



Provisional version

Committee on Legal Affairs and Human Rights

Human rights violations in Belarus require an international investigation

Report*

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A. Draft resolution

1. The Assembly recalls that the peaceful protests against the falsification of the results of the presidential election in Belarus of 9 August 2020 were brutally put down by the regime of Alexander Lukashenko, with many protesters arrested and tortured in detention. A great many leaders of the citizens' movement were prosecuted for crimes which are vaguely defined but incur long prison sentences, while others were forced into exile.
2. In February 2021, a new wave of arrests and prosecutions was launched against opposition activists who had not yet been detained. Those prosecuted included human rights defenders, journalists, lawyers, trade unionists and representatives of the "Coordination Council", the political opposition's flagship body.
3. According to the Freedom House, the number of political prisoners, including human rights defenders, journalists, activists, representatives of youth organisations and political parties, has reached 300, with fabricated cases against them; in March 2021 there were attempted suicides of two political prisoners and three hunger strikes in protest by Igor Losik, Igor Bantser and Dmitriy Furmanov.
4. The Assembly considers the persons referred to above as political prisoners, following the definition of this term in Resolution 1900 (2012). These persons are in administrative or pre-trial detention or serving prison sentences for merely participating in peaceful protests or publishing information on those protests and their repression by the law enforcement agencies.
5. The Assembly notes that the perpetrators of the serious human rights violations committed on a massive scale when repressing the protests against the falsification of the presidential election results have not been troubled in the slightest by any criminal proceedings at national level, despite the fact that torture and inhuman and degrading treatment are also crimes in Belarusian law; where international anti-torture instruments are concerned, Belarus is not a contracting party to the European Convention for the prevention of torture and inhuman or degrading treatment or punishment (ECPT, *ETS no. 126*) or to the Optional Protocol to the United Nations Convention against torture (OP-CAT) or to the Rome Statute of the International Criminal Court.
6. The Assembly stresses the great importance of combating impunity for the perpetrators of serious human rights violations, out of principle and also to deter others from perpetrating human rights violations in the future, reiterating its Resolutions 2252 (2019), 2157 (2017), 2134 (2016) and 1966 (2014). It notes that the criminal legislation of several Council of Europe member States provides for "universal jurisdiction" for their courts for certain crimes of a particularly serious nature, including acts of torture, even committed abroad, by foreign nationals and against foreign nationals. It also notes that a number of States have passed "Magnitsky laws" under which targeted sanctions may be imposed on perpetrators of serious human rights violations.

* Draft resolution and draft recommendation adopted by the committee on 22 March 2021.

7. The Assembly welcomes the initiative taken by human rights activists in Belarus who have successfully compiled a substantial body of evidence of torture and inhuman and degrading treatment and identified presumed perpetrators.

8. It welcomes the initiative launched by the European Parliament in collaboration with other international stakeholders, in the spirit of the follow up to the recommendations of the OSCE's Moscow Mechanism, setting up an international advisory platform, the Belarus Accountability Platform, tasked with gathering evidence of serious human rights violations in Belarus and assessing it with a view to making it available to the competent authorities of member States, so that they can prosecute Belarusian nationals having perpetrated these crimes, committed in Belarus against Belarusian victims).

9. The Assembly considers that the information gathered by human rights activists in Belarus and the evidence assessed by the platform launched within the European Parliament will be able to serve as a basis for criminal proceedings lodged on the basis of universal jurisdiction and for the imposing of targeted sanctions under "Magnitsky laws".

10. It welcomes the prosecutions already initiated by Lithuanian courts on the basis of universal jurisdiction and the commitment of some member States, notably the Baltic countries, Poland and Ukraine, which have taken in victims of repression forced into exile and support civil society in Belarus.

11. The Assembly calls upon:

11.1. the Belarusian authorities to:

11.1.1. engage in dialogue with the opposition as the only way to cease the violence, human rights violations and to hold new democratic elections to resolve the political crisis.

11.1.2. release political prisoners without delay;

11.1.3. immediately put a stop to all acts of torture and inhuman and degrading treatment committed against opponents of the regime, whether in public, citizens' homes or any places of detention;

11.1.4. prosecute all the perpetrators of such acts in accordance with the Belarusian Criminal Code;

11.1.5. co-operate with the European Commission for Democracy through Law (Venice Commission) with a view to reforming the Criminal Code in order to decriminalise the exercise of freedom of expression, assembly and association;

11.1.6. sign and ratify the United Nations Optional Protocol to the Convention against torture and other cruel, inhuman or degrading treatment or punishment (OP-CAT) and the Rome Statute establishing the International Criminal Court and ask the Council of Europe Committee of Ministers to invite their country to accede to the European Convention for the prevention of torture and inhuman or degrading treatment or punishment (ECPT);

11.1.7. take all necessary measures to ensure the right to a fair trial, including access to a lawyer;

11.1.8. cease all restrictions on media freedom and freedom of assembly;

11.1.9. implement all recommendations of the European Commission for Democracy through Law (Venice Commission) in its opinion of 20 March 2021 on the Compatibility with European Standards of certain Criminal Law Provisions used to prosecute peaceful demonstrators and members of the Coordinating Council.

11.1.10. abolish the death penalty as soon as possible, starting with a moratorium.

11.2. the member States of the Council of Europe to:

11.2.1. to explore mechanisms for facilitating dialogue between the authorities and the opposition for resolving the political crisis;

11.2.2. demand, in their dealings with the Belarusian authorities, at all levels, the immediate release of all political prisoners and the ceasing of the campaign of repression against protesters and their families;

11.2.3. support the ongoing efforts at international level to call to account the perpetrators of serious human rights violations committed in Belarus by state officials who enjoy impunity, including by exercising the universal jurisdiction provided for in their criminal legislation or, where applicable, by introducing this possibility in their legislation;

11.2.4. continue to take in the victims of repression who have been forced into political exile and support Belarusian civil society, including political prisoners' families, and provide study grants for Belarusian students who have been expelled from their faculties;

11.2.5. use their "Magnitsky laws" which make it possible to impose targeted sanctions on perpetrators of human rights violations and also presumed perpetrators of such violations in Belarus, and pass such laws where necessary;

11.3. The competent institutions of the European Union to:

11.3.1. demand, in their dealings with Belarus, at all levels, the immediate release of all political prisoners and the ceasing of the campaign of repression against protesters and their families, and make any economic and financial co-operation conditional on this;

11.3.2. strengthen their co-operation with Belarusian civil society and give support to political prisoners' families and provide study grants for Belarusian students who have been expelled from their faculties;

11.3.3. support the initiative developed within the European Parliament aimed at creating a coordination platform federating efforts at international level to combat impunity for the perpetrators of human rights violations in Belarus, by gathering, analysing and assessing relevant information and tip-offs, with a view to these being used to help national law enforcement authorities exercise universal jurisdiction and to impose targeted sanctions via the "Magnitsky" mechanisms that exist or are to be created; strengthen personalised sanctions against those perpetrating human rights violations, including police, prosecutors and judges.

