VIASNA
human rights center

Restrictions on freedom of expression under the pretext of combating extremism and terrorism

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Contents

Introduction....4

Applicable international standards....5

National legislation....8

Inclusion of individuals, communities, media, other entities and informational products in “extremist” and “terrorist” lists....10

- List of citizens involved in extremist activities....11
- List of extremist formations....14
- List of citizens and organizations involved in terrorism....15
- List of products designated as extremist....16

Persecution for specific forms of freedom of expression....20

- Dissemination of “knowingly false information” for extremist purposes....20
- Disproportionate prosecution for insulting government officials....24
- Inciting hatred and discord....28
- Persecution of founders, participants, and supporters of “extremist groups”....32
- Hooliganism and vandalism as forms of extremism....34
- Terrorism charges and long prison sentences....38
- Distribution of “extremist material”, manufacture, publication, storage or transportation of such material for the purpose of distribution....40
- Rehabilitation of Nazism, propaganda or public demonstration, production, distribution of Nazi symbols and paraphernalia, as well as the storage or acquisition of such symbols or paraphernalia for the purpose of distribution....42
- Public calls for extremism and public justification of such actions....46

Punitive psychiatry....48

Deprivation of citizenship....50

- Procedure for the loss of citizenship....52

Conclusions....54

Introduction

Freedom of expression is one of the most important rights aimed to support independent opinions, a progressive democratic way of thinking, social and political activity, providing a precise and predictable framework for restrictions and prohibitions.

The Belarusian authorities have consistently shrunk the boundaries of rights and freedoms, intensifying these processes after the presidential election of 2020, which was marred by significant violations and put an end to the recognition of the Lukashenka regime as a legitimate government. In 2021, the authorities launched a legislation reform, which further restricted civil and political rights and freedoms, disguising the efforts with the rhetoric of combating terrorism and extremism as a rationale for imposing and tightening punishment.

In this regard, it is worth emphasizing that the Belarusian government's goals stand in stark contrast to those pursued by international organizations fighting terrorism and its basis — violent extremism: it is a fight against dissent and protests, as well as the brutal suppression of actions that have signs of offenses, but committed with the aim of expressing a socio-political position, counteracting the strengthening of the potential of illegitimate authorities in the absence of opportunities for expressing opinions in another way. Manifestations of anti-war sentiment after the start of Russia's full-scale aggression against Ukraine are yet another target of reprisals.

Applicable international standards

The Republic of Belarus is a party to a number of international treaties entailing detailed commitments in the field of human rights, including freedom of expression. International standards are an integral part of the current legislation of Belarus. This is fixed, above all, in Art. 8 of the Constitution: Belarus recognizes the priority of the universally recognized principles of international law and ensures compliance of national legislation with these principles. The rules of law contained in international treaties of the Republic of Belarus are subject to direct application, stipulates Art. 36 of Law No. 421-Z "On International Treaties" of July 23, 2008.

The de jure place of international standards in Belarusian legislation is defined as a priority and does not cause contradictions between national and international law: the rules of national law must be applied inseparably from the rules of international treaties. For example, the Code of Administrative Offenses is based on the Constitution of the Republic of Belarus, the generally recognized principles of international law and the provisions of international treaties of the Republic of Belarus (part 1, Article 1.1 of the Code).

The main international treaty of the Republic of Belarus in the field of civil rights is the International Covenant on Civil and Political Rights (hereinafter referred to as the Covenant). Despite the fact that on October 27, 2022, the Council of Ministers denounced[1] the optional protocol allowing the submission of individual communications about violations of the Covenant by Belarus, the provisions of the Covenant remain and will remain binding.

A universal rule binding for Belarus is article 19 of the International Covenant on Civil and Political Rights; paragraph 1 of art. 19 endows every person with the right to freely adhere to their opinions. In accordance with paragraph 2, each person "shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice." The same rule establishes permissible restrictions: "the exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals."

It follows directly from this article that restrictions on freedom of expression meet international standards if the criteria of legality, necessity in a democratic society and proportionality are respected.

After considering individual communications and reports of States on the implementation of the Covenant, the Human Rights Committee summarizes the practice in its general comments. The interpretation of the provisions of article 19 of the Covenant, as well as individual recommendations for the protection and exercise of freedom of expression, are reflected in General comment No. 34.

The Rabat Plan of Action on the prohibition of advocacy of national, racial or religious

[1] Law No. 217-Z of the Republic of Belarus "On the denunciation by the Republic of Belarus of the Optional Protocol to the International Covenant on Civil and Political Rights" dated October 27, 2022

hatred that constitutes incitement to discrimination, hostility or violence contains the conclusions and recommendations of the expert meetings organized by the OHCHR, provides for a high threshold for restricting freedom of expression, recognizing hate speech and for applying article 20 of the International Covenant on Civil and Political Rights. It describes a six-part test that takes into account:

(1) social and political context;

(2) the status of the speaker;

(3) the intent to cause public hostility towards a particular group;

(4) the content and form of speech;

(5) the extent of the speech act;

(6) the likelihood of harm, including its imminence.

The Camden principles on freedom of expression and equality "represent t a progressive interpretation of international law and standards, accepted State practice (as reflected, inter alia, in national laws and the judgments of national courts), and the general principles of law recognised by the community of nations. The development of these Principles was motivated by a desire to promote greater consensus globally about the proper relationship between respect for freedom of expression and the promotion of equality."

The Johannesburg principles on national security, freedom of expression and access to information emphasize that "restrictions on freedom of expression and freedom of information may be imposed in the interest of national security, so as to discourage governments from using the pretext of national security to place unjustified restrictions on the exercise of these freedoms."

The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights (E/CN.4/1985/4) is a document that summarizes generally accepted approaches to determining the rules and limits for restrictions on fundamental rights and freedoms, containing general principles of interpreting provisions of the Covenant relating to the lawfulness of the restriction of rights, principles of interpretation relating to individual provisions on the restriction of rights, and derogations from rights in connection with a state of emergency.

In addition to these key documents related to rights and freedoms, in assessing the policy of the Republic of Belarus regarding the fight against terrorism and extremism, one should keep in mind the UN documents related to the fight against terrorism and violent extremism.

Resolution 60/288 adopted by the General Assembly on September 8, 2006 (A/RES/60/288). The United Nations Global Counter-Terrorism Strategy defines terrorism in all its forms and manifestations as an activity that destroys human rights, fundamental freedoms and democracy, endangers the territorial integrity and security of States, and destabilizes legitimate governments.

Plan of Action to Prevent Violent Extremism. Report of the Secretary-General — a document describing the conditions for the emergence and development of violent extremism as a breeding ground for terrorism: "Narratives of grievance, actual or perceived injustice, promised empowerment and sweeping change become attractive where human rights are being violated, good governance is being ignored and aspirations are being crushed."

It is also worth paying attention to the OSCE report "Freedom of Expression on the Internet". The study concludes that OSCE participating States should avoid using vague legal terminology in restrictions on freedom of expression. Particularly relevant are comments about the need to clarify the notions of "extremism", "terrorist propaganda", "harmful" or "racist content", and "hate speech". Any restriction must meet strict criteria in accordance with international and regional legal standards governing human rights. The need to restrict the rights to speak and receive information must be convincingly demonstrated in order to comply with international human rights standards.

With regard to the relationship between the obligations of states under articles 19 and 20 of the International Covenant on Civil and Political Rights, an important source of soft law is the report of the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression of October 9, 2019 (A/74/486), which deals with countering hate speech.

With regard to freedom of expression on the Internet and the protection of the media, an important source of soft law are the Joint declarations of the representatives of intergovernmental bodies to protect free media and expression, including of the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the OSCE Representative on Freedom of the Media. These declarations mainly concern the specifics of ensuring freedom of expression and its restriction on the Internet, as well as freedom of the media, but also, for example, develop standards for criminal prosecution for defamation, anti-terrorism legislation and access to information.

National legislation

Until mid-2020, legislation restricting freedom of expression could hardly be called comprehensive, which left a fairly wide field for the legitimate use of the right; most of the prohibitions and restrictions of that time were the result of arbitrary practice.

Since 2007, Law No. 203-Z "On countering extremism" has been in force. Human rights defenders earlier analyzed its content and practice.

Presidential Decree No. 575 of November 9, 2010 approved the Concept of National Security of the Republic of Belarus, which fixed the totality of official views on the essence and content of "the activities of the Republic of Belarus to ensure a balance of interests of the individual, society, state and protect them from internal and external threats". This document contains a definition of the concept of "national security", which is used in the dispositions of the articles of the Criminal Code – the state of protection of the national interests of the Republic of Belarus from internal and external threats and a number of related definitions of the concepts, "national interests" and "threat to national security" among them.

In January 2021, the Prosecutor General of Belarus Andrei Shved announced a draft law to increase liability for "extremist activities", and, as early as in mid-2021, several relevant laws came into force.

First of all, it is worth noting the amendments to the Law No. 203-Z "On countering extremism" of January 4, 2007, set out in a new version (entered into force on June 16, 2021). The expanded definition of extremism and the rules on the disenfranchisement of individuals convicted of "extremist crimes" are not yet completely incorporated in repressive practices.

At the same time, the Law "On preventing the rehabilitation of Nazism" was adopted and entered into force (before the adoption of the law, the rehabilitation of Nazism was one of the forms of extremism and was limited by the corresponding law).

On January 22, 2022, Law No. 2/2866 "On the Genocide of the Belarusian People" came into force, one of the few initiated by a member of the House of Representatives of the National Assembly, Liliya Ananich. The idea of the "holocaust of the Belarusian people" was voiced by Aliaksandr Lukashenka in the summer of 2021. The first article of the law states that "atrocities committed by Nazi criminals and their accomplices, nationalist formations during the Great Patriotic War and in the post-war period, aimed at the systematic physical destruction of the Belarusian people through murder and other actions recognized as genocide in accordance with legislative acts and norms of international law are genocide of the Belarusian people". The post-war period in this case means the period up to December 31, 1951. The Belarusian people are understood as "Soviet citizens who lived on the territory of the Belarusian Soviet Socialist Republic during the Great Patriotic War and (or) in the post-war period". The second article of the law amends the Criminal Code by introducing criminal liability for the denial of the genocide of the Belarusian people, contained in a public speech, or in a printed or publicly displayed work, or in the media, or in information posted on the Internet, on another network of public telecommunications or a dedicated telecommunications network, providing for penalties up to imprisonment for up to 10 years.

Previously, several amendments were made to the Criminal Code establishing or strengthening liability for certain ways of expressing opinions (entered into force on July 18, 2021):

— Article 342-2 was introduced, providing for liability for repeated violation of the procedure for organizing or holding assemblies: meetings, rallies, street processions, demonstrations, pickets, and other events, including public calls for organizing or holding such assemblies in violation of the established procedure for their organization or holding, if this act has been committed repeatedly;

— Article 361-4 was introduced, providing for liability for promoting "extremist activities".

Liability was increased under:

— Article 130 for inciting racial, national, religious or other social hatred or discord;

— Article 342 for organizing and preparing actions that grossly violate public order, or active participation in them;

— Article 341 for vandalizing buildings and damage to property with "cynical inscriptions or images" in the absence of the elements of a more serious crime;

— Article 361 for calls for restrictive measures (sanctions), other actions aimed at causing harm to the national security of the Republic of Belarus;

— Article 367 for slandering the President of the Republic of Belarus;

— Article 368 for insulting the President of the Republic of Belarus;

— Article 369 for insulting a representative of the authorities;

— Article 369-1 for discrediting the Republic of Belarus;

— Article 369-3 for public calls to organize or hold an illegal assembly, rally, street procession, demonstration or picket, or to involve persons in such events;

— Article 370 for desecration of state symbols.

Decree No. 575 of the Council of Ministers of the Republic of Belarus of October 12, 2021 "On measures to counter extremism and rehabilitation of Nazism" established:

— procedure for maintaining a list of organizations, formations, and individual entrepreneurs involved in extremist activities, and a list of citizens of the Republic of Belarus, foreign citizens or stateless persons involved in extremist activities;

— procedure for appealing against inclusion in the lists;

— procedure for monitoring compliance with the law in terms of preventing the rehabilitation of Nazism, including by the founders and editorial offices of the media, owners of online media, journalists, authors of media reports and publications;

— approved the Regulations on the procedure for assessing symbols and paraphernalia, information products for the presence (absence) of signs of extremism and the Regulations on the National Commission for assessing symbols and paraphernalia, information products for the presence (absence) of signs of extremism;

— clarified the procedure for maintaining and publishing the national list of extremist materials.

Decision No. 309 of the Minsk City Council of Deputies of June 4, 2021 amended decision No. 252 of the Minsk City Council of Deputies "On Approval of the Rules for the Maintenance and Amenities of the City of Minsk" of November 16, 2016, establishing that in case of intentional damage (harm) to amenities, buildings, and structures, the organizations in possession of the specified objects may recover damage, however in a hundredfold greater amount. The rule essentially established punishment, since it did not regulate the procedure for compensating property damage.

Inclusion of individuals, communities, media, other entities and informational products in “extremist” and “terrorist” lists

Legislation on combating extremism and terrorism provides for the maintenance by executive authorities of lists of organizations and formations without official status, groups of people and individuals involved, in the opinion of the authorities, in “extremist and terrorist activities”. At the moment, four inventories are being maintained: the National List of Extremist Materials, the List of Organizations, Formations, Individual Entrepreneurs Involved in Extremist Activities, the List of Citizens of the Republic of Belarus, Foreign Citizens or Stateless Persons Involved in Extremist Activities, and the List of Organizations and individuals involved in terrorist activities.

General comment No. 34

Article 19: Freedoms of opinion and expression

25. […] A law may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution. Laws must provide sufficient guidance to those charged with their execution to enable them to ascertain what sorts of expression are properly restricted and what sorts are not.

Grounds for inclusion in some lists (National list of extremist materials, List of citizens of Belarus, foreign citizens or stateless persons involved in extremist activity) is a court decision that has entered into force, while the basis for inclusion in other lists (List of organizations, formations, individual entrepreneurs involved in extremist activities, List of organizations and individuals involved in terrorist activities) is only one administrative decision of the executive authority.

