



Violations of the rights of creative professionals, activists and artists during the post-election crackdown in Belarus between October 2020 and January 2021

# Report: Violations of the rights of creative professionals, activists and artists during the post-election crackdown in Belarus between October 2020 and January 2021

Produced by:



International Partnership for Human Rights (IPHR)  
Truth Hounds Georgia  
Belarusian PEN Center  
Legal Transformation Center (Lawtrend)



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Within the framework of the Civic Solidarity Platform.

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# I. Executive Summary

This joint report by Belarusian PEN Centre, Civic Solidarity Platform (CSP), International Partnership for Human Rights (IPHR) and Truth Hounds, presents information obtained from monitoring by Belarusian PEN Centre as well as other local and international human rights defender organisations and provides an assessment of the human rights violations against creative professionals, activists and artists by the Belarusian authorities in response to the post-election protests in Belarus.<sup>1, 2</sup> The report focuses primarily on events documented between October 2020 and January 2021.

Unprecedented, mass peaceful protests followed the Belarusian Central Election Commission's (CEC) announcement that Alexander Lukashenko had won the highly contested presidential election of 9 August 2020 with an overwhelming majority. Protestors took to the streets in cities across the country to protest what they believed to be the rigged re-election of Lukashenko, and regular demonstrations have continued to date.

Artists have been amongst the key actors in the post-election events in Belarus. Whether participating in mass demonstrations, or holding individual/group acts of protest, artists have significantly raised the publicity and impact of the protest movement. Yet, due to the increased public attention, artists have also become targets for “exemplary punishment” by the state authorities and security services.

Research by Belarus PEN Centre focusing on violations targeting artists and creative professionals shows that since August 2020 hundreds of artists, from various disciplines and geographical areas within Belarus, have been detained for peacefully expressing their rights to freedom of expression and/or assembly and sentenced to periods of administrative detention of up to 20 days,<sup>3</sup> as well as being fined. The report finds that artists and creative professionals taking part in the protests and expressing oppositional opinions via creative means have been disproportionately targeted during the post-election engagement during the post-election crackdown. The violations targeting this specific group of activists and artists are part of the overall pattern of violations of the rights of protestors witnessed during the post-election protests.

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1 In this report the terms ‘artists’ and ‘creative professionals’ are used to describe people involved in the field of creative industries, including those who work in: primary cultural production, distribution and interpretation of cultural and creative works, cultural management, education, and protection of cultural rights and freedom of expression.

2 The terms ‘cultural workers’ and ‘artists’ are used interchangeably in this report.

3 The Code of Administrative Offences of Belarus provides for administrative detention as a punishment for administrative offences. Chapter 6 of the Code lists the sanctions that may be imposed by the courts on those who committed administrative offences. Article 6.7 provides for ‘administrative detention’ as one of such forms: <https://cis-legislation.com/document.fwx?rgn=14895>

In addition, the human rights violations witnessed during the post-election protests form part of a broader pattern of state harassment and persecution of artists in Belarus. According to monitoring by the Belarus PEN Centre, there were at least 485 cases of state violence against cultural rights workers and artists from December 2019 to November 2020. According to PEN Centre figures, the number of violations has increased by an average of 551 percent each month since August 2020.<sup>4</sup>

The violations documented by human rights groups during the post-election protests include: violations of the right to freedom of peaceful assembly and expression; the use of excessive and unreasonable force to disperse predominantly peaceful protests; arbitrary and/or unlawful detentions of protestors and bystanders; torture and ill-treatment in detention; overcrowded detention facilities, including deprivation of access to food, drinking water and adequate sanitation facilities; violations of international fair trial standards during court hearings held inside detention facilities and behind closed doors.

Artist and community teacher Raman Bandarenka died in custody after he was beaten by police officers on 11 November 2020. To date, the authorities have failed to promptly and impartially investigate allegations of torture and ill-treatment and bring the perpetrators to justice as required by the UN CAT and other international human rights treaties ratified by Belarus.

In fact the Prosecutor's Office and the Investigative Committee have not opened a single criminal investigation into the numerous allegations of systematic and widespread torture of protestors in detention. At the same time, law enforcement officials continue to use torture and cruel, inhuman and degrading treatment against detained protestors.

Finally a large number of artists and creative professionals have been dismissed from their workplaces or forced to resign after they publicly expressed their political views. At least 140 students and at least 15 academics have been dismissed from Belarusian universities due to their active civil position and participation in the peaceful protests, including students and academic staff of the Belarusian State Academy of Arts.

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4 The Belarusian PEN Centre 'The first results of monitoring violations of cultural rights in Belarus are available' 21 December 2020: <https://pen-centre.by/en/2020/12/21/stali-vyadomyya-pershyya-vyniki-manitorynga-parushennya-pravou-u-sfery-kultury-u-belarusi.html>

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## II. Methodology

This report is based on information gathered from interviews with and testimonies of individuals involved in the protests, victims of violence and unlawful treatment, witnesses and passers-by as well as media reports, reports from human right activists and local and international NGOs working in the field. The information gathered indicates a pattern of intentional arbitrary and/or unlawful detentions and also of concerted efforts by law enforcement officials to intimidate and discourage the population of Belarus, and in particular artists, professionals and students in the art and culture industry, as well as activists and others, from exercising their lawful right to peaceful assembly. The evidence points to carefully planned and orchestrated round-ups carried out by riot police and other law enforcement officials, including officials who wore no signs of identification.

The Belarusian PEN Centre carries out systematic monitoring of human rights violations against cultural workers and the implementation of cultural rights. The national monitoring focuses on cultural figures working in diverse fields: literature, photography, music, design, theatre, cinematography etc. Data collection is based on analysis of publicly available information ; state and non-state media (15 media portals in total); information from creative associations and initiatives across Belarus (about 20 partners); information from Belarusian human rights organisations in partnership with the Centre for Legal Transformation (Lawtrend); personal testimonies of cultural figures and artists and observation of trials of cultural workers; monitoring of social media and Telegram channels of professional and regional communities. By cross-checking information from numerous sources, the Belarusian PEN Centre aims to provide nuanced and reliable information.

This report, focusing on artists and creative professionals as a particularly active group of protesters, serves as a follow-up report to IPHR, Truth Hounds and Civic Solidarity Platform's previous *publication* from September 2020 on the violation of protesters rights in Belarus during the post-election process. This report looks in more depth at the treatment of one particular, active group of protestors by the Belarusian authorities.

### III. Overview of events



## Background to detentions of artists

The widely disputed Belarusian presidential election took place on 9 August 2020 in a highly tense atmosphere. Ahead of the election, the authorities had barred several opposition candidates from running and arrested several of them on trumped-up criminal charges. According to Belarusian human rights defenders and other observers, the authorities also arrested at least 2000 political opposition activists, journalists, bloggers, peaceful protesters and others in the months leading up to the vote. Among them were nine members of opposition candidate Svetlana Tikhanovskaya's campaign staff. Tikhanovskaya emerged as long-term President Alexander Lukashenko's main opponent in the election after entering the race instead of her husband, the popular YouTube blogger Sergei Tikhanovsky who was denied registration and arrested.

After the announcement of the preliminary election results on 9 August 2020, thousands of people took to the streets to protest what they believed to be the rigged re-election of Lukashenko and to defend the votes they had cast for Tikhanovskaya. Large numbers of peaceful protesters gathered in the main squares in the capital, Minsk, as well as in Brest, Gomel, Grodno, Mogilev, Molodechno, and other cities across the country on Election Day and in the weeks and months after the election.

The main opposition candidate, Svetlana Tikhanovskaya fled to Lithuania after apparently being intimidated by government representatives during a three-hour long meeting in the building of the Central Election Committee (further CEC) in Minsk on 10 August 2020. She allegedly faced threats to her safety, as well as that of her family. In addition, she was forced to record a video in which she said that she accepted the official election results and called for an end to the demonstrations. As of mid-August 2020, Tikhanovskaya resumed her opposition activity from exile and addressed the people of Belarus,<sup>5</sup> international institutions<sup>6</sup> and other audiences<sup>7</sup> in video messages calling for an end to police violence, the release of all political prisoners and a free and fair presidential election.