B. Draft recommendation

Referring to its Resolution **** (2021), the Assembly invites the Committee of Ministers to:

1. examine the scope of universal jurisdiction with a view to its use by Council of Europe member States to combat impunity for perpetrators of serious human rights violations;
2. invite Belarus to accede to the European Convention for the prevention of torture and inhuman or degrading treatment or punishment (ECPT);
3. make the expertise of the Council of Europe available to the "coordination platform" launched within the European Parliament, particularly in the sphere of combating torture and protecting freedom of expression, association and the media;
4. demand, in its dealings with Belarus, the immediate release of all political prisoners and the ceasing of the campaign of repression against protesters and their families and make any technical co-operation and any movement towards the possible accession of Belarus to the Council of Europe subject to that requirement.
5. explore ways for the Council of Europe to serve as a mediation platform for the dialogue between the authorities and the opposition.

C. Explanatory memorandum by Ms Louis, rapporteur

1. Introduction

1.1. Background to the current situation

1. Alexander Lukashenko has been President of Belarus since 1994. He has secured re-election four times since then, against a backdrop of systematic repression of the opposition and election campaigns and ballots deemed not free by the international community, including the Council of Europe. In January 1997, following a none too democratic referendum establishing extravagant presidential powers, the Parliamentary Assembly froze the special guest status granted to the Belarusian Parliament in 1992.

2. During the parliamentary elections of November 2019, none of the opposition parties or candidates won any seats. The two opposition MPs who had been elected in 2016 were prevented from standing for re-election. Already in the 2019 elections, the opposition pointed to fraud on a massive scale. In June 2020, less than two months before the date of the presidential election, the main opposition candidates Viktor Babaryka and Sergei Tsikhanousky were arrested, together with other members of the opposition, and excluded from the election. *Amnesty International* regards them as prisoners of conscience. Sergei Tsikhanousky's wife, Sviatlana, stood for election in his stead. According to the official results, she supposedly received 10% of the vote, compared to 80% for Mr Lukashenko.

3. On the very evening of polling day, following the announcement of the presidential election results based on exit polls, tens of thousands of protesters massed on the streets. In Minsk the anti-riot police used stun grenades, rubber bullets and even real bullets against them, a fact admitted by the police themselves¹. The opposition claimed victory for Sviatlana Tsikhanouskaya in the election and demanded Mr Lukashenko's departure. On 11 August, Ms Tsikhanouskaya took refuge in Lithuania². The Coordination Council of opposition forces called for national dialogue for an orderly handover of power, backing its demands with regular but peaceful mass demonstrations particularly at weekends, in Minsk and other Belarusian towns and cities. On 23 September 2020, a secret ceremony was held to swear in Alexander Lukashenko for a new term in office. This inauguration by stealth was followed by new mass protests and strikes targeting state enterprises.

4. The authorities became increasingly brutal in their response: hundreds of peaceful demonstrators were arrested, often by men wearing uniforms without insignia and taken away in vans without licence plates. Some people disappeared, temporarily, while their families had no idea where they were. During their detention, they were subjected to ill-treatment, as evidenced by witness statements and frightening photographs. Some of them died³. Most of the detainees were released after a few days, while others were prosecuted for crimes potentially punishable by long prison sentences, in conditions that did not respect the rights of the defense. In addition to arresting and ill-treating demonstrators and sometimes even mere passers-by, the authorities systematically persecuted the leaders of the movement. Not a single member of the Coordination Council of opposition forces still lives in Belarus in liberty. Some are in detention, while others have been forced into exile⁴. The repression has also targeted grassroots activists, bloggers and other journalists and independent trade unionists. Since the beginning of October, even foreign journalists have been prevented from doing their job.

5. In short, Mr Lukashenko's regime appears to be trying to hold onto power by force, despite the obvious rejection of his rule by a large part of the population and the fact that many members of the elite, including diplomats and state media journalists, have defected. The courage of the people of Belarus, particularly its women, who are in the front line at all levels, is impressive.

1.2. Responses of the international community

6. Within the Council of Europe, the President of the Assembly, the Chairman of the Committee of Ministers and the Secretary General have repeatedly called on the Belarus authorities to put an end to the violence and engage in inclusive dialogue with all the stakeholders. In a statement adopted on 9 September 2020, our

¹ See for example Euronews of 11 August 2020, "Belarus : l'opposante Svetlana Tikhanovskaïa s'est réfugiée en Lituanie", available at <https://fr.euronews.com/2020/08/10/belarus-l-opposante-svetlana-tikhanovskaia-conteste-la-reelection-d-alexandre-loukachenko>.

² See for example Euronews (note 1).

³ See below, para. 11.

⁴ See La Libre Belgique of 13 October 2020, at <https://www.lalibre.be/international/europe/tensions-au-belarus-l-opposante-tikhanovskaia-lance-un-ultimatum-au-president-loukachenko-5f85af2dd8ad583d1b4ecea5>.

Committee called on the Council of Europe, "in co-operation with other international bodies, [to] urgently set up an international investigative body to collect information and secure evidence on human rights crimes in Belarus". Following further repression to brutally put down demonstrations at the beginning of October, the President of the Assembly, the Chairman of the Committee of Ministers and the Secretary General of the Council of Europe condemned the exactions perpetrated by the authorities in the strongest possible terms and called for dialogue in a [joint statement](#) of 13 October 2020.

7. Where the European Union is concerned, Charles Michel, President of the European Council, announced as long ago as 19 August 2020 that the European Union did not intend to recognise the election result. Subsequently, the Council of the European Union decreed sanctions (including the freezing of assets and the refusal of visas) targeting numerous representatives of the regime, including those suspected of involvement in the falsification of the election results and in police brutality. On 12 October 2020, the European Council agreed on a second list of sanctioned individuals, including Mr Lukashenko himself. On 16 October 2020, our committee chair, Boriss Cilevičs, confirmed during a hearing at the European Parliament on combating impunity in Belarus that our Committee stood ready to co-operate in that effort alongside the competent international stakeholders⁵.

8. Regarding the OSCE (Organisation for Security and Co-operation in Europe), 17 participating States, including the United States, triggered the OSCE's "Moscow Mechanism" on 17 September 2020 to set up a mission of experts to examine credible reports of human rights abuses and violations, including electoral fraud, in Belarus. The OSCE rapporteur Wolfgang Benedek (Austria) has already contacted me with a view to developing co-operation. In the meantime, he contributed to the hearing alongside other experts at our committee meeting on 8 December 2020.

1.3. *The aim of the present report*

9. The signatories of the [motion for a resolution](#) underlying my terms of reference considered that "the perpetrators of the serious human rights violations in the context of the recent presidential election and its aftermath must be held to account. *A clear signal must be sent to all members of the Belarusian security forces that there will be no impunity for serious human rights violations. Therefore, the Council of Europe, in co-operation with other international organisations, should urgently set up an international investigative body to collect information and secure evidence on human rights crimes in Belarus. Both the Belarusian authorities and representatives of civil society shall be invited to co-operate in this investigation. Its results shall be published and made available to any national or international law enforcement bodies that are willing and have jurisdiction to prosecute massive human rights violations committed in Belarus.*"

10. The aim of this report is therefore clear: to shed light on the human rights violations mentioned before and to send a clear message to the perpetrators and organisers of the serious violations of these rights reminding them that their actions violate the most fundamental rights and freedoms and that they will be held to account for their misdeeds. This is also a message addressed to the Belarusian people in support of their struggle for democracy and the protection of human rights. The necessary message that the international community will not tolerate the impunity evidenced by the total lack of criminal proceedings on the part of the Belarusian authorities against the perpetrators of these exactions must result in the setting up of an appropriate international mechanism capable of helping national courts, wherever possible, to take up given cases or use other instruments to combat impunity, such as the "Magnitsky laws" passed in numerous countries and by the European Union in recent years.