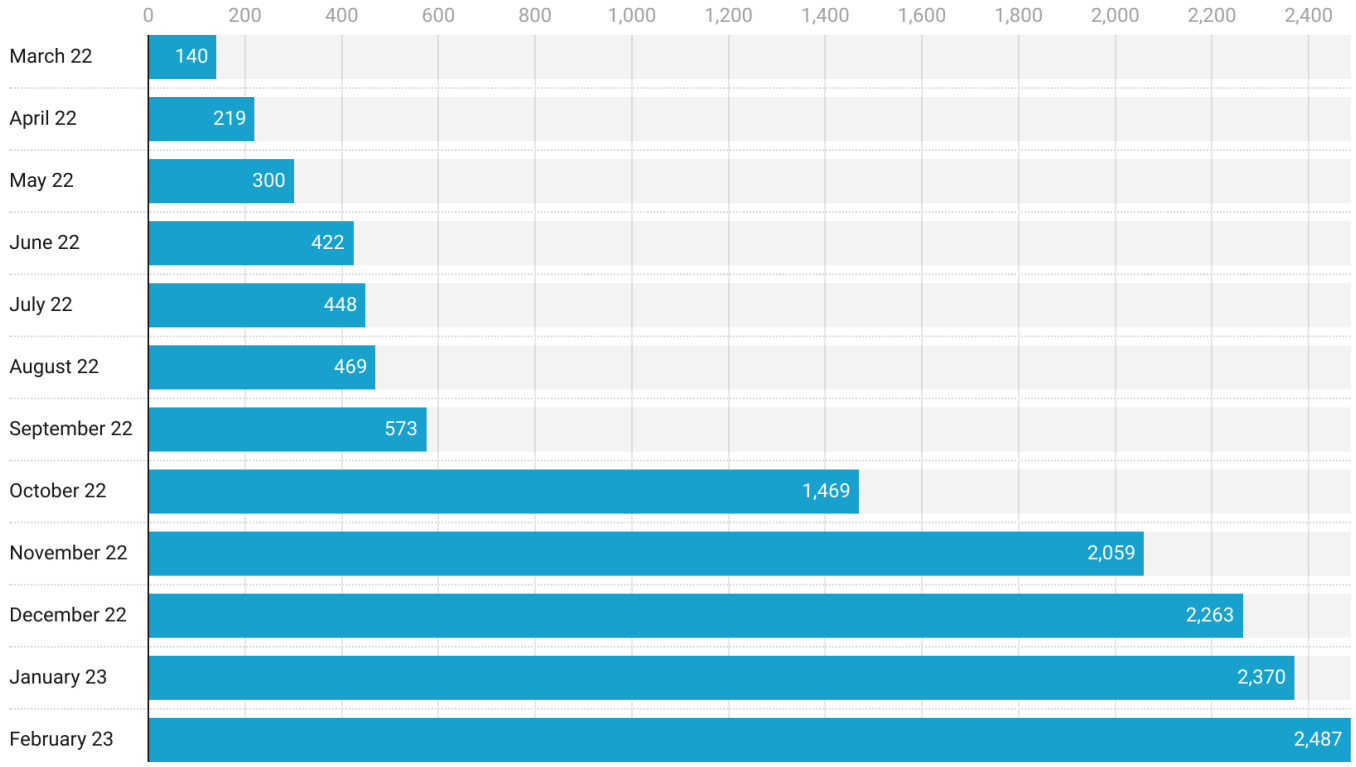
All decisions on direct inclusion in the lists are taken behind closed doors, as the procedure for their adoption does not provide for the participation of persons affected by the decision, nor their proper notification of the decision and the procedure for appealing against it.

In practice, administratively, the lists include groups of citizens, public organizations, the media and initiatives for criticizing the current authorities, expressing alternative opinions, demands for changes in the state and the policy pursued by the authorities. Such arbitrary designation by the Ministry of Internal Affairs and the State Security Committee of groups of people as “extremist” and “terrorist” makes it possible to prosecute them and apply disproportionately severe punishment.

List of citizens involved in extremist activities

The list of citizens of Belarus, foreign citizens or stateless persons involved in extremist activities is maintained by the Ministry of Internal Affairs on the basis of final court verdicts. The list includes those in respect of whom the sentence has just entered into force, who have already served their criminal sentence in full, and those whose conviction has already been removed from criminal record. As of March 15, 2023, 2,531 people are included in the list.

Number of people on the list in the last 12 months



An active surge in new entries occurred in October 2022, when the list increased by 896 names during one month. A decision by the Ministry of the Interior of October 28, 2022 alone added 625 people to the list. By the end of the month, the list more than doubled.

Inclusion in the list imposes disenfranchisement as a set of restrictions supplementary to the punishment imposed by the court, which is the same for those who are serving a criminal sentence of imprisonment or restricted freedom, and for those who have already served it. All restrictions cease to apply only 5 years after the expungement or removal of conviction from criminal record.

Financial transactions (opening a bank account, one-time payments, transfer, receipt, issue, exchange, deposit of funds) of those included in the list are subject to "special financial control".[2] In practice, this means that a person cannot freely use their bank account or open a new account. Any use or withdrawal of funds from a bank account is only possible as an exception with the permission of the body exercising financial control.

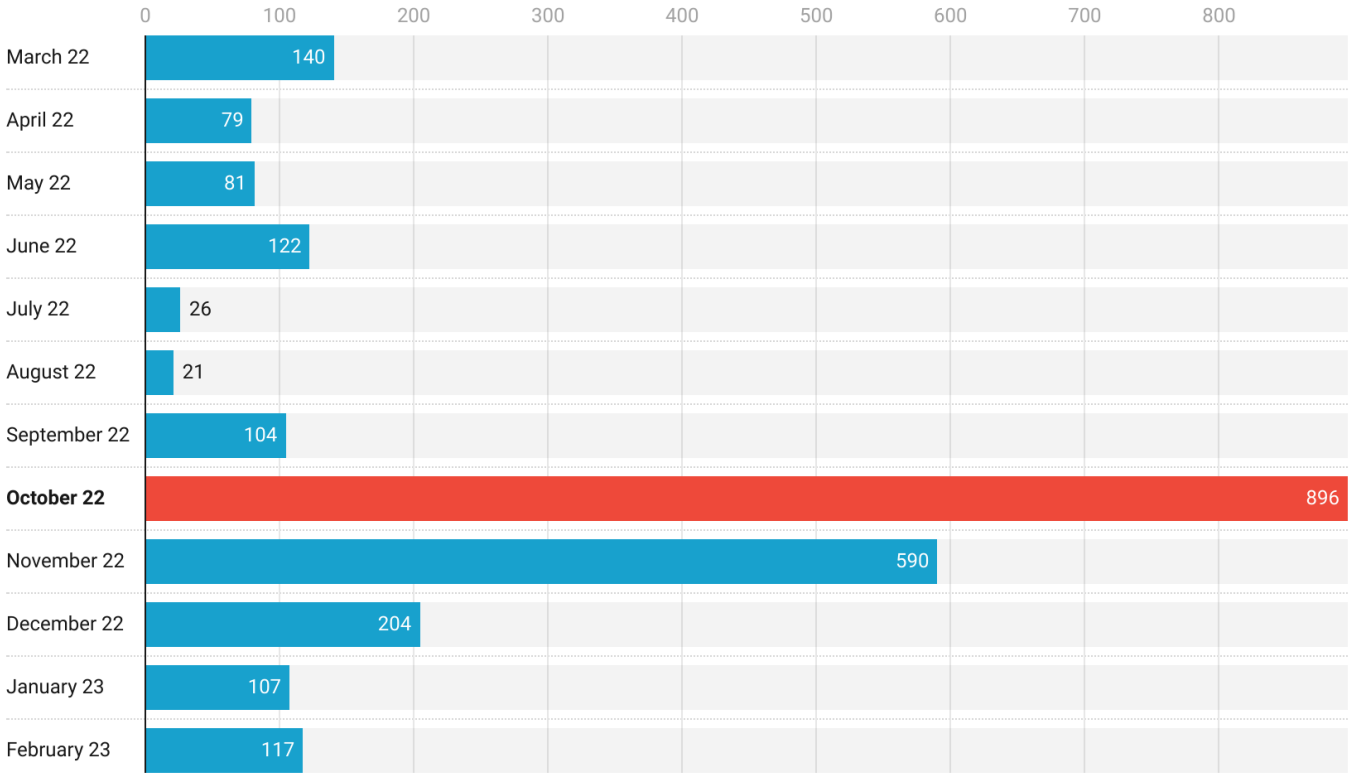
Similarly, persons on the list are prohibited from:

- engaging in activities related to the circulation of narcotic drugs, psychotropic substances, their precursors, weapons and ammunition, explosives;

[2] Law of the Republic of Belarus No. 203-Z "On countering extremism" of January 4, 2007, Art. 18

- pedagogical activity (in the implementation of the content of educational programs);
- publishing activities;
- holding public office;
- performing military service.

Number of people listed in a single month



Siracusa principles

B. Interpretative Principles Relating to Specific Limitation Clauses

i. "prescribed by law"

17. Legal rules limiting the exercise of human rights shall be clear and accessible to everyone.

18. Adequate safeguards and effective remedies shall be provided by law against illegal or abusive imposition or application of limitations on human rights.

Report of the United Nations High Commissioner for Human Rights on best practices and lessons learned on how protecting and promoting human rights contribute to preventing and countering violent extremism of July 21, 2016, No. A/HRC/33/29

18. Some domestic laws and policies address the phenomenon of "extremism" without qualifying it as "violent". [...] If they are not limited to "violent" extremism, such measures risk targeting the holding of an opinion or belief rather than actual conduct.

An individual can be added to the blacklist if convicted by a final court verdict of acts classified by the Law "On countering extremism" as "extremist activity". The law labels as "extremist activities" a wide range of acts, including "seizing or holding state power in an unconstitutional way" and such non-violent actions as "distributing extremist material", insulting a government official, and participating or calling for participation in peaceful assemblies. The inaccuracy and vagueness of the vocabulary in these acts does not make it possible to unequivocally determine which actions will fall under the concept of extremism and which will not.

One of the criteria for classifying an exhaustive list of criminalized acts as "extremist activity" is the purpose of the act: "planning, organizing, preparing and committing attacks on independence, territorial integrity, sovereignty, the foundations of the constitutional order, public security".[3] For example, "insulting a representative of the authorities" (Article 369 of the Criminal Code) falls under the definition of "extremist activity" only if committed for the purposes listed in the notion of "extremist activity" (planning, organizing, preparing and committing attacks on independence, territorial integrity, sovereignty, foundations of the constitutional system, public security). In practice, when a court sentence for criminalized acts listed in the notion of "extremist activity" enters into force, the designation occurs automatically, regardless of whether the court has established the specific purpose of the act.

The procedure for appealing against decisions designating individuals as "extremists" provides[4] for filing a complaint in the body that issued the decision, i.e. the Ministry of the Interior. The complaint may be filed in writing or electronically. An electronic complaint is filed through the website of the Ministry of Internal Affairs, access to which is restricted outside the territory of Belarus. The period for consideration of the complaint is one month, after which a reply shall be sent to the claimant. National legislation does not provide for a special body (commission) within the Ministry of Internal Affairs to deal with complaints or a specific responsible person. It also does not provide for the possibility of the claimant and their lawyer to participate in the process of considering the complaint. Further appeal is possible to the court under the general procedure for appealing against replies of government bodies.

Complaints filed with the help of the legal advice office of the Human Rights Center "Viasna" received carbon-copy replies from the Ministry of Internal Affairs, effectively rejecting the appeals solely based on a rule providing that a complaint can be either granted or declared unfounded.

Thus, there is a practice of classifying non-violent behavior as "extremist activity", which in reality plays the role of persecution for expressing an alternative opinion and for criticizing the authorities. The established procedure for entering individuals into the List of citizens of Belarus, foreign citizens or stateless persons involved in extremist activities leads to the formal designation as "extremist activity" of all offenses that, according to the law, can be attributed to it, automatically, regardless of whether the court established if the act possessed any of the specific criteria for classifying such an act as "extremist activity."

[3] Law of the Republic of Belarus No. 203-Z "On countering extremism" of January 4, 2007, Art. 1

[4] Decree No. 575 of the Council of Ministers of the Republic of Belarus of October 12, 2021 "On measures to counter extremism and rehabilitation of Nazism", para. 1.3

List of extremist formations

The notion of an "extremist formation" was used in the text of the Law "On countering extremism" even before amendments were made to it in 2021: "the creation of an organization for the implementation of extremist activity, an extremist organization, an extremist group (hereinafter referred to as extremist formations)" was recognized as a form of extremist activity, however "extremist formation" was the general name for an extremist organization — an organization that carries out extremist activity, or recognizes the possibility of its implementation in its activities, or finances extremist activity, which was designated as "extremist" by a final decision of the Supreme Court of the Republic of Belarus, and extremist group — a stable and controlled group of two or more persons who previously united to carry out extremist activities.

According to the new version of the law, an extremist formation is a group of individuals engaged in extremist activity, or otherwise assisting extremist activity, or recognizing the possibility of its implementation in their activities, or financing extremist activity, which were designated as "extremist" by a decision of the Ministry of Internal Affairs or the State Security Committee.

The procedure for designating an extremist formation is as follows: if signs are found in the actions of the group that indicate the implementation of activities provided for by part 4 of Art. 1 of the Law "On countering extremism", the Ministry of Internal Affairs or the State Security Committee issues a decision to designate such a group as an extremist formation, and to outlaw its activities, which can be appealed to these bodies and (or) to the court.

The list of organizations, formations, and individual entrepreneurs involved in extremist activities is maintained by the Ministry of Internal Affairs; the procedure for including organizations, formations and individual entrepreneurs is regulated by Decree No. 575 of the Council of Ministers of the Republic of Belarus of October 12, 2021 "On measures to counter extremism and rehabilitation of Nazism." The first entries were added to the list on October 18, 2021, shortly after the said Decree entered into effect.

Currently, there are 121 "extremist formations" on the list, including media outlets (Belsat, Radio Svaboda, Euroradio, Nasha Niva, etc.), civil society organizations (Ecohome, BAJ), the REP trade union, other professional associations (Rabochy Rukh, Belarusian Sports Solidarity Foundation, etc.), nation-wide and local initiatives (Honest People, By_help, BYSOL, etc.), political entities (Valery Tsapkala's team, National Anti-Crisis Management, Sviatlana Tsikhanouskaya's team, Coordination Council), musical group Tor Band.

These entities vary in forms and size: from small ones ("A group of citizens from among the co-founder, editor-in-chief and other persons from among the Brestskaya Gazeta LLC carry out extremist activities") to groups with several thousand members (Belarusian Independent Trade Union REP); with a fixed composition: "A group of citizens united in a musical group called "Tor Band" consisting of Dzmitry Halavach, Yauhen Burlo, Andrei Yaremchyk, and Yuliya Halavach carry out extremist activities" and unknown size: "A group of citizens, united, among other things, through the Viciebsk 97% Telegram channel, carry out extremist activities."

