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Extract from the IHF report

Human Rights in the OSCE Region: Europe, Central Asia and North America, Report 2005 (Events of 2004)

Belarus¹

IHF FOCUS: elections and referenda; national human rights protection (human rights defenders); freedom of expression, free media and information; peaceful assembly; freedom of association; judicial system and independence of the judiciary; right to a fair trial and effective remedies; arbitrary arrest and detention; ill-treatment and police misconduct; conditions in prisons and detention facilities; right to life; “disappearances”; freedom of religion and religious intolerance; ethnicity; racism, intolerance and xenophobia;

Belarus remained one of the worst countries in Europe in terms of respect for the rule of law, democracy and human rights. The government’s record fell short in respect to a number of basic rights. It imposed excessive restrictions on the freedom of expression, association and the media, while violations of the right of peaceful assembly continued. Conditions in prisons and detention facilities remained poor, amounting in some instances to cruel, inhuman and degrading treatment. Police misconduct continued, including arbitrary arrests and ill-treatment, and unsolved “disappearances” of the past remained uninvestigated. Fair trial standards were repeatedly violated by the courts. The Criminal Code and other legislation allowed arbitrary accusations against persons for various offences. As a result, intimidation and manipulation of critically minded public officials also became possible.

President Aliaksandr Lukashenka, in whose hands most power was concentrated, kept the country in a tight, authoritarian grip. Among other things, he directly appointed officials of state institutions – a practice that was at variance with democratic procedures.

In addition to wide-scale violations of civil and political rights, Belarus suffered economic privation and, still 20 years after the Chernobyl catastrophe, from its long-term consequences. As a result of political and economic repression, social problems grew further. For example, alcoholism increased and so posed a serious threat to the stability and development of society, as well as to the health and welfare of the nation.

¹ Based on the *Annual Report 2005 (Events of 2004)* of the Belarusian Helsinki Committee, prepared by Dzmitry Markusheuski.

Elections and Referenda²

Parliamentary elections were held on 17 October, together with a referendum. Similarly to previous fraudulent elections and referenda, the October poll fell seriously short of international standards for free and fair elections. The referendum, announced by President Lukashenko as late as September, was held to decide his eligibility in the forthcoming presidential elections.

Parliamentary Elections

The Belarusian Helsinki Committee (BHC, IHF member) monitored the elections of the House of Representatives of the National Assembly and documented serious violations. The Election Code did not provide for effective mechanisms to prevent election fraud and the members of the election commissions of all levels were appointed on the basis of loyalty to the authorities. Representatives of opposition parties did not have influence in the decisions of the commissions, nor did they have equal access to the necessary election materials. The number of voters was manipulated, in an apparent attempt to secure the necessary 50-percent threshold to declare the elections valid. Around 40% of candidates had their registration rejected on questionable grounds, with authorities claiming that signatures collected in their support were "not authentic" or that their parties did not have appropriate organizational structures in the election district. In some cases, registration was rejected under the pretext that there were petty formal mistakes in the candidate's income and property declaration, which all candidates were obliged to submit.

Authorities hindered the opposition candidates from meeting with the electorate indoors and the restrictive rules on demonstrations obstructed the holding of outdoor election rallies. Independent mass media faced pressure, and the authorities used public resources to support candidates loyal to them.

The elections were not transparent at any stages of the process – observers were not allowed to monitor the establishment of the election commissions; they did not have a genuine possibility to control the ballot-boxes and vote count; and they were generally prevented from monitoring the tally of absentee ballots. The Central Election Commission, according to its own interpretation of the Election Code, illegally restricted public associations' ability to participate in monitoring: only official members of NGOs were allowed to observe the elections, not other people selected by the NGO for this purpose. Members of the election commissions refused to authorize protocols on the election results that were prepared by the observers and by candidates.

The principle of a free and secret ballot was massively violated. Citizens, especially students and employees of state companies and institutions, were forced to vote in advance – often in the presence of the administration and other people. The ballots were not adequately protected against copying, their exact number was unknown and the final protocol confirmed by the local election commissions did not include all the necessary information.

Referendum

The parliamentary elections were combined with a referendum aimed at lifting all limitations on the tenure of President Lukashenko. The BHC stated that the Constitution and other laws clearly limit his tenure to two terms, and, therefore, a referendum on this question was illegal. The Presidential Decree No. 431 "On Calling the National Referendum" does not comply with the Constitution and other legislation of Belarus,

² See also the BHC report on the election observation, January 2005, <http://bhc.unibel.by/arhiv/elec2004.doc>.

violates the rights of citizens, and should thus have been considered invalid.³ In particular, according to article 78 of the Constitution, the list of issues, which cannot be brought to a referendum, is defined by the Election Code. This code stipulates that “the issues related to election and dismissal of the president of the Republic of Belarus cannot be brought to a national referendum” (part 3, article 112).

The fraudulent referendum decided that the number of presidential terms must not be limited. After this, the Constitution was changed, enabling President Lukashenka to nominate himself and to run in the next presidential elections.