2. Summary of information available in relation to the allegations of human rights violations since the presidential election of 9 August 2020

2.1. *Overview*

11. Since the announcement of the disputed result of the presidential election of 9 August 2020, the special forces of the Ministry of the Interior (OMON) have been deployed to disperse the peaceful mass protests that were subsequently held. The OMON troops used disproportionate physical force, special equipment and non-lethal weapons which are nevertheless dangerous depending on how they are used (water cannons, batons, stun and flash grenades, rubber bullets). Many people were injured as a result. At least two protesters were killed by direct action by the police and two others died following their detention⁶. It has been reported that,

⁵ A copy of Mr Cilevičs's statement is available on request from the Secretariat.

⁶ During the protests, at least two protesters were killed by special forces officers - Alexander Taraikovsky in Minsk and Gennady Shutov in Brest. Alexander Vikhor from Gomel died immediately after his arrest. See the report of the "Viasna" human rights centre on the human rights situation in Belarus. August 2020 <https://spring96.org/ru/news/99334>. Denis

recently, Mr Lukashenko even authorised the use, by his security forces, of weapons with live bullets⁷. On 12 August 2020, the Ministry of Health stated that just over 200 had been taken to hospital with injuries in two days of protests, several of them requiring surgery⁸.

12. During the month of August, over 7 500 people were arrested for taking part in peaceful protests. Protesters were detained in nearly all the country's cities. A number of detainees were kept incommunicado for several days⁹. Belarusian human rights protection organisations have logged and documented over 500 cases of torture and other cruel and inhuman treatment, which points to the systematic use of such tactics on a massive scale. In September 2020, over 3 500 people were arrested for participating in protests, of whom over 2 700 were placed in detention¹⁰.

13. Human rights defenders and activists assert that, from 9 to 14 August 2020, acts they describe as "crimes against human security" were widespread throughout the country, with people being detained and taken away because of their political beliefs¹¹, and subsequently subjected to torture and other prohibited ill-treatment. According to the Office of the United Nations High Commissioner for Human Rights, for several days from 9 August onwards, throughout the country, law enforcement officers committed acts intended to inflict serious injuries on people (protesters, members of the political opposition, innocent bystanders, passers-by, journalists, bloggers)¹². Finally, it should be noted that by the end of August, none of the 2 000 complaints¹³ lodged with the Minsk prosecutor's office and the Investigative Committee¹⁴ had resulted in prosecutions being brought for acts of torture committed in provisional detention centres¹⁵.

14. Some details of alleged acts of repression submitted by "target group" (the main organisers of the opposition movement, lawyers, journalists, human rights activists and finally the Belarusians taking part in protests) are provided below.

2.2. Allegations of human rights violations, by target group

2.2.1. Political prisoners - persecution of the main organisers of the opposition movement for political motives

15. Back in 18 June 2020, the potential presidential candidate **Viktar Babaryka** and his son Eduard were arrested in Minsk and their houses were searched for doubtful motives. Viktar Babaryka and his son are being prosecuted under six articles of the Criminal Code (tax evasion; laundering of proceeds of crime; embezzlement; fraud; active and passive corruption)¹⁶.

16. On 24 August 2020, two members of the "Coordination Council", set up to promote a peaceful handover of power, **Sergei Dilevsky** and **Olga Kovalkova**, were apprehended for illegally organising a strike¹⁷.

Kuznetsov died from multiple injuries following his detention in the temporary custody isolation unit in Minsk. See the Report by the non-profit non-governmental organisation "Legal Initiative" on mass torture in Belarus: 2020, p.39 (<http://www.legin.by/documents/Belarus-tortures-2020-first-report>); <https://belsat.eu/ru/news/izbityj-na-okrestina-denis-k-segodnya-umer/>.

⁷ See <https://fr.euronews.com/2020/10/13/les-armes-letales-autorisees-pour-contrer-le-mouvement-anti-loukachenko>

⁸ <https://news.tut.by/society/696345.html>

⁹ <https://spring96.org/ru/news/99334>

¹⁰ <https://spring96.org/ru/news/99777>

¹¹ It is claimed that the most severe punishment was meted out to certain categories of detainee, identified by "tell-tale signs" such as white wristbands or ribbons, a subscription to certain Telegram channels or their unusual appearance. See <https://spring96.org/en/news/99871>

¹² <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26199&LangID=E>

¹³ Report on mass torture in Belarus: 2020, p.31 (<http://www.legin.by/documents/Belarus-tortures-2020-first-report>).

¹⁴ <https://t.me/skgovby/2945> (according to the official data of the Investigative Committee of 17 August, over 600 citizens lodged complaints over injuries received when being detained by law enforcement agencies, and around 100 people - for injuries received in places of detention).

¹⁵ <http://www.legin.by/posts/pravozaschitniki-potrebovali-prokuraturu-gorod-minska-otchitatsyaa>, <http://www.legin.by/posts/283>, <http://www.legin.by/documents/Belarus-tortures-2020-first-report>

¹⁶ <https://www.currenttime.tv/a/belarus-babariko-detention/30678308.html>;

<https://www.currenttime.tv/a/belarus-elections-babariko/30678039.html>

¹⁷ https://www.lemonde.fr/international/article/2020/08/24/en-bielorussie-deux-membres-du-conseil-de-coordination-de-l-opposition-interpelles_6049788_3210.html

17. On the same day, the chairman of the strike committee of a major state factory, **Alexander Lavrinovich**, was also picked up by the police while collecting signatures to support a new work stoppage. The joint chairman of the strike committee of another factory, **Anatoly Bokun**, was also apprehended¹⁸.

18. The co-founder of the Belarusian Christian Democracy party **Pavel Sevyarynets** was arrested back in 7 June 2020. After that, at least three administrative detention orders of 15 days were issued against him for taking part in pre-election pickets and calls for participation in mass events. On 1 September, he was indicted for taking part in mass riots (Article 293 of the Criminal Code), in the form of "direct participation in actions accompanied by violence against people, pogroms, arson, destruction of property or armed resistance against representatives of the authorities"¹⁹. Mr Sevyarynets risks a prison sentence of three to eight years.

19. On 31 August 2020, **Lilia Vlasova** and **Vasily Polyakov**, two other members of the "Coordination Council" of the Belarusian opposition, were arrested. Lilia Vlasova's flat was searched²⁰. On 9 September, the lawyers **Maxim Znak** and **Ilya Salei**, members of the Bureau of the "Coordination Council", were arrested. Their flats were also searched.

