



HUMAN RIGHTS DEFENDERS
FOR FREE ELECTIONS

BELARUS

ELECTIONS AND ENFORCED DISAPPEARANCES

Contribution to the Working Group on Enforced or Involuntary Disappearances prepared by the Human Rights Defenders for Free Elections campaign, with the Belarusian Helsinki Committee and Human Rights Center Viasna involved.

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INTRODUCTION

The Human Rights Defenders for Free Elections is an expert mission of elections and referendums observation in Belarus carried out by the Belarusian Helsinki Committee and Human Rights Center Viasna. The campaign is aimed at evaluating the elections and referendums in Belarus from the viewpoint of the Belarusian electoral legislation and international standards of free and democratic elections, as well as informing the Belarusian public and international community about the progress of the elections and results of observation.

Founded in 1995, Belarusian Helsinki Committee (BHC) is one of the oldest human rights defenders' organizations in Belarus. BHC works mainly on six major human rights topics: discrimination, human rights based approach, international human rights mechanisms, national human rights mechanisms, business and human rights, death penalty. For many years, BHC has been contributing to the ability of Belarusian NGOs to effectively report to the UN mechanisms and to advocate in dialogue with the government through training and web resources for NGOs. In 2022, BHC received special consultative status with the UN ECOSOC. Among other projects, BHC engages in monitoring the situation of the implementation of various human rights in Belarus, compiling an expert Human Rights Index, as well as tracks qualitative changes in public policy in the field of human rights, documenting them in Key Trends in Public Policy.

Human Rights Center Viasna is the leading human rights organization of Belarus with 27 years of relevant experience. Its priorities include assistance to the victims of human rights violations, information activities, monitoring freedom of peaceful assembly and fair trial standards, etc. Viasna is the key participant in the country's human rights community. It is a member of several major coalitions running thematic campaigns.

Guided by the definition of enforced disappearances as established in the Declaration on the Protection of All Persons from Enforced Disappearance and the clarifications provided in the General Comments by the Working Group on Enforced or Involuntary Disappearances (the Working Group), we will concisely address the election-related practices of the Belarusian authorities that i) resulted in the deprivation of liberty of individuals, ii) by officials or entities acting on behalf of, or with the support of, the Government, iii) followed by a refusal to reveal the fate or whereabouts of the persons involved or a refusal to acknowledge the deprivation of their liberty, thus placing such individuals entirely or partially outside the protection of the law, namely:

- i. Cases of enforced disappearances in 1999
- ii. Mass arbitrary arrests with subsequent refusal to acknowledge the deprivation of liberty following the 2020 elections (ii-a), including the case of Maria Kalesnikava (ii-b)
- iii. Instances of prolonged incommunicado detention posing a risk of enforced disappearance

i. 1999 DISAPPEARANCES

Context:

Enforced disappearances of several prominent figures in Belarus' opposition have repeatedly been the subject of consideration of the Working group¹. Between 1999-2000, four known cases of enforced disappearance of prominent figures occurred. We identify three of these — the abduction of **Mr. Yury Zakharanka**, **Mr. Viktor Hanchar**, and **Mr. Anatol Krasouski**, as related to elections, given the overarching context of these crimes and the roles played by the disappeared individuals.

The year these three disappearances took place was marked by the alternative presidential elections organized by the opposition in May 1999, taking the view that President Lukashenko's term of office expired on 20 July, in accordance with the 1994 Constitution².

- In May 1999, the whereabouts of Yury Zakharanka (a former Minister of Interior and a senior figure in the opposition movement, engaged in the unofficial presidential elections) became unknown. Reportedly, before his disappearance, Mr. Zakharanka was followed and received threats to his life³.
- In September 1999, Viktor Hanchar (the chairman of the unofficial electoral commission, a member of the dissolved Belarusian parliament and a significant political adversary of Alexander Lukashenko), disappeared along with his companion, another political opponent of the President, Anatol Krasouski. Prior to their disappearances, both had been under surveillance and subject to various forms of pressure, including arbitrary detentions. Earlier that year, Mr. Hanchar was recognised as a prisoner of conscience by Amnesty International due to an imprisonment for his peaceful opposition activities⁴.