After six months of protests, over 16,000 people have been detained for participating in peaceful assemblies, including at least 169 people who are considered to be political prisoners. To date, the authorities continue to routinely prosecute citizens for political reasons.<sup>8,9</sup> At the time of writing at least seven people have died as a result of the actions of law enforcement officials.

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5 BBC News Russian, «Давайте вместе защитим наш выбор»: новое обращение Светланы Тихановской, 14 August 2020: <https://www.bbc.com/russian/live/news-53698604>

6 'Ruptly' Youtube Channel, 'LIVE: Belarus opposition leader Tikhanovskaya addresses the European Parliament', 25 August 2020: <https://www.youtube.com/watch?v=AP7MhtFBI5w>; Council of Europe, 'Secretary General gravely concerned by human rights violations in Belarus', 08 September 2020: <https://www.coe.int/ru/web/portal/-/secretary-general-gravely-concerned-by-human-rights-violations-in-belarus>; BBC News, Belarus: 'Tikhanovskaya urges UN intervention to stop violence', 05 September 2020: <https://www.bbc.com/news/world-europe-54024272>

7 'In time Ukraine' Youtube Channel, 'Обращение Светланы Тихановской к гражданам России: Поддержите белорусский народ', 09 September 2020: <https://www.youtube.com/watch?v=O9YQPWashu4>

8 European Platform for Democratic Elections, November 2, 2020: <https://www.epde.org/en/news/details/human-rights-situation-in-october-2020.html>

9 iSANS, 'Political prisoners in Belarus, 2020', 30.12.2020: [https://isans.org/palitviazni/?lang=eng&fbclid=IwAR33r5IOc0GWid8OlaVfUnZt1N\\_7H8TH8Gfk9hGkNmwi1uqOOwCA49Nhv4w](https://isans.org/palitviazni/?lang=eng&fbclid=IwAR33r5IOc0GWid8OlaVfUnZt1N_7H8TH8Gfk9hGkNmwi1uqOOwCA49Nhv4w)



During the protests, representatives of the artistic community reported being subjected to human rights violations including: unlawful and/or arbitrary detentions of artists by riot police, police and plainclothes police officers; torture and ill-treatment in detention facilities; violations of due process safeguards during arrest and detention, and a lack of adequate and timely medical treatment for detainees. This report provides an overview of these human rights violations committed by state actors against artists in Belarus.



## IV. Legal framework for the protection of human rights in Belarus



# International Human Rights Standards

As a state party to key international human rights treaties, including the International Covenant on Civil and Political Rights,<sup>10</sup> the UN International Covenant on Economic, Social and Cultural Rights,<sup>11</sup> the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment<sup>12</sup> and others,<sup>13</sup> Belarus is legally bound to comply with the obligations set out therein. Additionally, as a member of the Organisation for Security and Cooperation in Europe (OSCE) Belarus has agreed to observe a set of human rights commitments.<sup>14</sup>

## Human Rights Standards in National Legislation

The Constitution of Belarus recognises the supremacy of generally recognised principles of international law, and, according to Article 8, domestic law must fully comply with these principles. Further, Article 21 of the Constitution provides that the supreme goal of the state is to safeguard the rights and freedoms of Belarusian citizens. The Constitution also guarantees major human rights and fundamental freedoms including: the right to liberty and security of a person and the prohibition of torture, inhuman and degrading treatment or punishment (Article 25), the right to a fair trial and presumption of innocence (Articles 26-27); the right to privacy (Article 28); freedom of thoughts and belief and their free expression (Article 33); the freedom to hold assemblies (Article 35); freedom of association (Article 36), the right to participate in the solution of state matters, both directly and through freely elected representatives (Article 37); and the right to vote freely and to be elected to state bodies on the basis of universal, equal, direct or indirect suffrage by secret ballot (Article 38). According to Article 33, no one can be forced to express their beliefs or to renounce them.

Under Articles 22 and 23 of the Constitution, everyone is equal before the law and has the right to equal protection of their rights and legitimate interests without discrimination. Moreover, restrictions on human rights are permitted only when specified by law, on the grounds of national security, public order, or the protection of the morals and health of the population or of the rights and freedoms of others. Article 60 of the Constitution guarantees everyone protection of their rights and liberties by a competent, independent and impartial court of law within time periods specified in law; citizens are also entitled, in accordance with the law, to recover, through the courts, both property damage and financial compensation for moral injury.

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10 ICCPR ratified on 12 November 1973

11 ICESCR ratified on 12 November 1973

12 UN CAT, ratified on 13 March 1987

13 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, ratified 04 Feb 1981), International Convention on the Elimination of All Forms of Racial Discrimination (CERD, ratified 08 Apr 1969), Convention on the Rights of the Child (CRC, ratified 01 Oct 1990), Convention on the Rights of Persons with Disabilities (CRPD, ratified 29 Nov 2016)

14 OSCE, "Human Dimension Commitments Vol 1, 3rd Edition" 2011 - available at <https://www.osce.org/files/f/documents/5/d/76894.pdf>; OSCE, Human Dimension Commitments, Vol 2, Chronological Compilation, November 2012 - <https://www.osce.org/odihr/elections/76895>

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## V. Violations of the rights of creative professionals, activists and artists



Ж Ы В Е   Б Е Л А Р У С Ь !



## Violations of the right to freedom of peaceful assembly and the use of excessive force by law enforcement officials



The right to freedom of peaceful assembly stands at the cornerstone of democracy protecting the rights of individuals and groups to meet and engage in inter alia peaceful protest. Both the rights to freedom of peaceful assembly and association are contained in international human rights instruments.<sup>15</sup> It is important to note that only peaceful assembly is protected by the right to freedom of assembly. The UN Human Rights Committee has indicated that States have an obligation “to allow such assemblies to take place without unwarranted interference.”<sup>16</sup>

International human rights law provides for a presumption in favour of holding peaceful assemblies, including spontaneous assemblies, making it unnecessary for legislation to require advance notification of an assembly. The UN Special Rapporteur on the right to Freedom of Peaceful Assembly and Association “has recommended that spontaneous assemblies should be recognised in law, and exempted from prior notification. Simultaneous assemblies should be allowed, protected and facilitated, whenever possible”.<sup>17</sup>

15 Article 21, ICCPR; Article 20(1), UDHR. According to the OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly, Second Edition (2010), an assembly is defined as “the intentional and temporary presence of a number of individuals in a public place for a common expressive purpose” See, OSCE/ODIHR “Guidelines on Freedom of Peaceful Assembly” Second edition 2010 available at: <https://www.osce.org/files/f/documents/4/0/73405.pdf>

16 General Comment 37 on the Right to peaceful assembly, Human Rights Committee, 22 July 2020, para 8 - available at: <https://www.ohchr.org/EN/HRBodies/CCPR/Pages/GCArticle21.aspx>

17 Article 21 (Right of Peaceful Assembly) of the International Covenant on Civil and Political Rights, Palais Wilson, 20 March 2019: <https://www.ohchr.org/EN/HRBodies/CCPR/Pages/GC37.aspx>

// The use of force by law enforcement officials in policing protests is clearly prescribed under international human rights law; authorities should only use force in a proportional manner and in a way in which damage and injury are minimised.

Over 30,000 people were detained during anti-Lukashenko protests in Belarus in 2020.<sup>18</sup> The detained included artists and creative professionals, often accused of participating in an “unauthorised gathering” in violation of the Law on Mass Events. By law, in order to hold a protest or a demonstration, organisers must apply for permission from the authorities at least 15 days prior to the planned event. In contrast to recommendations by UN bodies, Belarusian legislation does not allow for spontaneous, simultaneous or counter assemblies.

The Belarusian authorities have used the Law on Mass Events to target individuals expressing anti-Lukashenko views both on social media and in the press as well as those who participated in the peaceful protests. Artists and creative professionals who use artistic tools to express their anti-Lukashenko opinions, inevitably draw the attention of a wider audience, and thus have been specifically targeted by law enforcement officials, with the aim of preventing protestors mobilising around the artistic performances. The detained and their relatives are often fined, sentenced to administrative detention, or charged with criminal offences. There are numerous reports of law enforcement officials using excessive force against peaceful protestors during arrest, as well as reports of torture and ill-treatment during detention.