20. The authorities have also used the tactic of forced expatriation of eminent opposition figures. This was used for the first time in August 2020, against the main opposition candidate for the presidency, **Sviatlana Tsikhanouskaya**²¹. During the night of 5 to 6 September 2020, **Olga Kovalkova**, member of the Bureau of the "Coordination Council", who was serving a sentence of administrative detention at a remand centre for organising unauthorised actions, was forced to leave Belarus²². She is currently in Warsaw. On 7 September 2020, in Minsk city centre, another member of the Bureau of the "Coordination Council", **Maria Kolesnikova**, was abducted²³. She was forcibly taken to the Ukrainian border to be expelled from the country. Ms Kolesnikova tore up her passport at the border, which prevented the Belarusian special services officers from deporting her²⁴. On the same day, the "Coordination Council" press officer Anton Rodnenkov and another representative of the "Coordination Council", Ivan Kravtsov, were arrested. They were forcibly taken to the Ukrainian border to be expelled from the country. They are currently in Ukraine.

21. Maria Kolesnikova, Maxim Znak and Ilya Salei are currently in provisional detention and stand accused in criminal proceedings lodged pursuant to Article 361 paragraph 3 of the Criminal Code (calling for actions aimed at damaging the national security of the Republic of Belarus).

22. All of the opposition figures in Belarus are currently in detention or in exile. On 10 October 2020, Mr Lukashenko went to a prison in Minsk to meet with the opposition leaders imprisoned there²⁵. It is reported that, at that meeting, he had aired proposals to amend the Constitution. The leaders he spoke to told him that prison was not an appropriate place for negotiations.

2.2.2. *Persecution of journalists*

23. During the election campaign period and after the elections, the media, journalists and bloggers were put under increasing pressure. The vast majority of violations of journalists' rights took place in the period following the elections. In 2020, the Belarusian Association of Journalists (BAJ) logged over 400 cases of harassment of journalists because of their professional activities²⁶, including more than 186 instances of journalists being detained in the period from 9 August to mid-September²⁷. Something like one journalist in three was subjected to violence during their detention. The BAJ recorded cases of torture and ill-treatment of journalists after their arrest, including foreign journalists, the damaging or confiscation of their equipment, the wiping of footage, beatings and the use of rubber bullets against them; 24 journalists were detained and sentenced to administrative detention for durations of between 3 to 15 days plus fines²⁸.

¹⁸ https://www.lemonde.fr/international/article/2020/08/24/en-bielorussie-deux-membres-du-conseil-de-coordination-de-l-opposition-interpelles_6049788_3210.html

¹⁹ <http://spring96.org/ru/news/99321>

²⁰ <https://www.epde.org/ru/news/details/zaderzhaniya-chlenov-koordinatsionnogo-soveta-v-belarusi-31-avgusta.html>

²¹ <https://spring96.org/ru/news/99777>; https://lenta.ru/brief/2020/08/11/che_tam/

²² <http://spring96.org/ru/news/99407>

²³ <https://spring96.org/ru/news/99777>

²⁴ <https://www.bbc.com/russian/news-54068283>

²⁵ https://www.challenges.fr/monde/le-president-bielorusse-rencontre-des-opposants-detenus-en-prison_731992;

<https://isans.org/analysis-en/belarus-review-daily/belarus-review-daily-october-9-2020.html>;

<https://www.currenttime.tv/a/kolesnikova-otkazalasi-ot-vstrechi-s-lukashenko/30890470.html>

²⁶ <https://baj.by/ru/analytics/byut-strelyayut-brosayut-na-sutki-kak-vo-vremya-protestov-rabotayut-zhurnalisty-v-belarusi>

²⁷ Report on "Belarus after elections: 2020", p. 37, <https://baj.by/ru/analytics/belarus-posle-vyborov-doklad-belorusskih-pravozashchitnyh-organizatsiy-o-situatsii-s-pravami>.

²⁸ <http://spring96.org/ru/news/99381>

24. On 10 August 2020, an employee of TUT.BY²⁹, **Nikita Bystrik**, was arrested and beaten. Due to police violence, he suffers from fractures of the skull and of a rib and wide-spread bruising. He received no medical assistance, even on the next day, was not given any food for two days and was rarely allowed to go to the toilet³⁰.

25. Other violations of freedom of expression connected to the elections included:

- the blocking of the Internet throughout the country in the initial days following the election and the routine limiting of it during mass protests;
- restrictions on access to events sites;
- a tacit ban on the printing and distribution of national newspapers and magazines;
- refusal of applications for accreditation for foreign journalists;
- cancellation of permanent accreditation for foreign journalists;
- threats from the Ministry of Foreign Affairs to the functioning of accredited foreign media in response to possible European sanctions against representatives of Belarus.

2.2.3. Harassment and persecution of human rights activists

26. Already on polling day, seven members of regional branches of the "Vesna" ("Spring") human rights centre were arbitrarily detained because of their human rights work³¹.

27. On 31 August 2020, a volunteer of the "Viasna" human rights centre, **Pavel Garbuz**, who was suspected of participating in the demonstrations from 9 to 11 August in Minsk, was arrested and placed in the provisional detention centre³². During the 10 days he spent there, he was pressurised by staff of the Chief Directorate for combating organised crime and corruption (GUBOPiK) of the Ministry of the Interior. He is identified as a suspect in a criminal case brought under Article 293 paragraph 2 of the Criminal Code.

28. On 17 September 2020, GUBOPiK staff arrested the coordinator of the "Viasna" volunteer service, **Marfa Rabkova**, together with her husband, who was then released³³. She is currently held in a remand prison in Minsk. Ms Rabkova is accused of an offence under Article 293 paragraph 3 of the Criminal Code (training or otherwise preparing individuals to participate in riots or financing such activities). As part of her work for "Viasna", Ms Rabkova, together with volunteers, observed peaceful gatherings, took an active part in the independent election observation campaign entitled "Human rights activists for free elections" and participated in the documenting of evidence of torture and other harsh treatment inflicted on detainees. On 18 September, Amnesty International recognised Marfa Rabkova as a prisoner of conscience owing to her human rights protection work³⁴. The Council of "Viasna" regards the criminal proceedings against Marfa Rabkova as persecution and a form of pressure on the "Viasna" human rights centre as a whole.

2.2.4. Persecution of lawyers

29. It is also alleged that the lawyers who defend civic rights of militants and opponents of the current government are targeted by politically motivated prosecutions and other forms of harassment, notably by the removal of their licences to practise.

30. **Maksim Znak**, the lawyer of the presidential candidate Viktor Babaryka, and also the lawyer of Maria Kolesnikova, **Ilya Salei** (see above), are believed to be currently in detention³⁵. **Ludmila Kazak**, another

²⁹Information and services internet portal in Belarus. In September 2020, the Ministry of Information lodged a court complaint demanding that the portal be denied registration as a media outlet following its coverage of the demonstrations in Belarus (<https://euroradio.fm/ru/tutby-grozit-poterya-statusa-smi>).