Consequences:

No official acknowledgment of the enforced disappearances followed, nor was there any independent, impartial, thorough investigation capable of leading to the identification and punishment of those responsible.

- A criminal case under the “intentional murder” article was opened, however, no organ that could conduct an independent investigation and resist the steps “taken at the highest level of the State to actively cover up the true background of the disappearances” was established⁵. For more than 20 years, the investigative process has been plagued by numerous deficiencies,

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<https://documents.un.org/doc/undoc/gen/g23/152/12/pdf/g2315212.pdf?token=VO4S209L4kS66fB2V5&fe=true>

² The Constitution was amended as a result of the controversial 1996 referendum, widely considered to be falsified (it is notable that the 1996 campaign was marked, among other shortcomings, by the dismissal of Viktor Hanchar, then the chairman of Central electoral commission, who refused to recognise the referendum results as legitimate):

<https://www.osce.org/node/52438>,

<https://www.nytimes.com/1996/11/26/world/president-of-belarus-wins-referendum-on-expanding-his-power.html>. Among others, the renewed Constitution extended the President's term of office, due to expire in 1999, until 2001 and significantly broadened his powers.

³ <https://www.amnesty.org/en/documents/eur49/002/2001/en/>, p. 7.

⁴ <https://www.amnesty.org/fr/wp-content/uploads/2021/06/eur010021999en.pdf>, p. 9

⁵ A person that had allegedly ordered several political murders whilst in his previous function was put in charge, as Prosecutor General, of the official investigation of the said crimes: Disappeared Persons in Belarus, Report by the Committee on Legal Affairs and Human Rights, Rapporteur: Mr Christos Pourgourides, Cyprus, Group of the European People's Party (hereinafter — Mr. Pourgourides memorandum), para. 67, <https://www.refworld.org/reference/countryrep/coepace/2004/en/12607>

such as discontinuation of inquiries; replacement of investigators; refusal to interrogate officials suspected of involvement into the alleged disappearances, as well as resistance to consider procedural motions made by lawyers and family members⁶. Serious allegations were made regarding deliberate concealment of crucial evidence⁷. In January 2019, the investigation into the alleged disappearance of Mr. Zakharenko was suspended since the suspects could not be identified. In December 2019, Deutsche Welle released an interview with a former Belarusian special rapid response unit (SOBR) member, revealing that SOBR agents were behind the abductions and murders of the three individuals. Following this resonance interview, the criminal investigation was reopened on December 18, 2019, only to be suspended again⁸. **So, the persons allegedly involved in enforced disappearances continue to enjoy impunity.** For instance, Viktor Sheyman, who has allegedly orchestrated the mentioned disappearances, has not only been put in charge of the investigation of these crimes, but has also held various high-ranking state positions, currently serving as the President's "special envoy"⁹.

- In 2000, **another enforced disappearance followed.** In July 2000, the whereabouts of the Russian Public Television (ORT) cameraman, **Dmitry Zavadsky**, also became unknown leading to an investigation of dubious impartiality and effectiveness and the in camera conviction of four individuals that had allegedly abducted Mr. Zavadsky. Zavadsky's lawyer and family claimed the trial failed to examine credible allegations that Belarusian authorities were also involved in the abduction¹⁰.
- **To date, no legal framework specifically addressing enforced disappearances**, including a dedicated investigation procedure, statutory limitations, and a distinct status for victims and their relatives, has been established. Viktor Hanchar and Anatol Krasouski have been declared missing, while Mr. Zakharenko **has neither been declared missing, nor presumed dead.** Consequently, the State continues to infringe upon the human rights of the relatives of these missing individuals: they have not received adequate redress. The mothers of Viktor Hanchar, Anatol Krasouski and Yury Zakharanka have been denied survivor benefits, subsisting on minimal pensions. The ambiguous legal status of the missing has complicated inheritance proceedings and the management of the disappeared relatives' properties for their families¹¹.
- Additionally, the missing persons' **relatives have faced surveillance, pressure, and, in some cases, anonymous threats.** Opposition members advocating for the disappeared and their families and calling for thorough and impartial investigations have also been intimidated by the authorities¹².

⁶ Among other deficiencies, one of the perpetrators was released from custody under questionable grounds shortly after an arrest for a series of murders (and promoted later): Mr. Pourgourides memorandum, para. 41, footnote 68.