Article 23.34 of the Code of Administrative Offenses (“Breaching the order of organising or conducting mass events”) is most commonly used in relation to those allegedly guilty of breaking the Law on Mass Events. In practice, however, charges under this article have been used towards any person seen near a protest, including bystanders and passers-by who are not participating. Law enforcement officials implemented the legislation in a discriminatory manner, targeting people standing near anti-Lukashenko protests, but not those participating in pro-governmental events which, evidence shows, have been organised in violation of the Law on Mass Events.<sup>19,20</sup>

Article 23.34 is often applied in an unlawful manner, with little or no substantive evidence against peaceful protesters, with convictions often based on evidence from police officers given under fake names, whose testimonies are trusted more than defendants’ during court trials. In October and November 2020, hundreds of artists were detained and charged with participating in unauthorised events. Many of them had to serve between one and 20 days in administrative detention after being found guilty of violating Article 23.34, and many were given fines ranging from 280 to 1645 Belarusian rubles (from 90 to 525 EUR).

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18 Human Rights Centre Viasna, Human Rights Situation in Belarus: November 2020, at: <http://spring96.org/en/news/100777>

19 Reformation portal, Закон не для всех? Сторонники Лукашенко провели акцию у посольства Литвы, 24 September 2020, at: <https://reform.by/166484-storonniki-lukashenko-proveli-nezakonnuju-akciju-u-posolstva-litvy>

20 TUT.BY, Марши соседей, аресты, протестные активности. Что происходило в Беларуси 29 ноября, 29 November 2020, at: <https://news.tut.by/society/709540.html>

Henik Lojka,<sup>21</sup> a well-known sculptor, was detained at an anti-Lukashenko rally in Minsk on 1 November 2020 and was sentenced to 20 days of administrative detention on 3 November.

Halina Kazimiruskaya, director of the Concordia Choir and wife of Belarusian musician Zmitser Vaitsiyushkevich, was arrested on 29 October at her office by plainclothes police officers. The performances of the Concordia Choir are considered as ‘unsanctioned mass events’ by the Belarusian law enforcement officials and the police search for musicians who direct ‘flying choirs’, i.e. groups singing so-called opposition songs and hymns (e.g. God Almighty, Pursuit, Walls, We Long for Changes) to boost the fighting mood of Belarusians amid post-election protests.<sup>22,23</sup>

On the evening of the same day, Kazimiruskaya was again fined 855 Belarusian rubles (267 EUR) under Article 23.34, when police officer Mikita Bielski from the Savetski District Department of Internal Affairs testified against her at a trial in Savetski District Court which was hearing the cases against Kazimiruskaya for participating in the March of the People’s Ultimatum on 25 October 2020.

Similarly, Tatsiana Haluza, a lecturer at Minsk State Art College and a choir master, was arrested by plainclothes police officers as she was leaving a store in the town of Lesny on 2 November 2020. She was taken to Borovlya Police Department Minsk Central District Court fined Haluza 855 Belarusian rubles (267 EUR) under Articles 23.34 and 23.4 for “picketing at the Bolshoi Opera and Ballet Theatre”. On 2 November 2020, Haluza had protested against the elections in front of the Bolshoi Opera and Ballet Theatre. On 2 November she was fined 1710 Belarusian rubles (534 EUR).

Alesya Klachko, an actress at the Belarusian Army Drama Theatre, was detained on 2 November 2020 under Article 23.34. Klachko had been involved in filming the *Freedom Belarus* video, after which her house was searched by police officers who failed to show identification documents or a search warrant. Alesya Klachko’s 78-year-old grandmother was present during the search. On 2 November 2020, Alesya Klachko was invited to the Minsk City Police Department (Central) “to talk” and arrested when she got there. On 3 November 2020, she was fined 30 basic units the equivalent of 855 Belarusian rubles (267 EUR) after having been found guilty.

On 4 October 2020, Alyaksandr Tykun and Andrei Kanoika, screenwriters and actors in “KVN,” a Russian TV show featuring a comedy competition, were arrested by plainclothes police officers at a peaceful anti-Lukashenko march on Kalvaryiskaya Street in Minsk. On 5 October 2020, Tykun and Kanoika were sentenced to 12 and eight days of administrative detention respectively, under Article 23.34.

In addition, artists have been deliberately targeted months after their participation in protests, and charged with offences on the basis of trumped up charges which the artists themselves deny.

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21 Lojka designed the Tadeusz Kościuszko monument in the village of Kosava in western Belarus

22 Nasha Niva, Сілавікі палююць на дырыжораў. Затрыманая яшчэ адна — Таццяна Галуза, at: <https://nn.by/?c=ar&i=261742>

23 Belsat, Belarus Police Hunting Even for Choirmeisters, at: <https://belsat.eu/en/news/belarus-police-hunting-even-for-choirmeisters/>

On 2 October 2020, Volha Semchanka, Head of the Literary and Drama Department of the Mahileu Theatre and manager of the Belarusian Folk-Dance Club, was arrested near the theatre by plainclothes police officers. A few hours later, her acquaintance received a call from the Leninski District Department of Internal Affairs with a request to pick up her bicycle. During her court hearing on 5 October 2020, Semchanka reported that her phone had been confiscated by police officers while she was held in the temporary detention centre at the Leninski District Department of Internal Affairs. Semchanka was sentenced to seven days of administrative detention by Leninski District Court after she was found guilty under Article 23.34 on the basis of her participation in a peaceful anti-Lukashenko protest on 23 August 2020.

Semchanka was then held in the pre-trial detention centre of the Leninski District Department of Internal Affairs. On 9 October 2020, she was released with further charges pending against her, police officers drove her to the area where she lived, and pushed her out of the car onto the street. On 21 October 2020, Semchanka was fined for participating in two peaceful marches on 30 August and 6 September 2020, in Mahileu and fined 10 basic units the equivalent of 285 Belarusian rubles (89 EUR).

“Today’s punishment looks mild in comparison to the previous one. Still, there should be no such cases at all. Those taking part in peaceful marches are not breaking any laws. There are women, children, and elderly people among the peaceful protest participants. Do you become a criminal when you walk down the street with flowers and ribbons? This is our Constitutional right”, Volha stated after her trial. She believes the authorities will continue to persecute her and she fears for her life.

On 25 October 2020, riot police dragged Eryc Arlou-Shymkus, a musician from the Kupalaŭski Theatre out of a building, beat him, threatened him with torture and rape, and put a full-face mask over his face. He was held in Okrestino Isolation Centre and Arlou-Shymkus remains a suspect in a criminal case under Article 342 part 1 of the Criminal Code for allegedly throwing stones at the Central District Department of Internal Affairs and hitting a riot police officer. Arlou-Shymkus denies the charges and maintains his innocence.<sup>24</sup>

Artists report being forced to unlock their mobile devices, threats of physical violence and the use of tear gas canisters by law enforcement officials dispersing the protests and making arrests.

On 7 November 2020, musicians from *the band* Recha: Andrus Takindanh, Ihar Asidchanka, Kanstantsin Lisetski and Leanid Paulionak were detained on Nemanskaya street after playing a concert in honour of the unveiling of a mural showing two white cats in red scarves, which had the approval of the housing authority. According to Belsat TV, the musicians were detained whilst in a taxi leaving the venue, which was blocked by buses of riot police. Each band member was sentenced to 15 days’ administrative detention under Article 23.34 for participating in an unsanctioned mass event.

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24 Viasna Human Rights Centre, 14.11.2020: <http://spring96.org/ru/news/100414>





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Volha Semchanka in court.

Credits: Belstat



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Eryc Arlou-Shymkus being met by colleagues from the Kupalaŭski Theatre upon his release

Photograph from social media.