Designating an entity as an extremist formation results in the comprehensive, under the threat of criminal punishment, restriction on the rights and freedoms of both the entire entities and their participants and the people who wish to join the de facto lawful activities of such entities, to speak out through the opportunities that they provide.

List of citizens and organizations involved in terrorism

The Law of the Republic of Belarus "On combating terrorism" of January 3, 2002 mentions the List of organizations and individuals, including individual entrepreneurs, involved in terrorist activities, formed by the State Security Committee, and also establishes a rule according to which an organization designated as a "terrorist organization" on the basis of a decision of the Supreme Court of the Republic of Belarus shall be included in the list of terrorist organizations "subject to publication in the media". The maintenance of the list and its publication are also run by the State Security Committee under a procedure determined by the Council of Ministers. Decree No. 1 256 of the Council of Ministers of December 30, 2014 "On approval of the Regulations on the procedure for determining the list of organizations and individuals, including individual entrepreneurs, involved in terrorist activities, appealing the decision to include an organization, individual, including an individual entrepreneur, in such a list and consideration of other appeals of these organizations, an individual, including an individual entrepreneur, bringing this list to the attention of persons engaged in financial transactions, and the financial monitoring body" established a significantly larger list of grounds for inclusion in the list than in relation to extremism:

— a decision of the Supreme Court that has entered into force designating an organization as terrorist (extremist), prohibiting its activities and liquidating it, designating a foreign or international organization as terrorist (extremist), prohibiting its activities on the territory of the Republic of Belarus and liquidating it if there is a representative office of such a foreign or international organization located on the territory of the Republic of Belarus;

— a decision to involve an individual as a defendant and a final verdict of the court of the Republic of Belarus on finding an individual guilty of committing crimes provided for in Articles 124-131, 134, 287, 289-293, part 4 of Article 294, part 4 of Article 295, part 4 of Article 309, part 3 of Article 311, Articles 322-324, 359, 360 and 361 of the Criminal Code of the Republic of Belarus;

— lists of persons involved in terrorist activities, involved in the proliferation of weapons of mass destruction or under the control of such persons, compiled by international organizations or bodies authorized by them and recognized by the Republic of Belarus, in the presence of objective circumstances and actions that pose a threat to the national security of the Republic of Belarus;

— sentences or decisions of courts, other competent authorities of foreign states in respect of such persons recognized in the Republic of Belarus in accordance with international treaties of the Republic of Belarus.

Currently, 401 entries are on the list, of which 4 (Civil Self-Defense Detachments of Belarus (OGSB), Supratsiu and its sub-initiatives, Cyber Partisans, People's Self-Defense Teams and Busly Liatsyats, NEXTA with its structural subdivisions: NEXTA Live and LUXTA, BYPOL with its structural subdivisions, Situation Analytical Center and Pieramoha Mobilization Plan), are included in the list based on decisions by the Supreme Court of Belarus.

By mid-March 2023, 1,015 people were included in the list, of which 266 are citizens of the Republic of Belarus.

List of products designated as extremist

Unlike the lists of persons involved in extremist activities and extremist groups, which have been run since 2022 and 2021, respectively, the National List of Extremist Materials was launched much earlier, in September 2008, and has been regularly updated since then. By mid-March, the list featured about 3,000 items of "extremist materials" of the most diverse nature: more than 1,000 Telegram channels and Telegram chats, about 150 YouTube channels, about 400 webpages, domain names or individual publications on the social media VKontakte, 115 on Facebook, 54 on Odnoklassniki, 35 on Twitter, about 80 books, audio and video files, various images and objects. Nazi and neo-Nazi content and products are regularly designated as extremist, together with religious texts, however, the vast majority of new entries are information products of socio-political content, the free circulation of which cannot be restricted on the basis of the requirements of article 19, para. 3 of the Covenant.

General comment No. 34

Article 19: Freedom of opinion and expression

11. Paragraph 2 requires States parties to guarantee the right to freedom of expression, including the right to seek, receive and impart information and ideas of all kinds regardless of frontiers. This right includes the expression and receipt of communications of every form of idea and opinion capable of transmission to others, subject to the provisions in article 19, paragraph 3, and article 20. It includes political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse. It may also include commercial advertising. The scope of paragraph 2 embraces even expression that may be regarded as deeply offensive, although such expression may be restricted in accordance with the provisions of article 19, paragraph 3 and article 20.

12. Paragraph 2 protects all forms of expression and the means of their dissemination. Such forms include spoken, written and sign language and such non-verbal expression as images and objects of art. Means of expression include books, newspapers, pamphlets, posters, banners, dress and legal submissions. They include all forms of audio-visual as well as electronic and internet-based modes of expression.

The Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence

18. Article 20 of the Covenant requires a high threshold because, as a matter of fundamental principle, limitation of speech must remain an exception. Such threshold must take into account the provisions of article 19 of the Covenant. Indeed the three-part test (legality, proportionality and necessity) for restrictions also applies to cases involving incitement to hatred, in that such restrictions must be provided by law, be narrowly defined to serve a legitimate interest, and be necessary in a democratic society to protect that interest. This implies, among other things, that restrictions are clearly and narrowly defined and respond to a pressing social need; are the least intrusive

measure available; are not overly broad, so that they do not restrict speech in a wide or untargeted way; and are proportionate so that the benefit to the protected interest outweighs the harm to freedom of expression, including with respect to the sanctions they authorize.

Camden Principles on Freedom of Expression and Equality

IV. Freedom of expression and harmful speech

Principle 11: Restrictions

11.1. States should not impose any restrictions on freedom of expression that are not in accordance with the standards set out in Principle 2.2 and, in particular, restrictions should be provided by law, serve to protect the rights or reputations of others, national security or public order, or public health or morals, and be necessary in a democratic society to protect these interests. This implies, among other things, that restrictions:

i. Are clearly and narrowly defined and respond to a pressing social need.

ii. Are the least intrusive measure available, in the sense that there is no other measure which would be effective and yet less restrictive of freedom of expression.

iii. Are not overbroad, in the sense that they do not restrict speech in a wide or untargeted way, or go beyond the scope of harmful speech and rule out legitimate speech.

iv. Are proportionate in the sense that the benefit to the protected interest outweighs the harm to freedom of expression, including in respect to the sanctions they authorise.

11.2. States should review their legal framework to ensure that any restrictions on freedom of expression conform to the above.

It is impossible to assess the degree of interference with rights and freedoms by the fact that information products are included in the list under consideration without simultaneously assessing legal responsibility for their storage and distribution.

In accordance with Article 19.11 Code of Administrative Offenses, distribution of information products containing incitement to extremist activity or promoting such activity, as well as the production, storage or transportation for the purpose of distributing such information products, shall entail the imposition of a fine in the amount of up to twenty basic units for individuals, from twenty to fifty basic units for individual entrepreneurs, and from fifty to two hundred basic units for legal entities (all penalties with confiscation of the product in question). Distribution of information products included in the National list of extremist materials, as well as production, publication, storage or transportation for the purpose of distribution of such information products shall entail the imposition of a fine in the amount of ten to thirty basic units, or compulsory community service, or administrative imprisonment, for individual entrepreneurs — imposition of a fine in the amount of fifty to one hundred basic units, and for legal entities — from one hundred to five hundred basic units (all types of penalties with confiscation of the subject of an administrative offense, as well as tools and means of committing the specified violation or without confiscation of such tools and means).

Thus, the inclusion of information products in the list triggers imposition of punishment comparable to a criminal one on a person distributing, manufacturing, transporting or

storing the items. In the period from January 2022 to mid-March 2023, under Article 19.11 of the Code of Administrative Offenses, according to fragmentary information accessible to Viasna, more than 1,200 people were prosecuted, of which only 350 names are known to human rights defenders.

Human rights organizations have repeatedly criticized the formality of the rule, which allows sanctions to be applied for non-compliance with overly broad restrictions (for example, blacklisting a website, a Telegram channel or a social media page means a ban on the distribution of any content from this source, which is incompatible with the requirements of article 19, para. 3 of the Covenant), the widespread nature and unpredictability of the designation of information products as extremist (see above statistics on designation of information sources as extremist, some of which had previously been government-registered as media outlets and/or possessed other signs of a legal source of information), violations of the fair trial standards in the process of designation and the lack of the possibility of appealing in the public interest against decisions designating content as extremist), and a number of other factors.

Another tool for the arbitrary use of anti-extremist legislation is the method of preparing a case for trial, namely, the process of assessing the presence of signs of extremism in information products. The Regulation on the procedure for assessing symbols, paraphernalia and information products for the presence (absence) of signs of extremism[5] provides that the assessment of products identified on the territory of Minsk shall be carried out by the National Commission for the assessment of symbols and paraphernalia, information products for the presence (absence) of signs of extremism, and on the territory of the regions – by the corresponding regional commissions.

Regional commissions are created by the corresponding regional executive committees. Regulations on regional commissions are approved and their personal compositions are determined by decisions of the local executive committees.

At the instructions of the chairperson of the commission, the assessment is carried out by one or more members of the commission and (or) specialists who, based on the results of the assessment, draft their findings. The draft is then considered and approved at a meeting of the commission. The Regulation does not describe any requirements for the composition of regional commissions.

The Regulation on the National Commission establishes vague requirements for the composition of the commission (the personal composition of the commission is in the appendix to the Regulation), its tasks, the rights and obligations of members, and decision-making rules.

In accordance with para. 4 of the Regulation, “The National Commission is not a forensic organization. Members of the commission can independently conduct an examination on the basis of a decision (determination) of a state body (official) issued in the manner prescribed by the procedural legislation, followed by the preparation of an expert opinion”. The personal composition of the commission guarantees the adoption of politically motivated findings: out of twenty-one members of the commission, ten can be conditionally attributed to representatives of the scientific community, however, at the same time, some of them are civil servants by virtue of positions held, including head of

[5] Approved by Resolution No. 575 of the Council of Ministers of the Republic of Belarus of October 12, 2021.

the department for outreach and ideology of the National Institute of Education of the Ministry of Education, head of the information and analytical department of the Secretariat of the Council of the Republic of the National Assembly of the Republic of Belarus, or hold responsible administrative positions in scientific institutions.

According to an established practice, the courts issue a decision without a deep assessment of the findings, which is facilitated by the exclusively closed nature of the court hearings and the presumption in favor of the approval by the courts of the initiatives of government bodies that restrict freedom of expression, as well as the lack of history of application of international human rights treaties and generally accepted principles of law for the substantiation of judgments.

As a result, charges under Art. 19.11 of the Code of Administrative Offenses have become a universal tool for arbitrary repression, including by imposing administrative imprisonment, sometimes several consecutive terms, in cases based on a number of similar posts on social media. In addition, the courts pervasively apply prosecution under Article 19.11 of the Code of Administrative Offenses in relation to materials designated as “extremist”, even when they were stored and not publicly displayed, and then the attribute “for the purpose of distribution” is imputed without objective grounds, which adds to the arbitrariness of such restrictions.

Persecution for specific forms of freedom of expression

Dissemination of "knowingly false information" for extremist purposes

Article 369-1 of the Criminal Code, "discrediting the Republic of Belarus," provides for liability for "dissemination of deliberately false information about the political, economic, social, military or international situation of the Republic of Belarus, the legal status of citizens in the Republic of Belarus, the activities of state bodies, which discredits the Republic of Belarus, committed in public speech, or in a printed or publicly displayed work, or in the media, or in information posted on the Internet, aimed at causing significant harm to state or public interests."

Johannesburg principles

Principle 2: Legitimate National Security Interest

(a) A restriction sought to be justified on the ground of national security is not legitimate unless its genuine purpose and demonstrable effect is to protect a country's existence or its territorial integrity against the use or threat of force, or its capacity to respond to the use or threat of force, whether from an external source, such as a military threat, or an internal source, such as incitement to violent overthrow of the government.

Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/14/23

84. […] Criminal defamation laws may not be used to protect abstract or subjective notions or concepts, such as the State, national symbols, national identity, cultures, schools of thought, religions, ideologies or political doctrines.

Concluding observations on the fifth periodic report of Belarus adopted by the UN Human Rights Committee on November 22, 2018; CCPR/C/BLR/CO/5

Freedom of expression

49. The Committee is concerned about laws and practices that do not appear to comply with the principles of legal certainty, necessity and proportionality as required by the Covenant, and that severely restrict freedom of opinion and expression, including:

d) Laws prohibiting information that harms the honour and dignity of highranking officials, including criminal responsibility for defamation of the President of Belarus (article 367 of the Criminal Code) and for defamation of Belarus, or that establishes liability for knowingly providing a foreign State or a foreign or international organization with false information on the political, economic, social, military or international status of Belarus or the legal status of citizens in Belarus that damages the image of Belarus or its authorities.

Article 369-1 of the Criminal Code "Discrediting the Republic of Belarus" implies that the object of the offense is the reputation of the Republic of Belarus. The reputation of the state is not a legitimate target for imposing restrictions on freedom of expression.

Johannesburg principles

Principle 7: Protected Expression

(a) Subject to Principles 15 and 16, the peaceful exercise of the right to freedom of expression shall not be considered a threat to national security or subjected to any restrictions or penalties. Expression which shall not constitute a threat to national security includes, but is not limited to, expression that:

(i) advocates non-violent change of government policy or the government itself;

(ii) constitutes criticism of, or insult to, the nation, the state or its symbols, the government, its agencies, or public officials, or a foreign nation, state or its symbols, government, agencies or public officials;

(iii) constitutes objection, or advocacy of objection, on grounds of religion, conscience or belief, to military conscription or service, a particular conflict, or the threat or use of force to settle international disputes;

(iv) is directed at communicating information about alleged violations of international human rights standards or international humanitarian law.

The original version[6] of Article 369-1 of the Criminal Code phrased the offense as follows: *"providing to a foreign state, foreign or international organization knowingly false information about the political, economic, social, military or international situation of the Republic of Belarus, the legal status of citizens in the Republic of Belarus, discrediting the Republic Belarus or its authorities."*

The new version[7] covers a wider range of acts, covering both the transfer of information to a foreign state, foreign or international organization and any form of dissemination of information. Such a broad definition of defamation allows using the charge to prosecute any public criticism of the authorities.

General comment No. 34

Article 19: Freedom of opinion and expression

The application of article 19 (3)

21. Paragraph 3 expressly states that the exercise of the right to freedom of expression carries with it special duties and responsibilities. For this reason two limitative areas of restrictions on the right are permitted, which may relate either to respect of the rights or reputations of others or to the protection of national security or of public order (ordre public) or of public health or morals.

