 - <https://news.zerkalo.io/life/3383.html>

<sup>212</sup> UN News (reference 182).

<sup>213</sup> Situaciya s pravami cheloveka v Belarusi. Fevral' 2021. [The human rights situation in Belarus. February 2021.] Online. - The Human Rights Center "Viasna" 02.03.2021. - <http://spring96.org/ru/news/102222>

<sup>214</sup> Genprokuratura: rassledovanie ugolovnogo dela po faktu smerti Romana Bondarenko priostanovleno. [Prosecutor General's Office: criminal investigation into the death of Roman Bondarenko suspended.] Online. - State media outlet Belta 17.09.2021. - <https://www.belta.by/incident/view/genprokuratura-rassledovanie-ugolovnogo-dela-po-faktu-smerti-romana-bondarenko-priostanovleno-460288-2021/>



## 2.8 Discrimination on political beliefs

The prohibition of discrimination is included in many legal instruments, the UN acts' most important. Among these documents, I will single out those that the Republic of Belarus has ratified. Political discrimination is prohibited in article 2 of the ICCPR. At the same time, Article 26 of the ICCPR has a dominant practical significance, since the issue of analysis of discrimination, both on political and linguistic grounds, which will be discussed below, as defined within the framework of this international standard in General Comment No. 18.<sup>215</sup>

In the national legislation, the prohibition of discrimination is enshrined in article 22 of the main hierarchical document of the country - the Constitution.

The political opposition and linguistic nationalists in Belarus have been in step since the birth of Belarus's unitary state. Initially, almost all opposition leaders spoke exclusively in Belarusian and called for the revival of national values. Nevertheless, the state policy was not aimed at improving the rights of the Belarusian language. Later, as it turned out, the government was also not interested in democracy. The starting point was the events of the first Referendum and the "Minsk Spring," when citizens went to the streets, disagreeing with the creation of the Union State, providing the Russian language the status of the second state language, and changing national symbols.<sup>216</sup>

### 2.8.1 Revocation of citizenship. Forced displacement

In December, Belarus has adopted amendments<sup>217</sup> to legislation that allows dissidents to be deprived of citizenship, violating the principle of the impossibility of deprivation of citizenship (Article 10 of the Constitution of Belarus) and several fundamental international legal acts on human rights, which, among other things, enshrine the right to citizenship.<sup>218</sup> Article 15 of the Universal Declaration of Human Rights of 1948, article 24 of the International Covenant on Civil and Political Rights of 1966, Article 7 of the Convention on

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<sup>215</sup> UN Human Rights Committee (HRC). CCPR General Comment No. 18: Non-discrimination of 10.11.1989. Online. - <https://uniteforreproprights.org/wp-content/uploads/2018/01/453883fa8.pdf> (05.11.2021)

<sup>216</sup> Panfilov, O. *Vlast' i pressa v Belarusi: hronika protivostoyaniya (1994-1997)* [Power and the press in Belarus: Chronicle of the Confrontation (1994-1997).] .Ed. I. Maksakov. Moscow:Prava cheloveka 1998, pp 370-405.

<sup>217</sup> RB. The Council of the Republic. The law on the amendment of the Law of the Republic of Belarus "On Citizenship of the Republic of Belarus" of 10.12.2020 № 67-Z. Online. - <https://pravo.by/document/?guid=12551&p0=H12000067&p1=1> (05.11.2021)

<sup>218</sup> UN. Human Rights Office of the High Commissioner. Right to a Nationality and Statelessness. Online Publication. <https://www.ohchr.org/EN/Issues/Pages/Nationality.aspx> (03.11.2021).

the Rights of the Child of 1989, Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination, Article 9 of the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Nationality of Married Women, article 18 of the Convention on the Rights of Persons with Disabilities. All these conventions are legally bound for Belarus to comply with the obligations set out therein.

The previous review of the legal act on citizenship must be emphasized; the Constitutional Court of Belarus emphasized the inseparability of the right to citizenship. Considering and recognizing the principles of international law and international obligations, the Constitutional Court in 2015 decided to amend the law on citizenship, emphasizing the inviolability of the right to citizenship.<sup>219</sup>

The amendments to the law "On The Fight Against Terrorism" authorize the right to deprive the citizenship and expel from the state's territory those who do not support the current regime, despite the Constitution and international norms being hierarchically higher than the ordinary laws of Belarus. Foreign citizens included in the list of "objectionable" will be deported, and in the future, entry into the country will be restricted.<sup>220</sup>

## 2.8.2 Linguistic discrimination

Language discrimination in Belarus is not a novelty; this problem has existed since the first Lukashenka's term: the marginalisation of the national language from all social spheres of Belarusians, the persecution of nationalists. The ICCPR voluntarily ratified by Belarus and articles 2 and 26 of the ICCPR does not allow language discrimination, and the prohibition of discrimination is also emphasized in General Comment No. 18. In addition to the above-mentioned international acts prohibiting discrimination, it is necessary to highlight Article 1(3) of the UN Charter, where language discrimination is emphasised as an unacceptable attitude in a democratic society.

The absurdity of language discrimination is that the Belarusian language is the state language in Belarus. In the Constitution Article 17 and Article 2 of the law "On Languages,"<sup>221</sup> its

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<sup>219</sup> RB. Decision of the Constitutional Court of 16.12.2015 № R-1006/2015. - <http://www.kc.gov.by/document-41713> (05.11.2021).

<sup>220</sup> RB. The Council of of the Republic. (reference 217).

<sup>221</sup> BSSR. Presidium of the Supreme Soviet. Law "On Languages in the Republic of Belarus" of 26.01.1990 No. 3094-XI. Online. - [http://base.spininform.ru/show\\_doc.fwx?rgn=1869](http://base.spininform.ru/show_doc.fwx?rgn=1869) (02.11.2021).

status is consolidated. Nevertheless, there is no adequate language policy in the country. The prohibition of language-based discrimination is reflected in national legislation. Article 22 of the Constitution, which establishes the equality of all before the law, and article 50 of the Constitution, guarantees freedom to choose one's language. Following legal norms, Belarus has positive obligations for preserving and developing the national language and undertakes not to discriminate based on language.

At the end of February 2021, a group of men in civies detained pensioners (the oldest of whom was 75) at one train station to read Belarusian books. Several days before the trial, all they spent in a pre-trial detention center without food and mattresses.<sup>222</sup> The detention protocol is written falsely about the presence of white and red clothing and the announcement of opposition slogans by the pensioner, despite that during the trial, they wore different clothes than which declared by the police officers. Nevertheless, the judicial system is corrupt, and without taking into account the apparent contradiction, the judge passed sentenced some of the pensioners for a fine of up to 1,740 rubles (560 Euros)<sup>223</sup>, for others - up to 20 days of arrest: after all, according to the judge's decision, reading books on the train was not agreed with the local authorities. According to the data of the Committee on Labor, Employment and Social Protection of the Minsk City Executive Committee, the average pension in the country is 500 rubles (161 Euro). Afterward, the authority would issue the bill for seniors to pay for this degrading and inhumane treatment.

Another example of preventive deterrence measures is the detention of participants in Belarusian language courses. Due to the lack of proper Belarusian language policy in the country, Belarusians have to attend additional classes to master their native language. After the time had passed, all participants were released from the police station but forced to sign a familiarisation document on administrative responsibility for participation in unauthorized events.<sup>224</sup>

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<sup>222</sup> Pod Minskom pensionerok zaderzhali v elektrichke za chtenie knig na belorusskom yazyke. Odnu iz nih arestovali na sutki, drugih oshtrafovali. [Near Minsk, pensioners were detained on a commuter train for reading books in the Belarusian language. One of them was arrested for a day, the others were fined]. Online. - media outlet Nastoyashchee Vremya 02.03.2021. - <https://www.currenttime.tv/a/belarus-train-pensioners-detention/31130007.html>

<sup>223</sup> The Committee on Labor, Employment and Social Protection of the Minsk City Executive Committee. Pension amounts and recalculations. Online. - <https://ktzszmoik.gov.by/pereraschyoty-pensij/> (02.11.2021).

<sup>224</sup> V Volkovyske uchastnikov zanyatiya «Mova Nanova» uvezli v ROVD. [In Volkovysk participants of the "Mova Nanova" class were taken to the police department.] Online. - media project REFORM.by 22.03.2021. - <https://reform.by/210479-v-volkovyske-uchastnikov-zanjatija-mova-nanova-uvezli-v-rovvd>

Another egregious case of the authorities' struggle with non - state news outlets that publish news in the Belarusian language is the refusal to distribute it. Thus, the press distribution network terminated the contract with the "Novy Chas" newspaper without explaining the reason.<sup>225</sup>

The Belarusian ideology encourages the inciting of fierce hatred towards those who disagree with the Lukashenka regime, being specifically aggressive towards Belarusian speakers. In the first months of protest movement, peaceful demonstrators during detention were marked with a color corresponding to what kind of inhumane treatment they would be subjected to in pre-trial and temporary detention facilities.<sup>226</sup> The usurping authorities divided the Belarusian people into "true Belarusian patriots" (those who support the regime), whom the security forces must protect, and oppositionists, whom, by illegal order, the security forces are obliged to repress in all possible ways. Their practical implementation of the order is physical and psychological violence, acts of torture, inhumane treatment, rape, untraceable kidnappings, and murders.