The BHC filed a complaint to the Supreme Court, asking the court to rule illegal the Presidential Decree No. 431 and to declare it void from the date of its issuance. The BHC argued that the president also violated part 2, article 357 of the Criminal Code, i.e., a seizure or retention of power in an unconstitutional way. In addition, the BHC appealed to all state bodies that have the right to file complaints with the Constitutional Court to raise the issue on non-conformity of the decree with the Constitution. All of them rejected the appeal – and the Ministry of Justice moved to request the Supreme Court to close down the BHC.⁴

National Human Rights Protection

Human Rights Defenders

Belarusian human rights activists faced constant harassment, judicial proceedings and other threats. The authorities targeted especially the BHC, which was the only nation-wide human rights organization that still maintained its legal status.

- From August 2003 through January 2004, the Inspectorate of the Ministry for Taxes and Collections of the Maskowski District of Minsk audited all the BHC’s financial records since its foundation in 1995. While it confirmed that the BHC had used the funds adequately, it nevertheless charged Tatsyana Pratsko, the BHC chairperson, and Tatsyana Rutkevich, its accountant, for tax evasion and required the sum of over 385 million rubles (about EUR 140,000) in back taxes and fines for the BHC activities under the EU’s TACIS Program. On 23 June, the Economic Court of Minsk cleared the BHC of charges of tax evasion and a few days later a second instance court rejected the appeal of the inspectorate, thus confirming the legality of the BHC actions. Yet, the Department of Financial Investigations of the Committee of State Control continued a criminal case against Pratsko and Rutkevich, who faced the maximum sentence of seven years in prison and confiscation of property. Meanwhile, in December 2004, the investigator closed the case due to lack of crime, but the tax inspectorate appealed to the supervising Prosecutor Office to continue with the case.
- In another legal case against the BHC, the Ministry of Justice filed a case with the Supreme Court on 16 September for the closure of the organization. The ministry initiated the proceedings after the BHC had publicly voiced its doubt about the legality of the October referendum and appealed to the Constitutional Court to declare the referendum illegal. The BHC was not informed about the exact charges that were filed against it. The Supreme Court, however, returned the case back to the ministry without consideration.

³ The Council of Europe’s Venice Commission came to the same conclusion. See its statement “Opinion on the Referendum of 17 October 2004 in Belarus, Adopted by the Venice Commission, at its 60th Plenary Session (Venice, 8-9 October 2004),” Opinion no. 314/2004, [http://www.venice.coe.int/docs/2004/CDL-AD\(2004\)029-e.asp](http://www.venice.coe.int/docs/2004/CDL-AD(2004)029-e.asp).

⁴ See the section on National Human Rights Protection: Human Rights Defenders.

- On 16 September, the vice-president of the BHC, Hary Pahaniaila, and Tatsyana Reviaka, a member of the human rights center Viasna, were detained by unidentified persons in plain clothes for handing over to the prosecutor's office the report by Christos Pourgourides, the special rapporteur of the PACE on violent disappearances of politicians, and a resolution of the UN Commission on Human Rights on the situation in Belarus. The activists were accused of violating part 3 of article 172 of the Code of Administrative Offences, which states that "dissemination of printed editions, produced through breaching the established order and having no publisher's imprint, the contents of which is directed at causing damage to the state and social order, rights and legitimate interests of citizens" is an offence, which carries a fine at a rate of five minimum monthly wages and the confiscation of the "illegal" publications.
- In October, Hary Pahaniaila, who is a legal advisor of the families of the "disappeared" politicians (see below), was charged with slandering President Lukashenka. The prosecution based the charges on an interview that Pahaniaila gave to the Swedish TV4 channel, a videotaped version of which was confiscated by customs when the TV4 journalist left the country. In the interview, Pahaniaila described the due process violations that have characterized the investigations into the cases of "disappearances" that he was working on. If found guilty, Pahaniaila could be sentenced to up to five years in prison.

As a logical continuation to previous harassment of the BHC, the Ministry of Justice issued in January an official warning to the BHC for allegedly having breached its own charter when dealing with membership issues of its Homel branch and when sending people who were not BHC members as observers to polling stations during the parliamentary elections and referendum.⁵ In addition, the ministry claimed that the Brest branch had not had a "legal address"⁶ since November 2001. Should the BHC receive a similar warning in 2005, the ministry can ask a court to close the organization down.

Freedom of Expression, Free Media and Information

Political Opposition⁷

Members of the political opposition and other critical public figures were constantly targeted, harassed and risked detention on fabricated or questionable charges.