³⁰ <https://baj.by/be/analytics/sotrudnika-tutby-zaderzhali-za-video-s-mirnyh-protstov-emu-slomali-rebro-i-razbili-golovu>

³¹ <https://spring96.org/ru/news/99777>

³² <http://spring96.org/ru/news/99627>

³³ <https://spring96.org/ru/news/99569>

³⁴<https://eurasia.amnesty.org/2020/09/22/zayavlenie-marfa-rabkova-i-ostalnye-uzniki-sovesti-v-belarusi-dolzny-byt-osvobozhdeny/>

³⁵ Report on "Belarus after elections: 2020", p. 44, <https://baj.by/ru/analytics/belarus-posle-vyborov-doklad-belorusskih-pravozashchitnyh-organizacij-o-situacii-s-pravami>.

lawyer of Maria Kolesnikova, was detained and then found guilty of breaching Article 23.4 of the Code of Administrative Infringements, resulting in her being fined³⁶. The lawyers found it difficult to have access to their clients under conditions of professional secrecy and to the proceedings concerning them.

2.2.5. Human rights violations against people who were simply peacefully protesting

31. Numerous protests have been organised against the falsification of election results and the violent dispersal of protesters during the period following the elections. Demonstrations with tens of thousands of participants were held on every Sunday in September and October 2020, and hundreds of people were arrested and sentenced to heavy fines and administrative detention. According to the public report drawn up by the main human rights defence organisations, many of them were also subject to acts of torture and cruel, inhuman and degrading treatment (see below), including minors³⁷.

32. The various "marches" organised by civil society were as follows:

- the Unity March of 6 September 2020, in Minsk and in the regions;
- the Heroes' March of 13 September 2020 (774 arrests);
- the Justice March of 20 September 2020;
- the "People's Inauguration" of 27 September 2020, in parallel with Mr Lukashenko's inauguration by stealth;
- protest actions by students resulting in 150 individuals being apprehended; 55 of them ended up in remand centres³⁸.
- Women's Marches took place on 5, 12, 19 and 26 September 2020, with hundreds of arrests;
- the March for the release of political prisoners took place on 4 October 2020 in several of the country's cities. 252 people were arrested³⁹.
- the Pride March of 11 October 2020 came under heavy pressure from the security forces: water cannons, teargas, stun grenades and rubber bullets were used against the protesters. Over 600 were arrested⁴⁰.
- the Pensioners' March of 12 October 2020 in Minsk mobilised over a thousand people. The march ended in clashes with the security forces which used flashballs and pepper spray⁴¹.
- the Disabled Persons' March of 15 October 2020 in Minsk brought together a hundred or so protesters. At least two of them were arrested, including Oleg Grablevsky, an employee of the Disabled Persons' Rights Office⁴².
- Tens of thousands were on the streets of Belarus again on 18 October 2020, despite threats by police to fire on them with live rounds, who apprehended over 200 demonstrators⁴³.

33. According to the Ministry of the Interior, at least 3 500 protesters were arrested in the month of September alone, of whom some 2 700 were subjected to lengthy administrative detention in remand prisons. Physical violence and special equipment, including teargas and water cannons, were used against demonstrators, even those in fragile health.

³⁶ Idem.

³⁷ Report on "Belarus after elections: 2020", p. 45, <https://baj.by/ru/analytics/belarus-posle-vyborov-doklad-belorusskih-pravozashchitnyh-organizaciy-o-situacii-s-pravami>.

³⁸ <http://spring96.org/ru/news/99377>

³⁹ <http://spring96.org/be/news/99807>

⁴⁰ <https://belsat.eu/ru/news/marsh-dostoinstva-pochti-600-zaderzhannyh-po-vsej-strane/>;
https://www.lemonde.fr/international/article/2020/10/11/bielorussie-une-manifestation-hostile-a-loukachenko-violemment-reprimee-a-minsk_6055624_3210.html

⁴¹ <https://news.tut.by/society/703887.html>

⁴² https://news.tut.by/society/704245.html#ua:news_geonews_minsk~7

⁴³ [Tens of thousands of people march through streets of Minsk in Belarus in latest protest | Daily Mail Online](https://www.dailymail.com/news/world-news/Tens-of-thousands-of-people-march-through-streets-of-Minsk-in-Belarus-in-latest-protest)

34. The victims of ill-treatment have testified that they were severely beaten with batons during their arrest, in the prisoner transport vehicle and upon their arrival at the police department or at the temporary detention facility. People were kept kneeling on the ground, standing against a wall or lying down in rows. The new arrivals were forced to walk on those who were lying down. The detainees spent 6 to 12 hours without being able to go to the toilet and without food or water. Some were kept in prisoner transport vehicles in a cramped position for over 6 hours. According to the testimony of the injured, in the temporary detention facilities people wearing t-shirts printed with the "Pagonya" former national coat of arms were doused with water and hit with stun guns, some people were forced to eat their white wristbands. The "Zvyano" association, which interviewed victims of ill-treatment, alleges that intramuscular injections of sulfozinum were used on foreign nationals so as not to leave traces of beatings, as well as psychotropic drugs. Many reported that they had been threatened with murder or rape and forced to strip naked and lie on the floor. Several witnesses said that officers were being trained in how to beat people up "as per the instructions", with one holding the detainee and the other telling him how to turn the detainee for an optimum beating. Prisoners received beatings without reason from time to time. In the first two days, the detainees were given no food at all, after which they were given an inadequate serving of bread and porridge once a day. 40 to 50 detainees were held in cells designed for 8 to 10.

35. Finally, among the alleged human rights violations in Belarus since the last presidential election and affecting virtually the entire adult population there are of course the manipulations of the vote itself and of the vote-counting. But the question of whether the result of this election must be rejected and a new election held, and in what conditions, is not within the remit of our Committee.

2.3. Human rights violations confirmed by the hearing on 8 December 2020

36. At its meeting on 8 December 2020, the Committee held a hearing with the participation of

Professor Wolfgang Benedek (Austria), special rapporteur, OSCE Moscow Mechanism
 Mr Valentin Stefanovich, Board Member, *Viasna* Human Rights Centre
 Ms Sviatlana Tsikhanouskaya, Leader of Democratic Belarus
 Mr Aleh Hulak, Chairman of the Belarusian Helsinki Committee, Minsk, Belarus

37. The Belarusian authorities were invited to appoint a representative to convey the official viewpoint but did not avail themselves of the opportunity.

38. **Professor Benedek** explained how the Moscow Mechanism worked. An OSCE report prepared in October had confirmed the allegations of electoral fraud as well as numerous human rights violations (cases of arbitrary detention, cases of torture, persecution of journalists, blocking of the Internet etc). The report contained recommendations for the Belarusian authorities, calling on them to organise new, genuine presidential elections, cease violations of protesters' human rights and reprisals against striking workers, lawyers and journalists, release people who had been arbitrarily detained and ensure respect for the right to a fair trial as well as freedom of access to the Internet. The expert thought that the Venice Commission could provide the Belarusian authorities with advice on implementing democratic reforms and that an international investigation should be carried out to clarify the circumstances of human rights violations and end impunity for the perpetrators. He stressed the necessity of international collaboration on the question of accountability of the perpetrators of human rights violations.

39. **Mr Stefanovich** said that the human rights situation was deteriorating, with more than 4,000 people arrested following the latest protests. Around 500 individuals had been placed in detention centres for political motives. He stressed that the protests had been peaceful. His organisation was documenting the victims of human rights violations and had only a few international mechanisms at its disposal, including the UN special rapporteur, not accepted by the authorities, and the Universal Periodic Review, whose effectiveness depended on the goodwill of the authorities. The authorities also rejected the Moscow Mechanism.