Upon release from detention, the leader of the band, Andrus Takindanh, described his experience in an interview.<sup>25</sup> He reports being intimidated by riot police:

“At first, we were taken to the police department, reports were drawn up, our fingerprints were taken, our phones were taken away. The most unpleasant thing is when you realise that they will read your correspondence. At first I asked “Can I not give the pass-code of my phone? What does the law say about this?” But the riot policeman replied: “Good luck with that, I will have to force you! Good luck, you will give me everything I need quickly! ”

In other cases, artists were additionally charged with failing to obey police orders (Article 23.4 of the Administrative code):

Musician Eryc Arlou-Shymkus, and film director and camera woman Aliaksandra Babkova, from the Kupalaŭski Theatre, were arrested in Minsk on 25 October 2020, at the People’s Ultimatum march after law enforcement officials threw tear gas canisters to disperse the crowd on Orlovskaya Street. Babkova was fined the equivalent of 200 Belarusian rubles (64 EUR) for participation in the ‘unsanctioned mass event’ on 25 October 2020. Eryc Arlou-Shymkus was sentenced to 12 days of administrative detention after finding him guilty under Articles 23.34 and 23.4 (“Failure to obey the orders of police officers”).

In other cases criminal charges were brought against artists after they were initially detained in relation to administrative violations:

Aliaksej Sančuk, a drummer with the band “Trebudem Razojtis” was detained along with 15 other musicians on 4 November 2020, during a rehearsal. Seven band members were released immediately, three were fined 855 Belarusian rubles (267 EUR), and six were sentenced to 10-15 days of administrative detention.<sup>26</sup> Sančuk was reportedly beaten during his arrest, and forced to unlock his phone, where police officers found messages about the timing and location of upcoming peaceful marches. After the initial 15 days of administrative detention, law enforcement officials charged Sančuk under Article 342 of the Criminal Code (“Organisation or active participation in group actions grossly violating public order”). He is currently being held at a detention centre on Volodarskogo Street in Minsk. Belarusian and international human rights organizations have recognized Sančuk as a political prisoner.<sup>27, 28</sup>

Ihar Bantsar (‘Mister X’), a well-known activist and musician, was arrested at his home in Hrodna on 20 October 2020 by two policemen. Law enforcement officials searched his apartment the same evening and seized his laptop. A criminal case was initiated against him under Article 339 (“Hooliganism”) in relation to a street performance where he danced in front of police officers without wearing underwear. Bantsar previously served 10 days of administrative detention in August during which he went on a hunger strike.

25 Tuzinfo.by, Андрусь Такінданг: “Радаваўся, што трапіліся не ў жніўні, а цяпер”. Вялікая гутарка пасля Акрэсціна, at: <https://tuzinfo.by/article/4738/andrus-takindang-akrescina.html>

26 Under Article 23.34 of the Code of Administrative Offenses

27 Viasna Human Rights Centre: <https://prisoners.spring96.org/ru>

28 Viasna Human Rights Centre: <https://spring96.org/be/news/100557>





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Aliaksei Sančuk playing at one of the Sunday actions due to which the band "Trebujem Razojtis" has become well-known in Belarus.

Credits: Tut.By



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Maryia Tulzhankova with the poster "No refill for Sasha"

Credits: Silnye Novosti

*Those taking part in peaceful marches are not breaking any laws. There are women, children, and elderly people among the peaceful protest participants. Do you become a criminal when you walk down the street with flowers and ribbons? This is our Constitutional right.*  
(Volha Semchanka)

On 12 October 2020, Gomel-based artist Maryia Tulzhankova was arrested at her apartment. Prior to the arrest, her apartment was searched by police officers who seized her laptop and mobile phone. Initially, Tulzhankova was threatened with criminal proceedings for organising “mass unrest”. Maryia believes her arrest is connected to the banner “No refill for Sasha” which she had previously brought to a rally. On 15 October 2020, Ales Osipau, judge of the Gomel Central District Court, sentenced Tulzhankova to 15 days of administrative detention under Article 23.34. On 22 October 2020, Tulzhankova discovered that a criminal case under Article 293 of the Criminal Code (“Organisation of mass riots”) had also been initiated against her. The basis for these criminal charges is still unclear at the time of writing.

Musician and flautist, Maryia Kalenik, student at the Belarusian State Academy of Arts and an active member of the headquarters of presidential candidate Viktor Babariko, was detained on 12 November 2020, and charged with organizing group actions violating public order under Article 342 of the Criminal Code”. Kalenik was recognised as a political prisoner in a joint statement by Belarusian human rights organisations from 18 November 2020.<sup>29</sup> At the time of writing of this report, Kalenik remains in custody.

As of 18 February 2021, human rights organisations considered that in Belarus at least 255 persons serving prison terms as criminal punishments are political prisoners.<sup>30,31</sup> These include Filipp Shavrov - historian and activist; Pavel Sevyarynets - writer and public figure; Aleksander Vasilyevich - founder of the U gallery of contemporary art; Maryia Kolesnikova - cultural and political activist, musician, head of the headquarters of Viktor Babariko; Dmitry Dedok - former political prisoner and anarchist activist, author of prison literature who received an award from the Belarusian PEN Centre for the best book written in captivity (“Colours of the Parallel World”); Edvard Babariko - supporter and patron of independent cultural projects; Viktor Babariko - presidential candidate and patron of independent cultural projects; Maksim Znak - lawyer and aspiring poet; Ignat Sidorchik - film director.

29 Viasna Human Rights Centre: <https://spring96.org/be/news/100557>

30 Viasna Human Rights Centre: <https://prisoners.spring96.org/ru>

31 Based on Guidelines for the Definition of a Political Prisoner Viasna Human Rights Centre: [https://spring96.org/ru/news/100870?fbclid=IwAR1JAjCeIGLLFe\\_IIAr3rPWVA8kPQLE6Ln0rKrgnkG-dEPc9MdcBkxRIIdOM](https://spring96.org/ru/news/100870?fbclid=IwAR1JAjCeIGLLFe_IIAr3rPWVA8kPQLE6Ln0rKrgnkG-dEPc9MdcBkxRIIdOM)



## Violations of the right to a fair trial



International human rights law provides important safeguards for individuals deprived of their liberty.<sup>32</sup> The right to a fair trial is a general norm of customary international law and is protected under international human rights law and associated treaties, including the ICCPR.<sup>33</sup> Anyone arrested or detained must be notified of the reasons for their arrest or detention, including their right to counsel.<sup>34</sup> In Belarus, Articles 22, 23 and 60 of the Constitution stipulate that everyone is equal before the law and has the right to equal protection of their rights, freedoms and legitimate interests by a competent, independent and impartial court and without discrimination.

However, evidence gathered for this report indicates that the authorities failed to comply with international and domestic standards in relation to fair trial and due process rights. In particular, many court hearings have taken place unannounced and in the absence of either legal counsel or relatives. Courts have failed to provide timely information about the date and venue of court hearings available to the parties and the general public.<sup>35</sup>

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32 ICCPR, Article 14; UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 1988 (General Assembly) - available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/DetentionOrImprisonment.aspx>

33 ICCPR, Article 14 available at: <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

34 ICCPR, Article 14; see also General Comment 35 on Article 9 - the right to liberty and security of person, UN Human Rights Committee, 16 December 2014, CCPR/C/GC/35 - available at: <https://www.ohchr.org/EN/HRBodies/CCPR/Pages/GC35-Article9LibertyandSecurityofperson.aspx>

35 See General Comment 32 on Article 14 - the right to equality before courts and tribunals and the right to a fair trial, UN Human Rights Committee - CCPR/C/GC/32 - para 28, 23 August 2007 available at: <https://www.refworld.org/docid/478b2b2f2.html>

// The right to a fair trial is a general norm of customary international law and is protected under international human rights law and associated treaties, including the ICCPR.

On 5 October 2020, Alyaksandr Tykun was charged with an offence under Article 23.34 of the Code of Administrative Offenses at Zavodsky District Court of Minsk. Neither his wife nor his lawyer was able to attend the court hearing, as information regarding the hearing was not put on the court schedule. Alyaksandr Tykun's wife was notified about the court hearing only moments before it started; she informed the lawyer immediately but he was not able to get to the court on time.

On 5 October 2020, Tatiana Kastsyuk, judge at Leninski District Court, sentenced Volha Semchanka to seven days of administrative detention under Article 23.34 after finding her guilty of participating in a peaceful anti-Lukashenko protest on 23 August 2020, and of using "opposition symbols". During the court hearing, Kastsyuk refused to provide Semchanka with an interpreter from Russian to Belarusian, justifying her refusal with the fact that "Belarus is a bilingual country". In addition, Kastsyuk refused to specify which "opposition symbols" Semchanka had allegedly used during the peaceful protest.