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<sup>225</sup> «Belsoyuzpechat» rastorgaet kontrakt s gazetoy «Novy chas» ["Belsoyuzpechat" terminates the contract with the newspaper "Novy Chas"] Online. - media project REFORM.by 14.01.2021. - <https://reform.by/194122-belsoyuzpechat-razryvaet-kontrakt-s-gazetoy-novy-chas>

<sup>226</sup> International Center For Civil Initiatives "Nash Dom". Cvetovaya stigmatizaciya i markirovka mirnyh protestuyushchih i zaklyuchennyh v belorusskih tyur'mah Belarusi. [Color stigmatization and labeling of peaceful protesters and prisoners in Belarusian prisons in Belarus.] Online. - <https://nash-dom.info/63467?fbclid=IwAR3h8F3L9GiqLTuN5GyBjPq5wmUP70URZK9iEGYDtrEvh5cqnMCOHoZJ1rk>

### 3. How to peacefully 'kill' the Belarusian authoritarian regime?

After Lukashenka's sham defeat in the presidential elections, no democratic state recognized the elections as having taken place. After the brutal suppression of the peaceful protesters, demonstrating the rejection of the falsified results, the international community called on Lukashenka to stop the use of violence by the security forces and engage in a national dialogue. After the cowardly and secret inauguration of Lukashenka, the world (except for countries with authoritarian governance) declared him an illegitimate president and began to reduce political and economic contacts with the regime.

However, the Belarusian civil society did not remain isolated from the regime, under the support and assistance provided to the Belarusian population by Europe and the Euro-Atlantic region.

#### 3.1 International legal control mechanisms

The system of international legal responsibility that has been formed today exercises international control over the implementation of the legal obligations assumed by States at the universal and regional levels.

The establishment of independent international monitoring mechanisms is crucial for the compliance of States with their obligations under international human rights instruments. A vital characteristic of monitoring mechanisms is their autonomy from the target State. This is because, to judge the level of protection of citizens from a State, an objective opinion is often needed compared to the average indicator of protection in other participating states.

##### 3.1.1 Invocation of the Moscow Mechanism

The 2020 presidential election was the first election that was not monitored by the OSCE / ODIHR international mission since the inability to organize full-fledged monitoring was due to a deliberately late invitation from the country's authorities.

Further, in connection with the massive and systemic violations of human rights before, during, and after the presidential elections, OSCE announced the invocation of the "Moscow Mechanism." Several days after this, Lukashenka held his secret self-inauguration.

This instrument is a special OSCE mechanism for responding to a human rights crisis in one participating State. It is based on appointed OSCE experts who collect evidence of violations of human rights and the rule of law during an emergency, then assess the information received regarding compliance with responsibility under international law and the OSCE, and prescribe guidance to the government of the country where citizens' rights are violated. In the resulting report, based on the data, the regulations are reviewed by the participating countries for further discussion and a decision on which measures contribute to changing the situation. The international community's opinion on what needs to be done to change the circumstances and eliminate the consequences is also presented.<sup>227</sup>

Seventeen countries launched the initiation of this procedure concerning the situation in Belarus in September 2020. The investigation was based on election fraud, gross violations of human rights, and the authorities' disregard of international and national law at all stages of the presidential election.<sup>228</sup>

Representatives of the Lukashenka regime refused to cooperate with the OSCE rapporteur and receive him for meetings and information gathering, denying the need to receive an international delegation for good reasons.<sup>229</sup>

Thus, the OSCE rapporteur was not allowed to enter the territory of Belarus. However, through the extensive work done by non-governmental organizations, individuals, media, and international organizations to collect data on human rights violations and interviews conducted, the OSCE expert analyzed and presented the brutal reality of the events in Belarus. It should be noted that the information received by the rapporteur underwent a thorough methodological review, and its sources are mentioned in his report.<sup>230</sup>

Together with the Association of Journalists in cooperation with the World Organization against Torture and the International Federation for Human Rights, Belarusian human rights organizations collected information material. They submitted it in a report to the OSCE

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<sup>227</sup> OSCE. The Moscow Mechanism (reference 4).

<sup>228</sup> *Ibid.*

<sup>229</sup> RB. Ministry of Foreign Affairs. Speech by the Permanent Representative of the Republic of Belarus to the OSCE A.Sycheva at a meeting of the OSCE Permanent Council. Online. - <https://www.mfa.gov.by/press/statements/be0b17c36cbbc61f.html> (02.04.2021).

<sup>230</sup> OSCE. The Moscow Mechanism (reference 4).

rapporteur on human rights violations in Belarus in the post-election period. This data was subsequently reclaimed in his report.<sup>231</sup>

Persecution and victimization of active social society, media workers, presidential candidates, including possible presidential candidates, lawyers, and human rights defenders, are documented in it. Among other things, it also indicates egregious violations of the national electoral law and the entire course of the electoral process, restrictions on access to information and Internet shutdowns, the use of police violence, sexual and gender-based violence, the use of torture, and other degrading treatment aimed against Belarusian citizens. The report also focuses on violations of fundamental human rights and freedoms: the inviolability of the person, a fair trial, the right to peaceful assembly, freedom of expression, freedom from arbitrary detention, and enforced disappearance.

His report contains a range of recommendations for Belarus, the OSCE, and international society, potentially encouraging the establishment of a more favorable human rights climate in the country.

In particular, the expert pointed out to Belarus the illegitimacy of the election results without international observers. There is a need to hold new presidential elections, which must be organized under international standards. The government of Belarus should also allow civil society representatives to fully participate in all stages of the election campaign and regulate the electoral legislation following international standards. In the field of human rights, Belarus has provided a comprehensive list of recommendations concerning the rights of expression and freedom of the media, freedom of assembly and association, personal freedom and security, accountability of perpetrators and prevention of impunity, and the right to a fair trial. The recommendations include the ratification of the statute of the International Criminal Court and the establishment of an independent international body to thoroughly investigate human rights violations during the presidential election with the participation of forensic experts.

And what about recommendations to the international community? The Speaker advises not to recognize the results of the elections in Belarus as legitimate, and to declare the need to initiate new ones, to establish an impartial international institution to investigate human rights

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<sup>231</sup> Human Rights Centre «Viasna», Belarusian Helsinki Committee, Belarusian Association Of Journalists 2020 (reference 3).

violations, and subsequently to bring all those responsible for torture and ill-treatment, and their leaders to criminal responsibility. In addition to the above, it is recommended to help Belarusian citizens forced to flee the country, providing them with shelter, protection, and medical care in the treatment of injuries received due to ill-treatment, to promote the work of human rights defenders, to promote the involvement of special UN human rights mechanisms. Besides, universal jurisdiction to bring to justice all those responsible for torture and other inhumane forms of treatment must be established. The Special Rapporteur specifically points out the concern about impunity for criminal acts committed, and the absolute lack of unbiased investigation of allegations of torture and ill-treatment is a blatant violation of international obligations.<sup>232</sup>

### 3.1.2 Venice Commission

Belarus contributes as an associate member to the activities of the Venice Commission, an advisory body established under the Council of Europe in 1990. At the end of 2020, PACE requested clarification from the Venice Commission on Belarus's legal issue and human rights violations. Due to the situation with the coronavirus in the world, a meeting was planned with representatives of the *de facto* authorities of Belarus in the digital environment, but the request of experts was not approved.

Some of the recommendations derived from the explanations of the Venice Commission have already been noted in previous chapters. In this sub-chapter, I summarize the main conclusions of this document received.

The explanatory opinion of the Venice Commission covers the government's counter-actions against the protest movement of the Belarusian civil society against the falsification of the presidential elections. Based on a thorough study of the relevant articles of the Law "On mass events," the Criminal Code, and the Code of Administrative Offences, the Venice Commission provided an explanatory document on the violation of the rule of law and human rights in Belarus during the August crackdown on demonstrators. In addition to the legislation mentioned above, experts from the Venice Commission condemned the views of the

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<sup>232</sup> OSCE. The Moscow Mechanism (reference 4).



Constitutional Court of Belarus on the creation of the Coordinating Council, in the decision of which the Coordinating Council was considered as an unconstitutional body.<sup>233</sup>

Given the non-changeability of the national law regarding the exercise of the right to freedom of assembly ("On Mass Events"), the Venice Commission supports the necessary provisions drawn up in 2012, namely: 1. to grant citizens the exercise of freedom of assembly, 2. to alter the concept of holding mass gatherings from authorization to notification, 3. to modify all provisions concerning prohibitions on the organization and entities interested in its implementation in favor of citizens' rights.