[6] Version of December 15, 2005

[7] Version of May 26, 2021

Johannesburg principles

Preamble

[…] Recognizing the necessity for legal protection of these freedoms by the enactment of laws drawn narrowly and with precision, and which ensure the essential requirements of the rule of law […]

Siracusa principles

I. Limitation clauses

A. General Interpretative Principles Relating to the Justification of Limitations

3. All limitation clauses shall be interpreted strictly and in favor of the rights at issue.

6. No limitation referred to in the Covenant shall be applied for any purpose other than that for which it has been prescribed.

7. No limitation shall be applied in an arbitrary manner.

According to Article 369-1 of the Criminal Code, the act must be aimed at "causing significant harm to state or public interests". Criminal law does not contain definitions of these notions, while the practice in criminal cases, both under this article and under other articles of the Criminal Code, is indicative of a trend for arbitrary interpretation by the investigation and the court of these notions, which does not correlate with the requirement for a clear framework of restrictions on the right to freedom of expression.

Human rights defenders are aware of 16 persons convicted since the summer of 2020 on charges of discrediting the Republic of Belarus. In the majority of known cases (9 convicts), these charges were brought separately, without other criminal charges being presented in aggregate. When charges were brought as a combination of crimes, the largest number of cases were accompanied by accusations of participation in peaceful meetings in the summer and fall of 2020 (under Article 342 of the Criminal Code), as well as defamation (insulting or slandering government officials) and "extremist" articles (financing, creation or participation in an extremist formation, assistance to its activities).

Mikalai Vitsikau was convicted on charges of discrediting the Republic of Belarus for writing to the Mayak district newspaper about changes to the Constitution.

Pavel Pernikau was convicted on charges of discrediting the Republic of Belarus for editing articles on Wikipedia about the murder of journalist Veranika Charkasava and protester Henadz Shutau, as well as an article on the website of a German human rights organization about the torture and murder of Belarusians during the protests.

Palina Palavinka, Dzmitry Luksha, Kanstantsin Nikanorau, and Dzianis Yarouski were all convicted on charges of discrediting the Republic of Belarus (or complicity) for a number of videos and publications that, according to the prosecution, created a false image of a spontaneous camp of migrants from Syria on the border with Poland.

Vasil Chykh was convicted on charges of discrediting the Republic of Belarus for "posting a video with deliberately unreliable information about the economic and social situation of the Republic of Belarus."

Alena Hnauk was convicted on charges of discrediting the Republic of Belarus for commenting on social media about Kurdish families and the situation of migrants in Belarus. The court regarded her publications as "knowingly unreliable information about the legal status of foreign citizens in the Republic of Belarus, which was aimed at causing significant harm to state interests."

Criminal prosecution under Article 369-1 of the Criminal Code is often associated with an attempt by the authorities to "protect" the status of law enforcement officers, similar to the prosecution for inciting hatred (Article 130 of the Criminal Code) in relation to law enforcement officers. In particular, a number of criminal cases of discrediting the Republic of Belarus are linked to the so-called "Zeltzer case", a massive criminal investigation targeting dozens of people who commented on the deaths of Andrei Zeltser, an IT worker, and an officer of the State Security Committee, during a raid on Zeltser's apartment in Minsk in September 2021. The news was widely commented online, resulting in a surge in approving comments about Andrei Zeltser and negative comments about employees of the State Security Committee and law enforcement agencies in general. Six people were convicted on charges of discrediting the Republic of Belarus for such comments and publications on social media.

Illia Mironau, an activist based in Homieĺ and a former political prisoner, was convicted by the court of the Saviecki district of Homieĺ on October 24, 2022 under Article 369-1 of the Criminal Code for posting on Facebook his condolences to the family and friends of the deceased Andrei Zeltser: "My condolences to the family and friends of Andrei Zeltser, who was shot dead by KGB officers in self-defense, in his own apartment. He had a minor son, and his wife was arrested. We'll always remember Andrei!" This publication was regarded as a criminally punishable act, namely "discrediting the Republic of Belarus.".

Given the broad scope of the disposition of Article 369-1 and the practice of its application, focused on prosecution for expressing an alternative opinion and criticizing the authorities, this article can be attributed to defamation. The accusation of discrediting the Republic of Belarus is used not only to prosecute for expressing an alternative opinion in general (as, for example, in the case of the criminal case against Alena Hnauk), but also to suppress mass criticism of law enforcement agencies in cases with considerable public attention (as in the case of comments in the "Zeltser case") or persecution for disclosing information that is unfavorable for the authorities (as in the case of media reports on a spontaneous migrant camp).

Thus, the prosecution under Article 369-1 of the Criminal Code for expressing an alternative opinion and criticizing the authorities is a disproportionate reaction, leading to the deprivation of liberty of the defendant during pre-trial detention and deprivation or restriction of liberty as a criminal punishment, which is unacceptable.

Disproportionate prosecution for insulting government officials

Article 369 of the Criminal Code, "insulting a representative of the authorities", criminalizes "insulting a representative of the authorities or their relatives in connection with the performance of their official duties, committed in a public speech, or in a printed or publicly displayed work, or in the media, or in information posted on the Internet". The new version[8] provides for criminal punishment not only for insulting government officials, but also their family members, while the penalty was also increased: the maximum punishment under part 1 is 3 years in prison.

Article 368 of the Criminal Code, "insulting the President of the Republic of Belarus", criminalizes a narrower range of defamatory offenses, as compared to the above article, a public insult to the President of the Republic of Belarus. In this case, the method of committing an offense is not determined through a list of actions, as in the case of insulting a representative of the authorities, but by indicating the characteristics of the publicity of the act, which provides great opportunities for broad interpretation. The maximum penalty for insulting the president is 4 years in prison, and for committing it by a person previously convicted of insult or slander, or combined with a charge of committing a grave or especially grave crime (part 2 of Article 368) — 5 years in prison.

Article 391 of the Criminal Code, "insulting a judge or a lay judge", provides for liability for "insulting a judge or a lay judge in connection with the administration of justice by them". The maximum penalty is restriction of freedom for 3 years.

In these articles, an insult is understood as a deliberate humiliation of the honor and dignity of a person, expressed in an indecent form.

Johannesburg principles

Principle 7: Protected Expression

(b) No one may be punished for criticizing or insulting the nation, the state or its symbols, the government, its agencies, or public officials, or a foreign nation, state or its symbols, government, agency or public official unless the criticism or insult was intended and likely to incite imminent violence.

[8] Version of May 26, 2021

General comment No. 34

Article 19: Freedom of opinion and expression

Freedom of expression

11. […] The scope of paragraph 2 embraces even expression that may be regarded as deeply offensive, although such expression may be restricted in accordance with the provisions of article 19, paragraph 3 and article 20.

Concluding observations on the fifth periodic report of Belarus adopted by the UN Human Rights Committee on November 22, 2018; CCPR/C/BLR/CO/5

Freedom of expression

49. The Committee is concerned about laws and practices that do not appear to comply with the principles of legal certainty, necessity and proportionality as required by the Covenant, and that severely restrict freedom of opinion and expression, including:

d) Laws prohibiting information that harms the honour and dignity of highranking officials, including criminal responsibility for defamation of the President of Belarus (article 367 of the Criminal Code) and for defamation of Belarus, or that establishes liability for knowingly providing a foreign State or a foreign or international organization with false information on the political, economic, social, military or international status of Belarus or the legal status of citizens in Belarus that damages the image of Belarus or its authorities.

Human rights defenders are aware of 1,192 sentences handed down since the summer of 2020 under Articles 368, 369 and 391 of the Criminal Code, which criminalize insulting officials and members of their families in connection with the exercise of their official powers. 19 of them were convicted under all three articles. Half of the defendants under Article 368 (insulting Lukashenka) were sentenced to imprisonment.

For the most part, criminal prosecution for insulting a representative of the authorities or insulting the president concerns negative statements addressed to officials, often police officers, on social media and in the comments of online media outlets.

On September 13, 2021, Tatsiana Yankouskaya was sentenced by the Smarhoń District Court to 2 years of restricted freedom (home confinement) under Article 369 of the Criminal Code (insulting a representative of the authorities) for commenting on a post in the Punitive Squads of Belarus Telegram channel[9] about the head of the Juvenile Inspectorate of the Barysaŭ district police department Natallia Yermalinskaya: "Someone married the beast, after all."

Viktar Kulesha was sentenced by the Maladziečna District Court on September 13, 2021 to 18 months of restricted freedom in an open penitentiary under Article 369 of the Criminal Code (insulting a representative of the authorities) for a comment reading "Call the bitch to account!" on the Odnoklassniki social media on a post

[9] The Punitive Squads of Belarus ("Karateli Belarusi") Telegram channel publishes information about government officials involved in torture and other human rights violations

with a photograph of Lieutenant Colonel Siarhei Helda, deputy head for ideology of the Maladziečna District Department of Internal Affairs.

*Raman Skaptsou was sentenced by the court of the Čyhunačny district of Homieĺ on September 16, 2021 to 2 ½ years of restricted freedom in an open penitentiary under Article 369 of the Criminal Code (insulting a representative of the authorities) for the comment "All people are fine, but this one is ***" on a video with a scene of the violent arrest of a protester, where police officer Ihar Volnich pressed the lying person's head to the ground.*

Hanna Khadnevich was sentenced by the court of the Frunzienski district of Minsk on September 15, 2021 to 2 years of restricted freedom (home confinement) under Article 391 of the Criminal Code (insulting a judge or a lay judge) for insulting Natallia Barysavets, a judge of the same court, by writing the following message about her in a public group on the social media Odnoklassniki: "Filth, everything will hit back on you and very soon."

Aliaksandr Halkouski was sentenced by the court of the Maladziečna district to 18 months of restricted freedom in an open penitentiary under Article 368 of the Criminal Code (insulting the President of the Republic of Belarus) for having installed near his summer house and set fire to an effigy outwardly similar to Aliaksandr Lukashenka, which had a sign reading "East – to The Hague."

Maksim Antanovich was sentenced by the Lieninski District Court of Hrodna on June 23, 2022 to 1 year of imprisonment under Article 368 of the Criminal Code (insulting the President of the Republic of Belarus). He was convicted of posting a comment "Brainless idiot, burn in hell" in relation to Lukashenka in the Telegram chat "Povestka-Chat" under the publication "Lukashenka signed an order to call for urgent military service in August-November."

General comment No. 34

Article 19: Freedom of opinion and expression

Freedom of expression

38. [...] laws should not provide for more severe penalties solely on the basis of the identity of the person that may have been impugned.

The ranking of the severity of punishment depending on the status of the official targeted by the statement is present at the level of establishing the penalty. Administrative liability: both for a simple insult and for insulting an official in the exercise of their official powers, the penalty is a fine with the same upper threshold, however, for insulting an official, the lower threshold of the penalty is also established. Criminal liability: up to 3 years of restricted freedom for insulting a judge or a lay judge, up to 3 years in prison for insulting a representative of the authorities and up to 4 years in prison for insulting the president. At the same time, insulting persons who do not perform administrative functions is not criminalized.

General comment No. 34

Article 19: Freedom of opinion and expression

Limitative scope of restrictions on freedom of expression in certain specific areas

38. [...] The mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties, albeit public figures may also benefit from the provisions of the Covenant.

The accusations under these articles are triggered by negative assessments of officials. In particular, convictions under these articles are based on the findings of experts who describe the comments and publications as a "negative assessment of an official", and in some cases as "obscene forms of expression."

X, convicted in 2022 under Article 369 of the Criminal Code (insulting a representative of the authorities), was accused of posting a comment "Scum!" on a social media post negatively characterizing police officers. The court's decision was based on "an expert's opinion", [...] from which it follows that the comment [...] contains a negative assessment of official activity [...] using an obscene form of speech expression."

X, convicted in 2022 under Article 369 of the Criminal Code (insulting a government official), was accused of posting a negative comment about a police officer. The court's decision was based on "an expert opinion, which [...] concluded that the text [...] contained a negative assessment."

Criminal Code of the Republic of Belarus

Article 9. Effect of the Criminal Law in Time

1. Criminality and punishment of an action shall be defined by the law which was in effect during the perpetration of this action. The time of the commission of an act is the time of the implementation of a socially dangerous action (inaction) regardless of the time of the onset of the consequences.

Cases are known of prosecution under these articles ex post facto in relation to the imposed punishment. When imposing punishment after the entry into force of the new version of the criminal law, but for acts committed before its entry into force, the courts are guided by the range of penalties of the new version, rather than that in force at the time of the act, bearing in mind the continuing nature of the act. This approach is ambiguous due to the lack of consensus on what in this case is the time of the act.

Yahor Bahdzevich was convicted by the court of the Ašmiany district on April 5, 2022 for publishing videos in August and September 2020, in which the faces were changed to represent Lukashenka (Article 368 of the Criminal Code, "insulting the President of the Republic of Belarus"). At the time of the commission of the act, the maximum term of restricted freedom under this article was 2 years. After the entry

into force of the 2021 version of the Criminal Code, the term of was increased to 4 years. Despite this, the public prosecutor requested 3 years of restricted freedom for Bahdzevich. The court eventually sentenced the defendant to 2 years and 6 months of restricted freedom.

Thus, the existing legislative regulation and practice create and encourage an asymmetry towards the protection of government officials, ranging the severity of punishment depending on the position of the official. Judicial practice regards as an insult the expression of any criticism or a negatively colored opinion regarding officials.

Inciting hatred and discord

Article 130 of the Criminal Code, "inciting racial, national, religious or other social hatred or discord", provides for liability for "deliberate actions aimed at inciting racial, national, religious or other social hatred or discord on the basis of racial, national, religious, linguistic or other social affiliation". "Other social affiliation" is understood as belonging to a certain social group according to gender, age, profession, occupation, place of residence and other social group identification: these clarifications were introduced as a note to Article 130 in 2021, apparently as a reaction to widespread criticism of the application of Article 130 of the Criminal Code in relation to representatives of the Ministry of Internal Affairs and other representatives of government and administration. The maximum penalty under part 1 of this article is 5 years of imprisonment, and, in the presence of qualifying factors, up to 12 years.

Rabat Plan

18. Article 20 of the Covenant requires a high threshold because, as a matter of fundamental principle, limitation of speech must remain an exception.

22. [...] In order to establish severity as the underlying consideration of the thresholds, incitement to hatred must refer to the most severe and deeply felt form of opprobrium.

Human rights defenders are aware of 295 politically motivated sentences handed down since the summer of 2020 under Article 130 of the Criminal Code. Of them, in 65 cases people were convicted solely on charges of "inciting hatred and discord", with no other charges brought. 107 verdicts also concern accusations on the aggregate of insulting a representative of the authorities (Article 369 of the Criminal Code), and 69 verdicts – insulting the President of the Republic of Belarus (Article 368 of the Criminal Code).