⁷ Inter alia, Mr. Pourgourides memorandum, para. 32.

⁸

<https://www.dw.com/ru/в-беларуси-приостановлено-расследование-исчезновения-экс-главы-мвд-захаренко/a-52903619>

⁹<https://www.occrp.org/en/the-pandora-papers/belarusian-elites-golden-deal-with-zimbabwe>,

<https://www.belta.by/president/view/lukashenko-prinjal-s-dokladom-shejmana-na-temu-razvitiya-sotrudnichestva-so-stranami-afriki-555705-2023/>

¹⁰ <https://cpj.org/data/people/dmitry-zavadsky/>

¹¹ <https://spring96.org/ru/news/92008>

¹² <https://www.amnesty.org/en/documents/eur49/002/2001/en/>, p. 6

- **Belarus still hasn't ratified the International Convention for the Protection of All Persons from Enforced Disappearance**, despite the respective calls from victims' families¹³ and human rights defenders¹⁴.

Thus, in 2 years 1999-2000, four cases of enforced disappearances took place, of which three can be considered election-related: a person having a leading role in organizing the 1999 unofficial presidential elections, and two President's political opponents went missing. Given the overall unstable situation in the country and numerous instances of intimidation of other political opponents of Alexander Lukashenko, enforced disappearances seem to be only one tool of many that were used by him to take control over the State's main institutions¹⁵. The lack of independent, impartial, thorough and effective investigations, along with the lack of legislation specifically addressing enforced disappearances, has denied victims proper redress and fostered a culture of impunity in Belarus, thus leaving the door open for the recurrence of such crimes.

¹³ <https://spring96.org/en/news/51239>

¹⁴ <https://spring96.org/ru/news/92008>

¹⁵ See, inter alia, other tools, utilized back then, including arbitrary detentions and ill-treatment in custodial institutions: <https://www.amnesty.org/en/documents/eur49/002/2001/en/>

ii-a. MASS ARBITRARY ARRESTS WITH SUBSEQUENT REFUSAL TO ACKNOWLEDGE THE DEPRIVATION OF LIBERTY FOLLOWING THE 2020 ELECTIONS

The announcement of official presidential election results has been a traditional trigger for spontaneous mass peaceful protests since the 1999 presidential election (except for the 2015 campaign). These protests have consistently led to a pattern of mass arrests and detentions of demonstrators by the authorities, replicated across election cycles.¹⁶

The crackdown on post-election protests was characterized by:

- disproportionate use of force by police officers against protesters,
- indiscriminate arrests of protesters,
- prolonged failure to formally establish the official status of arrest and subsequent detention, resulting in a lack of information about the legal ground of detention,
- absence of information from authorities about the detainees' whereabouts for a day or more.¹⁷

Therefore, arrests during the dispersal of post-election protests acquire the features of 'short-term disappearances' due to the systemic noncompliance of the competent bodies with human rights obligations, including right to liberty and security, prohibition on torture and cruel, inhuman or degrading treatment or punishment, and the humane treatment of those deprived of their liberty. Currently, the persons deprived of liberty in Belarus:

- i) may be arbitrarily denied prompt registration in an officially recognized place of detention,
- ii) as well as denied the ability to promptly notify relatives and attorneys about their detention¹⁸,
- iii) are not guaranteed the right to be brought before a judicial authority shortly after detention¹⁹,

¹⁶ See publications on post-election protests:

in 1999 <https://news.rambler.ru/cis/44671703-kak-oppozitsionery-i-rabochie-buntovali-protiv-lukashenko-v-1995-1999-godah/>
in 2001 https://spring96.org/files/reviews/ru/2001_review_ru.pdf
in 2004 (constitutional referendum) <https://spring96.org/be/news/1849>
in 2006 <https://spring96.org/be/news/4054>, <https://spring96.org/be/news/4062>
in 2010 <https://spring96.org/be/news/39817>
in 2020 <https://meduza.io/feature/2020/08/13/k-visku-pristavlyali-oruzhie-i-perezaryazhali>

¹⁷ For example, noted in the 2001 Review-Chronicle of Human Rights Violations, see https://spring96.org/files/reviews/ru/2001_review_ru.pdf