The explanatory note also contains

- 1) further instructions regarding the abolition of the disproportionate penalty of imprisonment or a hefty fine for involvement in peaceful assemblies;
- 2) the proper interpretation of the repealed provisions of the Criminal Code;
- 3) revision of the article of the Criminal Code regarding calls for the violent overthrow of the constitutional order and distinguishing them from the implementation of the right of citizens to freedom of expression for political reasons.<sup>234</sup>

### 3.1.3 UN Human Rights Council Resolution on the situation of human rights in Belarus

On the communication submitted by Portugal and with the support of 20 countries, a resolution of the UN Human Rights Council on Belarus was adopted. The violence used against peaceful demonstrators in August 2020 was disproportionate, flagrantly violated human rights, and went against the international obligations guaranteed by Belarus.<sup>235</sup>

This Resolution expresses concern about the massive violations of human rights in Belarus during the pre-election period. There is also a lack of stabilization in resolving this critical issue in the post-election period. Subsequently, the practice of violence, torture, arbitrary detention, disappearance without a trace, murder, and other inhumane treatment became "natural" for the Government to treat civilians, where the rule of law is not supported by the

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<sup>233</sup> Council of Europe. Opinion of the Venice Commission (reference 57).

<sup>234</sup> *Ibid.*

<sup>235</sup> HRC. Resolution on the Situation of Human Rights in Belarus in the Run-up to the 2020 Presidential Election and in its Aftermath of 15.03.2021. A/HRC/46/L.19. Online. - <https://documents-dds-ny.un.org/doc/UNDOC/LTD/G21/062/07/PDF/G2106207.pdf?OpenElement> (02.11.2021).

*de-facto* authorities and does not apply to civil society.<sup>236</sup> The situation in the country is sheer totalitarian control and an absolute anarchist system.

The Council's message to the *de facto* government of Belarus is as follows: to engage in an honest dialogue with the opposition, to stop the use of violence against peaceful demonstrators, to stop arbitrary detentions, and to guarantee fair and free presidential elections.<sup>237</sup>

To conduct a full investigation, the target State must cooperate to establish the truth. From the statement of the press secretary of the Belarusian Foreign Ministry, it is concluded that the Belarusian government refuses to promote an impartial investigation, calling the Council's decision "contrary to logic and common sense."<sup>238</sup>

In this reality, the High Commissioner will have to rely on evidence obtained directly from the regime's victims, interacting with experts in various fields, human rights organizations and States, international organizations in the interests of conducting a thorough investigation in Belarus.

The Resolution on the establishment of an official international mechanism plays a critical role in applying universal jurisdiction. With its adoption, the UN High Commissioner for Human Rights has the powers assigned by this Resolution to resolve the crisis in Belarus to identify and bring to justice those responsible.

#### 3.1.4 International project on holding perpetrators accountable

On March 24, 2021, the "The International Accountability Platform for Belarus" was initiated. This joint international initiative of human rights organizations, supported by the governments of 19 states, was created to implement the recommendations of the OSCE Rapporteur under the auspices of the Moscow Mechanism for Belarus. Now Belarusians can report on torture and other types of inhumane treatment on this platform.

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<sup>236</sup> *Ibid.*

<sup>237</sup> *Ibid.*

<sup>238</sup> RB. Ministry of Foreign Affairs (MFA). The response of the Press Secretary of the Ministry of Foreign Affairs A. Glazov to the question of the BelaPAN agency in connection with the adoption of the UN Human Rights Council resolution of 24.03.2021. Online. - [https://www.mfa.gov.by/press/news\\_mfa/a275d74119ce4c17.html](https://www.mfa.gov.by/press/news_mfa/a275d74119ce4c17.html) (02.11.2021).

This project aims to encourage the ongoing work of Belarusian human rights organizations in the context of the analysis, verification, and storage of all received documents on violations of international human rights norms that occurred in Belarus during the pre-and post-election period of 2020. The obtained data can later be used to initiate criminal cases and bring those responsible to justice in international courts.<sup>239</sup>

It is worth noting that the purpose of the platform is not to replace the UN mechanism but to constitute mutual complementarity, act in the interests of a prompt resolve of the egregious facts of human rights violations in Belarus, and to be synchronized in the investigations with the UN High Commissioner for Human Rights.

### 3.2 The imposition of personal and economic sanctions

The implementation of economic sanctions against the current Belarusian regime is a practical, legitimate mechanism for the international democratic community to suppress the regime of the dictatorship of Lukashenka and can accelerate the end of his regime.

Amongst the EU members, the Baltic States, which themselves have passed their paths of democratization, were the first to impose sanctions by coordinating unilateral measures in response to the use of violence by the Belarusian authorities and election fraud, and then expanding their sanctions lists further. Estonia was the first to propose economic sanctions against legal entities that sponsor the regime.<sup>240</sup>

In addition to unilateral punitive measures taken at the national level, sanctions are also imposed by the supranational association. Thus, the EU imposed four packages of sanctions against Belarus: the first package of sanctions was adopted by the EU in October aimed against 40 Belarusian officials (representatives of the Ministry of Internal Affairs and the KGB) and members of the CEC, against whom personal restrictions were imposed;<sup>241</sup> on the second stage, the European Union imposed restrictions on Alyaksandr Lukashenka and 14 high-ranking officials;<sup>242</sup> the third targets high-ranking officials, but this package also

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<sup>239</sup> Belarusian and international human rights organisations. The International Accountability Platform for Belarus on bringing to justice perpetrators of 24.03.2021. Online. - <https://iapbelarus.org>

<sup>240</sup> Mishchenko, O. Strany Baltii rasshirili sankcii protiv Minska.[ The Baltic states have expanded sanctions against Minsk.] Online. - Information and news portal DW.com 20.11.2020. - <https://www.dw.com/ru/strany-baltii-rasshirili-sankcii-protiv-minska/a-55678563>

<sup>241</sup> EU. Council Implementing Regulation (EU) 2020/1387 of 02.10.2020 concerning restrictive measures against Belarus *OJ L 319I*. Official Journal of the European Union, pp 1-12.

<sup>242</sup> EU. Council Implementing Regulation (EU) 2020/1648 of 06.11.2020 concerning restrictive measures in respect of Belarus *OJ L 370I*. Official Journal of the European Union, pp 1-6.

includes defense enterprises, legal entities, and business people who provide financial support to the regime.<sup>243</sup>

The restrictions imposed by the sanctions include

- a) a ban on entry into the European Union,
- b) the freezing of bank accounts of both individuals and legal entities, and
- c) a ban on EU residents directly or indirectly providing access to financial resources and cooperating with businesses included in the sanction list.

Since October 2020, the European Union has imposed sanctions on more than 160 people due to falsifying the results of the presidential elections in Belarus and harsh crackdowns on protest actions.<sup>244</sup> The demands were put forward to the Belarusian ruling elite of the dictatorial regime by the European Union, including a cease of the violence of the police counteraction to the protests, the release of all detainees, and the beginning of a dialogue with the leadership of the protest movement.<sup>245</sup> The actions of the Belarusian ruling elite are condemned not only by the EU, so on January 15, 2021, the official Council of the EU announced the decision of 5 more countries to join the third package of EU sanctions against Belarus, which previously also supported EU sanctions and criticized the actions of the Belarusian authorities.<sup>246</sup>

After the first package of EU sanctions, the US Senate approved the Law on Democracy, Human Rights and Sovereignty of Belarus in 2020, which primarily reflected the first package of EU sanctions. However, among other things, it imposed sanctions against Belarusian officials and accomplices from the Union State.<sup>247</sup>

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<sup>243</sup> EU. Council implementing Regulation (EU) 2020/2129 of 17.12.2020 concerning restrictive measures in respect of Belarus L 426 I. Official Journal of the European Union, pp 1-27.

<sup>244</sup> Pol'skaya, K. Velikobritaniya prisoeдинilas' k sankciyam ES protiv rezhima Lukashenko. [Britain joined the EU sanctions against Lukashenka's regime]. Online. Information and news portal DW.com 18.12.2020. - <https://www.dw.com/ru/velikobritaniya-rasshirila-sankcii-protiv-rezhima-lukashenko/a-55994400>

<sup>245</sup> Shejko, YU. Evrosoyuz gotovit ekonomicheskie sankcii protiv rezhima Lukashenko. [The European Union is preparing economic sanctions against the Lukashenka regime.]. Online. - Information and news portal DW.com 19.11.2020. - <https://www.dw.com/ru/evrosoyuz-gotovit-jekonomicheskie-sankcii-protiv-rezhima-lukashenko/a-55667935>

<sup>246</sup> Council Declaration of 26 January 2021 by the High Representative on behalf of the European Union on the alignment of certain countries concerning restrictive measures against Belarus. - The Official Journal of the European Union no. L1 426, p 14.