Criminal cases of allegations of inciting hatred or discord in practice often deal with negative public comments about law enforcement officers, in many cases in connection with their involvement in repression of civil society and human rights violations. Such public statements are rather an emotional reaction to the repressive policies of the Belarusian authorities or to specific events.

Pavel Babchonak was sentenced to 2 years in prison by a verdict of the Homieĺ Regional Court of August 2, 2022 (part 1 of Article 130 of the Criminal Code) for calling law enforcement officers "subhumans" on a social media. He also wrote that they "will answer for crimes against their people."

Andrei Ausiyevich was arrested in May 2021 for commenting on the "Hrodna 97%" Telegram channel about police officer Maksim Chartkou. He was charged with "insulting a representative of the authorities" (Article 369 of the Criminal Code) and "threatening to use violence against an employee of the internal affairs bodies" (part 1 of Article 366 of the Criminal Code), although at that time the investigation possessed the results of an examination, according to which Ausiyevich's public statements did not contain threats to police officers. Later, the accusations of "threats of violence" were reclassified as "public calls to commit an act of terrorism aimed at causing harm to national security" (part 3 of Article 361 of the Criminal Code). In court, another examination was appointed, which also did not find threats in the statement. These charges were further reclassified as "inciting hatred and discord". On December 8, 2021, the Homieĺ Regional Court found Ausiyevich guilty of "insulting a representative of the authorities" (Article 369 of the Criminal Code) and "inciting hatred and discord" (part 1 of Article 130 of the Criminal Code), sentencing him to 3 1/2 years in prison.

By a verdict of the Brest Regional Court of April 4, 2022, Dzianis Karaban was sentenced under Article 130 of the Criminal Code to 2 ½ years in prison for commenting "F..k yeah, it's time to do them in" in a group on the VKontakte social media on a publication about the death of a State Security Committee officer[10].

In a number of cases, charges under Article 130 of the Criminal Code relate to statements made against a specific law enforcement officer. In this case, charges are brought for a combination of crimes: Article 369 of the Criminal Code (insulting a government official) for a negative public statement addressed to a particular law enforcement officer, and also under Article 130 (inciting hatred and discord) for a negative characterization of the police as a whole.

X was convicted in 2022 under part 1 of Article 369 (insulting a representative of the authorities) and under part 1 of Article 130 (inciting hatred and discord) of the Criminal Code for posting comments about the death of a State Security Committee officer on publications on a social media "negatively assessing both the above-mentioned representative of the authorities, and the KGB officers as a whole…". According to the indictment, X's comments pursued a "criminal intent to publicly insult a representative of the authorities Dzmitry Fedasiuk, an officer of the KGB of the Republic of Belarus, who died while on duty, as well as KGB officers in general, in order to humiliate their honor and dignity, in connection with their performance office powers…".

General comment No. 34

Article 19: Freedom of opinion and expression

34. Restrictions must not be overbroad. The Committee observed in general comment No. 27 that "restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve their protective function; they must be proportionate to the interest to be protected…

[10] Part of the "Zeltser case".

Siracusa principles

I. Limitation Clauses

A. General Interpretative Principles Relating to the Justification of Limitations

3. All limitation clauses shall be interpreted strictly and in favor of the rights at issue.

Article 130 of the Criminal Code criminalizes a wide range of statements, not limited to the most serious forms of incitement to violent acts. The possibility of imprisonment as a pre-trial measure and as punishment is also not ranked by the severity of the forms of incitement.

This rule uses vague and potentially overly broad vocabulary ("incitement", "social enmity", "discord", "other social affiliation"), in respect of which there are no clear definitions in the law, while the bias of law enforcement officers, the low level of legal culture of judges, and their involvement in repressive policies completely deprive the defendants of the right to a fair sentence.

International Covenant on Civil and Political Rights

Article 20

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

General comment No. 34

Article 19: Freedom of opinion and expression

27. It is for the State party to demonstrate the legal basis for any restrictions imposed on freedom of expression.

Johannesburg principles

Principle 1.3: Necessary in a Democratic Society

To establish that a restriction on freedom of expression or information is necessary to protect a legitimate national security interest, a government must demonstrate that:

(a) the expression or information at issue poses a serious threat to a legitimate national security interest;

(b) the restriction imposed is the least restrictive means possible for protecting that interest;

(c) and the restriction is compatible with democratic principles.

In the accusations under Article 130 of the Criminal Code, employees of specific law enforcement agencies, and law enforcement officers in general, or, even more broadly,

employees of government bodies, are distinguished as a vulnerable group. In this case, according to the prosecution, the social group is singled out on the basis of belonging to a profession.

X was convicted in 2021 under part 1 of Article 130 of the Criminal Code for publications, which, according to the verdict, contained "a negative assessment of persons united on the basis of belonging to groups in the Republic of Belarus: "employees of internal affairs bodies and members of their families", "military personnel and members of their families", "employees of state bodies and institutions and members of their families."

X was convicted in 2022 under part 1 of Article 130 of the Criminal Code. The verdict described the affected vulnerable group as "an association of people with a social community, whose representatives have common socially significant features based on their role in public life, belonging to a particular profession, as well as common socio-political views – employees of the bodies of internal affairs, actively advocating the observance of law and order and the preservation of the current constitutional order of the Republic of Belarus...".

Although the duty of the state is to protect against racist and discriminatory speech, and, if necessary, ensure their criminal prosecution, the international standard[11] in the European region is to refrain from singling out representatives of law enforcement agencies as a social group that could benefit from such protection (vulnerable group).

Article 20 of the International Covenant on Civil and Political Rights lists three attributes for identifying a vulnerable group and its additional protection: nationality, race and religion. However, international practice tends to apply a flexible interpretation of this rule and a broad understanding of the three attributes, which should take into account current trends: a vulnerable group can be identified according to the criterion based on race, skin color, gender, language, religion, political or other beliefs, national or social origin, property status, birth or other status. At the same time, given that the burden of justifying restrictions on freedom of expression lies with the state, singling out any group as vulnerable in the context of protection in accordance with article 20 of the Covenant must be clearly argued.

Employees of law enforcement agencies, on the contrary, belong to a privileged group that enjoys additional protection from the state and are themselves representatives of the authorities, and therefore do not need protection in accordance with Article 130 of the Criminal Code.

In general, the practice of viewing law enforcement agencies as a separate social group according to their professional affiliation is questionable. In the case of Dzmitry Paliyenka[12] human rights defenders referred to the findings of a comprehensive psycholinguistic and sociological examination, according to which:

"Law enforcement officers", "employees of the Ministry of Internal Affairs" or "cops" as a system of state services and public order bodies do not form a social group, since police officers (policemen) are employees of law enforcement state bodies, and not political and moreover, not public organizations.

[11] European Court of Human Rights (10692/09) - Judgment (Merits and Just Satisfaction) - CASE OF SAVVA TERENTYEV v. RUSSIA

[12] In 2019, Dzmitry Paliyenka was charged with a number of criminal offenses, including under Article 130 of the Criminal Code for inciting social enmity or discord based on social affiliation against police officers

In sociology, it is unacceptable to single out any group according to the criterion of the absence of any sign, in particular, belonging or not belonging to employees of the Ministry of Internal Affairs."

Thus, in practice, Article 130 of the Criminal Code is applied extremely selectively and unpredictably, and is used to combat various manifestations of criticism. This article is actively applied to suppress the public expression of negative assessments of law enforcement officers who are unreasonably singled out as a vulnerable social group.

Persecution of founders, participants, and supporters of "extremist groups"

Prosecution for the creation of an "extremist group" or participation in an extremist group, facilitating the implementation of "extremist activities", receiving guidance or other training to participate in such activities, financing extremist activities in Belarus are forms of repression for the exercise of various rights and freedoms, often for the exercise of freedom of association. However, persecution under Articles 361-1, 361-2, and 361-4 for exercising freedom of expression or for cumulative acts is equally common:

"The freedoms of opinion and expression form a basis for the full enjoyment of a wide range of other human rights. For instance, freedom of expression is integral to the enjoyment of the rights to freedom of assembly and association, and the exercise of the right to vote."[13]

General comment No. 34

Article 19: Freedoms of opinion and expression

14. As a means to protect the rights of media users, […] to receive a wide range of information and ideas, States parties should take particular care to encourage an independent and diverse media.

15. States parties should take account of the extent to which developments in information and communication technologies, such as internet and mobile based electronic information dissemination systems, have substantially changed communication practices around the world. There is now a global network for exchanging ideas and opinions that does not necessarily rely on the traditional mass media intermediaries. States parties should take all necessary steps to foster the independence of these new media and to ensure access of individuals thereto.

The application of article 19 (3):

21. Paragraph 3 expressly states that the exercise of the right to freedom of expression carries with it special duties and responsibilities. For this reason two limitative areas of restrictions on the right are permitted, which may relate either to respect of the rights or reputations of others or to the protection of national security or of public order (ordre public) or of public health or morals. However, when a State party imposes restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself. The Committee recalls that the relation between right and restriction

[13] General comment No. 34, Article 19: Freedoms of Opinion and Expression, para. 4

and between norm and exception must not be reversed. The Committee also recalls the provisions of article 5, paragraph 1, of the Covenant according to which "nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant."

According to information possessed by the Human Rights Center "Viasna", by the beginning of March 2023, 70 people were convicted under Article 361-1 of the Criminal Code for creating an "extremist group" or participating in it, 5 people were convicted under Article 361-2 of the Criminal Code for "financing extremist activities", and 35 people under Article 361-4 of the Criminal Code for "promoting extremist activities", while there were no information about convictions under Art. 361-5 of the Criminal Code for "receiving guidance or other training for participation in extremist activities."

The List of citizens of the Republic of Belarus, foreign citizens or stateless persons involved in extremist activities includes 38 people convicted under Art. 361-1 of the Criminal Code, 6 people under Art. 361-2 of the Criminal Code, 38 people under Art. 361-4 of the Criminal Code, while there is no information about convictions under Art. 361-5 of the Criminal Code.

Some of the convicts (Pavel Latushka, Volha Kavalkova, Maryia Maroz, Sviatlana Tsikhanouskaya, and others) were convicted in absentia. Others were convicted following closed trials (Yury Trapachou, Andrei Kuznechyk, etc.)

Iryna Abdukeryna was arrested on April 5, 2022 on suspicion of recording with her smartphone the movement of a Russian military convoy and sharing the video with the Belarusian Hajun Telegram channel (designated as an extremist formation). The woman was charged under the following articles of the Criminal Code: part 1 of Art. 130 (inciting hatred and discord), 361-1 (participation in an extremist formation), 361-2 (financing extremist activities), and 369-1 (discrediting Belarus). On December 6, 2022, judge Ruslan Tsaruk of the Homieĺ Regional Court found the political prisoner guilty and sentenced her to four years in prison and a fine of 3,200 rubles.

Andrei Kuznechyk, a freelance journalist for Radio Svaboda, was arrested on November 25, 2021. After his arrest, the security forces briefly managed to seize control of Radio Svaboda's Telegram channel. The consideration of Kuznechyk's case took place on June 8, 2022 at the Mahilioŭ Regional Court. The journalist was charged under part 1 of Art. 361-1 of the Criminal Code. Judge Ihar Shvedau found Kuznechyk guilty and sentenced him to 6 years in prison.

Uladzimir Butskavets was arrested on September 5, 2022. On September 14, a video was posted by a pro-government Telegram channel, showing police officers violently arresting the man, who then admits to moderating and posting news about the Belarusian language in a VKontakte group, which recently was declared an "extremist group", "For the only state language of Belarus!". On February 13, 2023, the Homieĺ Regional Court sentenced Butskavets to three years in prison. The verdict was handed down by judge Ruslan Tsaruk under part 1 of Art. 361-1.

Mikalai Bredzeleu, press secretary of the A1 telecom provider, was arrested on December 10, 2021. On October 24, 2022, judge Alena Ananich of the Minsk City Court found Bredzeleu guilty of providing funds to knowingly support the activities of an "extremist group" (Art. 361-2 of the Criminal Code) and sentenced the man to four years in prison. On January 20, judge Andrei Kavalchuk of the Minsk City Court upheld the verdict. Both decisions were taken behind closed doors.

Yury Hantsarevich, a reporter with the Intex-press newspaper based in Baranavičy, was arrested on April 27, 2022. On May 6, Hantsarevich was charged under part 1 of Art. 361-4 of the Criminal Code of Belarus (assistance to extremist activities). The man allegedly photographed Russian military vehicles and shared the pictures with several media outlets, which were labelled by the Belarusian authorities as extremist. On July 14, judge Mikalai Hryharovich of the Brest Regional Court found Hantsarevich guilty and sentenced him to 2 ½ years in prison. On September 20, the Supreme Court upheld the verdict.

Thus, for the exercise of their rights and freedoms, citizens are sentenced to imprisonment (with the exception of two known cases of imposing terms of restricted freedom, also known as home confinement).

Hooliganism and vandalism as forms of extremism

Belarusian legislation uses the word "extremism" to describe unlawful acts against public order and public morality, government, life and health, personal freedom, honor and dignity of the person, property aimed at "inciting racial, national, religious or other social enmity or discord, political or ideological enmity or discord against any social group".

In addition, "extremism" includes the organization and implementation of acts of vandalism involving damage or destruction of property, other actions that grossly violate public order, or active participation in them based on racial, national, religious or other social hostility or hatred, political or ideological hostility or discord in relation to any social group.

General comment No. 34

Article 19: Freedoms of opinion and expression

34. Restrictions must not be overbroad. The Committee observed in general comment No. 27 that "restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve their protective function; they must be proportionate to the interest to be protected…The principle of proportionality has to be respected not only in the law that frames the restrictions but also by the administrative and judicial authorities in applying the law". The principle of proportionality must also take account of the form of expression at issue as well as the means of its dissemination.

Camden Principles on Freedom of Expression and Equality

Principle 12: Incitement to hatred

All States should adopt legislation prohibiting any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (hate speech). National legal systems should make it clear, either explicitly or through authoritative interpretation, that:

i. The terms 'hatred' and 'hostility' refer to intense and irrational emotions of opprobrium, enmity and detestation towards the target group.

ii. The term 'advocacy' is to be understood as requiring an intention to promote hatred publicly towards the target group.

iii. The term 'incitement' refers to statements about national, racial or religious groups which create an imminent risk of discrimination, hostility or violence against persons belonging to those groups.

Investigative authorities and courts classify various forms of legal expression as "hooliganism".