- Mikhail Marynich, former minister, Member of Parliament, ambassador, and presidential candidate was taken into investigative custody of the State Security Committee (KGB) on 26 April and was still detained as of the end of the year. Marynich was first charged under article 295(2) of the Criminal Code (illegal actions with firearms, ammunition and explosives), and later with additional criminal offences: theft or damage of documents, stamps, and seals (article 377.2) and larceny committed with abuse of power by an organized group or at an especially high rate (article 210.4). While the court dismissed the first charge, it sentenced Marynich for alleged larceny. The BHC believes that these charges were fabricated and the real reason for Marynich's detention appeared to be his opposition activities. On 25 August, the UN Working Group on Arbitrary Detentions was denied access to Marynich. On 30 December, despite reported due process violations and domestic and international protests, Marynich was sentenced to five years of imprisonment with confiscation of property.

⁵ The Ministry of Justice has used the interpretation of article 13 of the Electoral Code so as to allow only officials members of NGOs to observe the elections, not other people selected by the NGO for this purpose.

⁶ See the section on Freedom of Association.

⁷ See also the sections on Ill-Treatment and Police Misconduct.

- On 7 September, the Leninski District Court in Hrodna sentenced Valery Levaneuski and his assistant Alyaksandr Vasilyeu – both opposition politicians – to two years in a penal colony for defaming the Belarusian president, in conjunction with a felony (article 368.2) of the Criminal Code). Levaneuski chairs the National Strike Committee of Entrepreneurs. The two men had distributed leaflets with a satirical poem at an unsanctioned rally in May. Vasilyeu was also sentenced for organizing a protest action of entrepreneurs on 1 May. The court also ordered the confiscation of the computers that were allegedly used to produce the leaflets, and the defendants were ordered to pay 6,432 rubles (approximately EUR 234) for court expenses.
- On 26 September, Dzmitry Levaneuski, son of Valery Levaneuski, was detained at the local market in Pinsk. Police officers first took him to the market administration office, and then to Pinsk police department. He was reportedly hit hard on his back during interrogation. The police also confiscated 112 newsletters entitled *Predprinimatel* (Entrepreneur) and 245 leaflets about the trial of Valery Levaneuski and Alyaksandr Vasilyeu.

In addition to well-known public figures, other activists were targeted.

- In 2004, Valery Yarotski, who works with the BHC, was reportedly harassed by law enforcement authorities for his political criticism. He was ill-treated while in pre-trial detention for six months in SIZO-1, after which he was transferred to a psychiatric hospital. Yarotski was released only after the BHC had published information regarding his case. Nevertheless, the prosecutor's office started judicial proceedings against Yarotski for alleged defamation.
- Aksana Novikava was sentenced to two and a half years in a corrective labor colony for libel after she distributed leaflets critical of President Lukashenka at a Minsk subway station.⁸ Her case was but one of many similar cases, all aimed at suppressing legitimate criticism.

In 2002-2004, well-known public figures and intellectuals were increasingly subjected to beatings by “unidentified individuals” who, as a rule, were never caught. The victims included Professor Adam Maldzis; Yury Khaschavatski and Valery Mazynski, producers; Yauhen Kryzhanouski and Vitar Charnabayeu, actors; Radzim Haretski and Yauhen Babosau, academicians; Uladzimir Kolas, director of the recently closed National Humanitarian Lyceum; Siarhey Zakonnikau, a poet; Aleh Volchak, head of the recently closed “Legal Aid to Population”; and Valery Fralow, member of parliament.

Media Freedoms

In 2004, criminal, administrative and economic pressure on the independent mass media increased. The state-run media was financed from the national budget, and the Academy of Management under the President of the Republic of Belarus trained staff journalists for the state-owned mass media. At the same time, the independent media faced serious financial problems.

As of 1 December, 1,255 periodicals were registered with the Ministry of Information (versus 1,411, as of 1 May 2003), as well as nine news agencies, 51 television stations (26 of them state-owned) and 149 radio stations (130 of them state-owned). Two thirds of the total number of printed periodicals, television and radio companies, and news agencies were not owned by the state. At the same time, however, the circulation of state-owned printed media exceeded that of the non-state outlets because the authorities promoted and subsidized state-run media and obliged officers and workers to subscribe to them. In addition, state-owned printed media were favored by the monopolistic state-run distribution service.

⁸ Amnesty International (AI), “No freedom of expression in Belarus,” 10 June 2004, <http://news.amnesty.org/mavp/news.nsf/print/ENGEUR490132004>.

Under various pretexts, printing houses refused to print independent newspapers and magazines or censored them, fearing problems from the authorities.

- In December, an issue of *Volnae Hlybokae* was censored by the administration of Maladzechna state-run printing house. They replaced an article about a meeting held by the oppositional Belarusian Popular Front with the inscription “Your Ad could be here.”

Fearing problems from the authorities, shops and supermarkets refused to sell independent newspapers and magazines.

Another powerful form of indirect censorship was the right of the authorities to issue official warnings to the mass media—after two warnings, a court was able to order the closure of an media outlet. Moreover, the Ministry of Information was able to suspend the operation of an outlet without a court decision. In 2004, the ministry punished a number of media outlets after their critical reporting. The following newspapers were suspended: *Novaya Gazeta Smarhoni*, *Navinki*, *Zgoda*, *Vremya*, *Predprinimatelskaya Gazeta*, *Vecherni Stolin*, *Regionalnaya Gazeta*, *Narodny Predprinimatel*, *Regionalnye Vedomosti*, *Birzha Informacii*.