<sup>247</sup> US Senate. Belarus Democracy, Human Rights, and Sovereignty Act of 2020. H.R.8438 — 116th Congress. <https://www.congress.gov/bill/116th-congress/house-bill/8438> (02.11.2021)

The third package was supported by the former EU member, Great Britain.<sup>248</sup> Before that, the United Kingdom, having coordinated sanctions with Canada, imposed sanctions against high-ranking officials and Lukashenka.<sup>249</sup>

On the day of the celebration of Freedom Day (the anniversary of the independence of the first Belarusian republic), 118 officials, law enforcement, and justice officials were added to the list against which the Baltic States introduced personal sanctions.<sup>250</sup>

After the incident with the hijacking of the plane onboard of which was an opposition blogger and former editor in chief of the leading opposition telegram channel Nexta (recognized by the Ministry of Internal Affairs as an extremist association).<sup>251</sup> The European Union has introduced the fourth package of sanctions against the "totalitarian elite" of Belarus.<sup>252</sup> This time, sanctions against seven legal entities were brought. Seventy-eight individuals against whom sanctions were imposed: judges, prosecutors, investigators - actors in politically motivated cases, assemblymembers - active supporters of the Lukashenka regime, representatives of the university administration - responsible for the repression of students and teachers, officials close to Lukashenka, and businessmen. The imposition of sanctions against government-controlled enterprises, especially the profitable raw materials sector: petrochemical complex products and potash and nitrogen fertilizers, inflicts a significant blow to the deprivation of funds for the regime.<sup>253</sup> Even though restrictive measures have been introduced against businesses controlled by the government of Belarus, they primarily concern their business partners from EU countries that have imposed sanctions. Thus, after the introduction of sanctions, new and additional contracts with entities subject to sanctions or contracts through a third party, where a final beneficiary is a sub-sanctioned person, cannot be concluded without the risk of administrative or criminal liability against their partners by an

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<sup>248</sup> Pol'skaya, K., (reference 244).

<sup>249</sup> The website for the UK government. Belarus: UK sanctions 8 members of regime, including Alexander Lukashenko. - Press release 29.09.2020. - <https://www.gov.uk/government/news/belarus-uk-sanctions-eight-members-of-regime-including-alexander-lukashenko>

<sup>250</sup> Strany Baltii vveli sankcii protiv eshche 118 predstavitelej rezhima Belarusi. [The Baltic states imposed sanctions against 118 more representatives of the Belarusian regime.] Online. - media outlet Delfi 25.03.2021. - <https://www.delfi.lt/ru/news/politics/strany-baltii-vveli-sankcii-protiv-esche-118-predstavitelej-rezhima-belarusi.d?id=86785705>

<sup>251</sup> Kontent trekh Telegram-kanalov priznan ekstremistskim. [The content of three Telegram channels is recognized as extremist.] Online. - State media outlet Belta 29.10.2021. - <https://www.belta.by/incident/view/kontent-treh-telegram-kanalov-priznan-ekstremistskim-466925-2021>

<sup>252</sup> EU. Council Implementing Regulation (EU) 2021/996 of 21.06.2021 concerning restrictive measures in respect of Belarus L 219I. Official Journal of the European Union, pp 1-103.

<sup>253</sup> Vneshnyaya trgovlya Respubliki Belarus'. [Foreign trade of the Republic of Belarus.] Online. - Financial Internet Resource Myfin.by 16.04.2021. - <https://myfin.by/wiki/term/vneshnyaya-torgovlya-respubliki-belarus> (05.11.2021).

EU resident country. The introduction of restrictive measures cannot but impact citizens and residents of Belarus, but this is the only legal way to fight against the regime applied by the international community towards the offending State. In addition, it is likely that if sanctions measures had not been introduced, the profits of such enterprises would benefit the regime entirely.

### 3.3 Seeking Justice: the investigation of the crimes committed

What are the chances of Belarusians succeeding in filing a lawsuit and investigating Lukashenka's crimes in the ICC? What should consistent legal actions be taken to ensure that Lukashenka spends his "last term" in the same place as the President of the former Yugoslavia?

After the unfree and unfair elections on August 9, 2020, protesters of Belarus faced a brutal suppression of the national security structures. In turn, the Belarusian authorities, in a coalition with international human rights organizations, collected information on cases of acts of torture, ill-treatment, the use of weapons, and special equipment against civilians. Along with the witnesses of the crimes and the collected evidence of the use of acts of torture and inhumane treatment, the search for the identity of the perpetrators is constantly being conducted. Human rights organizations, in their way, can be identified as commissions for the restoration of the truth-following principles 2-18 of the report of the independent expert Diane Orentlicher on the updated set of principles for combating impunity.<sup>254</sup>

The prohibition of torture by the international standards of a democratically functioning society is absolute and non-derogable. In turn, the violation of this obligation constitutes an international crime against a fundamental human right. UNCAT<sup>255</sup> and ICCPR<sup>256</sup> has been ratified by Belarus, and therefore, it is obliged to protect anyone from torture and ensure a prompt and unbiased investigation of such ill-treatment. As a result of the investigation, the perpetrators must be brought to justice and, if found guilty, punished for the acts committed under the law. However, no matter how much the current illegitimate authorities would like to believe in the indisputability of their decisions and the impunity of their actions, human rights

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<sup>254</sup> UN. Commission on Human Rights. Report of the independent expert to update the set of principles to combat impunity of 08.02.2005, E/CN.4/2005/102/Add.1. Online. - <https://undocs.org/E/CN.4/2005/102/Add.1> (06.11.2011)

<sup>255</sup> Law of 29.01.1987 № 1302-XI (reference 145).

<sup>256</sup> Law of 05.10.1973 (reference 144).

defenders, after processing the information received, send complaints to international bodies, such as the Commission on Human Rights and the Committee against Torture, the Committee on the Elimination of Discrimination against Women, the Committee on the Rights of the Child, whose statutory treaties Belarus has ratified and implemented into its legislation.

Further, a group<sup>257</sup> of human rights organizations<sup>258</sup> is an independent monitoring commission for human rights violations in Belarus, whose scope of activity includes preparing reports on the collected information for the public of Belarus and international organizations and institutions.<sup>259</sup> Together with other initiatives created by the Belarusian diaspora, they lay the foundation for restoring justice when the regime falls. Their activities include collecting testimonies of victims and their families subjected to acts of torture and inhumane treatment. The work carried out in this area on preparing factual materials will not be in vain: these materials will be used in future court cases against criminals.<sup>260</sup>

### 3.4 Welcome to “The Hague”: International prosecution of persons responsible for national and international crimes in Belarus

The opposition does not lose hope for establishing justice and the end of the authoritarian police state, heir to the Soviet regime,<sup>261</sup> and has found several potentially possible political and legal ways to bring Lukashenka to international criminal responsibility. The Belarusian opposition filed a petition to the ICC to open a criminal case against Lukashenka. Without Belarusian ratification of the Rome Statute,<sup>262</sup> consideration of initiating a case by petition complicates its mechanism and makes it relatively unlikely in practice.<sup>263</sup>

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<sup>257</sup> International Committee for the Investigation of Torture in Belarus. Mass Torture in Belarus. Second interim report: detention, conditions of detention and treatment of detainees in September- November 2020. Online. - [https://drive.google.com/file/d/1O7KmY9QIJNT3dIUZOYJHOWIHB\\_1Hrikk/view](https://drive.google.com/file/d/1O7KmY9QIJNT3dIUZOYJHOWIHB_1Hrikk/view) (01.11.2021).

<sup>258</sup> Litavrin, M., Frenkel', D., Skovoroda, E., Bojko, A., (reference 206).

<sup>259</sup> International Committee for the Investigation of Torture in Belarus. The Mass Torture in Belarus. First interim report: on the state's reaction and measures taken to investigate the mass torture of 09-13 August, 2020. Online. - [https://drive.google.com/file/d/1N33mURcDKBJ7UiuSxuSL\\_XuYY3QJFS-0/view](https://drive.google.com/file/d/1N33mURcDKBJ7UiuSxuSL_XuYY3QJFS-0/view) (02.11.2021).

<sup>260</sup> Belarus in Focus, Independent Belarusian Media, Belarusian Association of Journalists, Legal Initiative NGO, Human Rights Center Viasna. Seeking Justice Stories of Violence in Belarus. Investigation of Mass media 11.11.2020. Online. [https://www.belarusinfocus.info/sites/default/files/seeking\\_justice\\_web.pdf](https://www.belarusinfocus.info/sites/default/files/seeking_justice_web.pdf) (02.11.2021)

<sup>261</sup> Los, M., Zybortowicz, A. Privatizing the Police-State: The Case of Poland. New York: ST. Martin's Press 2000, pp 25-31.