Aleh Falei was arrested at the end of July 2022 in Minsk. He was accused of "insulting a government official" (Art. 369 of the Criminal Code) and "hooliganism" (part 1 of Article 339 of the Criminal Code). In a video recorded by the police, Falei says that in August 2020 he attended a protest, after which he spray-painted "Long Live Belarus!" at the staircase of a residential building. The charge under Art. 369 was later dropped. On November 16, Falei was found guilty under part 1 of Art. 339 and sentenced to one year of home confinement.

Alina Muratava, Natallia Barynava and others were convicted in May 2021 by the Lieninski District Court of Brest (judge Aliaksandr Semianchuk) under part 2 of Article 339 of the Criminal Code for displaying in a public place an effigy imitating a hanged figure with a sign reading "OMON" (special police unit).

The court did not find in the actions of the defendants the purpose of inciting racial, national, religious or other social enmity or discord, political or ideological enmity or discord against any social group, however, Muratava and Barynava were added to the List of persons involved in extremist activity with the following reference: "The verdict of the court of the Lieninski district of Brest that has entered into force

in connection with the commission of a crime under part 2 of Article 339 of the Criminal Code of the Republic of Belarus." Thus, there are cases of designating persons as "involved in extremist activities" despite absence of a proven offense provided for in Article 1 of the Law "On countering extremism".

Viktar Losik was a member of Viktar Babaryka's nomination group, collecting signatures to support his nomination, a volunteer in the joint opposition headquarters, and helped the Honest People initiative. He was then an independent observer in the presidential election. Losik was arrested near Minsk on December 6, 2020 by officers the Ministry of Internal Affairs. He was accused of hanging effigies with photographs of the Minister of Internal Affairs and the chairperson of a polling station election commission and signs reading "We will not forget, we will not forgive!" on a bridge, as well as of spray-painting images of the Belarusian national emblem "Pahonia" on structures and a bridge. He was charged under part 1 of Art. 339 (hooliganism) and Art. 341 of the Criminal Code (vandalizing buildings and damage to property) and remanded in a pre-trial detention center in the city of Žodzina. Losik was eventually found guilty under Arts. 339 and 341 of the Criminal Code and sentenced to four years in prison.

On April 8, 2022, the court of the Brest district convicted six defendants under part 2 of Art. 339 of the Criminal Code over protest graffiti reading "3%", "Go Away", and "Long Live Belarus!" on a Lenin monument in the village of Damačava (Brest district). According to the investigation, which qualified the action as "malicious hooliganism", the graffiti were spray-painted by six people. Judge Siarhei Maruchak sentenced Yaraslau Burak to three months in prison, Dzmitry Khars to one month in prison, Aliaksandr Nikitsin and Uladzislau Tsiareshka to 18 months of home confinement, Kiryl Bekish and Dzianis Charnyhin – to 2 ½ years of home confinement.

On September 2, 2021, the press service of the Ministry of Internal Affairs reported that four men and three women from Minsk aged 27 to 51 were arrested near the M1 highway at night. The seven people were detained for allegedly painting various protest inscriptions and symbols on more than 80 hay bales in a field outside the city. They all faced charges under part 2 of Art. 339 of the Criminal Code (malicious hooliganism) and remained in custody before the trial.

On January 31, 2022, judge Viktoryia Sudnik of the Stoŭbcy District Court sentenced Andrei Aryka, Maksim Dubeshka, Aliaksandr Babko, Volha Dubovik, Alena Dziadziulia, Ihar Myslivets to one year in prison each. Katsiaryna Aryka was sentenced to 18 months of restricted freedom. During the trial, the defendants complained that Interior Ministry officers drew swastikas on their clothes and bodies, while some were beaten.

These cases exemplify several patterns of persecution for expressing opinions.

In particular, the criminal case of Iryna Abdukeryna under Art. 361-1 of the Criminal Code is one of the numerous cases of ordinary people facing criminal charges for collecting information about the use of the territory of Belarus, its airspace and infrastructure by Russian troops in order to carry out a full-scale invasion of Ukraine, and the subsequent transfer of this information to "Belarusian Hajun", a specialized Telegram account labelled as an "extremist formation". Per se, sharing information does not constitute a crime; such actions are criminalized solely by the fact that the recipient is designated as an extremist formation. In the absence of details of the case, it is impossible to establish how Abdukeryna's actions differed in their essence from the actions of Yury Hantsarevich, who was convicted for the same actions under Article 361-4 of the Criminal Code.

The criminalization of these actions pursues several goals: support by the Belarusian authorities of their military ally, the Russian Federation, and suppression of any manifestations of an anti-war stance as a form of expression.

The criminal prosecution of Butskavets was triggered by the designation of his VKontakte group as an "extremist formation", and it were his actions that were considered as criminal acts. The group called "For the only state language of Belarus!" was designated as extremist by the decision of the Ministry of Internal Affairs of August 17, 2022, and Butskavets was arrested on September 5, 2021.

The criminal prosecution of Yury Kuznechyk was launched soon after the designation of Radio Svaboda's website and social media accounts as an "extremist formation" (decision No. 21EK by the Interior Ministry of December 23, 2021 "On the designation of a group of citizens as an extremist formation and the prohibition of its activities"). Kuznechyk was arrested in November 2021, but for over a month he was held in administrative detention, and only on December 23, the day Radio Svaboda was labelled an "extremist group", the journalist's family was notified that he was charged with a criminal offense. The authorities used similar methods against Dzmitry Halavach and other members of the rock group Tor Band: after their arrest, the musicians were repeatedly sentenced to short terms of administrative imprisonment. During their stay at the detention facility, the band was designated as an "extremist formation" by a decision of the Ministry of Internal Affairs.

The criminal prosecution of Dzianis Vorazau and others was launched under Article 339 (hooliganism), and only two weeks later the authorities labelled their Zello channel as an "extremist formation", since the app was used by the group for communication. Since the commission of "hooliganism" acts is no longer imputed to the defendants, the case is a shameful example of persecution only on formal grounds of joining a community for expressing an opinion. In this case, the government does not even try to justify the restriction of freedom of expression with formally acceptable considerations from the point of view of international obligations, but instead arbitrarily uses the wide opportunities provided by anti-extremist legislation for repressive purposes.

The criminal prosecution of Darya Losik is a classic form of prosecution for the lawful exercise of one's freedoms. Her actions were criminalized solely by the fact of the designation of Belsat TV as an extremist formation.

Terrorism charges and long prison sentences

The accusation of terrorism is the most severe level of repression for exercising freedom of expression due to the severity of the penalty of the corresponding criminal articles. At the same time, such cases run the risk of receiving ambiguous assessments, since the actions often contain an element of unlawfulness. Thus, in addition to signs of a violation of the right, the proportionality of restrictive measures is also subject to assessment.

In accordance with the Criminal Code, an act of terrorism is the commission of an explosion, arson, flooding, or other acts by socially dangerous means or otherwise resulting in the risks of deaths, bodily harm or other grave consequences in order to influence the decision-making by the authorities, or to obstruct political or other public activities, or to intimidate a population, or to destabilize public order. Under the conditions of politically motivated bias of the investigating authorities and the courts, actions that possess some of the formal signs of terrorism, but failing to meet the criteria for classifying them as terrorism, as understood by international bodies, are artificially adjusted to the definitions of the disposition of Article 289 of the Criminal Code.

International law has not yet developed a universal and exhaustive concept of terrorism. It is usually understood as acts of violence committed against the civilian population for political or ideology purposes.[14]

The most popular and accepted definition is that by the UN Security Council Resolution 1566 (2004), which classifies terrorism as acts possessing the following three characteristics, regardless of whether they are justified by considerations of political, philosophical, ideological, racial, ethnic, religious or other of a similar nature:

- are committed, including against civilians, with the intent to cause death or serious bodily injury or to take hostages;
- are committed with the intent to provoke a state of terror in the general public, or in a group of persons or particular persons, intimidate a population, or compel a government or an international organization to do or to abstain from doing any act;
- constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism.

The last criterion echoes the definitions of terrorism contained in earlier UN documents. Thus, the Declaration on Measures to Eliminate International Terrorism, adopted by General Assembly resolution 49/60 in 1994, defined terrorism as "criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes". In its resolution 1566 (2004), the Security Council described terrorism as "criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act". Later, in 2004, the High-Level Panel on Threats, Challenges and Change

[14] Office of the United Nations High Commissioner for Human Rights. Human Rights, Terrorism and Counter-terrorism. Fact Sheet No. 32

formed by the UN Secretary-General defined terrorism as any act "any action, in addition to actions already specified by the existing conventions on aspects of terrorism, the Geneva Conventions and Security Council resolution 1566 (2004), that is intended to cause death or serious bodily harm to civilians or non-combatants, when the purpose of such an act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act."[15]

It is important to emphasize that these definitions apply to legitimate governments: "acts, methods and practices of terrorism in all its forms and manifestations are activities aimed at the destruction of human rights, fundamental freedoms and democracy, threatening territorial integrity, security of States and destabilizing legitimately constituted Governments."[16]

Johannesburg principles

Principles on National Security, Freedom of Expression and Access to Information

Principle 24: Disproportionate Punishments

A person, media outlet, political or other organization may not be subject to such sanctions, restraints or penalties for a security-related crime involving freedom of expression or information that are disproportionate to the seriousness of the actual crime.

 # On July 26, 2021, the court of the Frunzienski district of Minsk convicted Yahor Mikhailau of an "act of terrorism" (part 1 of Art. 289 of the Criminal Code). He was accused of setting fire to a T-72 tank at a railway station in Minsk by throwing a Molotov cocktail at the tank on the night of January 31, 2021. The video of the burning tank appeared online in early February, but the state media called it a fake, and the Ministry of Defense showed an undamaged tank. According to the prosecution, as a result of Mikhailau's actions, there was an "objective risk of deaths", although a military patrol did not even notice the fire. Judge Alena Bushava sentenced Mikhailau to ten years' imprisonment. The court did not take into account the defendant's explanations that his actions were a form of expressing an opinion on the state of the army, and that the recipe of the incendiary mixture was designed for a short burning time, incapable of causing real harm to a metal object. The video was distributed with the comment "This is an act of civil defiance! Tank T-72, 120th division. For the silence of the army, which should have put an end to the powers of "Marshal" Sasha 3% a long time ago. We have shown what we can do. Let them answer who they are with, and who they must protect!"

According to the prosecution, Mikhailau "deliberately, in order to influence decision-making by the authorities, obstruct political activity, intimidate the population, destabilize public order, in the period from 3:30 to 3:36 on January 31, committed an act of terrorism by socially dangerous means by setting fire to military equipment belonging to the 120th division, located on the tracks as part of a train at the Aziaryšča railway station

[15] A more secure world: Our shared responsibility (United Nations publication, Sales N° E.05.I.5).

[16] Resolution adopted by the General Assembly on 8 September 2006. 60/288. The United Nations Global Counter-Terrorism Strategy

in Sciapianka, which resulted in an objective risk of deaths, causing bodily injuries other serious consequences."

On August 10, 2022, the Babrujsk District and City Court convicted a group of defendants, including those accused of terrorism. The charges were heard by judge Natallia Ahladkova. Kanstantsin Yermalovich, Vital Minkevich, and Ihar Kazlou were sentenced to 14 to 16 years in prison on terrorism charges. One of the counts of terrorism was setting fire to a canopy at the shooting range of military unit 5527, a unit of the Internal Troops of the Ministry of Internal Affairs, reportedly involved in the repression of protesters in 2020.

Distribution of "extremist material", manufacture, publication, storage or transportation of such material for the purpose of distribution

The Ministry of Information is the agency in charge of designating information products as "extremist", regularly updating the list of "extremist material" and publishing the updates on the Ministry's official website. Although this is not a new practice for the post-election period, the starting point for the massive blacklisting of products and content as "extremist" is probably the Ministry's decision of October 2020 to outlaw the "information channel of the Telegram Internet Messenger – NEXTA-Live (t.me/nexta_live) and the logo (digital watermark) NEXTA". The popular Telegram channel was accused of coordinating the 2020 protests. After that, the practice of labelling products of a social, political and cultural nature as "extremist material" became routine, and as of early March 2023, the list featured 1,341 court decisions and many more items of "extremist" products and content, as one decision often concerns several units.

At the end of November 2022, the head of the Investigative Committee, Dzmitry Hora, said that "the activity of extremists has dropped significantly". At the same time, the list of "extremist material" grew by almost 80 items.

The designation of products and content as "extremist" is mostly the result of the vague definitions of the terms "extremism" and "extremist material", which is what the authorities

extensively abuse. As a result, in practice, the anti-extremist actions of the authorities diverge from the norms of soft law and are aimed at the very fact of having an opinion, instead of targeting the actual actions of a violent, Nazi or fascist nature.

For example, para. 46 of General comment No. 34 interprets this as follows: "such offences as "encouragement of terrorism" and "extremist activity" as well as offences of "praising", "glorifying", or "justifying" terrorism, should be clearly defined to ensure that they do not lead to unnecessary or disproportionate interference with freedom of expression."

The UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism expressed serious concern about the criminalization of "extremism" in general due to the extremely vague and subjective nature of the term, as well as the wide range of activities it can refer to. She noted that the "term "extremism" has no purchase in binding international legal standards and, when employed as a criminal legal category, is irreconcilable with the principle of legal certainty and is per se incompatible with the exercise of certain fundamental human rights."[17]

The crackdown on freedom of expression under the guise of fighting extremism resulted in the prohibition of independent media, Telegram channels, Telegram chats, books, souvenirs with national, historical and protest symbols, together with a variety of other items and content related to the socio-political and cultural life of Belarus.

The suppression of the street protests naturally morphed into the total stifling of the expression of opinions online. The widespread application of Article 24.23 of the Code of Administrative Offenses for "violating the procedure for organizing and holding mass events" was followed by the wide usage of Article 19.11, "distribution, production, storage, transportation of information products containing calls for extremist activity or promoting such activity."

Under this article, people are convicted of online reactions ("likes", etc.) on social media, reposts on public and private accounts, as well as in private messages, subscriptions to Telegram channels, public media pages, etc.

The article provides for the imposition of a fine in the amount of ten to thirty basic units, administrative imprisonment up to 15 days or compulsory community service, and, with any of the penalties, confiscation of the object of an administrative offense, i.e., as a rule, a mobile phone.

At the same time, in practice, people face charges even if they shared the content before it was blacklisted as "extremist". Also, this article is indicatively used for political pressure and is applied repeatedly and consecutively.