Authorities at all levels refused access to information of public interest and on their activities to non-state mass media and did not allow them to attend official events such as press conferences and “public” hearings that were open to the state-run mass media.

- In October, Dzmitry Markushchuk, a correspondent of the human rights magazine *Chalavek*, was not allowed to attend the “public” hearing of the administrative case of Hary Pahaniaila before a district administrative commission.

Local administrations and courts refused to give any information to correspondents of *Narodnaya Volya*, *Belorusskaya Gazeta*, *Den'*, *Mestnaya Gazeta*, *Hancavitski Chas*, and other independent papers.

Throughout the year, leaders of several public organizations (Ales Bialiatski, Iryna Zhyhar, Siarhej Matskevich and others) were “invited” to the prosecutor's office to be questioned about the publication called *Assembly*, a bulletin of public activists. One edition of the bulletin was confiscated. Later on, several activists whose organizations focused on politics were summoned to the prosecutor's office and the KGB.

There was a serious threat to free access to the Internet and specific websites were banned. According to new rules, visitors of internet cafes were obliged to identify themselves and the cafe administration was required to keep track of their customers surfing on the Internet.

Criminal Defamation and Insult

A serious threat to the freedom of mass media is provided by the Criminal Code for “offences against the order of state management.” Article 367 of the code states that defamation of the president may be punished by deprivation of liberty for up to five years. Article 368 of the code envisages a fine or up to three years of imprisonment for insulting the president. In 2002-2003, three journalists were convicted for criminal libel for their criticism of the president and the government and served their sentences.

Criticism of the authorities often equalled to an insult of the authorities, which, under article 369 of the Criminal Code, entails a fine, correctional labor or deprivation of liberty for up to three years. This circumstance essentially affected the course of the electoral campaign in October 2004. Moreover, during the elections, the authorities censored speeches of the candidates.

In 2004, the editorial boards and correspondents of the *Belorusskaya Delovaya Gazeta*, *Narodnaya Volya*, *Mestnaya Gazeta*, *Den'*, *Gazeta dla Vas* were reprimanded and fined for allegedly insulting the authorities.

State Indoctrination

All state organizations and enterprises with a staff more than 300 people employed “deputy managers for ideological work.” Their task was to promote the ideology of the Belarusian state and its home and foreign policies.

In addition, each university and other institutes of higher education provided for compulsory courses on state ideology. State officers and state-run enterprises were obliged to subscribe to the presidential and governmental newspapers *Sovetskaya Belorussiya* and *Respublika*.

- In July, all Belarusian TV and radio stations were admonished for transmitting songs of the music groups Palace, N.R.M., Zet, Neuro Dubel, and Drum Ecstasy, which participated in a concert at an opposition meeting on 21 July.

Peaceful Assembly

It was only possible to hold peaceful assemblies and demonstrations if permitted by authorities, and organizers had to cover the costs for “providing for public order.” Opposition rallies were as a rule not sanctioned and – if they were held at all – were dispersed by the police and the participants were beaten, arrested and fined. Authorities often moved even sanctioned demonstrations to suburban areas or they banned them outright.

- On 21 July, during a mass demonstration of thousands of people to mark the end of Lukashenka's tenure according to the 1994 Belarusian Constitution, riot police hindered regional activists from participating in the rally. Busses carrying members of regional branches of political parties were stopped on their way to Minsk. More than 60 demonstrators were arrested, some 20 people were forcibly banished from Minsk, 26 spent a night in detention and over 20 activists were sentenced to administrative detention of up to 15 days or fined.

Freedom of Association⁹

New regulations and practices led to a wave of threats to and liquidations of NGOs, which seriously affected the whole Belarusian civil society. A number of NGOs were closed down for alleged violations of regulations relating to foreign aid and rules on registration. A number of restrictions on the freedom of associations and activities of NGOs were not based on laws but were merely outlined in presidential decrees and instructions of the Ministry of Justice.

The commission that decided on registrations and re-registrations consisted of representatives of the Ministries of Interior and Justice, and the KGB. The applicants underwent checks of political reliability – which were not provided by the law – and the appointments were often rejected without any legal basis. Despite the regulation that the registration procedure must not take longer than one month, it often took one or two years.

⁹ See also the section on National Human Rights Protection: Human Rights Defenders.

Among additional arbitrary hurdles that impeded legal registration was, for example, a requirement that a public organization must have an office in an administrative building. However, such buildings in Belarus are state-owned and are usually not rented to independent organizations. In October-November, the authorities started a large-scale campaign to check the legal addresses of NGOs, which will probably result in the closure of a number of NGOs and the majority of regional branches of political parties in the near future.