<sup>262</sup> UN. General Assembly. Rome Statute of the International Criminal Court of 17.07.1998. Online. - <https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf> (06.11.2021).

<sup>263</sup> 40,000 People Filed Complaint Against Lukashenka With International Criminal Court In The Hague. Online. - Information and news portal Charter 97 30.09.2020. - <https://charter97.org/en/news/2020/9/30/395125/>

### 3.4.1 Referral of the UN Security Council to the International Criminal Court

The grounds on which the UN Security Council may act upon the ICC are set out under Chapter VII of the UN Charter and articles 13 (b), 15ter, and 16 of the Rome Statute.<sup>264</sup> This issue requires the adoption of an appropriate Security Council resolution, the chances of which are usually equal to zero because Russia and China traditionally veto the adoption of such documents. It should not be discounted of the current political situation, the dynamics of which every day increases the possibility<sup>265</sup> of adopting such a resolution, as a result of increasing pressure on the Kremlin from the world community, which is overwhelmingly sympathetic to the people of Belarus.<sup>266</sup>

Whatever the chances of adopting such a resolution, the inclusion of the issue of Belarus in the agenda of the UN Security Council session seems necessary, if only because it will provide an opportunity to present to the world the egregious human rights situation in Belarus. It is worth noting that in the implementation of the UN Convention on the Non-Applicability of the Statute of Limitations to War Crimes and Crimes against Humanity, Article 85 of the Criminal Code does not provide for a statute of limitations in these crimes for those who committed them.<sup>267</sup>

### 3.4.2 Initiation of the investigation by the ICC Prosecutor (*proprio motu*)

A non-registered candidate for President of Belarus, Valery Tsepkalo, started gathering documents, evidence of illegal actions of the usurper of power in Belarus, Lukashenka. In the future, the collected data will be submitted to the ICC Prosecutor, who can start an investigation *proprio motu* under Articles 13(c), 15, and 53(1) of the Rome Statute.<sup>268</sup>

One of the prevailing determinants for achieving the goal of considering a claim in the ICC is the existence of resolutions and reports on Belarus produced by the UN Human Rights Council and the OSCE Permanent Council. These documents, attached to the evidence

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<sup>264</sup> Rome Statute.

<sup>265</sup> Skander Galand, A. UN Security Council Referrals to the International Criminal Court. Legal Nature, Effects and Limits. - Leiden Studies on the Frontiers of International Law. Eds. C. Stahn, L. van den Herik, N. Schrijver. Vol. 5. Leiden: Brill Nijhoff 2019, pp 35-38, 209-216.

<sup>266</sup> Trahan, J. The relationship between the International Criminal Court and the UN Security Council: Parameters and Best Practices. - Crim Law Forum 24/2013, 05.11.2013, pp 417 -473. Online – <https://rdcu.be/cdR0m>

<sup>267</sup> The House of Representatives. Criminal Code (reference 68).

<sup>268</sup> Rome Statute.



submitted to the ICC, will be an irrefutable guaranty of the need for the ICC Prosecutor to accept the claim.<sup>269</sup>

### 3.4.3 Principle of universal jurisdiction

The universal fundamental principle of the inevitability of punishment applies to officials, commanders-in-chief of law enforcement agencies, officers holding senior positions, law enforcement officers, prosecutors, judges, those who provided unlawful orders, and those who executed them – all associates of the authoritarian regime are complicit in crimes and evidence of their guilt is collected against all of them.<sup>270</sup>

Use of torture, illegal detention in custody, systematic execution without fair but arbitrary trial, enforced disappearance-prohibition of these acts. Belarus has ratified international treaties, implementing them in its legislation, namely in Article 128 of the Criminal Code of Belarus. According to Article 12 (5) of the Criminal Code, these crimes are grave in their degree and nature. Under Criminal Code Chapter 17, crimes against peace and humanity belong to the universal criminal jurisdiction, which is enshrined in the Criminal Code of Article 6 (3) as an imperative commitment of the international legal agreement.<sup>271</sup> This practice is part of public international law, implemented in national legislation, custom law, and is practiced in all democratic States. It follows that different countries can prosecute, regardless of nationality, a person guilty of a crime against humanity at the national level. Amongst other things, it is essential to note that the fundamental principle of *aut dedere aut judicare* obliges countries to cooperate in the fight against lawlessness in connection with the violation of an international crime, which is an integral part of the principle of the inevitability of punishment.<sup>272</sup>

Victims of state actors' violence who have fled are engaging with lawyers, human rights organizations, government agencies of other states in the practical implementation of universal jurisdiction, where it can be applied, especially those countries that have bilateral treaties and intergovernmental agreements with Belarus. Such countries include Ukraine, Lithuania, Estonia, Romania, Poland, Hungary, Latvia, etc., and international treaties on the

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<sup>269</sup> Sjöström, M. The Initiation of an Investigation *Proprio Motu* by the Prosecutor of the ICC – A Reasonable Basis to Proceed? Master Thesis. Supervisor Professor Inger Österdahl. Uppsala: Uppsala Universitet 2014. Online. - <https://www.diva-portal.org/smash/get/diva2:721739/FULLTEXT01.pdf>

<sup>270</sup> Skander Galand, A., (reference 265), pp 32-38, 88-92.

<sup>271</sup> *Ibid.*

<sup>272</sup> Skander Galand, A., (reference 265), pp 32-38, 45-46, 88-92.

international cooperation in criminal matters ratified by Belarus<sup>273</sup> succeeding principles 19-30 on the updated set of principles to combat impunity.<sup>274</sup> However, there is no doubt that under the current regime of power in Belarus, the competent authorities may refuse to cooperate with foreign colleagues, including the extradition of those guilty of crimes against humanity to states that may require compliance with obligations under international treaties, which will entail a possible refusal to extradite criminals declared by Belarus through Interpol to the international wanted list.<sup>275</sup>

Based on the results of the investigation of the crimes initiated by other states, the intergovernmental agreements with Belarus, these states can issue international arrest warrants to any requested state with the complaint about reparation for civil law claims to victims at the expense of state property, as exemplified by the Magnitsky Act. Based on the report of the independent expert Diane Orentlicher on the updated set of principles against impunity, namely principles 31-38, victims have the right to compensation for the harm.<sup>276</sup>

The restoration of justice about the victims and/or their families should be applied without a statute of limitations, that is, the initiation of criminal proceedings against all victims of the regime enforced disappearance of prominent opposition figures whose cases have never been investigated by the will of the tyrant, where relatives are recognized as victims. In the neighboring states of Belarus, where victims fled to escape persecution, the process of initiating criminal cases on the available evidence had been launched. Thus, the Prosecutor General's Office of Lithuania opened the first criminal case on the use of torture by the Belarusian Riot Police and began a pre-trial investigation.<sup>277</sup> Following Lithuania, several European countries initiated cases involving torture and inhuman treatment by law enforcement officers.<sup>278</sup> Before this, the Investigative Committee and the Prosecutor's Office of Belarus did not open a criminal case on any act of torture, acts of cruel, degrading

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<sup>273</sup> Matvejchev, YU., Shkaplerov, YU. *Mezhdunarodnaya pravovaya pomoshch' po ugolovnym delam*. [International legal assistance in criminal cases]. Mogilev: Uchrezhdenie obrazovaniya «Mogilevskij institut Ministerstva vnutrennih del Respubliki Belarus'» 2017. Online. - [http://www.institutemvd.by/images/NIO/Mezhdunarodnaya\\_pravovaya\\_pomosch\\_po\\_ugolovnim\\_delam.pdf](http://www.institutemvd.by/images/NIO/Mezhdunarodnaya_pravovaya_pomosch_po_ugolovnim_delam.pdf)

<sup>274</sup> UN Commission on Human Rights (reference 254).

<sup>275</sup> Fooner, M. *Interpol: Issues in World Crime and International Criminal Justice*. New York: Plenum Publishing Corporation 1989, pp 77-80, 127-143.

<sup>276</sup> UN Commission on Human Rights (reference 254).

<sup>277</sup> *Genprakturatura Litvy pachala dasudovae rass'ledavan'ne ab gvalce milicyi ŷ Mensku*. [Lithuanian Prosecutor General's Office launches pre-trial investigation into police violence in Minsk]. Online. - Information and news portal Charter 97 (09.12.2020). - <https://www.svaboda.org/a/30991612.html>

<sup>278</sup> Aleksandrovskaya, B. *Kak v Evrope hotyat sudit' belorusskih silovikov, obvinyaemyh v pytkah*. [How do they want to try Belarusian security officials accused of torture in Europe.] Online. - media outlet DW.com 06.05.2021. - <https://www.dw.com/ru/kak-v-evrope-hotjat-sudit-belorusskih-silovikov-obvinjaemyh-v-pytkah/a-57444819>

treatment, including those that resulted in serious and less serious bodily injuries, and nor start unbiased investigations into the public deaths of Alexander Taraykovsky and Roman Bondarenko.<sup>279</sup>

The European Parliament, in its recent resolution on the situation in Belarus, also recommends that the governments of the countries implement the principle of universal jurisdiction and prepare court cases against those responsible for repression in Belarus.<sup>280</sup>

#### 3.4.4 Hijacking an airplane

On May 23, 2020, a Ryanair plane making a regular flight on the Athens-Minsk route was forcibly redirected to Minsk. The former editor-in-chief of Nekhta, the leading opposition news telegram channel coordinating the protest movement in Belarus during the pre-election and post-election periods, was on board the aircraft. This opposition channel has established contact with representatives of various civil society groups in Belarus and has data on those who may pose a potential threat to the regime. Therefore, the arrest of the former editor-in-chief, Roman Protasevich, was a vital tool of intimidation used by the regime.