40. **Ms Tsikhanouskaya** thought that the Council of Europe had reacted swiftly to the events in her country. The situation had not improved since September, with over 1,500 cases of torture, some 160 political prisoners and the deployment of teargas on a massive scale by the police. Ms Tsikhanouskaya welcomed Professor Benedek's proposals, the OSCE report and *Viasna's* documentation work. She stressed the need to set up a mechanism based on the principle of universal jurisdiction to try the perpetrators of human rights violations and said that she was already working on this in conjunction with the Lithuanian authorities.

41. **Mr Hulak** also pointed to the worsening situation in Belarus. There had been no criminal investigations into human rights violations. Protesters had been fined or placed in provisional detention. Public institutions had lost their legitimacy owing to the violations of electoral law. The Venice Commission was the only Council

of Europe body with which the Belarusian authorities were co-operating. Mr Hulak hoped that the Council of Europe would devise standards making it possible to set up a judicial mechanism for investigating human rights violations, involving certain neighbouring countries (Poland, Lithuania and Latvia). He reiterated that all rights were indivisible. As the Belarusian economy was deteriorating, economic rights were being jeopardised, since those who went on strike were punished and workers were emigrating to other countries. His organisation had made its views clear to parliamentarians after the presidential elections. The authorities had proposed constitutional reforms, but their proposals were not based on dialogue with society⁴⁴.

2.4. *The campaign of repression continues in 2021*

42. On 17 February 2021, two Belsat TV journalists, **Kaciaryna Andrejeva (Bachvalava)** and **Darja Čulcova**, were sentenced to two years in prison for serious public order offences – for live-broadcasting footage of an opposition demonstration and its brutal repression by the law enforcement agencies⁴⁵.

43. On 16 February 2021, numerous activists, including human rights defenders⁴⁶, journalists' lawyers⁴⁷ and independent election observers⁴⁸ were detained, their offices and homes searched and their technical equipment confiscated. It should be noted that this campaign of intimidation did not spare the well-reputed human rights protection association *Viasna*, whose president, Aleh Bialiatski, is a winner of the Parliamentary Assembly's Vaclav Havel prize, and whose vice-president, Valentin Stefanovich, participated in the hearing before our Committee on 8 December 2020.

44. On 15 February 2021, I received particularly important information on the repression of youth organisations in Belarus. The Chair of the Council of Europe's Advisory Council on Youth (CCJ) informed me of its activities aimed at supporting the National Youth Council of Belarus (RADA – a coalition of 28 youth organisations) and the repression faced by youth initiatives in Belarus. Our committee chair, Boris Cilevičs, has also been involved in these efforts by participating in an online debate with young activists in Belarus.

45. At the end of last January, RADA provided further information on violations of the human rights of young Belarusian activists: some of their team had to leave the country and are unable to return to Belarus; one member close to the family of the secretary general was arrested for a second time; nine students representing a RADA member organisation, the Association of Belarusian Students, were incarcerated in a KGB prison, and that same organisation and the Student Initiative Group have gathered evidence of 399 students being detained and 131 expelled in 2020.

46. RADA does its utmost to keep the international community informed of the situation in the country, including by sending communications to the United Nations special rapporteur on the human rights situation in Belarus and other UN representatives, and they have also shared this information with me.

47. It is ultimately from young people that change must come in Belarus, it is their future that is at stake, it is their energy and creativity that scares the regime. Young Belarusians deserve our full support, including through grants for study abroad for the students who have been expelled from faculties in their own country.

48. On 11 February 2021, the *Viasna* activist **María Rabkova**, who has documented numerous human rights violations including acts of torture and has been in detention since 17 September 2020 (see paragraph 28 above) was charged with new crimes, including links to terrorist activities. She is facing up to 12 years in prison. It is noteworthy that these accusations were made just a few hours after state television broadcast a report linking *Viasna* and Ms Rabkova and alleged terrorist activities. Other *Viasna* members are also being prosecuted under unclear provisions of the Belarusian Criminal Code, including **Leanid Sudalenka**, **María Tarasenko**, **Tatsiana Lasitsa**, **Maryna Kastyliančanka** and **Aliaksandr Paplauski**⁴⁹.

⁴⁴ The full statements by these experts are available from the Committee's secretariat.

⁴⁵ See BELAPAN of 18 February 2021, quoting the reactions of the representatives of the international and European federations of journalists, calling these sentences a "criminalisation of journalism"; in a statement of 19 February 2021, the spokesperson of the EEAS of the European Union also condemned the convictions of the two BELSAT TV journalists and the new campaign aimed at intimidating journalists, human rights defenders and lawyers in Belarus (see: [Belarus: Statement by the Spokesperson on the escalating repression of journalists - European External Action Service \(europa.eu\)](#)).

⁴⁶ See the press release from the Observatory for the protection of human rights defenders of 16 February 2021.

⁴⁷ According to the Observatory (note 46 above), the headquarters of the Belarusian Association of Journalists (BAJ) was one of the main targets, together with the regional and central offices of "Viasna". Baris Haretski, director of the BAJ, and Andrei Bastunets, its chairperson, were arrested in their flats early in the morning.

⁴⁸ See the press release from the EPDE (European Platform for Democratic Elections) of 17 February 2021.

⁴⁹ See the press releases from the Observatory for the protection of human rights defenders of 8 and 15 February 2021.

49. On 3 February 2021, **Siarhei Drazdouski** and **Aleh Hrableuski**, respectively the founder/director and the legal adviser of the Office for the Rights of Persons with Disabilities, were arrested and placed in detention (in the case of Mr Hrableuski) and placed under house arrest (Mr Drazdouski) after a search of their NGO's headquarters. Their detention is on the supposed grounds of their involvement in the organisation of the disabled persons' marches on 15 and 22 October 2020. On 6 February 2021, local human rights organisations declared them political prisoners⁵⁰.

50. In December 2020, I was informed of the ordeal of another journalist, Mr **Mikola Dziadok**, arrested on 12 November 2020 and repeatedly tortured in prison. The winner of several international prizes, he has already spent time in prison in Belarus and won the support of a number of members of the European Parliament as a political prisoner⁵¹.

2.5. The Venice Commission's opinion: laws contrary to Belarus' international obligations

51. It is the prosecutions described above and those of other opponents of the regime based on articles of the Belarusian Criminal Code that are unclear and seem to provide for disproportionate penalties that have motivated the request for an opinion that our Commission addressed to the Venice Commission on 8 December 2020, at my proposal. The request for an opinion concerns the compatibility of certain articles of the Belarusian Criminal Code with European principles of criminal law.⁵²

52. The Venice Commission first reiterates its recommendations already expressed in a joint opinion with the OSCE Office for Democratic Institutions and Human Rights (ODIHR) of 2012 with regard to the Belarusian "Law on Mass Events"⁵³, which provides for administratively burdensome and restrictive regulation of demonstrations, with disproportionate penalties for non-compliance (see Opinion, pages 3 and 19-20). The Venice Commission remains concerned about the overregulation of the procedural aspects of holding assemblies. "Domestic law creates a complicated procedure of compliance with a rigid and difficult authorisation procedure, while at the same time leaving administrative authorities with a very wide margin of discretion for the application of the legislation in force. *In concreto*, this may mean that spontaneous peaceful demonstrations or counterdemonstrations are *de facto* prohibited. As regards the (application of) criminal law provisions, some of the main concerns of the Venice Commission are the criminalisation of *non-violent* demonstrators; the *application* of certain provisions due to the use of vague notions; the (criminal) responsibility of organisers of a demonstration on account of acts imputable to participants; and the severity (and unclarity) of the sentences enshrined in the Criminal Code." (ibid., page 19, paragraph 82).