The problem of failure to clarify the fate of detainees assumed gigantic proportions during the post-election protests of 2020, see <https://meduza.io/feature/2020/08/13/ne-hvatit-tyurem-vsyu-belarus-ne-posadish>

¹⁸Despite the fact that both the Code of Criminal Procedure and the Procedural-Executive Code of Administrative Offenses establish an obligation for competent authorities to promptly notify relatives about the detention of an individual, in practice, this obligation is not fulfilled on time — or may not be fulfilled at all. In Belarus, there is no unified centralized official registry listing the names of detained persons, their places of detention, times of arrival and departure, as well as the names of those responsible for their custody, accessible to interested parties, including relatives: See The Crisis of the Belarusian Bar: How to Restore the Right to Defense Report, p. 35, <https://drive.google.com/file/d/1cGbBv2r6bt5rCg7fOLAmGFoQLUBQQBvx/view>

¹⁹ In Belarus, the placement of detentions, or custody of suspects or accused in criminal cases under judicial review is not guaranteed (the court examines the legality and justification of detention or restraint measures only if they are appealed, and measures restricting personal liberty are authorized by the prosecutor), the duration of

iv) and are frequently arbitrarily denied access to legal aid²⁰, which poses a risk for short-term disappearances, as documented in 2020.

From 2020, when the post-election protests reached unprecedented scope, extending beyond isolated actions or minor series of demonstrations against the election outcomes — with mass protests commencing in August 2020 and ultimately quelled by March 2021 — the 'short-term disappearance' of detainees became standard practice.²¹ Ten days after the post-election protests began in 2020, the Ministry of Interior acknowledged receiving at least 70 missing persons reports related to the protests.²² In total, by the end of 2020 there were at least 33,000 detained participants of peaceful protests.²³ Among the numerous reported cases of arbitrary deprivations of liberty accompanied by the lack of any information about the whereabouts of the persons concerned for more than 24 hours, at least seven documented cases of treatment that meet the threshold of short-term enforced disappearance were documented²⁴. **Not a single criminal case has followed** against those responsible for the organization and commission of the crimes against protesters and passersby. Many applicants attempting to use the national legal remedies reported threats from investigators, who warned of initiating criminal prosecutions for participation in the protests.

ii-b. MARIA KALESNIKAVA DISAPPEARANCE

Context:

An extraordinary case within the 2020 repressions is the short-term enforced disappearance of Maria Kalesnikava, noted by various UN Special Procedures, including the Working group²⁵. It is important

pre-trial detention is also determined by the prosecutor and is subject to judicial review only upon the filing of a complaint by the accused, with no proper justification provided for extending such terms.

²⁰ Despite the right enshrined in national legislation to have a defender and to communicate with them confidentially, guaranteed to suspects and accused in criminal proceedings and to individuals in administrative proceedings, in practice, this right is consistently violated. Firstly, national legislation does not set a timeframe within which a lawyer must be unconditionally granted access to a detainee, nor does it obligate the state to ensure prompt access, allowing for arbitrary application of the law. As mentioned above, the location of a person immediately after detention can be concealed, complicating a lawyer's access to them. Cases of deliberate concealment of a detainee's whereabouts are known. Secondly, since 2020, there has been a completely arbitrary practice of completely excluding contacts with a lawyer for administratively detained individuals due to anti-epidemic measures. Sometimes the first meeting between a lawyer and their client occurs just a few minutes before the court session on administrative offenses, conducted via video conference, which does not allow for defense preparation and the confidentiality of consultations between the lawyer and the client. Thirdly, the problem remains of complicating lawyers' access to accused clients through an arbitrary, legislatively unforeseen procedure of "admission" to participate in the case (the admission of a lawyer to participate in a case is at the discretion of the investigator and can be done at a time convenient for them. The investigator can also arbitrarily deny a lawyer's participation in the case. See *The Crisis of the Belarusian Bar: How to Restore the Right to Defense Report*, p. 36, <https://drive.google.com/file/d/1cGbBv2r6bt5rCg7fOLAmGFoQLUBQQBvx/view>, and an addition to it, p. 7: <https://www.defendersbelarus.org/tpost/szf87fx5z1-report-the-crisis-of-the-legal-professio>