Closing public organizations by court ruling on the basis of a lawsuit initiated by the Ministry of Justice was common practice in 2004. From January through September, 21 public organizations were liquidated, most of them having opposition activists as their leaders. Courts decided to shut down, for example, the Independent Association for Legal Research, the Centre of Constitutional and Comparative Legal Research, the Belarusian Association of Young Politicians, “Initiative” Women’s Association, Maladaya Hramada (the youth wing of the Social Democratic Party), New Group Youth Association, the Belarusian Engineer Technological Academy, and the International Institute for Political Research. The Olympic Fund was liquidated because its leader, Mr. Parfianovich, was an opposition MP. In addition, the Party of Labour was shut down on questionable grounds.

Most court rulings ordering to close down public organizations were based on accusations that the official address of an NGO was a private apartment; that the documents submitted for registration were insufficient or erroneous; that the NGO had violated its own membership procedures and members’ registration; or that it had failed to inform the authorities promptly about the changes in the official titles of the leaders of the organization, etc.¹⁰ A number of organizations decided to dissolve themselves at the request of the Ministry of Justice simply because they wanted to avoid further problems with authorities.

At the same time as independent NGOs were closed down, the authorities set up so-called “state public organizations” and other “NGOs” that were controlled by the state.

The requirement that public associations must submit reports of their activities to authorities seriously impeded participation in their activities. Because most of the NGOs that were officially shut down continued their work illegally, their activists were constantly exposed to the danger of being fined or arrested. In 2004, 20 activists of Charter’97, Zubr, and People’s Coalition “5+” were punished for carrying out activities on behalf of non-registered NGOs.¹¹

- In December 2004, authorities hindered the work the Independent Institute for Socio-Economic and Political Studies (IISEPS). Its director, Professor Manaev, was interrogated by prosecutors about IISEPS research activities during the parliamentary elections. The KGB searched the IISEPS office, and the Ministry of Justice reprimanded the IISEPS for hiding its questionnaire, used in the last poll.

A new draft on public organizations was prepared and passed the first reading in the Chamber of Representatives. It includes further restrictions on NGO activity. For example, according to the draft law, public organizations shall report on their activities to authorities on an annual basis.

Trade union activities were obstructed by state pressure on their members, a virtual ban on strikes and obstacles related to the registration of new trade unions. Trade unions were set up on a territorial (instead of professional) basis under the aegis of local authorities and were controlled by them. Authorities frequently attempted to influence their elections at all levels.

¹⁰ Survey on the System of Collective Defense of Non-Governmental Organizations of Belarus, December 2004.

¹¹ Ibid.

According to a report¹² issued by an ILO Commission of Inquiry, several acts by the Belarusian government gave rise to the conclusion that the trade union movement has been and continues to be the subject of significant interference on the part of the government. The ILO commission concluded that the independence of the Federation of Trade Unions of Belarus (FPB) had been seriously compromised under its current leadership.

Judicial System and Independence of the Judiciary¹³

By law, the president of the republic appointed the judges at all levels after a procedure that started with their nomination by the executive branch. For the appointment of judges to the Supreme Court and the Supreme Economic Court, he needed consent of the Higher Chamber of the Parliament. The judges' terms were unlimited except for their first appointment for five years. The candidates' qualifications had to be approved by qualification boards of judges, i.e., bodies of judicial self-management. The president was allowed to dismiss any judge after a qualification board recommended it.

The main threat to the independence of the judiciary lay in the system of material and social subsistence of judges. For example, a judge had the right to a publicly owned apartment but the apartment was allocated by local authorities. Judges' salaries and social guarantees were established by the president. Their monthly income was about 750,000 Belarusian roubles (approximately EUR 285).

The lack of independence of the judiciary was also demonstrated in the judges' willingness to approve almost automatically proposals for the closure of public associations and to pronounce convictions in fabricated defamation cases brought forward by the departments of justice.

Lawyers

Lawyers did not enjoy the freedom that would be necessary to carry out their duties properly. The Presidential Decree No. 12 (1997) amended the Law "On Advocacy" to stipulate that legal services may be rendered only by members of the bar who have obtained additional license issued by the Ministry of Justice. The license is granted for five years and only upon passing a special examination, which is taken without consideration of the lawyer's specialization. The qualification board consists of only two lawyers of the Bar – the other members represent the KGB, the Ministries of Interior and Justice, and the Supreme Court. All candidates need a prior consent of a regional Bar to be allowed to take the examination.

In September, Miachyslaw Hryb, a lawyer, member of the BHC Council and former speaker of the Belarusian Parliament (1994-1996), appealed to the UN Human Rights Committee complaining that authorities discriminate against him because of his political conviction. His advocate license was annulled on the basis of the Presidential Decree No. 12 of 3 May 1997. On 1 July 1997 he had re-passed the qualifying exam at the Ministry of Justice and was supposed to be issued a new advocate license. However, on the basis of a 29 July 1997 legal amendment, the minister of justice refused to issue the license for his alleged violation of the Code on Administrative Offences during a peaceful demonstration on Constitution Day. Hryb emphasized that at that time he enjoyed immunity as an MP and was therefore not subject to administrative prosecution. Hryb has exhausted all domestic remedies without effect.