53. The notion of "public call for the violent overthrow of the constitutional order" (Article 361.1 of the Criminal Code) lends itself to an interpretation contrary to international standards on freedom of expression and assembly. In particular, the Venice Commission (ibid., page 19, paras. 77-78) is concerned about the interpretation given by the Belarusian Constitutional Court that the vote itself is a democratic institution that only electoral judges can challenge. Under this logic, calls by the Co-ordinating Council, under the leadership of Ms Tsikhanouskaya, to demonstrate peacefully against electoral fraud in the 2020 presidential election would be heavily penalised; indeed, such prosecutions against members of the Co-ordinating Council have already been launched.⁵⁴

54. Finally, it should be stressed that the conclusions of the Venice Commission are based not only on the European Convention on Human Rights and the case law of the Strasbourg Court, bearing in mind that Belarus is a candidate for membership of the Council of Europe, but also on Article 21 of the International Covenant on Civil and Political Rights (ICCPR), which entered into force in Belarus in 1973, as well as on the above-mentioned joint opinion with the OSCE/ODIHR as well as the "Joint Guidelines on Freedom of Peaceful Assembly"⁵⁵, which were also jointly formulated by the Venice Commission and ODIHR, and which, though

⁵⁰ See the press release from the Observatory for the protection of human rights defenders of 12 February 2021.

⁵¹ See Mikola Dziadok: A Tortured Political Prisoner in Belarus – The Russian Reader, 19 November 2020.

⁵² The adoption of the Venice Commission's opinion is scheduled for its meeting on 20 March 2020. I have based my report on the draft sent to members, which I received on 5 March 2020. In case the draft is modified during its adoption, I will make the necessary changes to my report before the plenary debate. *Update 22 March 2021*: The opinion of the Venice Commission was indeed adopted on 20 March 2021, with some modifications to the draft on the basis of which I worked, following comments received by the Venice Commission from the Belarusian authorities on 18 March 2021. I have taken these changes into account in paragraphs 51 to 54 of this report. The draft resolution and draft recommendation are not affected.)

⁵³ CDL-AD(2012)006, Joint Opinion on the Law on Mass Events of the Republic of Belarus.

⁵⁴ See draft opinion of the Venice Commission of 20 March 2020, page 19.

⁵⁵ CDL-AD(2019)017, Joint Guidelines on Freedom of Peaceful Assembly (3rd edition).

not legally binding, are applicable to Belarus on the basis of its political commitments as an OSCE participating State.

2.6. *New reports detail cases of torture and confirm impunity for perpetrators*

55. On 26 January 2021, the NGOs "Committee against Torture" (Nizhny Novgorod/Russia) and the World Organisation against Torture (OMCT) published a report providing details of cases of torture and inhuman and degrading treatment committed by members of the security forces and the ploys used by the authorities to ensure complete impunity for the perpetrators of these exactions.⁵⁶ Other major reports have been published by *Viasna*⁵⁷ and *Human Rights Watch*.⁵⁸ I believe that these reports, based on *in situ* research and interviews with numerous witnesses and victims, are a further argument for the urgent need for an international mechanism to combat the impunity enjoyed by the perpetrators of such violations. While it cannot be made public in the aforementioned reports for security reasons, the evidence gathered by the NGOs certainly does exist and could be made available to such an international mechanism with the necessary precautions.

3. **Releasing political prisoners: a matter of the utmost urgency**

56. In its Resolution 1900 (2012), the Parliamentary Assembly reiterated the definition of a "political prisoner" already applied by the Committee of Ministers when Armenia and Azerbaijan acceded to the Council of Europe. The definition of political prisoner is summed up in paragraph 3 of that Resolution .

"A person deprived of his or her personal liberty is to be regarded as a 'political prisoner':

- a. if the detention has been imposed in violation of one of the fundamental guarantees set out in the European Convention on Human Rights and its Protocols (ECHR), in particular freedom of thought, conscience and religion, freedom of expression and information, freedom of assembly and association;*
- b. if the detention has been imposed for purely political reasons without connection to any offence;*
- c. if, for political motives, the length of the detention or its conditions are clearly out of proportion to the offence the person has been found guilty of or is suspected of;*
- d. if, for political motives, he or she is detained in a discriminatory manner as compared to other persons; or,*
- e. if the detention is the result of proceedings which were clearly unfair and this appears to be connected with political motives of the authorities." (SG/Inf(2001)34, paragraph 10).*

57. Belarus is not a State Party to the European Convention on Human Rights (ECHR) but that convention is nevertheless the appropriate reference framework for applying the definition of political prisoner to the case of Belarus, as it essentially contains the same rights as the International Covenant on civil and political rights of the United Nations, which has been signed and ratified by Belarus.

58. The different cases listed above of individuals deprived of their liberty because of their activism easily qualify for this definition.

59. Peaceful protesters placed in detention for merely exercising their freedom of expression, association and assembly meet all the criteria set out in paragraph 3.a. of this definition. The violation of freedom of expression, freedom of association and assembly is expressly mentioned in it.

60. Likewise, journalists, human rights defenders and lawyers prosecuted for poorly defined offences in the Criminal Code criminalising conduct that is part of the normal exercise of fundamental rights in a democracy fall within paragraph 3.a.

⁵⁶ See "*Corridor of Truncheons. How popular demonstrations are met with massive police violence and denial of justice*", CAT/OMCT 26 January 2021, at: https://www.omct.org/site-resources/files/Doklad_en_Web.pdf

⁵⁷ "Belarus after election. Report on the human rights situation in Belarus in the post-election period", prepared by *Viasna* in collaboration with the Belarus Helsinki Committee, the Belarusian Association of Journalists, the International Federation for Human Rights (FIDH) and the World Organisation Against Torture (OMCT), published on 9 December 2020; "Belarus. August 2020: "Justice" for Protesters", and "Human rights situation in Belarus in 2020 – Analytical Review", published on 5 January 2021.

⁵⁸ "World Report 2021", pages 84-92.

61. In cases where opponents of the regime are prosecuted for ordinary law offences (in other words crimes whose definition has no obvious "political" connotation, such as fraud, violent and/or sexual crime etc) but on the basis of trumped-up charges with no credible proof, it is paragraph 3.b. which applies. This appears to be the case of the presidential candidate **Viktar Babaryka**⁵⁹ and of the peaceful protestors accused of violent conduct.

62. Finally, in a great many cases, it is paragraph 3.e. of Resolution 1900 that comes into play, notably where the accused have not been allowed access to a lawyer or have had new charges laid against them as a pretext for extending provisional detention beyond the legal time limits. We have already seen a number of such cases, including that of the human rights activist of *Viasna*, **Maria Rabkova**.