²¹ <https://meduza.io/feature/2020/08/13/ne-hvatit-tyurem-vsyu-belarus-ne-posadish>

²² <https://www.rbc.ru/rbcfreenews/5f3bb96b9a7947cfbf96ccec>

²³ <https://spring96.org/en/news/101223>

²⁴ <https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=25517>

²⁵

<https://www.ohchr.org/en/press-releases/2020/09/un-human-rights-experts-belarus-must-release-opposition-lead>

to note that Maria's disappearance is part of the overall post-electoral 2020 repressive climate. Not only were individuals actively protesting targeted, but also key opposition figures: it is worth recalling that presidential candidates that managed to gain popular support in 2020 did not even pass the registration stage²⁶. Sviatlana Tsikhanouskaya, a candidate who may have actually won a substantive majority of the votes, faced intimidation when she visited the office of the Central Electoral Commission to submit evidence of vote manipulation the day following the election. Shortly afterwards she was forced into exile. In Lithuania, Sviatlana has initiated the creation of the Coordination Council aimed to organize the process of overcoming the political crisis²⁷. The Council was led by the Presidium; in the end, all seven members of the latter have been either forced out of Belarus or detained²⁸. Maria Kalesnikava, as one of the Presidium members and among the three key female opposition leaders who rallied the mass protest vote, became the highest-profile opposition figure in Belarus after Sviatlana Tsikhanouskaya's forced exile. Her enforced disappearance is just one of the tools used by those retaining power to suppress political adversaries, alongside arbitrary detentions and charges based on fabricated grounds, as well as pressure to force a politician or activist to leave Belarus. The practice of pushing "undesirable" individuals out from the country persists to this day²⁹.

On September 7, Ms. Kalesnikava was abducted from the streets of the capital. On 10 September, authorities stated she was held in pre-trial detention in Minsk, and on 16 September, she was officially charged with undermining national security. In between these dates her whereabouts and state of health were concealed. It later came to light that on September 8, Maria was driven to the border, where she was supposed to leave the country along with two other members of the Coordination Council — Ivan Krautsou and Anton Radnyankou, who were also arbitrarily arrested with handcuffs and with bags over their heads with the intention of being expelled abroad. They reported that the authorities had arranged coronavirus tests, medical insurances, and plane tickets to third countries to stage a voluntary departure from the country. Maria tore up her passport and refused to cross the border. Mr. Krautsou and Mr. Radnyankou were forced to leave to Ukraine, while Maria was detained³⁰.

Consequences:

- No investigation of this abduction followed. To the contrary, in 2021, Maria was sentenced to 11 years in a general-security penal colony. In 2022, the KGB added her to the 'List of persons

er-maria?LangID=E&NewsID=26296;

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25558>

²⁶ See, inter alia, the situations of Sergey Tikanovski, Viktor Babariko and Valery Tsapkalo in OSCE Rapporteur's Report under the Moscow Mechanism on Alleged Human Rights Violations related to the Presidential Elections of 9 August 2020 in Belarus (<https://www.osce.org/odihr/469539>), p. 16-17

²⁷ <https://rada.vision/en>

²⁸ See the stories of their prosecution: Belarus: "They are stealing the best of us". Arbitrary arrests and forced expulsion of leading opposition activists (<https://www.amnesty.org/en/documents/eur49/3040/2020/en/>), p. 2-3, and, additionally, the story of one of the Presidium members and the winner of 2015 Nobel Literary Prize Svyatlana Aleksievich that has also left the country: <https://www.spiegel.de/international/europe/svetlana-alexievich-on-the-protests-against-alexander-lukashenko-in-belarus-a-5ef54f55-1816-4933-9afc-b6208645dbc9>

²⁹

<https://www.ohchr.org/en/press-releases/2022/10/belarus-crackdown-rights-forcing-citizens-flee-says-un-expert>

³⁰

<https://www.dw.com/ru/beloruskie-oppozicionery-kravcov-i-rodnenkov-rasskazali-kak-ih-i-kolesnikovu-vydvorjali-iz-strany/a-54858169>, <https://www.amnesty.org/en/documents/eur49/3040/2020/en/>, p. 2

involved in terrorist activities'³¹. As of the drafting of this communication, Ms. Kalesnikava has been held incommunicado (with no correspondence received from her) for 376 days³².