Dzmitry Strotsau, poet, activist, and member of PEN Belarus, took part in election protests and wrote about it openly. He was arrested on 21 October 2020. His relatives did not find out his whereabouts until the next morning when they found his name in lists of detainees being held at the Okrestino Isolation Centre for Offenders. Later it became known that a judge of the Central District Court of Minsk, Viktoria Shabunya, had sentenced him to 15 days of administrative detention after finding him guilty under Article 23.34. Insufficient warning was given about the date and time of Strotsau's court hearing, meaning that neither his family members nor his defense lawyer were able to attend.

# Violations of the right to freedom of expression of political opinion

## VIOLATIONS OF THE RIGHTS TO PROTEST AT THE WORKPLACE



Monitoring for this report also shows that another tool used by the Belarusian authorities against artists has been the dismissal of individuals from their workplaces. Hundreds of reports from students and professionals in the art and culture industries and higher education institutions point to discrimination in the workplace on the grounds of political profile and political stance. Artists reported so-called blacklists of names of individuals working in artistic and cultural fields who took part in protests, rallies and other peaceful mass events, as well as had expressed solidarity with the protest movement online and offline. As a result, many artists have been dismissed from their jobs, or been put under pressure and forced to resign, and students have been expelled from the Academy of Arts. Some companies and organisations were forced to fire their employees en masse and, in so doing, several institutions have been left with very few or no creative staff. These actions by the state contradict the provisions of Article 11 (2) of the Labour Code of the Republic of Belarus which guarantees the protection of workers' rights, including the right to join labour unions, conclude collective agreements, and the right to strike.<sup>36</sup>

Since August 2020, more than 1500 musicians, artists, actors, teachers, directors, writers, and other activists — both from governmental and non-governmental cultural institutions and initiatives — have signed an *open letter* demanding a review of the results of the presidential election, a cessation of violence, cancellation of “blacklists” and putting an end to pressure on artists and people working in the cultural industry who disapprove of the policy of the Belarusian authorities.

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36 Article 11, the Labour Code of the Republic of Belarus, of July 26, 1999 No. 296-Z, as amended on 18-07-2019: <https://cis-legislation.com/document.fwx?rgn=2562>

The Open Letter states: “Repressions have spread throughout the country and reached the sphere of culture. Not only we are getting fired, our names are blacklisted, but we are directly pressured, intimidated and arrested. We believe that this situation requires an immediate legal solution, otherwise, the consequences of the legal default will push our country back in development and create the ground for arbitrariness and lawlessness”. It concludes by saying: “In the event of attempts at pressure, threats to dismiss or violate the rights of the signatories of this letter, we will all act in solidarity, and refuse to represent the national interests of the country and organise international and national cultural events. In addition, such facts will be immediately reported to the world cultural community, as well as to international organisations”. Many of the signatories of this letter faced subsequent reprisals at work including pressure and dismissal.

Artists have shown solidarity towards one another in the post-election period and have often spoken out in support of their colleagues, despite risking losing their jobs in the process. Those working in government run cultural institutions who have either joined the protest movement, or expressed their solidarity in other ways have come under particular pressure, as illustrated in the following cases:

Zoya Belakhvostik, drama teacher at the Belarusian State Academy of Arts and actress with the Kupalaŭski Theatre, left the theatre in August 2020 together with 57 others in protest at the dismissal of director Pavel Latushka. On 4 September 2020, Belakhvostik's contract with the Belarusian State Academy of Arts where she had been teaching for 20 years was terminated. She stated: “Nothing was explained to me at all, no one called me.” Vyachaslau Pauluts, the head of the Department for Acting Skills reports being told by someone working in the theatre administration: “We respect Zoya Belakhvostik, she is a wise woman, she will understand, too.”<sup>37</sup>

Valeria Valadzko, singer, soloist with the band ‘Harotnitsa’, and music teacher was fired from her post at school, after the mother of one of her students reported her for refusing to take part in “obligatory” rallies in support of Lukashenko and for refusing to take her students to sing at a polling station during the 9 August election. The mother of the student reportedly called her “a fascist” and “an oppositionist”. A representative of the school administration told Valadzko that “We have received orders to fire everyone like you because you make too much noise, they see and know a lot about you”.

Andrej Novikaŭ, director of the well-known Regional theatre in Mahileŭ and the International Youth Theatre Forum “M. @ rt.kontakt”, was fired on the basis of Article 259 of the Labour Code which stipulates “An employment contract with the head of the organisation can be terminated before its expiration in the absence of culpable actions (inaction) of the head of the organisation, by decision of the owner of the organisations’ property or its authorised body.” According to staff at the theatre, the senior management dismissed Novikaŭ because he objected to firing his employees on what he considered to be unreasonable and illegal grounds, such as for taking part and being detained during the anti-election protests. His colleagues collected 86 signatures in a petition against his dismissal, but a new director has already been appointed. Novikaŭ had directed the Mogilev Regional Drama Theatre for 20 years, overseeing the establishment of a successful creative team which became famous nationally and internationally.

Multiple cultural institutions chose or were forced to fire their employees en masse and, in so doing, multiple institutions were left with very few or no creative staff.

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37    Nasha Niva, Народную артистку Беларуси Зою Белохвостик увольняют из Академии искусств, at: <https://nn.by/?c=ar&i=260063&lang=ru>



Several musicians have been dismissed from the National Academic Bolshoi Opera and Ballet Theatre in Minsk for supporting the “People’s Ultimatum” and *signing the Open Letter* from the Belarusian Arts and Culture Community.

On 27 October 2020, the Bolshoi Theatre was scheduled to host an opera performance entitled “The Tsar’s Bride”. Prior to the performance, the concertmaster and two soloists addressed the audience and stated that the musicians could not remain indifferent towards the events of recent months and in particular towards the violence against Belarusian citizens. The audience applauded and the theatre cast performed *the hymn “Magutny Bozha”* (“God Almighty”) — a religious hymn that is often performed at protests.

The next day, the Minister of Culture, Yuri Bondar, came to the theatre and announced that as of 29 October 2020, all performances would be cancelled.<sup>38</sup>

On 29 October, at least five cast members who spoke out against the violence during the performance on 27 October and/or performed the “Magutny Bozha” hymn, as well as those who signed an appeal by cultural figures on the “Peoples’ Ultimatum” were dismissed from their positions in the National Academic Bolshoi Opera and Ballet Theatre. These people include the first violinist, Regina Sarkisova; opera singer Ilya Silchukov; conductor Andrei Galanov; violinist Alla Dzhigan and violist Alexandra Potemina.

Several days after the dismissals, 188 artists and employees of the National Academic Bolshoi Opera and Ballet Theatre called on the theatre management to reconsider the dismissals in a *video address*. At the time of writing, the management have not changed the decision.

In a similar case, at least 14 staff of Grodno Regional Drama Theatre were dismissed from their positions for participating an open appeal against election fraud and state-sponsored violence or for supporting colleagues who were dismissed on political grounds. These staff included director Gennady Mushpert, production director Sergei Kurylenko, artist Elizaveta Milintsevich, leading stage manager Igor Ulanov, and actors Maria Butrimovich, Natella Belugina, Alexander Demyanov, Valentina Kharitonova, Natalia Leonova, Polina Levina, Maria Meleshko, Vasily Minich, Anastasia Muchko, and Aleksey Stonoga.



Grodno Regional Drama Theatre staff members with white-red-white umbrellas

Photo: Sasha Pravdina/ Belsat.

38 It is important to note that the COVID-19 pandemic is not recognised by the Belarusian authorities and, therefore, cannot be the reason for the cancellation of the event.

Director Sergei Kurylenko and his wife, actress Valentina Kharitonova, were detained during a peaceful solidarity action in September 2020. Their colleagues stopped acting at the theatre in solidarity, leading a wave of staff dismissals.