¹² *Trade Union Rights in Belarus, Report of the Commission of Inquiry appointed under Article 26 of the Constitution of the International Labour Organization to examine the observance by the Government of the Republic of Belarus of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98)*, Geneva, 2004, <http://www.ilo.org>.

¹³ Based on the special BHC report by Hary Pahaniaila and Aleh Hulak, *The Courts and Human Rights*, 2003.

Lawyers were obliged to take on state-appointed cases but did not receive additional payment for them. As a result, the lawyers typically showed little interest in the genuine defence of the rights of their clients in such cases. Nevertheless, there was no mechanism to make them accountable for such neglect.

Fair Trial and Effective Remedies¹⁴

During 2004, Belarusian courts considered roughly 170,000 civil cases, 60,000 criminal cases and 300,000 administrative cases. While according to the head of the Supreme Court, Valiantin Sukala, the courts handed down incorrect judgements in only 1.5% of the cases, surveys showed that very few people trusted the courts. For example, the National Report on Human Development of Belarus (UNDP, 2003) indicated that only 9 % of the interviewed experts and public opinion leaders expressed their trust in the courts.

Courts frequently accepted as sole evidence a confession by the suspect, even if there was reason to believe that it had been given under duress. The punishments were often totally disproportionate to the harm done. For example, fines for felonies were sometimes as high as EUR 625, which equals an average annual salary. Trials were often held behind closed doors without adequate justification, and representatives of human rights organizations were not allowed access to courts to monitor hearings.

The courts and prosecutor's offices generally refused to consider cases related to electoral disputes or alleged misconduct by public authorities. In addition, courts practically never referred to the norms of the Constitution or international treaties, and in many cases, rulings of the Constitutional Court were ignored by lower courts.

Despite constitutional guarantees for access to the courts to defend one's rights, not all people enjoyed this right in practice, as they were unable to pay the high court fees. For example, in cases of non-property suits, defence of one's honor and dignity, or on appeal against actions of state officials, a claimant must pay a fee of almost half of an average monthly salary.

The right to appeal was also insufficient because the Supreme Court in many cases acted as the first instance court – including in some serious criminal cases – with no higher instance to appeal.

Arbitrary Arrest and Detention¹⁵

Participants of peaceful meetings and demonstrations were the principal victims of arbitrary detention. Dozens of members of the informal oppositional youth movements Zubr and Malady Front, as well as other political activists and journalists, were arbitrarily detained during 2004.

The police (militia) officers, border guards, the KGB, the military police and the presidential security service were allowed to apprehend people. Once a suspect was arrested, he or she could be detained for a maximum of 72 hours.

The prosecutors and investigators enjoyed excessive powers during the pre-trial detention period. Prosecutors, at the request of an investigator, had the power to decide whether to hold a person in

¹⁴ Ibid.

¹⁵ See also the section on Peaceful Assembly and the report of the UN Working Group on Arbitrary Detention on its visit to the Republic of Belarus from 16 to 26 August 2004 (E/CN.4/2005/6/Add.3), <http://www.unhchr.ch>.

detention or to extend the period of detention without permission by a judge. Investigations were carried out without effective control by a judge.

- Mikhail Marynich (see above) was taken into investigative custody of the KGB on 26 April and remained there as of the end of December, on questionable grounds.¹⁶

III-Treatment and Police Misconduct¹⁷

Most cases ill-treatment and other misconduct by the police occurred during peaceful demonstrations and detention, in custody pending trial, arrest and at deprivation of liberty and in mental hospitals.

- In late 2003, 31 patients of a mental hospital died in a fire in Kazlovichy, Hrodna region.
- On 23 January, twenty-year-old Maxim Khromel, being drunk, was arrested in the evening in Minsk at a public transport stop and taken to a police station. Five hours later, Khromel's mother was called and asked to come and take her son away. She found her son dead on a bench near a police station of the Partyzanski District Interior Department. A medical examination diagnosed cerebral haemorrhage and haematomas. The prosecutor's office brought charges against the militiamen for "service negligence, which entailed a human death."

Police frequently used violence to disperse peaceful demonstration organized by the opposition.

- On 19 October, soldiers of the special police detachment (OMON) brutally put down the peaceful protest action against the fraudulent results of the parliamentary elections and the referendum. The police beat hundreds of people, including journalists, injuring many of them seriously. One of them, Anatol Liabedzka, the leader of the United Civic Party, was hospitalized. Around 50 people were detained, including minors, and they were fined around EUR 312 or had to spend 15 days under administrative arrest.