Therefore, the 2020 elections, marred by fraud and followed by peaceful protests and an unprecedented scale of repression, witnessed instances of short-term enforced disappearances. These occurred:

i) as a result of mass arbitrary deprivations of liberty (violating, inter alia, Belarusians' rights to peaceful assembly and freedom of expression) accompanied by the lack of adequate safeguards upon arrest and during the first hours of deprivation of liberty (including immediate registration, judicial oversight of the detention, notification of family members, and prompt access to legal aid). These shortcomings remain present in the current legislation and practice, posing a risk of repetition of such illegitimate treatment on the side of the authorities³³.

ii) as a mechanism used to isolate the political opponent, when the latter resists forced exile.

³¹ With the following charges indicted: Calls for actions aimed at causing harm to the national security of the Republic of Belarus (Art. 361 of the Criminal Code), Conspiracy to seize power in an unconstitutional way (Art. 357 of the Criminal Code), Creation of an extremist formation, or participation in it (Art. 361-1 of the Criminal Code).

³² https://spring96.org/files/reviews/en/review_2023_en.pdf, p. 8

³³ See The Crisis of the Belarusian Bar: How to Restore the Right to Defense Report, <https://drive.google.com/file/d/1cGbBv2r6bt5rCg7fOLAmGFoQLUBQQBvx/view>; Belarus Human Rights Index, Right to liberty and security of person (2022, 2023), <https://index.belhelcom.org/en/>

iii. INSTANCES OF PROLONGED INCOMMUNICADO DETENTION POSING A RISK OF ENFORCED DISAPPEARANCE

The practice of completely isolating political prisoners — especially prominent figures sentenced to lengthy imprisonment on politically motivated grounds for raising voices of dissent since 2020 — is being increasingly used. The Working Group is informed about the cases of **Siarhei Tsikhanouski** (pro-democracy activist that intended to run for the 2020 presidential elections)³⁴, **Viktar Babaryka** (presidential candidate)³⁵, and **Maksim Znak** (member of the Presidium of the Coordination Council, lawyer of Viktar Babaryka election team³⁶)³⁷. Among others, **Maria Kalesnikava** and **Mikalai Statkevich** (a prominent opposition politician)³⁸ have also been held incommunicado for over a year.

Belarusian incommunicado detention is a combination of arbitrary denial of correspondence and visits from both family and attorneys. It has to be noted that the Belarusian penitentiary system is non-transparent and difficult to monitor — particularly now, after at least 2 years of purposeful dismantling of independent civil society organizations and harassment of human rights defenders that could engage in public monitoring of this system³⁹. Public monitoring commissions that retain access to detention facilities lack guarantees of independence and impartiality and consistently overlook violations during their inspections of institutions where cases of cruel and inhuman treatment of detainees were documented⁴⁰.

Thus, political prisoners remain under total control of penitentiary administrations that routinely subject them to various types of pressure, reflecting a broader trend of discrimination by the State against those deemed “disloyal”⁴¹. Although the legislation permits the imprisoned persons **to send and receive correspondence**⁴², **this right is arbitrarily infringed upon**, inter alia, by imposing **lengthy solitary confinement** ("ShIZO", or punishment cells), during which visits, phone calls, shopping at the commissary, parcels and packages, correspondence, board games, and even smoking are prohibited⁴³. Such confinement can last for months, and is often prolonged under arbitrary,

³⁴ <https://prisoners.spring96.org/en/person/siarhiey-cichanouski>

³⁵ <https://prisoners.spring96.org/en/person/viktar-babaryka>

³⁶ <https://prisoners.spring96.org/en/person/maksim-znak>

³⁷ <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=28090>

³⁸ <https://prisoners.spring96.org/en/person/mikalaj-statkevich>

³⁹ See Belarus Human Rights Index, Right to Freedom of Association (2022): https://belhelcom.org/sites/default/files/10_right_to_freedom_of_association_2022.pdf

⁴⁰ Belarus Human Rights Index (2022), Right not to be subjected to torture, cruel, inhuman or degrading treatment or punishment, p. 7, https://belhelcom.org/sites/default/files/2_right_not_to_be_subjected_to_torture_2022.pdf