To hijack the plane and arrest Roman Protasevich, Lukashenka used a warplane and a false bomb report on a passenger plane. By order of Lukashenka, the fighter was raised to force the plane to turn around with the opposition leader Protasevich, desired by Lukashenka, and civilians on board, most of whom were Lithuanian citizens.<sup>281</sup> Immediately after the incident, Lithuania, the EU Council, the European Commission, the United States Senate Committee on Foreign Relations, NATO condemned the actions of the Belarusian authorities. It announced the need to take additional sanctions measures against the regime and investigate the incident. The EU Council closed its airspace from Belarus and urged carriers registered in the EU to avoid flights through the airspace of Belarus. Loss of revenue from flights over

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<sup>279</sup> Human Rights Centre "Viasna". Analytical Review (reference 155).

<sup>280</sup> European Parliament. Resolution on the situation in Belarus after one year of protests and their violent repression 2021/2881(RSP) of 04.10.2021. Online. - [https://www.europarl.europa.eu/doceo/document/B-9-2021-0494\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/B-9-2021-0494_EN.pdf) (06.11.2021)

<sup>281</sup> "Akt gosudarstvennogo piratstva". Kak Zapad otvetit na perekhvat Minskom rejsa Ryanair. ["An act of State piracy." How will the West respond to the interception of the Minsk Ryanair flight.] Online. - media outlet BBC News/Russian service 24.05.2021. - <https://www.bbc.com/russian/news-57225472>

Belarusian airspace gets another financial hit on the regime after several carriers have started bypassing through Belarus.<sup>282</sup>

So can this incident be qualified as state-sponsored air piracy and terrorism? In the Resolution on the situation in Belarus, the European Parliament qualifies the hijacking of the plane and the forced landing in Minsk as an act of state terrorism. According to the data provided by the email provider Proton Technologies AG, the plane was redirected to Minsk 10 minutes before a copy of the threat message arrived at the email address of the Minsk National Airport.<sup>283</sup>

Either the Belarusian authorities possess the clairvoyance to predict, or the forced landing was planned, which enables to consider this incident as a hijacking of a civil aviation aircraft. Following Article 17 of the Convention on International Civil Aviation<sup>284</sup> the aircraft has the nationality of Poland since it was registered there. Due to Article 5, paragraph 1 (b)<sup>285</sup> Poland has jurisdiction over the diplomatic incident with the intercepted aircraft, and therefore initiated an investigation of the crime.<sup>286</sup>

Belarus is a party to the Chicago Convention and the Convention for the suppression of unlawful acts against the safety of civil aviation (the Montreal Convention) and is bound by international norms.<sup>287</sup> Per Article 3bis (b),<sup>288</sup> a forced landing by a State Party is permitted if a civil aviation aircraft flies over the territory of that State without its permission or if the aircraft is used for purposes unacceptable under the Chicago Convention. The Ryanair civil aircraft, conducting the carriage of passengers, thereby 1) performed its purpose, 2) following its civil status, 3) made a regular flight, 4) flying over Belarus with its permission; hence it follows that article 3bis (b) is not applicable in this case. Following paragraph 3.7.2 of Annex

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<sup>282</sup> Kiseleva, M. Vozdushnaya blokada Belarusi. Kto vyigraet i proigraet ot ogranicheniya poletov? [Air blockade of Belarus. Who will benefit and lose from flight restrictions?] Online. - media outlet BBC News/Russian service 26.05.2021. - <https://www.bbc.com/russian/news-57252002>

<sup>283</sup> Satter, R. Bomb threat cited by Belarus was sent after plane was diverted - Swiss email provider. Online. - News and financial information agency Reuters 27.05.2021 - <https://www.reuters.com/world/europe/email-bomb-threat-sent-after-bloggers-plane-was-diverted-over-belarus-swiss-2021-05-27/>

<sup>284</sup> International Civil Aviation Organization (ICAO). Convention on International Civil Aviation ("The Chicago Convention") of 07.12.1944. Doc 730019. Online. - [https://www.icao.int/publications/Documents/7300\\_cons.pdf](https://www.icao.int/publications/Documents/7300_cons.pdf) (05.11.2021)

<sup>285</sup> ICAO. Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (The Montreal Convention) of 23.09.1971. 974 UNTS 177. Online. - [https://www.un.org/ru/documents/decl\\_conv/conventions/aviation\\_security.shtml](https://www.un.org/ru/documents/decl_conv/conventions/aviation_security.shtml) (05.11.2021)

<sup>286</sup> Romashenko, S. FBR i Pol'sha nachali sobstvennye rassledovaniya incidenta s samoletom Ryanair. [The FBI and Poland have launched their own investigations into the Ryanair plane incident.] Online. - media outlet DW.com 28.05.2021. - <https://www.dw.com/ru/fbr-i-polsha-nachali-sobstvennye-rassledovaniya-incidenta-s-samoletom-ryanair/a-57698343>

<sup>287</sup> ICAO. The status of Belarus with regard to international air law instruments. Online. - [https://www.icao.int/secretariat/legal/Status%20of%20individual%20States/belarus\\_en.pdf](https://www.icao.int/secretariat/legal/Status%20of%20individual%20States/belarus_en.pdf) (06.11.2021)

<sup>288</sup> The Chicago Convention.

2 Rules of the Air,<sup>289</sup> if a civilian aircraft was subject to illegal interference, then the commander should land the aircraft at the nearest airfield, and based on the available data, it was advisable to land at Vilnius airport since the aircraft was three times closer to it than to Minsk airport. Appendix 2 (1.1) of Annex 2 Rules of the Air states that the interception of a civilian vessel can only be a last resort, where, if carried out, the aircraft must be taken out of the airspace of the State or directed away from the restricted area and then land. Considering that if there was an explosive device on board a civilian aircraft, then landing at an international airport was a disproportionate decision, which could create an additional threat to the lives of employees and visitors of the international airport, seriously disrupting its regular business and operational processes. Given the potential threat from the text of the bomb explosion, if the plane lands at Vilnius airport, it would be expedient to land the plane in Grodno or at the Starinki aerodrome, which was the nearest and less busy, unlike Minsk International Airport. Based on the fact that the National Airport of Minsk received the message about the bomb scare after the plane was intercepted by a military jet, it is possible to claim a violation of article 3bis of the Chicago Convention. The Convention prohibits the use of measures that may endanger the safety of persons or aircraft. A military aircraft would have the capacity to use force if the captain of a passenger's vessel did not fulfill their requirements.

Placing on board a dangerous device intended for criminal purposes is an act of unlawful interference. Based on para 15.1.3.3 of Annex 17 to the Chicago Convention, a dispatcher must assist the captain of the aircraft; however, paragraph 15.1.3 does not oblige an employee of the Air Traffic Management to provide recommendations on where an aircraft shall fly on board of which there is a threat of explosion.<sup>290</sup>

Annex 17 to the Chicago Convention characterizes the provision of false information that endangers the safety of an aircraft in flight as unlawful interference. Taking into account that the message about a possible bomb threat on board the plane carrying journalist Roman Protasevich turned out to be staged by the Belarusian authorities, and considering that the Belarusian side explained its violent measures against the aircraft with the email on mining

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<sup>289</sup> ICAO. Annex 2 to the Convention on International Civil Aviation of July 2005. Rules of the Air. 10th Ed. Online. - [https://www.icao.int/Meetings/anconf12/Document%20Archive/an02\\_cons%5B1%5D.pdf](https://www.icao.int/Meetings/anconf12/Document%20Archive/an02_cons%5B1%5D.pdf) (05.11.2021).

<sup>290</sup> ICAO. Annex 17 to the Convention on International Civil Aviation. Safeguarding International Civil Aviation Against Acts of Unlawful Interference of March 2011. 9th Ed. Online. - <https://www.pilot18.com/wp-content/uploads/2017/10/Pilot18.com-ICAO-Annex-17-Security.pdf> (05.11.2021).

the aircraft before it was physically received,<sup>291</sup> it may be concluded about Belarus' violation of Articles 1 (1) (b) and (2) of the Montreal Convention.