Similarly, in the period from October to December 2020, the management of the Belarusian State Academy of Arts dismissed or did not renew the contracts of four employees: Yulia Savich, Alexei Strelnikov (Centre of Experimental Directing Centre staff member), Natalya Levanova (Centre of Experimental Directing Centre staff member), and Ksenia Knyazeva (Associate Professor at the department of Art Theory and History). Igor Kulikov, a teacher of humanitarian disciplines, was reprimanded by the administration of the Academy participating in unauthorised mass events in November 2020.

Observers testify that it has become common for professionals of creative industries to be summoned to a police department or to the managers of their workplaces to explain their political opinions and actions.

16-year-old Yelizaveta Vishnyak was summoned to the Central District Department of Internal Affairs in Minsk with an administrative case under Article 23.34 of the Administrative Code “Breaching the order of organising or conducting mass events”. She attended Sunday protests with her family members who were not summoned. Allegedly, Yelizaveta Vishnyak drew the attention of law enforcement officials due to her encouraging and pro-democratic *song* “Razam Peramozham” dedicated to the recent events in Belarus. The father of the 16-year-old girl, Igor Vishnyak, does not deny that he and his family have attended several Sunday protest marches in Minsk. “We received a letter from the Central District Department of Internal Affairs stating that there is an administrative case initiated against my 16-year-old daughter. We all went to Sunday marches together, in a large company. Apparently, this [administrative case against Yelizaveta Vishnyak] is related to the song that my daughter posted on YouTube”, Igor Vishnyak stated.

Katsyaryna Vadanosava, singer and former TV presenter for the Belarus-3 TV channel, was summoned to the police department for a “conversation” by a law enforcement official who called from a hidden phone number and refused to introduce himself. The official informed Vadanosava that she was suspected of having taken part in a peaceful march on 4 October 2020 and threatened to arrest her at home and put her children in care if she refused to comply with the order obey the request.

Vadanosava maintains that she did not take part in this march, as she had to be home with her children, but presumes that law enforcement officials’ interest towards her could be explained by the fact that she took part in yard concerts in Minsk.

Individuals performing cultural activities as part of private businesses and organisations (including music bands) have also been fired and/or exposed to disproportionate checks.

On 9 November 2020, Uladzimir and Nadziezhda Irdorath, musicians from the Belarusian fantasy-folk band Irdorath and non-formal education specialists, were fired from the educational centre “Victoria”, where they had worked for several years, due to their participation in peaceful protests and for making *statements* on social media.

"We were fired because we openly participated in marches, played music outside, made videos to support the people. [...] We were fired immediately after giving a series street concerts in courtyards in Minsk. During the last concert, my phone rang: the management had seen our performances, including in the Square of Change", Nadziezhda Irdorath stated.

The Land of Castles Foundation hosts a diverse range of cultural activities, including tours around Belarus, and its staff have been under pressure for several months. Foundation director, Aliaksandr Varykish, assisted the press service the Coordination Council for the Transfer of Power as a journalist.<sup>39</sup> This led to confiscation of his personal property, as well as property belonging to the Foundation. Officials from the State Audit Office visited the aristocratic farm - the Land of Castles' office located in the village of Rodevichy, Ashmyany on 9 September 2020. Since then at least 10 different civil services, including seven district services, have conducted checks at the aristocratic farm. The checks lasted for several months. Aliaksandr Varykish believes that the repeated checks are being carried out in connection with his volunteer work with the Coordination Council for the Transfer of Power.<sup>40</sup>

Students who spoke out about their political opinions have also been targeted. On 27 October 2020, President Lukashenko said "Whoever attended an unauthorised protest in violation of the law loses the right to be a student". By early November 2020, more than 140 students, and at least 15 professors, had been dismissed from Belarusian universities for their expression of their political opinions and their and participation in the protests.

On 27 October 2020 students Serafim Hanichau, Aliaksandar Danilkin, and Karyna Chakur, were expelled from the Belarusian State Academy of Arts for taking part in solidarity rallies with the national strike. Academic director Alena Bokhan, refused to sign the expulsion order, saying she disagreed with expelling students for their political opinions, but they were expelled nevertheless. Teachers and staff of the Academy of Arts signed an open letter urging management to stop persecuting students and staff who express their political opinions, to allow expelled students to return to their studies and to stop interfering with peaceful assemblies.

Yahor Prystauka, professor of ancient language and literature at the Belarusian State University was dismissed from his post allegedly as a result of his involvement in solidarity actions with students and his colleagues. He recorded a *video message* along with 50 other teachers entitled "University — a territory of freedom."

"I was summoned by the administration on 13 November for an interview where they signed a paper stating that my contract is not renewable. I will still work for 30 days and then who knows what will happen. They did not explain the reasons, no one even talked to me, they gave me a paper - and this was it. I wanted to take a photo of this document, but they told me that it was forbidden and that in a few days I could go to the office to make a copy." Yahor Prystauka stated. Over 800 students, teachers and graduates of the Belarusian State University have signed an appeal against Yahor Prystauka's dismissal as a unique specialist in classical philology.

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39 Coordination Council, at: <https://rada.vision/en>

40 Belarusian Partisan, <https://belaruspartisan.by/life/515422/>, at: «Страна замков» просит помощи: «накат» госслужб продолжается второй месяц

## Cases of torture, cruel, inhuman or degrading treatment or punishment



Numerous allegations of torture and ill-treatment of protesters involved in the post-election protests in Belarus have been made since August 2020. On 1 September 2020, a group of UN Special Rapporteurs and human rights experts expressed alarm at the large number of reports they had received about the use of torture and ill-treatment against people deprived of their liberty after the presidential election.<sup>41</sup>

Many of those detained, including as professionals working in the field of art and culture have alleged being subjected to torture and/or ill-treatment by police officers and plainclothes police officers. The allegations include severe beatings; intimidation and threats by law enforcement officials, including threats of torture and rape, as well as threats of withholding essential supplies such as food and water from detainees.

International human rights law prohibits torture and ill-treatment at all times. Under the UN CAT, states are obliged to take various steps to prevent torture on their territory, including criminalising torture in their domestic law.

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41 United Nations Human Rights Office of the High Commissioner, UN human rights experts: Belarus must stop torturing protesters and prevent enforced disappearances, at: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26199&LangID=E>



*“In the police van, a man was lying in the aisle. I said I wasn’t going to move forward until they picked the man up. They hit me on the head several times, dragged me into the van, and tied my hands behind my back”*  
(Alena Hironak)

On 8 November 2020, 66-year-old linguist and historian Ales Zhlutka was detained near the Opera House in Minsk and sentenced to ten days of administrative detention. Zhlutka reports having been subjected to torture and forced to stay in stress positions in Zhodino Detention Centre where he was held.

“In Zhodino we were told to stand along the wall in a corridor, later elderly people were allowed to move away. Young people were forced to squat many times. One man was exhausted and could not do it any longer, so a riot policeman sprayed him with gas. His colleagues complained: “What are you doing, we will suffocate here! Later we were all forced to bend at 90 degrees and to put our hands up to the cell bars. This position is really uncomfortable. Elderly people and those who said they were unwell were allowed to sit down and rest, but were later required to return to this position.”

On 13 October 2020, writer, and musician Raman Abramchuk was detained and sentenced to ten days of administrative detention. Abramchuk reported that law enforcement officials beat him on the head and face, and tied plastic handcuffs on his wrists. Wounds from the handcuffs were left on his hands. Abramchuk states he was made to sleep on a concrete floor and being given insufficient supplies of food and drinking water. He states that he lost consciousness due to a lack of fresh air in the cell and that parcels from his relatives, containing warm clothes and his contact lenses, did not reach him.

In a case of ill-treatment, actor Alena Hironak, was detained at Yakub Kolas Square as she filmed detentions during a peaceful protest in Minsk on 26 October 2020, around 7:00 p.m. She reports that riot police beat her on the head and forced to walk on a person. A report was drawn up against her by the Moskovsky District Police Department; she was released later the same day.

“People were walking calmly on the pavements that evening, but were not allowed to go to Kastrychnitskaya Street — even though they didn’t have appeals or slogans. Buses stopped [...] and [law enforcement officials] started detaining people at the pedestrian crossing to the Olympic sports complex. I took my phone out and started to film these detentions, so I was detained as well. In the police van, a man was lying in the aisle. I said I wasn’t going to move forward until they picked the man up. They hit me on the head several times, dragged me into the van, and tied my hands behind my back” Hironak reported.