The case of Aliaksei Duzhy was considered twice in the court of the Saviecki district of Minsk. On February 3, 2023, judge Aliaksandr Volk sentenced the man to 15 days of administrative imprisonment. On February 15, judge Volha Yemialyanchanka ordered 12 days in prison. In both cases, Duzhy was found guilty under Article 19.11 of the Code of Administrative Offenses.

In mid-May 2022, Barys Zhakhouski, an employee of the Naftan oil refinery, was arrested in Navapolack. He stood his first trial on May 16. Judge Volha Balika

[17] Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism: Visit to Kazakhstan, 22 January 2020, A/HRC/43/46/Add.1, para. 15

sentenced the man to 15 days of administrative imprisonment for "distributing extremist material" (Article 19.11 of the Code of Administrative Offenses). However, Zhakhouski was not released and faced new charges under Article 19.11. The result was another 15 days in prison. Zhakhouski was later convicted for a third time in a row. This time, judge Zinaida Balabolava found him guilty of "unauthorized picketing" (Art. 24.23 of the Code of Administrative Offenses) and imposed a term of 15 days in prison. In total, the man was kept behind bars for 45 days. While in prison, he declared a hunger strike and ended it 16 days later.

Andrei Halavyryn was arrested on June 15, 2022, and remanded in the Navapolack detention facility. It is known that on the same day he stood trial on charges under Art. 19.11 of the Code of Administrative Offenses for "dissemination of extremist material". Judge Zinaida Balabolava found him guilty and imprisoned the man for 15 days. On July 1, Andrei was again punished with a 15-day term. It is reported that while serving his first term, the man suffered a hypertensive crisis.

Prosecution for the storage and dissemination of "extremist material" is often accompanied by violations of the right to privacy, namely, unauthorized access to phones and private electronic messages.

The political nature of persecution under Art. 19.11 is also evidenced by the fact that after serving terms of administrative imprisonment, people often face criminal charges and remain in detention. The time spent in administrative detention is often used by the investigation to create grounds for opening a criminal case, including by obtaining a confession.

Political prisoner Andrei Raptunovich was sentenced to 14 days of administrative imprisonment under part 2 of Art. 19.11 of the Code of Administrative Offenses and was expected to be released on May 29, 2022, but faced new charges, instead, and was sentenced to 15 more days in prison under Art. 19.1 of the Code of Administrative Offenses (disorderly conduct). According to a law enforcement officer, he violently waved his arms and used foul language. Immediately after arrest, the police released a video confession, in which Raptunovich admits to having joined the Pieramoha plan and wishing to join the Kastuś Kalinoŭski Regiment fighting in Ukraine.

Thus, persecution for the free dissemination of information often reaches the level of a criminal offense, the penalties resemble criminal punishment, and are often applied in violation of presumptions and procedural guarantees.

Rehabilitation of Nazism, propaganda or public demonstration, production, distribution of Nazi symbols and paraphernalia, as well as the storage or acquisition of such symbols or paraphernalia for the purpose of distribution

Law "On Preventing the Rehabilitation of Nazism" of May 14, 2021 came into force on June 16, 2021. Before concluding whether the said law and the practice of its application violate the provisions of art. 19, para. 3 of the Covenant, one should refer to the terms and notions, limited to those definitions associated with the dispositions of the articles of the Criminal Code and the Code of Administrative Offenses.

Article 130-1 of the Criminal Code provides for responsibility for the rehabilitation of Nazism: deliberate actions to rehabilitate Nazism are punishable by a fine, or arrest (brief criminal imprisonment), or restriction of liberty for up to five years, or imprisonment for

the same period. Actions provided for by part 1 of Article 130-1, combined with violence or committed by an official using their official powers, are punishable by imprisonment of three to ten years. Actions provided for by parts 1 or 2 of the Article, committed by a group of persons or negligently causing the death of a person or other grave consequences, are punishable by imprisonment of five to twelve years.

In accordance with the law, rehabilitation of Nazism is an action committed publicly or using a publicly displayed work, or the media, or the Internet, or other information network, manifested in:

— justification of the ideology (doctrine) and practice of Nazism, recognizing them as correct, in need of support and worthy of imitation, as well as spreading the ideology of Nazism;

— approval or denial of crimes against the peace and security of mankind, military and other crimes established by the verdict of the International Military Tribunal or the verdicts of national, military or occupation tribunals based on the verdict of the International Military Tribunal;

— approval of persons and (or) structures or organizations found criminal or guilty of committing crimes by the verdict of the International Military Tribunal or by the verdicts of national, military or occupation tribunals based on the verdict of the International Military Tribunal, as well as of the political and military organizations who collaborated with such persons and (or) structures, or organizations in the occupied territory of the USSR during the Second World War, as well as of persons participating in the activities of such political and military organizations and executing or deliberately facilitating the execution of criminal orders of persons and (or) structures or organizations specified in this paragraph, in any form;

— heroification of Nazi criminals and their accomplices – the deliberate glorification of them, as well as of the crimes they committed.

Nazi criminals are organizers, instigators, leaders or perpetrators of war crimes and crimes against peace and humanity, subject to the jurisdiction of the International Military Tribunal.

Accomplices of Nazi criminals are executors of orders of the Nazi regime, the military command of the Wehrmacht, SS military personnel, auxiliary police and their allies from among the population of the occupied territories, who voluntarily or by conscription entered the service in these units, as well as other persons who deliberately contributed to the execution of the criminal orders of Nazi criminals in any form.

There are certain issues associated with the unreasonable expansion of these definitions by classifying part of the population of the occupied territories as accomplices of Nazi criminals and equating a number of political organizations located in the occupied territory and persons collaborating with them to organizations and persons convicted by the International Military Tribunal or on the basis of a verdict by the International Military Tribunal. This does not always take into account the historical circumstances and the situation in the occupied territories, and eliminates the possibility of discussion on historical and political issues.

As of mid-March 2023, two sentences are known under Article 130-2 and one sentence for the rehabilitation of Nazism under Article 130 of the Criminal Code (version of Article 130 of the Criminal Code active from February 1, 2020 to July 18, 2021).

Ales (Aliaksandr) Pushkin was convicted under part 3 of Article 130 of the Criminal Code. Pushkin was charged with the rehabilitation of Nazism and desecration of state symbols: "During the investigation, it was established that the accused committed actions aimed at the propaganda of Nazism and the activities of Belarusian collaborationist organizations", "the heroes of the works by Ales Pushkin during the Second World War executed and also deliberately contributed to the execution of the orders of Nazi structures and organizations, recognized as criminal by the verdict of the International Military Tribunal (IMT). The accused sought to consign to oblivion the lessons of the destructive war, cynically distort its moral and legal results, put true heroes and traitors on the same level, glorify and justify them, and also cast doubt on the decisions of the IMT that had no statute of limitations."

The Investigative Committee found that "Pushkin made and posted in the public domain portraits of accomplices of Nazi criminals portrayed as Belarusian patriots and heroic personalities. They depicted Michał Vituška, the main organizer of mobile detachments of the occupational auxiliary police operating in the rear area of the German Army Group Center in the territory of occupied Belarus, formed from among Belarusian nationalists, and Usievalad Rodzka, the burgomaster of Viciebsk, who collaborated with the Nazis and was recruited by the Abwehr. Pushkin counted on the audience's trust in the artist."

It follows from the materials of the criminal case that Pushkin, during an exhibition in Hrodna, publicly demonstrated a portrait of Yauhen Zhykhar, who since 1946 led a detachment of "former policemen and other traitors". For 9 years, in the Pastavy district, they committed "murders of police officers, party and state officials, arson of administrative buildings and sabotage on the railway". The accused in his speech "called the Nazi accomplice a Belarusian patriot and a prominent representative of the Belarusian anti-Soviet resistance."

Vadzim Shylko, a military reenactor, was convicted under part 1 of Article 130-1 of the Criminal Code. His account on the Odnoklassniki social media was blacklisted as "extremist", which indicates a possible connection between the charges and the content published on the page. In particular, the account featured several photographs of a convict wearing the uniform of a Wehrmacht soldier participating in reenactments. Apart from the very fact of posting these photos, Shylko did not publish any information glorifying Nazism in his account. On the contrary, the news feed contains an article about the events of the first days of the war, describing with sympathy the defensive actions of the Red Army.

On August 26, 2022, the Viciebsk Regional Court sentenced Aliaksei Reznikau to four and a half years in prison for posts and reposts on VKontakte. Reznikau was charged under five articles of the Criminal Code: part 1 of Art. 130 (inciting other social hatred or discord), part 1 of Art. 130-1 (rehabilitation of Nazism), part 1 of Art. 368 (insulting Lukashenka), Art. 369 (insulting a representative of the authorities), and Art. 370 (desecration of state symbols). Judge Yauhen Burunou considered the case behind closed doors. According to the prosecution, Reznikau, "due to political and ideological hostility, deliberately posted and saved on the public page of the social media VKontakte files with information related to the expression of a positive attitude towards the soldiers of the collaborationist formation Belarusian Regional Defense and members of the organization RONA, heroification of Nazi and neo-Nazi ideology, the formation of a positive attitude towards German soldiers in connection with their activities during the period of the fascist occupation of Belarus", "posted public publications for dissemination among an indefinite circle of people of the ideas of Nazism, neo-Nazism, nationalism, xenophobia and anti-Semitism". At the same time, it should be noted that the defendant's account testifies to his active civic position, his critical attitude towards the actions of the authorities. The reposts indicated in the accusation did not glorify Nazism and did not directly call for violence, nor did they contain definitely xenophobic or neo-Nazi ideas, but sometimes had an ambiguous, debatable character. The role and place of national collaborationist formations in history does not always have a well-established assessment, while Reznikau's publications of freely available photo and video materials left the reader with the opportunity to form their own position in relation to the posted information. Similar actions were earlier prosecuted under administrative procedures (also often arbitrarily). In such conditions, the long term of imprisonment is due to the political nature of the case, the charge of "insulting Lukashenka" and another high-ranking government official, and "desecration of state symbols" (posting a satirical drawing with elements of the coat of arms), and constitutes an unacceptable form of restriction of expression.

At the beginning of 2022, the Criminal Code was supplemented with Article 130-2 by Law No. 146-Z of January 5, 2022, which provides for liability for denying the genocide of the Belarusian people. These actions do not directly fall under the definition of extremism contained in the law, however:

— in accordance with the Law "On Citizenship of the Republic of Belarus", for the purposes of this Law, participation in extremist activities or causing grave damage to the interests of the Republic of Belarus means the commission in any form by a person who has reached the age of 18 of at least one of the acts recognized in the Republic Belarus as crimes provided for by Articles 130-133 [...] of the Criminal Code of the Republic of Belarus, regardless of the place of their commission;

— the list of persons involved in terrorist activities should include those accused and convicted under Art. 124-131 of the Criminal Code.

Thus, there is a reasonable assumption that this offense can become "extremist" in the process of administration of law. At the moment, there is no information about any convictions under this article.

In accordance with Article 130-2, the denial of the genocide of the Belarusian people, contained in a public speech, or in a printed or publicly displayed work, or in the media, or in information posted on the Internet, other public telecommunication network or dedicated telecommunications network, is punishable by arrest, or restriction of liberty of up to five years, or imprisonment for the same period. The same actions committed by a person previously convicted of denying the genocide of the Belarusian people, or by an official using their official powers, are punishable by imprisonment of three to ten years.

The period covered by the Law is from June 22, 1941 to December 31, 1951. The Law describes the "Belarusian people" as "Soviet citizens who lived on the territory of the Belarusian Soviet Socialist Republic during the Great Patriotic War and (or) in the post-war period."

The Law could become an effective tool in the fight against neo-Nazism, however, some vocabulary gives reason to use it for other interests: the suppression of dissent and the promotion of obsolete Soviet narratives that equate anti-communism and nationalism with crimes that ignore the facts of communist terror and do not take it into account as an incentive for the actions of residents of the occupied territories, and also do not take into account the historical ambiguity of the pre-war redistribution of borders, the partition of Poland, and the occupation of the Baltic countries. The law on the genocide of the Belarusian people is technically and substantive immature, contains several, and given its small volume, critically many controversial postulates. At the same time, the introduction of criminal liability for the denial of the genocide simultaneously with the adoption of the law immediately denies the society the opportunity to discuss the correctness of the legislator's decision. The practice of law administration risks confirming the worst fears about its role.

Public calls for extremism and public justification of such actions

Calls for extremist actions and public justification of extremism have become separate forms of extremism after the introduction of the new version of the Law "On countering extremism". These forms are viewed as crimes and entail criminal liability. In particular, public justification of terrorism (Article 289-1 of the Criminal Code), public calls for the seizure of state power, or the violent change of the constitutional order of the Republic of Belarus (Article 361 of the Criminal Code) are criminalized.

General comment No. 34

Article 19: Freedoms of opinion and expression

46. States parties should ensure that counter-terrorism measures are compatible with paragraph 3. Such offences as "encouragement of terrorism" and "extremist activity" as well as offences of "praising", "glorifying", or "justifying" terrorism, should be clearly

defined to ensure that they do not lead to unnecessary or disproportionate interference with freedom of expression.

Johannesburg principles

Principles on National Security, Freedom of Expression and Access to Information

Principle 7: Protected expression

(a) [...] Expression which shall not constitute a threat to national security includes, but is not limited to, expression that:

(i) advocates non-violent change of government policy or the government itself;

(ii) constitutes criticism of, or insult to, the nation, the state or its symbols, the government, its agencies, or public officials, or a foreign nation, state or its symbols, government, agencies or public officials;

(iii) constitutes objection, or advocacy of objection, on grounds of religion, conscience or belief, to military conscription or service, a particular conflict, or the threat or use of force to settle international disputes;

(iv) is directed at communicating information about alleged violations of international human rights standards or international humanitarian law.

Other forms of "justifying extremism" that are not related to criminal offenses may result in blacklisting information products as "extremist". However, there is a reasonable assumption that this rule will be abused to suppress dissenting voices in defense of those who are arbitrarily persecuted using anti-extremist legislation.

Punitive psychiatry

According to the Human Rights Center "Viasna", at least five times the courts applied coercive medical measures against people who committed actions containing signs of crimes based on statements (sometimes in combination with other acts).

Ihar Alkhou was accused of "attempted terrorism" (part 1 of Article 289 of the Criminal Code) and "insulting Lukashenka" (part 1 of Article 386 of the Criminal Code). According to the prosecution, Alkhou planned to detonate a bomb in an administrative building in Homieĺ in order to "obstruct political activity, intimidate the population and destabilize public order", for which had watched YouTube videos and learned the methods of making explosives. Then he allegedly purchased the necessary components and made such a mixture. Then he tried to acquire a radio remote control to detonate the explosive, but his illegal activities were stopped by law enforcement agencies. He also reportedly publicly insulted and humiliated the honor and dignity of Lukashenka in an indecent manner "in connection with the exercise of his powers". Alkhou authored a text, which he later voiced and filmed, and then shared the video with at least two users of the Telegram messenger.