⁴¹ Human Rights in Belarus: the Key Trends of Public Policy (January-June 2023), p. 22-23, <https://trends.belhelcom.org/storage/reviews/August2023/pzspkGp9ZZ3AHW9XN53D.pdf>

⁴² Penal Enforcement Code of the Republic of Belarus, Article 85: (1) Convicts sentenced to imprisonment shall be allowed to receive and send letters and telegrams without limiting their number. Letters and telegrams shall be sent at the expense of convicts: <https://pravo.by/document/?guid=3961&p0=HK0000365>

⁴³

<https://baj.media/be/analytics/karcer-pkt-shizo-cto-eto-takoe-kak-nakazyvayut-politzaklyuchennyh-kotorye-uzhe>

invented grounds⁴⁴. Despite the formally established opportunity for inmates to file complaints themselves, in practice, it is challenging to utilize this option⁴⁵.

Furthermore, convicts are also frequently **denied access to their lawyers**. The Penal Enforcement Code explicitly guarantees a convicted person's right to legal assistance, and according to Article 62 of the Constitution, this right cannot be restricted. Nonetheless, Part 6 of Article 83 of the Penal Enforcement Code, which allows for a meeting with a lawyer "upon request" of the convicted person, is used as a pretext for denying a lawyer's admission to the colony. Colony administrations improperly interpret the concept of "request" exclusively as the convicted person's written petition, and if such a request is not submitted in advance by the convicted person (or if the submitted request does not specify a particular lawyer), the lawyer arriving at the colony can be denied a visit. The administration refuses to obtain a request from the convicted person directly upon the lawyer's arrival at the colony⁴⁶. In some cases, the administration claims that the convicted persons themselves refuse the visit. The administration does not provide lawyers with a personal meeting with the convicted person to verify the authenticity of the refusal and its reasons.

An often cited reason for refusing entry is the unavailability of space for meetings⁴⁷. Between 2020 and 2023, a practice also developed of **denying lawyers access to clients placed in solitary confinement as a punitive action**. The arbitrary justification given is a provision of the Penal Enforcement Code, according to which being placed in solitary confinement deprives the convict of the right to long-term and short-term visits⁴⁸.

Consequently, with the existing regulations and the arbitrary enforcement of even national laws, the State **always** possesses the capability to isolate political prisoners entirely from the outside world. This is particularly alarming in light of recent developments: in 2023-2024 alone, **four political prisoners — Ihar Lednik, Vadzim Khrasko, Ales Pushkin, Mikalai Klimovich — passed**

⁴⁴ Reportedly, all the prominent figures that are currently being held incommunicado were subjected to lengthy solitary confinement in various forms: <https://prisoners.spring96.org/en/person/victar-babaryka>, <https://prisoners.spring96.org/en/person/siarhiej-cichanouski>, <https://prisoners.spring96.org/en/person/maryja-kalesnikava>, <https://prisoners.spring96.org/en/person/maksim-znak>.

See the illustrative example: The maximum stay in a punishment cell is 10 days, but during that time, one can accumulate 'violations' for which additional term is given", explains a former political prisoner.

"On average, a month is the standard. It all depends on how angry the warden is. If the warden doesn't want you to leave, it's done simply — an inspection comes and says the cell isn't clean. And it doesn't matter whether you cleaned or not because disputing the [violation] report is impossible...": <https://baj.media/be/analytics/karcer-pkt-shizo-cto-eto-takoe-kak-nakazyvayut-politzaklyuchennyh-kotorye-uz-he>; Belarus Human Rights Index (2022), Right of persons deprived of their liberty to be treated with humanity, p. 4, https://belhelcom.org/sites/default/files/4_right_of_persons_deprived_of_their_liberty_2022.pdf

⁴⁵ According to the Penal Code, an inmate has the right to appeal a disciplinary action taken against them. However, doing so from solitary confinement is unlikely to be feasible, as even basic writing materials like a pen and paper are not provided there. For instance, while in solitary, Alexander Kabanov requested to write to a lawyer, but he was told that writing materials would only be given to him "upon release": <https://baj.media/be/analytics/karcer-pkt-shizo-cto-eto-takoe-kak-nakazyvayut-politzaklyuchennyh-kotorye-uz-he>

⁴⁶ See The Crisis of the Belarusian Bar: How to Restore the Right to Defense Report, p. 43, <https://drive.google.com/file/d/1cGbBv2r6bt5rCg7fOLAmGFoQLUBQQBvx/view>

⁴⁷ In most colonies, lawyers are provided with rooms for short-term visits, where on certain days, no spaces are available due to the high number of relatives arriving for visits; any alternative space for lawyers is refused. Ibid, p. 43.