Belarus has failed to take sufficient steps to prevent incidents of torture and other ill-treatment in the country. Senior government officials have not publicly and explicitly condemned the use of torture, nor have they warned perpetrators of torture and their accomplices that they could be held accountable. The authorities have also failed to provide sufficient guidance, training or information to prosecutors, judicial and law enforcement officials on the practical implementation of the UN CAT.

Belarusian legislation does not define torture as a specific crime in accordance with Article 1 of the convention. The Belarusian Criminal Code covers acts of torture in Article 128 ( "Crimes against the security of mankind") and Article 394 (part 3) ("Coercion to testify"). In 2015, Article 128 was amended to include a definition of torture in line with the concept of torture under the UN CAT.<sup>42</sup> However, there is no separate article criminalising torture and the abovementioned articles do not cover the whole range of acts of torture, nor do they include reference to the criminal responsibility for committing acts of torture, as required by Article 4(2) of the UN CAT. Additionally, under national legislation, the statute of limitations does not apply to all acts of torture.

Belarus has no independent bodies authorised to visit and monitor places of detention without prior notice. The Public Monitoring Commission (PMC) can visit places of detention only with the permission of the Department of Execution of Sentences of the Ministry of the Interior and PMC members are not entitled to take photos, record videos or accept complaints from prisoners. Domestic law in Belarus does not exclude the use of evidence obtained by torture.

International human rights law prohibits torture and ill-treatment at all times. The ICCPR (article 7) and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UN CAT) set out this ban.<sup>43</sup> The prohibition of torture is also widely seen as forming part of customary international law and states may not derogate from this prohibition even in times of war or other emergency.<sup>44</sup> Under the UN CAT, torture includes three main elements: it constitutes severe pain or suffering (physical or mental), inflicted for a particular purpose and by a public official or other person acting in an official capacity, or at his/her instigation or with his/her consent or acquiescence.<sup>45</sup> Under the UN CAT, states are obliged to take various steps to prevent torture on their territory, including criminalising torture in their domestic law. Further, states are under a duty to promptly and thoroughly investigate any allegations of torture whenever there are reasonable grounds to believe that an act of torture has been committed on their territory.<sup>46</sup>

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42 Criminal Code of the Republic of Belarus. Article 128. Crimes against the security of mankind: [https://kodeksy-by.com/ugolovnyj\\_kodeks\\_rb/128.htm](https://kodeksy-by.com/ugolovnyj_kodeks_rb/128.htm)

43 Article 7 of the ICCPR provides for the prohibition against torture, or other cruel, inhuman or degrading treatment or punishment; Article 2.1 of UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) available at: <https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>

44 UN CAT - Article 2.2.

45 UN CAT - Article 1

46 UN CAT - Article 12

## Failure to protect lives of people in custody



// Under international human rights law, the right to life is fundamental and non-derogable: everyone has the right to life, liberty and security of person, and the “arbitrary” deprivation of life is prohibited.

Belarusian law enforcement officials have failed in their obligation to protect the lives of those in their custody.

Under international human rights law, the right to life is fundamental and non-derogable: everyone has the right to life, liberty and security of person, and the “arbitrary” deprivation of life is prohibited.<sup>47</sup> International human rights law requires states to take all necessary measures to prevent arbitrary deprivations of life by law enforcement officials.<sup>48</sup> The UN Human Rights Committee has made clear that the use of potentially lethal force for law enforcement purposes should only be a measure of last resort when it is strictly necessary to protect life or prevent serious injury from an imminent threat.<sup>49</sup>

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47 See ICCPR, Article 6 (the right to life) and Article 9 (right to liberty and security of the person).

48 HRC General Comment No 36 (2018) on Article 6 of the ICCPR on the right to life - CCPR/C/GC/36 - 30 October 2018 - available at: [https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1\\_Global/CCPR\\_C\\_GC\\_36\\_8785\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf)

49 Para 12, HRC General Comment No 36 (2018) on Article 6 of the ICCPR on the right to life - CCPR/C/GC/36 - 30 October 2018 - available at: [https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1\\_Global/CCPR\\_C\\_GC\\_36\\_8785\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf)



A public action in remembrance of Raman Bandarenka, Minsk, 20 November 2020.

Raman Bandarenka (01.08.1989 - 12.11.2020), a young painter, artist and community teacher who took part in the post-election protests, is reported to have been killed as a result of torture in detention facilities. On 11 November 2020, Bandarenka went down to his yard as masked plainclothes police officers were removing the white-red-white ribbons with which the residents had decorated their yards. Six masked plainclothes police officers beat him and arrested him. They took him to the Central Minsk City Police Department. Around midday on 12 November 2020, Bandarenka was taken to the Department of Neurosurgery of the Emergency Hospital in Minsk with a severe closed craniocerebral trauma, hematomas on both sides of the brain, as well as bruises and abrasions on his face and limbs. He was in a coma when he arrived at the intensive care unit and died at about 8:00 p.m. that day.

In February 2021, the Office of the Prosecutor General opened a criminal case into the death of Roman Bandarenka under Article 147 part 3 of the Criminal Code relating to deliberate infliction of grievous bodily harm, resulting in death by negligence. This crime is punishable by from 5 to 15 years of imprisonment. The Office of the Prosecutor General noted that "the involvement of employees of the internal affairs bodies in causing bodily harm has not been established."

Since his death, Bandarenka has become a symbol of the ongoing protests: there has been a country-wide wave of solidarity actions on the streets, in the factories, hospitals, universities and beyond.



## Detention conditions amounting to cruel, inhuman or degrading treatment



*“There were 20 people and four beds in my cell, so we had to sleep in shifts. Mattresses were given out only on the third night”. (Ales Zhlutka)*

Reports from people interviewed for this research indicate a pattern of inadequate detention conditions which in some instances amounted to cruel, inhuman or degrading treatment, including: severely overcrowded detention cells; lack of sufficient access to safe drinking water and adequate food; poor sanitary conditions; denial of adequate medical assistance. Detainees also report high risks of COVID-19 infection in detention facilities and a lack of sufficient preventative measures to prevent the spread of the virus.

Zmicier Sasnoŭski, the leader of the medieval folk band Stary Olsa, was detained in Klets'k on 13 November 2020, as he took part in a memorial protest for Raman Bandarenka. Sasnoŭski reported being held in detention for three days with no food and in very poor conditions. Upon his release, he was fined 855 Belarusian rubles (approximately 267 EUR). He later fled Belarus.

Musicians with the band "Echo", Kastus Lisetski, Lenya Pavlenka, and Andrus Takindang, were detained on 7 November 2020, after they gave a performance on Nemanskaya Street in Minsk at a solidarity action. They were taken to Okrestino Detention Centre where Andrus Takindang was held for 15 days. Kastus Lisetski and Lenya Pavlenka were subsequently transferred to Zhodino Detention Centre. Kastus Lisetski was later transferred to hospital where he was diagnosed with bilateral pneumonia and COVID-19. He believes he was infected with COVID-19 in Zhodino Detention Centre.

*There were 10 people in the cell and many had all the symptoms of COVID-19: coughs, a lack of a sense of smell... And there was no medical care at all".*  
(Kastus Lisetski)

Article 10 of the ICCPR which requires that "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."<sup>50</sup> Cruel, inhuman or degrading treatment or punishment (CIDT) does not have to be inflicted for a specific purpose (unlike torture), but there does have to be some intent to expose individuals to conditions which amount to or result in the ill-treatment. In some instances, conditions of detention may amount to cruel, inhuman or degrading treatment. Overcrowding and inadequate facilities in respect to heating, sanitation, sleeping arrangements, food and contact with the outside world have been found to be inhuman and degrading treatment.<sup>51</sup>

The UN Standard Minimum Rules for the Treatment of Prisoners (the "UN Mandela Rules") provide a de minimis soft law standard for the treatment of people in prison.<sup>52</sup> There are some 122 rules in total which were adopted by the UN General Assembly in 1957 and were subsequently revised and re-adopted unanimously in 2015. These rules govern every aspect of a prisoner's life including access to healthcare, food, water, contact with the outside world as well as obligations on prison authorities to investigate allegations of torture and ill-treatment. Most importantly, the Mandela Rules are grounded in the principles of compassion and dignity.