  During the trial and after a psychiatric examination, Alkhou was found to have mental disorders. During the commission of the crime, he allegedly could not realize the significance of his actions and control them, was not capable of an adequate perception of reality. On August 15, the Court of the Centraĺny District of Homieĺ ruled to subject Alkhou to compulsory security measures and confine the man to a psychiatric hospital with strict supervision, in view of the fact that he had "committed socially dangerous acts in an insane state" (part 1 of Art. 13, part 1 of Art. 289, and part 1 of Art. 368 of the Criminal Code).

Daniil Zharyn was charged under Art. 130 of the Criminal Code (inciting social discord), and part 1 of Art. 289 of the Criminal Code (act of terrorism). He was accused of attacking the building of the Institute of the Ministry of Internal Affairs in June 2021. According to the investigation, on the night of June 10, someone threw a bottle with a combustible substance at the front door of the Institute in Mahilioŭ. On December 1, 2021, the Mahilioŭ Regional Court referred to Art. 101 of the Criminal Code to subject him to compulsory security measures and treatment in a psychiatric hospital with enhanced supervision. On May 23, 2022, the KGB included Daniil in the list of "persons involved in terrorist activities."

On November 25, the Maladziečna District Court ordered compulsory medical measures for Aliaksandr Kisel, who was accused of insulting Lukashenka (part 1 of Art. 368 of the Criminal Code). According to the prosecution, Kisel posted an "insulting comment using profanity" on the social media VKontakte. The court sent Kisel for compulsory treatment in a psychiatric hospital.

The same decision was taken by the court of the Kastryčnicki district of Mahilioŭ, which on June 18, 2022 sent Mikhail Lepeika for compulsory treatment. The man was also accused of publicly insulting Lukashenka (part 2 of Article 368 of the Criminal Code).

Pavel Abukhovich was sentenced to compulsory psychiatric treatment under part 1 of Art. 130, Art. 369, and part 1 of Art. 368 of the Criminal Code for comments

posted on social media, which were not quoted by the court ruling but were said to have contained "criticism of law enforcement officers", "insulting" the former head of the GUBAZIK, Deputy Minister of Internal Affairs Karpiankou, and Lukashenka.

In accordance with the Criminal Code, persons who have committed socially dangerous acts in a state of insanity or who have committed crimes, but were diagnosed with a mental disorder before being sentenced or while serving the sentence, which deprives them of the opportunity to realize the significance of their actions or to control them, if these persons, due to their mental state and taking into account the nature of the act committed, pose a danger to society, are subject to the following compulsory measures of security and treatment: compulsory outpatient observation and treatment by a specialist in the field of mental health care; or compulsory treatment in a psychiatric hospital with ordinary, enhanced or strict supervision.

Compulsory treatment in a psychiatric hospital with ordinary supervision may be ordered by a court in respect of a person suffering from a mental disorder who, due to their mental state and the nature of the committed socially dangerous act, needs to be hospitalized and treated on a compulsory basis. Compulsory treatment in a psychiatric hospital with enhanced supervision may be ordered by a court in respect of a person suffering from a mental disorder, who has committed a socially dangerous act that is not related to an encroachment on the life and health of citizens, and due to their mental state does not pose a threat to others, but in need of hospital maintenance and treatment under conditions of enhanced observation. Compulsory treatment in a psychiatric hospital with strict supervision may be ordered by a court in respect of a person suffering from a mental disorder, who, due to their mental state and the nature of the committed socially dangerous act, poses a particular danger to society and needs hospitalization and treatment under strict supervision.

As a rule, the type of compulsory treatment is chosen by the court on the basis of a forensic psychiatric examination without a critical assessment of the findings.

At the same time, in accordance with the Law "On Psychiatric Care", a court decision on involuntary hospitalization and treatment is issued if a person suffering from a mental disorder and evading treatment is in a condition that causes: direct danger to oneself and (or) other persons; helplessness; possibility of causing significant harm to their health due to the deterioration of mental health, if such a person is left without psychiatric care.

The same approach should be followed in the case of compulsory medical measures, as the essence and purpose of these court orders is practically the same, and the fact that the wrongful act is committed in a state of insanity minimizes reasonable differences in the methods of medical response.

Thus, in the case of the use of compulsory treatment in a psychiatric hospital in relation to persons who are not dangerous to themselves and others at the time of the application of these measures, one should speak of arbitrary deprivation of liberty. On several occasions, this has been linked to the exercise of freedom of expression.

Deprivation of citizenship

After the presidential election of 2020, the Law "On Citizenship of the Republic of Belarus" was amended and supplemented twice: new grounds for the loss of citizenship were introduced, among other things.

In particular, Law No. 67-Z of December 10, 2020 (entered into force on June 18, 2021) amended Article 19 of the Law "On Citizenship of the Republic of Belarus", which empowered the state to deprive a person of citizenship acquired by naturalization for "participation in extremist activities" or "causing grave damage to the interests of the Republic of Belarus", which is confirmed by a final court verdict. "Participation in extremist activity" or "causing damage" are understood as the commission in any form by a person who has reached the age of 18 of at least one of the acts recognized in the Republic of Belarus as crimes under Articles 124-126, 130-133 (Chapter 17. Crimes against the peace and security of mankind), 287, 289–290[5], 293 (Chapter 27. Crimes against public safety), 356, 357, 359–361[3] (Chapter 32. Crimes against the state) of the Criminal Code of the Republic of Belarus, regardless of the place of its commission (Note to part 2 of Article 19 of the Law "On Citizenship of the Republic of Belarus").

Having checked Law No. 67-Z for compliance with the Constitution and international legal acts ratified by the Republic of Belarus, the Constitutional Court issued a decision on December 1, 2020 under No. R-1226/2020, which justified the new rules, indicating that the revocation of citizenship for participation in extremist activities or causing harm to the interests of the Republic of Belarus does not apply to citizens of the Republic of Belarus by birth.

The Constitutional Court noted that " […] when deciding on the loss of citizenship of the Republic of Belarus by persons specified in paragraph 8 of Article 1 of the Law, one should also proceed from the principle of citizenship of the Republic of Belarus, according to which the Republic of Belarus seeks to avoid cases of statelessness (Article 3 of the Law on citizenship)". The principle of avoiding statelessness is also provided for by international legal acts, in particular the Convention on the Reduction of Statelessness of 1961, which states that no state should deprive any person of their citizenship if such deprivation would make that person stateless (paragraph 1 of Article 8). The fact that Belarus is not a party to the Convention does not diminish the importance of the rules enshrined in it.

The procedure and conditions for the loss of citizenship for the commission of a crime are regulated by part 2 of Article 19 of the Law "On Citizenship of the Republic of Belarus" and the Regulations on the Procedure for Considering Issues Related to Citizenship of the Republic of Belarus, approved by Presidential Decree No. 209 of November 17, 1994. In particular, following grounds must be present in the aggregate in order to revoke citizenship under part 2 of Article 19 of the Law:

- acquisition of citizenship by naturalization;
- reaching the age of 18;
- entry into legal force of a court verdict for committing crimes under Articles 124-126, 130-133, 287, 289–290[5], 293, 356, 357, 359–361[3] of the Criminal Code.

Law No. 242-Z of January 5, 2023 (enters into force on July 11, 2023) amended and supplemented several legal acts, including a new rule allowing the loss of citizenship by birth for "participation in extremist activities" or "causing grave damage to the interests of

the Republic of Belarus". In addition, the number of crimes for which citizenship may be revoked increased from 24 to 53: citizens of Belarus by birth who committed crimes under Articles 122-137, 287, 289, part 2 of Article 290, Articles 2901-293, part 4 of Article 294, part 4 of Article 295, part 4 of Article 309, part 3 of Article 311, part 3 of Article 322, part 3 of Article 323, part 3 of Article 324, part 2 of Article 333, Articles 356, 357, 359-362 and part 2 of Article 367; part 2 of Article 363, Articles 364, 366 and 388 of the Criminal Code, on the grounds of racial, national, religious hatred or enmity, political or ideological hatred, or on the basis of hatred or enmity against any social group and are located abroad (note to Article 19 of Law No. 242-Z of January 5, 2023) fall under the category of persons whose nationality may be lost.

Thus, in order to terminate citizenship under part 3 of Article 19 of the Law "On Citizenship of the Republic of Belarus" (enters into force on July 11, 2023), the following grounds must be present in the aggregate:

- citizenship by birth;
- reaching the age of 18;
- entry into legal force of a court verdict for committing crimes under the articles specified in the note to Article 19 of the Law "On Citizenship of the Republic of Belarus";
- being abroad.

Arbitrary deprivation of citizenship is contrary to international human rights standards and the Constitution of the Republic of Belarus. According to para. 2 of Article 15 of the Universal Declaration of Human Rights, no one can "be arbitrarily deprived of his nationality nor denied the right to change his nationality". The Constitution of Belarus prohibits the state from deprivation of citizenship. In particular, part 2 of Article 10 reads:

> *"No one can be deprived of the citizenship of the Republic of Belarus or the right to change citizenship. Acquisition and termination of citizenship are carried out in accordance with the law."*

According to Pliakhimovich, "deprivation of citizenship is its forced termination as a sanction from the state. The deprivation of citizenship must be distinguished from the termination of citizenship, which does not have the character of a sanction. Such cases are called loss of citizenship."[18]

The Criminal Code lists both basic and additional types of punishment. According to part 2 of Article 3 of the Criminal Code, the punishability of an act is determined only by this Code. The articles of the Criminal Code mentioned in the note to parts 2 and 3 of Article 19 of the Law do not provide for the termination of citizenship as a punishment. Thus, for committing a crime, a person is subject to criminal liability and, additionally, to a type of punishment that is not provided for by the Criminal Code, namely, termination of citizenship.

In addition, deprivation of citizenship, as an additional type of sanction for committing a crime, will apply only to those citizens by birth who are located abroad. Therefore, if two citizens by birth commit a crime under Article 367 of the Criminal Code (slander against the President of the Republic of Belarus), but one of them lives in Belarus and the other lives abroad, then, in addition to the penalty provided for by the Code, the latter will face an additional form of punishment – deprivation of citizenship.

[18] Pliakhimovich, I.I. Kommentariy k Konstitutsii Respubliki Belarus'. In 2 volumes: V. 1. Minsk: Amalfeya, 2015. – pp. 267-268

International Convention on the Elimination of All Forms of Racial Discrimination, ratified by Belarus on April 8, 1969

Article 5

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(iii) The right to nationality.

On December 23, 2022, several UN Special Rapporteurs sent a joint appeal to the state expressing concern about the amendments to the Law "On Citizenship of the Republic of Belarus", which provide for the deprivation of citizenship as a punishment and the application of new provisions of the Code of Criminal Procedure on trials in absentia. The Special Rapporteurs question the compatibility of these legislative provisions and their implementation with Belarus's binding international human rights obligations, namely, in terms of their potential negative impact on the right to a nationality and the right to a fair trial, the denial of which would seriously affect the enjoyment of all other fundamental rights. In addition, there may be a potential intimidating effect of this legislation aimed at restricting the exercise of fundamental freedoms, including the freedom of opinion and expression, as well as of peaceful assembly and association by Belarusian citizens abroad, preventing them from organizing into any structures, participating in public actions or expressing dissent and criticism of the Belarusian government.

Procedure for the loss of citizenship

The procedure for the loss of citizenship is regulated by the Regulations on the Procedure for Considering Issues Related to Citizenship of the Republic of Belarus, approved by Presidential Decree No. 209 of November 17, 1994, and consists of several phases. The period of consideration on the loss of citizenship should not exceed six months.

At the first stage, government bodies shall send to the Ministry of Internal Affairs: a reasoned letter on the advisability of making a decision on the loss of citizenship; and a copy of the court verdict that has entered into legal force, confirming participation of a person in extremist activity or causing grave damage to the interests of the Republic of Belarus.

At the second stage, the Ministry of Internal Affairs shall check the received information for compliance with the requirements contained in part 2 of Article 19 of the Law; issue a reasoned opinion on the advisability of making such a decision; and send the findings, together with the case file, to the Commission on Citizenship under the President and the State Security Committee (the KGB).

At the third stage, the KGB shall send its opinion on the advisability of enforcing a decision on the loss of citizenship to the Commission on Citizenship.

At the fourth stage, the Commission on Citizenship shall evaluate the submitted files

taking into account the interests of the Republic of Belarus; issue a decision; and submit the decision to the president.

At the fifth stage, the president shall decide on the loss of citizenship by issuing a decree.

At the sixth and final stage, the decree is sent for execution to the Ministry of Internal Affairs; the state body that initiated the loss of citizenship shall notify the person of the decision taken; and the Ministry of Internal Affairs shall send a notification on the execution of the presidential decree to the president's office.

In accordance with Article 38 of the Law and part 2 of Article 45 of the Code of Civil Procedure, decisions on issues of citizenship of the Republic of Belarus taken by the president can be appealed to the Supreme Court, which considers such cases as a court of first instance. There is no separate procedure for the consideration of cases of this category.

Thus, the deprivation of citizenship based on a final court verdict confirming participation in extremist activities or causing grave damage to the interests of Belarus, is contrary to Article 10 of the Constitution, international legal standards, constitutes an additional type of punishment and is aimed at limiting the exercise of fundamental freedoms, including freedom of opinion and expression.

Conclusions

Due to the overbroad interpretation of the concepts of “extremism” and the arbitrary expansion of the concept of “terrorism”, the arbitrary application of anti-extremist legislation and the disregard for international standards, in particular, soft law rules on freedom of expression, Belarus widely applies repressive practices of suppressing expression of opinions and persecuting opponents of the authorities. They are used as part of the total suppression of dissent in society, in an atmosphere of instilling terror in all spheres of social relations. On the one hand, any independent information related to a wide range of issues is banned: from the socio-political sphere to culture and Belarusian-language content. On the other hand, violations of prohibitions entail persecution in a variety of forms: cruel treatment and torture, fines, confiscation of property, administrative imprisonment and criminal prosecution, forced psychiatric treatment, threats of deprivation of citizenship, etc.

Much of this arbitrary repression was made possible by the absence of an independent judiciary and the involvement of the judiciary in punitive practices.

Penalties for violating legal requirements or repressive practices are regularly increased. This became possible due to the fact that the legislature has lost the features of a representative branch, and is not accountable to the people as the sole power holder.