"Disappearances"

"Disappearances," involving the prolonged incommunicado detention or death of a detainee, were described by the UN Special Rapporteur on torture as "constituting torture for the victim and a kind of torture for family members due to continued uncertainty regarding the victim's fate."¹⁸

The whereabouts of four people critical of the government remained unknown as of the end of 2004 and were also specially mentioned by the UN rapporteur. They were: Yury Zakharanka, former Minister of Interior; Viktor Hanchar, vice-speaker of Belarusian Parliament (XIII convocation); Anatol Krasowski, a businessman supporting the opposition; and Dzmitry Zavadski, Russian public TV operator and former personal cameraman of President Lukashenka. All of them vanished in 1999-2000, and Belarusian authorities have failed to conduct a comprehensive and objective investigation into the "disappearances".

¹⁶ See the section on Freedom of Expression, Free Media and Information: Political Opposition.

¹⁷ See also the section on Peaceful Assembly.

¹⁸ The UN Committee against Torture, *Summary record of the first part (public) of the 442nd meeting: Belarus*. 20/11/2000. CAT/C/SR.442, <http://www.unhchr.ch/tbs/doc.nsf/0/4ab4670a99e9ee73c125699f005d29d4?Opendocument>.

The BHC suspected that the failure to investigate the cases was due to the fact that the highest state officials were involved in organizing the kidnappings and possible killings of the “disappeared” persons.¹⁹

These cases received renewed attention when the Council of Europe published a report about them in January 2004. The report revealed serious shortcomings in the investigations into the “disappearances” and indicated that efforts had been taken at the highest state level to cover them up. The report also expressed strong suspicion that senior officials may have been involved in the “disappearances”. The criminal inquiry into the abduction of Zavadski was closed in April 2004 after it had been reopened just days before the publication of the Council of Europe report.²⁰

Conditions in Prisons and Detention Facilities

Prisoners and detainees in Belarus typically had less than two square meters of space, including bed space, in dirty, dusty, and poorly ventilated cells. In some extremely overcrowded jails, prisoners had to take turns sleeping. Inmates were not given enough food, were forced to use inadequate hygiene facilities, and did not always receive the medical care or medicines that they needed.

Tuberculosis was widespread, including its active forms. Prisons and SIZOs (pre-trial detention facilities) made up 24 % of the total number of HIV-infected patients registered in the country. Among prisoners, there were 1,300 drug addicts and 9,900 chronic alcoholics. More than 25 % of convicts suffered from various mental disorders.

Human rights groups received letters from prisoners claiming that they were tortured or abused in other ways by prison staff, but there were no effective mechanisms to investigate the alleged abuse. Usually, the complainants did not want to have their names mentioned to the prison administration because they, justifiably, feared reprisals.

Right to Life

Belarus was one of only three OSCE states, which still carried out executions in 2004.²¹

In November 2003, the Belarusian Parliament submitted to the Constitutional Court a request to consider if the death penalty was justifiable under the Constitution. In March 2004, the court ruled that the president or the parliament is allowed to abolish the death penalty if they wish to do so. By the end of the year, however, no measures were known to have been taken to this end.

While two men were sentenced to death during 2004,²² the Department on Punishments of the Ministry of Interior refused to provide any information on how many death sentences were carried out. Due to

¹⁹ The officials who were particularly suspected of being involved in the disappearances were: V.V. Sheiman, former secretary of the Security Council and prosecutor general, currently head of the Presidential Office; Yu.L. Sivakou, former minister of internal affairs, currently minister of sports and tourism; N.V. Vasilchenka, former head of the security service of the president; Lieutenant Colonel D.V. Paulichenka, commander of the military unit 3214; V.V. Naumau, minister of internal affairs. See also the special report of the Belarusian Helsinki Committee to the 60th session of the Commission on Human Rights of the United Nations, March 2004, <http://bhc.unibel.by/arhiv/2004UNreport.doc>.

²⁰ Committee to Protect Journalists, “Prosecutors close investigation into journalist’s abduction,” 15 April 2004, <http://www.ifex.org/en/content/view/full/58321/>.

²¹ The other two were the United States and Uzbekistan.

²² According to the Supreme Court of the Republic of Belarus.

complete secrecy surrounding issues related to the death penalty, not even the family of the prisoner was informed about the date of execution, nor was his body handed over to them for burial. The place of burial was also kept secret.

Freedom of Religion and Religious Tolerance²³

The Constitution of Belarus provides for freedom of religion and equality of all religious communities. Nevertheless, the government openly backs and financially supports the Belarusian Exarchate of the Russian Orthodox Church, while minority religious communities are subject to harassment. The concordat signed on 13 June 2003 between the Belarusian government and the Russian Orthodox Church promotes one faith over all other religions.

The State Committee for Religious and Ethnic Affairs claimed that the 2002 restrictive law on religious organizations, which was drafted in consultation with the Russian Orthodox Church, was aimed at protecting citizens against dangerous “sects” and “cults.” In reality it placed far-reaching restrictions on all religious activity and required that all religious associations be re-registered by the end of 2004. Activities of non-registered religious groups were banned by law.