According to the Montreal Convention, the threat of the use of force that may endanger an aircraft is a crime. Regarding the issue of attempts to illegally exercise control over an aircraft, the Convention for the Suppression of unlawful seizure of aircraft (the Hague Convention) of 1970, ratified by Belarus, article 1 also qualifies such an act as a crime.<sup>292</sup>

Taking into account that a fighter jet was used to land the plane, in addition forcibly, it is worth considering the real motive – the arrest of the former editor-in-chief of the most popular opposition telegram channel, it can be concluded the fact of deliberate hijacking of the aircraft in the circumstances of the threat of use of force. Additional data on the conclusion of the ICAO regarding forced landing should be presented in its report in November 2021.<sup>293</sup> After all, the most crucial question in this incident has not yet been received: what motivated the pilot-in-command of the Ryanair plane to board at Minsk airport. Reporting false information about the presence of an explosive device on board an aircraft is an offense under Article 1 (1)(e) of the Montreal Convention to generate a stressful situation and thereby endanger the safety of the aircraft.

As it was noted, Poland initiated an investigation into the seizure of an aircraft under its jurisdiction. Even if Poland submits the results of the investigation and requests that the case be referred to the International Court of Justice of the United Nations by Article 14 (1) of the Montreal Convention and Article 12 (1), Belarus will not be obliged to follow the decision of this court, as it stated that it does not bind itself to this obligation. However, if a violation of the Chicago Convention of Belarus is found under Article 84, Poland may apply for consideration of the violation in the International Court of Justice of the United Nations.

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<sup>291</sup> SHvejcarskij HAMAS. Nestykovki v "terroristicheskoy" versii belorusskikh vlastej. [Swiss Hamas. Inconsistencies in the "terrorist" version of the Belarusian authorities.] Online. - Research Center "Dossier" - <https://dossier.center/bel-hamas/> (05.11.2021)

<sup>292</sup> UN. Convention for the Suppression of Unlawful Seizure of Aircraft of 16.12.1970. Online. - [https://www.un.org/ru/documents/decl\\_conv/conventions/aircraft\\_seizure.shtml](https://www.un.org/ru/documents/decl_conv/conventions/aircraft_seizure.shtml) (05.11.2021)

<sup>293</sup> Fomina, E. OON gotovitsya predstavit' doklad o posadke samoleta s Protasevichem v Minske. [The UN is preparing to present a report on the landing of the plane with Protasevich in Minsk] Online. - media outlet DW.com 04.09.2021. - <https://www.dw.com/ru/oon-predstavit-doklad-o-posadke-samoleta-s-protasevichem/a-59082692>

### 3.5 The World Congress of Belarus

The community "Belarusy Zamezhzha," whose goal is to restore and develop the institutions of civil society and restore democracy in Belarus, initiated the World Congress of Belarus to solve the tasks set, where they settled the demands for the immediate removal of the usurper from power, the release of all political prisoners and the holding of free elections in the interests of a New Democratic Belarus. The Congress of Belarus is a non-governmental body that represents cooperation between Belarusians and the Belarusian diaspora. The question that is relevant on the agenda is whether this body can be given legal powers to represent the will of the Belarusian people in their desire to bring Lukashenka to justice in initiating a judicial investigation.

Current issues are related to human rights and freedoms, public sector reform, international political partnership, restoration of justice over the perpetrators, recovery from the economic crisis, financial policy, ecology, social development, the need to reform the judicial system, as well as military and police structures, the education system, material assistance to the repressed, and compensation for damage after the change of power to all victims of the regime, etc.<sup>294</sup>

A resolution was adopted following the results of the first World Congress of Belarus, which was attended by 131 speakers from the Belarusian diaspora from more than 50 countries. This resolution is defined as an essential document, which is a formal expression of the will and opinion of Belarusians on the critical events taking place Belarus, supplemented by a plan aimed at resolving the crisis.<sup>295</sup>

### 3.6 The People's Embassies of Belarus

The People's Embassy is an independent alternative representation of Belarus, aimed at establishing democratization in Belarus in the absence of a legitimate leader. The goals and activities of the People's Embassies are enshrined in the Resolution of the First World Congress of Belarus.<sup>296</sup>

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<sup>294</sup> People's Embassies of Belarus. World Belarus Congress of 2020. Official website. Online. - <https://belarusabroad.org/en/world-belarus-congress-2020/>

<sup>295</sup> World Congress of Belarusians. Resolution of 11.11.2020. Online. - <https://drive.google.com/file/d/1c4PQ9epAOPSZknoCfBefFJFrtQh07Ic/view> (20.01.2020).

<sup>296</sup> People's Embassies of Belarus. Official website. Online. - <https://belarusabroad.org/en/>

In the recent past, the participants of the initiative, members of the Belarussian diaspora, have established contacts with politicians of the countries of their residency, organized regular meetings with various experts in the field of international relations, discussed possible actions following the adoption of the sanctions by the EU, some representatives of the people's embassies met with Sviatlana Tsikhanouskaya, held educative seminars. I consider the initiative of alternative people's embassies to be very promising and productive. In such a short period of its existence, this initiative has already been implemented in the 13 states of the world and is further impending to be launched in some other states. I think that in the future, these embassies will be able to substitute the embassies and ambassadors of the illegitimate president of Belarus, and diplomatic relations with the local authorities of the countries are already bringing positive political outcomes for the Belarussian democratic future.<sup>297</sup>

### 3.7 To be or not to be a violent civil revolution?

During one of the lectures, one of my professors said: “Exercising of the right to freedom of assembly, as a means of regime shift in the country, shall be carried out peacefully. However, when the regime is authoritarian, sometimes there is no other option than to fight for one's freedom and democracy by arming oneself.” This statement triggered me to consider the proportionality of the success of armed revolutions over peaceful protests, and is there any preponderance at all? So, to be or not to be an armed revolution?

Several recent examples suggest the opposite. So, effective methods of civil disobedience were protest movements, withdrawing deposits from banks, refusal to make concessions to the government, strikes, non-payment of the utilities, ignoring media, and other nonviolent methods that led the population to the desired political changes. Some of the model examples of the past of peaceful protest actions in the 1990s-2000s with successful, for the civilians, outcome: Madagascar, Serbia, Côte d'Ivoire, Latvia, Ukraine, Estonia, Guatemala, Lithuania, Georgia, Mongolia, Lebanon, Taiwan, Nepal.<sup>298</sup> It is worth considering that in some of the countries listed above, the course of the protest movement was mainly violent. As a result of

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<sup>297</sup> *Ibid.*

<sup>298</sup> Hastings, T. *A New Era of Nonviolence: The Power of Civil Society Over War*. Jefferson: McFarland & Company, Inc., Publishers 2014, pp 78 - 90.



the prolonged mass protest demonstrations in 2019 in Algeria, as well as in Sudan, the heads of these countries were released from their office.<sup>299</sup>

A little more than a decade earlier, the people of Georgia overthrew the government in a peaceful revolution that went down in history as the Rose Revolution.<sup>300</sup> During which the dissenters carried flowers in their hands while storming the government building. Before his overthrow, Ferdinand Marcos brutally persecuted dissenters with his regime, but in 1986, "the cup of peoples' patience was filled," and the people of the Philippines took to the streets in a peaceful protest demonstration called the Yellow Revolution. The dictator's regime did not last even four days. In the listed examples, the opposition to the authoritarian regime has overcome, having received the desired cardinal changes.<sup>301</sup>

I believe that for the absolute functioning of democracy in the country, it is necessary to introduce the right to revolt in the national legislature. This right should be inherent in the people, but it should not be coherent with calling for rebellion. No one whatsoever shall have the right to execute the call to revolt. This right should be an individual choice for everyone.