⁴⁸The latter administrations of colonies improperly extend to meetings with lawyers, contrary to the provision that such meetings are not counted among those legislatively provided). Ibid.

away in custody, each death attributed to the aggravation of health issues due to detention conditions and the absence of timely and sufficient medical care⁴⁹. In general, there are 5 **known** cases of deaths of political prisoners in custody⁵⁰.

⁴⁹ <https://spring96.org/en/news/114486>

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In this context, it is important to note that Belarusian judges, when issuing verdicts on politically motivated cases, often fail to take into account the health condition of the convicted, disabilities, age, and so forth: <https://prisoners.spring96.org/en/person/mikalai-klimovicz>, <https://prisoners.spring96.org/en/person/ihar-lednik>

CONCLUSIONS

The Belarusian authoritarian regime employs a number of repressive mechanisms, including practices of enforced disappearances. Between 1999-2000, enforced disappearances of opponents to President Alexander Lukashenko were executed, with one victim notably falling entirely outside the protection of national law due to the ambiguity of his status. These grave human rights violations were not effectively and thoroughly investigated, allowing those allegedly responsible for the abductions and murders of political figures to remain unaccountable.

The pervasive impunity among law enforcement became starkly evident during the 2020 post-election protests and their brutal suppression, followed by mass arbitrary detentions and short-term disappearances resulting from a systemic disregard for detained persons' rights. This period also saw the targeted persecution of opposition politicians and activists, either due to their candidacy in the 2020 elections or their active campaign participation. Common practices in such cases included arbitrary detention, persecution on fabricated criminal charges, or exerting pressure to expel "undesirable" persons from the country. Maria Kalesnikova's case exemplifies how these tactics could entail short-term enforced disappearances.

Some of the major politicians and activists that were detained and convicted after the 2020 elections, **are currently subjected to a lengthy** (over a year as of this report's preparation) **regime of complete incommunicado, facing a continuous risk of enforced disappearance**. This risk is amplified by the Belarusian penitentiary system's detention conditions, characterized by torture, inhumane treatment, and lack of access to adequate and timely medical care.

Over the years, a culture of impunity has solidified within Belarusian law enforcement, **with none of the aforementioned enforced disappearance cases subjected to an effective, thorough investigation** by an independent body.

Moreover, Belarus still lacks legal norms criminalizing enforced disappearances, establishing a special procedure for investigating such crimes, setting appropriate statutes of limitations, and mechanisms for compensation and rehabilitation for victims' relatives.

In addition to the aforementioned domestic regulatory shortcomings, the State's reluctance to ratify the Convention for the Protection of All Persons from Enforced Disappearance and implement its provisions, the State also creates further obstacles against accessing international mechanisms. Despite a request as early as 2011, Belarus has not extended an invitation to the Working Group⁵¹. By the end of 2022, Belarus withdrew from the First Optional Protocol to the International Covenant on Civil and Political Rights⁵², stripping the individuals under its jurisdiction of the opportunity to seek redress from the Human Rights Committee. The ability to gather evidence, including the exhaustion of all domestic legal remedies, is also hindered by repressive actions against lawyers, arbitrary use of non-disclosure agreements, and other similar practices, thus additionally contributing to the general climate of impunity⁵³.

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<https://www.ohchr.org/en/documents/reports/ahrc5422-enforced-or-involuntary-disappearance-report-working-group-enforced-or>, p. 15

⁵²

<https://www.ohchr.org/en/press-releases/2022/11/belarus-withdrawal-individual-complaints-procedure-serious-setback-human>

⁵³ An analysis of various aspects of denial of justice complicating appeals to international oversight mechanisms can be found here: <https://www.defendersbelarus.org/closed-corts-non-disclosure-agreements>