According to the preamble of the law, the Russian Orthodox Church plays a “determining role” in spiritual, cultural and state developments in Belarus. Catholicism, Lutheranism, Judaism and Islam are depicted as “traditional” religions. As regards other faiths, the law establishes that only those religions that have existed in the country 20 years and have at least ten member congregations can be officially recognized, hence affecting especially the so-called “new religions.” As a result, for example, the Hare Krishna movement was not officially recognized as it was not registered during the Soviet era, so relegating its activities to illegality. In 2003, thirty-five religious communities were registered, 28 of them belonging to the Russian Orthodox Church. In 2004, most religious communities that were denied re-registration were Protestant. Registration by most Orthodox churches that were not subordinated to the Moscow Patriarchate was effectively barred.

In 2004, religious groups that were not registered with the authorities were not allowed to collectively practice their faith, while even registered groups needed permission to conduct worships. All religious literature was subject to censorship prior to import or distribution and foreigners were not allowed to lead religious communities. The law, which is vaguely formulated, also regulates a broad range of other activities. For example, meetings of members of different communities of the same denomination were sometimes regarded as a violation of the law.

Prior permit from authorities was necessary to lease premises for events. This affected particularly many Protestant communities, which did not have premises of their own. In Minsk, most of the 500-800 Full Gospel communities had no opportunities to lease rooms for their regular religious meetings.

Members of minority religious communities were frequently warned, fined or arrested for participating in religious meetings or singing religious songs in public places. Most victims were from small religious groups established in rural areas.

²³ Based on the special report of the BHC to the 60th session of the Commission on human rights of the United Nations, March 2004.

Ethnicity

About 74% of the population identify Belarusian as their mother tongue while only 37% actually speak it.²⁴ This is a result of government policies aimed to suppress the use of the Belarusian language and to promote the use of Russian. Almost all laws are adopted in the Russian language and their Belarusian translations have no legal effect. There is a lack of Belarusian-language schools and no Belarusian-language institutions of higher education exist. The percentage of schools and classes with Belarusian as the language of instruction decreases each academic year: in 1994-1995 it was 40.6% but in 2004-2005 only 23.8%.²⁵

On 1 April, the publication of the state-owned magazine *Byarozka* was suspended. It was the country's only Belarusian-language children's magazine. Its editor and all of its staff members were dismissed. Officials cited administrative reasons, but most people believed that the real reason was the fact that it was written in Belarusian. Russian-language publications continued to be subsidized, including the children's magazine *Kacheli*.²⁶

In March 2004, all the entrance examination forms for all subjects except the Belarusian language at institutes of higher education were available in Russian only. More than 28,000 entrants from schools with the Belarusian language of instructions had to take their tests in Russian.²⁷ In a similar vein, the ballot papers of the October referendum were printed only in Russian.

On TV and radio, the Belarusian language is presented solely as a language of ethnography, history and literature; programs featuring political, social or economic issues are transmitted in the Russian language only. Moreover, the state media labels all Belarusian-speakers as "national fascist" and opposition activists in a very negative sense. Only a very small number of Belarusian-speakers work in the state administration or in law enforcement agencies and they hold primarily unimportant posts.

Belarusian-speakers face discrimination in daily life as well. For example, there is no SMS service for mobile phones in Belarusian, official personal registration forms are only in Russian, and state companies refuse to hire Belarusian speakers. Radio stations refuse to play Belarusian songs even at listeners' request, as happened on *Alfa-Radio* in November, when the disc-jockey demanded that a listener speak Russian only and insulted her for speaking Belarusian. The disc-jockey apologized some days later.

Racism, Intolerance and Xenophobia

Discriminatory and xenophobic tendencies against minority groups have become more common in Belarus but there are no national bodies with a clear mandate to combat such behavior. The state media frequently broadcast programs with an anti-minority message.

In August 2004, the UN Committee on the Elimination of Racial Discrimination considered the periodic report²⁸ of Belarus and a shadow report submitted by the BHC,²⁹ expressing particularly its concern over the dissemination of racist, discriminatory and xenophobic propaganda on the Internet.³⁰

²⁴ According to the national census of February 2000.

²⁵ Official data from the Ministry of Education of the Republic of Belarus.

²⁶ TOL, *Belarusian: A Language in Retreat*, April 2004, <http://www.tol.cz>

²⁷ Information from the Belarusian Language Fellowship.

²⁸ The fifteenth to seventeenth periodic reports of Belarus, submitted in one document (CERD/C/431/Add.9).

²⁹ See the BHC special report to the 65th session of the Committee on the Elimination of Racial Discrimination, http://bhc.unibel.by/arhiv/BelarusHC_report_CERD.doc.

³⁰ *Concluding observations of the Committee on the Elimination of Racial Discrimination: Belarus. 10/12/2004. CERD/C/65/CO/*,
[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/934184777a5e8869c1256efa005f338e?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/934184777a5e8869c1256efa005f338e?Opendocument).