Are there specific causal tools that determine the most successful outcome of some civil confrontations over others? In their research, Erica Chenoweth and Maria J. Stephan confirm that the peaceful protest movement is not only based on the moral preference of civil society. After analyzing many different types of demonstrations, the professor concluded that peaceful demonstrations achieved the desired result twice as high as revolutions with the use of force by the civilian population.<sup>302</sup>

While reflecting on peaceful campaigns, it is crucial to understand that nonviolent movements that follow the above criterion seem to be more likely to be effective than armed revolutions with identical characteristics, considering the lack of a progress strategy. Even though there is no proof that mass peaceful protest could be effectively facilitated or assisted by foreign

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<sup>299</sup> Daragahi, B. Sudan and Algeria are part of a new wave of peaceful regime change – other dictators should be worried. Online. - media outlet INDEPENDENT 11.04.2019. - <https://www.independent.co.uk/voices/omar-al-bashir-sudan-protests-arrest-abdelaziz-bouteflika-algeria-a8865406.html>

<sup>300</sup> CSCE. "Georgia's Rose Revolution". A Report from the Commission on Security and Cooperation in Europe at 108th Congress of 2nd Session 2004. "Georgia's Rose Revolution". Online. - <https://www.csce.gov/sites/helsinkicommission.house.gov/files/Report%20on%20Georgia%27s%20Rose%20Revolution.pdf> (02.11.2004)

<sup>301</sup> Litonjua, M. The 1986 Yellow Revolution of the Philippines: Why not Red? - *International Review of Modern Sociology* 31, № 2 (2005), pp179-206. Online. <http://www.jstor.org/stable/41421643>

<sup>302</sup> Chenoweth, E., Stephan, M. Why Civil Resistance Works: The Strategic Logic of Nonviolent Conflict - *International Security* 2008. Vol.33/1, pp 7–44. Online. - [https://www.belfercenter.org/sites/default/files/legacy/files/IS3301\\_pp007-044\\_Stephan\\_Chenoweth.pdf](https://www.belfercenter.org/sites/default/files/legacy/files/IS3301_pp007-044_Stephan_Chenoweth.pdf)

parties, these unified solidarity networks have exerted persistent pressure on governments aligned with the applicable goal regimes, implying that international organizations can increase the campaign's influence on the subject. Foreign support, on the other hand, may be detrimental if it damages the movement's legitimacy. That is, considering the critical importance that the media plays in supporting civil society, governmental and non-governmental institutions should help peaceful movements by promoting the development and preservation of alternative media outlets and technology that allow nonviolent parties to interact from inside and outs.<sup>303</sup>

Developing technological capability in election observation and human rights reporting are two other resources that peaceful campaigners can use. As a result, nonviolent activists will learn information that reflects lessons gained from past nonviolent campaigns to be crucial to their movement. Increasing reports of undemocratic regimes employing Internet surveillance, draconian laws restricting domestic and foreign NGOs, and more conventional attacks and violence targeting civil society organizations will likely raise new obstacles for those devoted to peaceful political reform. Resistance movements, which cause a shift of affiliation among security forces and government officials, are most likely successful. Of that kind, tactical results do exist periodically in aggressive campaigns, but peaceful campaigns are most likely to result in a change of allegations.

Furthermore, the repression of nonviolent campaigns in the Philippines and East Timor resulted in effective foreign sanctions against the hostile government, which was vital to the effectiveness of these peaceful movements. The internal and overseas political costs of resisting peaceful protests are more significant than repressing violent campaigns. According to Ms. Chenoweth, a Postdoctoral Fellow in Science and International Affairs at Harvard University, and Ms. Stephan, Director of Educational Initiatives on Nonviolent Conflict, analysis aggressive and peaceful protests that do not accomplish large and decentralized mobilization are unlikely to result in coup attempts or foreign sanctions. Massive demonstrations are likely to cast skepticism on the opposing party's credibility. The political cost of repressing a few dissidents, called "extremists," is much smaller than the cost of repressing thousands of protestors spanning the entire nation.<sup>304</sup>

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<sup>303</sup> *Ibid.*

<sup>304</sup> *Ibid.*

The first thing I would like to emphasize is that every authoritarian regime should be confronted peacefully, as far as the situation allows, and not go beyond what is allowed by international and national law: not to attack first, but to use self-defense, in the case of an imminent threat. Also, the mere liberation of the state from the power of the dictator does not ensure democracy and respect for the freedoms and rights of citizens. Further, it shall be admitted that peaceful demonstrations do not guarantee freedom from police violence, the safety of life and health, and repression, but the victims will be much less if the protest is violent. Autocratic power relies on violence, but if civil society uses their peaceful means of demonstration, the regime will be in disarray, as there is a tendency that the use of force against a peaceful confrontation is not approved by the international community and applies reasonable, given the situation, international legal countermeasures. There is a strong possibility that international aid may be lost as soon as the protest turns into a violent popular confrontation. And as a result, there is a massive number of victims and political isolation. It is possible to reduce the number of victims - by inaction, but the dictatorship will still find those who are not pleasing to the authorities for the sake of intimidating the masses and demonstrating force. Repression, pressure, arbitrary detentions, falsified criminal cases- these are not all the regime methods, but the most common. Two parameters remain crucial for those already involved in a revolution: it must be peaceful; no one can back down.

## SUMMARY

In this thesis, an extensive analysis of national legislation was carried out and of the most significant amendments made to it. The issue of compliance of national legislation with international norms and obligations voluntarily assumed by the Republic of Belarus and compliance with international customary law was researched. The paper also examined the modern trends in the development of universally recognized human rights in the democratic world, and recommendations for improving national legislation to comply with international standards adopted in a democratic society were offered.

Thus, summing up the above, it can be concluded that the transitional justice measures are part of the launch of initiatives aimed at transparency: the creation of truth commissions, the declassification of national archives, the presentation of compensation programs for victims of the regime, the verification of officials, including members of the security forces, and, of course, the criminal prosecution of regime leaders.

Total restoration of justice will occur only after the shift of the political regime since a fair and impartial investigation of crimes allowed by the state in the era of the dictator's regime seems impossible. The judicial system remains rotten and corrupt at its origins, and law enforcement agencies continue to follow the illegal orders of the criminal in bloody power. Therefore, it is necessary that a fair and impartial investigation of international crimes committed under the dictatorship be initiated from outside, and sanctions should have a global character.

However, the fear of losing their violent power allows the Belarusian agrarian dictator to retain the support of several other states, including two of which in the Security Council. The question remains: how can countries where a dictatorship has supplanted the rule of law maintain peace and security and monitor compliance with international law within the universal level? The reform of the UN Security Council structure should have a dominant agenda in the context of global respect for human rights and the improvement of the transitional justice system to establish world democracy.

There is no single formula for overcoming the consequences of tragic events marked in history by mass atrocities. In the meantime, in the conditions of the modern world, peaceful citizens suffer both economic losses and infringement of their rights and freedoms. After all,

at the moment, there is no single legal solution for how a regime can be shifted without harming human rights aspects in the first place. The measures, foremost sanctions, taken by the governments of other countries aimed to hasten the shift of authoritarian power in Belarus are proportionate, but not without consequences for the citizens of Belarus, who primarily suffer from the counter-actions of the illegitimate president of Belarus, who is not able to restrain his domineering ego from responding on humanitarian demands.

The mechanism of international legal protection should serve as a balance between establishing the truth and punishing those guilty of torture and other cruel, inhuman, or degrading treatment of civilians and crimes against humanity on the territory of Belarus by representatives of the *de facto* authorities. There are no international legal restrictions not to assign responsibility to those who pursued deliberately criminal orders, committed psychological and physical injuries, used weapons, intimidated, abducted, and killed people.

To implement the process of justice, the following recommendations may be pursued:

- 1) for the governments:
  - a) not to recognize the Belarusian government and Lukashenka as legitimate due to the lack of their legal rights to represent the interests of Belarusians on the international scene, because of their complicity in the falsification of the results of the 2020 presidential elections,
  - b) to recognize the actions committed by the *de facto* government as terrorists, and to identify Lukashenka and his associates as terrorists by the affected states due to the forced landing of the Ryanair plane,
  - c) based on the report of Dr. Wolfgang Benedek, within the framework of the Moscow Mechanism, to initiate court proceedings on crimes committed against human rights in Belarus in an international tribunal;
- 2) for the Human Rights NGOs and experts:
  - a) to provide the results of the collected evidence of torture, cruel, and inhuman treatment for the initiation of criminal proceedings within the universal jurisdiction.

The transition process has already been launched in Belarus by the joint efforts of Belarusians and residents of Belarus, civil society, politicians of other states, and supranational bodies. Ideas for reforming the political power, the judicial system, the economic life, the security system, and other institutions of the state apparatus aimed at building democracy, establishing

the rule of law, and eliminating human rights violations are already being developed by professionals among Belarusian citizens and members of the diaspora. The truth commissions are working together with some former investigators, employees of «Almaz» and OMON,<sup>305</sup> who defected to the opposition, preparing irrefutable evidence, declassifying information about the involvement of those responsible in international crimes, preparing the ground for the criminal prosecution of the perpetrators. Furthermore, it remains to keep fighting that the initiatives, methods, and processes launched by joint efforts with the international community will come to their Democratic fruition shortly of the New Free Belarus.

Justice adapted to the exceptional realities of the transitional period of society from the time when widespread violations of human rights were considered as its natural component. Sometimes, as to the current situation in Belarus, this transition can occur spontaneously and have clear and significant consequences. This research paper examines the fundamental perspective on transitional justice and how it implies the Belarusian agenda. A thorough analysis was carried out in the range of the main transitional justice measures implemented since the election in 2020, and further will be developed to hasten the shift of the regime in Belarus.

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<sup>305</sup> Edinaya Kniga Registracii Prestuplenij. [Unified Book Of Crime Registration]. - An online platform for collecting, storing and analyzing case files of crimes committed by officials of the Republic of Belarus. - <https://ekrp.org/ekrp/>, 05.11.2021.

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