50 ICCPR, Article 10 available at: <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> Article 2.1 of UN CAT requires states to take "legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction"

51 Kalashnikov v Russia, European Court of Human Rights, Application No 47095/99, 15 July 2002

52 United Nations, "The UN Standard Minimum Rules for the Treatment of Prisoners 2015" (UN Mandela Rules) available at: [https://www.unodc.org/documents/justice-and-prison-reform/Nelson\\_Mandela\\_Rules-E-ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf)

## Sexual and gender-based violence



In Belarus, some survivors report having experienced sexual harassment, threats of sexual violence and direct sexual violence (such as rape), along with more general threats by law enforcement officials while in detention. In light of the sensitive nature of the subject and the high risk of re-traumatisation of victims, data collection for this report is limited to the testimonies of victims who experienced sexual harassment and threats of rape by police officers.

Zhenya Vialko, a transgender musician, journalist and LGBTQ activist, was arrested near Komarovsky market on 26 September 2020, during a women's march. "I was told several times that they intended to give me a "proper strip search." They said that they would examine me in a "special way," and then repeated several times that "a piece of shit like me should not live", and that I should be taken out into the yard and shot." Vialko was held in Okrestino Isolation Centre and Zhodino Detention Centre for two days until his court hearing. The musician was fined 135 Belarusian rubles (43 EUR) under Article 23.34 ("Breaching the order of organising or conducting mass events").

// As a signatory to the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Belarus is legally bound by the obligations in this treaty.



Sexual violence is prohibited under international human rights law through the prohibition of torture and other ill-treatment. A number of international human rights tribunals have found rape of detainees to amount to torture.<sup>53</sup> As a signatory to the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Belarus is legally bound by the obligations in this treaty. Whilst the treaty itself does not contain specific provisions relating to gender-based violence, the UN Committee on the Elimination of Discrimination against Women (“CEDAW Committee”) has read in gender-based violence a form of discrimination against women prohibited under the treaty.<sup>54</sup> The CEDAW Committee has also stated that the Convention establishes state responsibility for gender-based violence perpetrated by public authorities.<sup>55</sup>



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53 European Court of Human Rights, *Aydin v. Turkey*, September 1997, (ibid., § 1741); *Aydin v. Turkey* (1997) was the first time the Court recognised that an act of rape by public officials or another person acting in an official capacity constitutes a form of torture. Available at: [https://hudoc.echr.coe.int/fre#{%22itemid%22:\[%22001-58371%22\]}](https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-58371%22]})

54 The UN Committee on the Elimination of Discrimination against Women defines gender based violence as “violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence”, General Comment 19, para 6, CEDAW Committee available at: <https://www.refworld.org/docid/52d920c54.html>

55 See above, par 8



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## VI. Recommendations



## **TO THE AUTHORITIES OF BELARUS:**

- Undertake prompt, thorough, impartial and independent investigations into all allegations of unlawful conduct detailed in this report by law enforcement officials against artists, creative professionals and cultural workers in connection with the peaceful protests held across Belarusian cities following the presidential election on 9 August 2020.
- Cease reprisals against artists, creative professionals and others for expressing their artistic views, political opinions and participating in peaceful protests.
- Immediately and unconditionally release all individuals who were imprisoned on politically-motivated grounds, as determined by human rights defenders and the international community.
- Ensure that artists, creative professionals and cultural workers, as well as all individuals deprived of their liberty in Belarus are afforded their rights under international fair trial standards and due process rights.
- Ensure that artists, creative professionals, cultural workers and all individuals deprived of their liberty are treated in line with international human rights standards including the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), the UN CAT and the ICCPR.
- Ensure that all those responsible for human rights violations, including those with command and supervision responsibility, are brought to justice in fair legal proceedings and in line with international human rights standards. All sanctions imposed should be commensurate with the severity of the violations committed.
- Provide reparations to victims of human rights violations including (as required by the UN CAT) by providing victims of torture with fair and adequate compensation, including the means for as full rehabilitation as possible, and providing dependants of victims who died as a result of an act of torture with compensation.

- Cease dismissals of employment and studies of artists, creative professionals, human rights defenders, students and university staff, as well as all of those willing to exercise their cultural rights, on the grounds of political opinion expressed by means of picketing, involvements in protests and solidarity actions, in social media, and by other means.
- Fully cooperate with the mission of independent experts under the Moscow Mechanism invoked on 17 September 2020, for the purpose of carrying out an impartial investigation of human rights violations committed in the context of the protests.
- Bring national legislation and practice on holding and policing assemblies into full compliance with international human rights standards. In particular, the authorities should ensure that peaceful assemblies can take place without interference, that any actions to disperse protests are used only as a last resort exclusively on grounds prescribed by international human rights law, and that the means employed for dispersal are strictly necessary and proportionate in any given situation.

## **WE REQUEST THE INTERNATIONAL COMMUNITY TO:**

- Insist that the Belarusian authorities put an end to ongoing post-election human rights violations and take urgent action to investigate all allegations of human rights violations perpetrated since 9 August 2020, election against artists, creative professionals, students and university staff, and all those willing to exercise their cultural rights. Urge that those responsible be brought to justice, in accordance with the recommendations made above.
- Ensure that political and economic engagement with the Belarusian government, as well as any financial assistance, is conditional on the conduct of independent investigations into, as well as accountability for, the human rights violations perpetrated since the election and on undertaking wider

reforms to safeguard the fundamental rights and freedoms of citizens.

- Call for a new presidential election held in full compliance with international standards for free and fair elections, and unhindered monitoring by independent local and international observers.
- Call for the reinstatement of all workers and students dismissed from their studies and/or employment on political grounds.

#### **WITH RESPECT TO EU ENGAGEMENT:**

- Provide rapid financial assistance to support victims of repression in Belarus, in particular for the purpose of funding the rehabilitation of survivors of torture and ill-treatment and the relocation of victims who had to flee the country, while freezing EU fund transfers, and discontinuing loans to the current regime or state-controlled projects – in line with the resolution of the European Parliament of 17 September 2020.
- Continue investigations into the violations of the right to freedom of expression and that to freedom of artistic expression, as well as other human rights violations beyond the third round of sanctions and expand targeted sanctions against individuals in the Belarusian regime responsible for violating these rights, as well as those responsible for the falsification of the presidential election and the post-election crackdown on peaceful protesters.
- Prolong the restrictive measures against Belarus, including but not limited to an arms embargo and a ban on the export of goods for internal repression, until all those responsible for ongoing human rights violations are brought to justice, a free and fair presidential election is organised, and all political prisoners are released.
- Use universal jurisdiction as a critical tool to bring to justice the perpetrators of torture and ill-treatment and other serious human rights violations committed in Belarus in connection with the post-election crackdown.

- Ensure that independent cultural institutions and culture activists, including those forcefully removed from their positions in state institutions, are prioritised and given appropriate support (including financial) from international stakeholders such as the European Union.
- Provide financial support to civil society organisations that focus their activities (including on an urgent basis) on the protection and promotion of the rights and interests of artists and creative professionals.
- Provide urgent assistance to civil society organisations that offer a safe haven to artists and creative professionals ‘at risk’ including those who have been dismissed from their positions in government institutions or expelled from their studies.
- Provide visa assistance to artists and creative professionals at risk and ensure there are avenues available, should it be necessary, for emergency travel outside Belarus for security reasons in cooperation with diplomatic missions and civil society organisations.
- Actively support the development of the infrastructure of civil society organisations that provide services to members of creative unions, artists and cultural workers among the priorities of the support programmes.

#### **WITH RESPECT TO THE UN WE URGE:**

- The Special Rapporteur in the field of cultural rights to use all the mechanisms at her disposal to monitor, document and ensure the protection of cultural workers in Belarus.
- The inclusion of the implementation of cultural rights in Belarus and the observance of human rights in relation to cultural workers as an agenda item and immediate priority at future UNESCO meetings in conjunction with civil society organisations.
- That the Special Rapporteur in the field of cultural rights is given a mandate to undertake an urgent visit to Belarus at the earliest opportunity.