63. It goes without saying that anyone who has been deprived of their liberty and meets the Assembly's definition of a political prisoner must be released immediately. Given the serious consequences of any deprivation of liberty for the prisoners themselves and their families, that must be our top priority.

4. Our second priority: combating impunity to deter further violations

64. All our sources have confirmed that, to date, not one of the violent riot police has been prosecuted despite the substantial body of proof gathered and published by the NGOs, including the identities of those alleged to be responsible. In the case of the protester who died in detention, Mr Raman Bandarenka, it is not the police officers and prison wardens who are being prosecuted by the journalist, **Ms Katsyarina Barysevich**, who investigated the case and Mr Bandarenka's GP, **Mr Artsyom Sarokin**. Ms Barysevich and Mr Sarokin have been charged with publishing personal data despite Mr Bandarenka's mother giving them permission to go public with information on her son's state of health and injuries.⁶⁰

65. Here too, international instruments cannot be deployed against the recalcitrance of the national authorities: while Belarus has been a contracting party, since soviet times, to the United Nations Convention against torture and other cruel, inhuman or degrading treatment or punishment (UNCAT), it has not signed the Optional Protocol to that convention (OP-CAT), which allows individual complaints. Belarus is not a Contracting Party to the European Convention for the prevention of torture and inhuman or degrading treatment or punishment (ECPT, CETS No. 126) although, by invitation of the Council of Europe's Committee of Ministers, Belarus could accede to that convention even before joining the Council of Europe. Nor has Belarus signed up to the Rome Statute establishing the International Criminal Court. The Belarusian authorities are not cooperating either with the competent special rapporteurs of the United Nations or with the rapporteur of the OSCE's "Moscow Mechanism", Wolfgang Benedek.

66. For some particularly serious crimes, including torture, the criminal law enforcement authorities of States other than that of the nationality of the suspect or the presumed victim or the territory where the crime was committed can take up a case on the basis of "universal jurisdiction", expressly provided for in Article 5 paragraph 2 of the UNCAT depending on national legislation. In order to better assess the potential scope for this possibility in practice, I sent a questionnaire to national parliaments via the European Centre for Parliamentary Research and Documentation (ECPDR), asking whether national legislation allowed the possibility of prosecuting the presumed perpetrators of acts of torture committed in Belarus, by a Belarusian citizen against Belarusian citizens. I received over thirty replies, many saying that it was not possible. Some countries' legislation simply makes no provision for jurisdiction for crimes committed abroad – unless the perpetrator or victim have the nationality of the country concerned or national interests are at stake. Others said that it was possible, but their authorities' international jurisdiction was conditional on the presumed perpetrator being on national territory, either temporarily (Albania, Germany⁶¹, Georgia, United Kingdom) or even as a long-term resident (France, Spain). Other replies stated that such prosecutions were theoretically possible in law but, for practical reasons, were unlikely (Ireland). The only country which reported that prosecutions of this kind were already in progress is Lithuania, which I wish to congratulate.

⁵⁹ See for example [Former Belarusian Banker, Would-Be Presidential Candidate To Face Trial On February 17](#), rferl site of 4 February 2021.

⁶⁰ See, for example, The Independent, 20 February 2021, [Belarus journalist on trial over report on protester's death](#) [journalist Data](#) [protester](#) [protester](#).

⁶¹ A torturer of the Syrian secret service, who "fled" to Germany and was recognised by some of his victims was recently convicted in Koblenz (Germany) on the basis of universal jurisdiction for torture cases (DIE WELT 25 February 2021 [Die Signalwirkung der Urteile von Koblenz und Celle - WELT](#)).

67. Many countries have implemented Article 5 (2) of the UNCAT by creating the legal possibility of taking action, notably for cases where they would be unable to extradite a suspect – as would be the case for Belarusian citizens enjoying impunity in their own country, which would therefore not request their extradition. In those countries, the reasons for not taking action tend to be of a practical nature: while the law allows prosecution of a presumed torturer who is present on the national territory, if the competent authorities are not aware that such an individual is present on the territory, they will not be able to take action.

68. In my opinion this inability to act is not beyond repair. It is here that an international mechanism, even a modest one, can come to the rescue. A mechanism along the lines of the "coordination platform" proposed within the European Parliament could gather and assess the relevant information, with the involvement of civil society and the competent international players, such as the Council of Europe, the OSCE and the UN's special rapporteurs, and then make it available to the national authorities that have introduced universal jurisdiction for cases of torture where the presumed perpetrators are present on the national territory. A list of individuals suspected of involvement in acts of torture provided by the platform to all interested States would make it possible to apprehend those individuals when they crossed the border; and the information and evidence gathered and assessed by the platform could help the national authorities to conduct targeted investigations. In the meantime, the very existence of such lists would send out a strong signal to perpetrators of such despicable acts, past, present and future.

69. This strategy for combating impunity can only work in the most serious cases of human rights violations which can be classified as acts of torture or inhuman and degrading punishment or treatment and therefore fall within the scope of Article 5 (2) of the UNCAT.

70. But for other human rights violations such as arbitrary deprivation of liberty or assault and battery not quite going as far as torture, there is another instrument that could be used to call the presumed perpetrators to account: the so-called "Magnitsky laws"⁶² that have been passed in many countries so that "targeted" or "intelligent" sanctions (such as visa bans or the freezing of bank accounts and other assets) can be imposed on the perpetrators of serious human rights violations who enjoy impunity in their country of origin for reasons of politics and or corruption.

71. The Parliamentary Assembly has itself recommended that Council of Europe member States pass laws of this kind⁶³. The United States and Canada have already done so. In Europe, Magnitsky laws have been passed by the three Baltic States, the United Kingdom and Ukraine. One major step forward was the adoption of such legislation at the level of the European Union in December 2020⁶⁴. Here again, the future "coordination platform" could prove useful, by providing the names of individuals who might be included on the "Magnitsky lists" as well as good-quality information that could be used to back up accusations against the people in question.

5. Abolition of the death penalty – a permanent priority

72. Belarus is the only State on the continent of Europe that still carries out executions in its territory. Although it entered into international commitments by ratifying the International Covenant on Civil and Political Rights on 12 November 1973, it is not a Party to its Second Optional Protocol of 15 December 1989 on the abolition of the death penalty⁶⁵.

73. On several occasions, the Council of Europe, including the Assembly, condemned the use of the death penalty in Belarus and called for its abolition, starting with the introduction of a moratorium. The Assembly's

⁶² Sergei Magnitsky was a Russian tax specialist who exposed a tax fraud on a grand scale and accused police officers of involvement. He ended up in provisional detention himself, under the supervision of the police officers he had accused and died in terrible circumstances in custody after one year. Those presumed responsible for Mr Magnitsky's death enjoy total impunity, while his former client, the British financier William Browder, has led a worldwide campaign to have laws passed that allow targeted sanctions against those responsible for serious human rights violations enjoying impunity in their own countries. (see Resolution 2252 (2019) on "Sergei Magnitsky and beyond – fighting impunity by targeted sanctions", Rapporteur: Lord Donald Anderson, United Kingdom (SOC) and Resolution 1966 (2014) on "Refusing impunity for the killers of Sergei Magnitsky", Rapporteur: Andreas Gross, Switzerland/SOC)

⁶³ See Resolution 2252 (2019)

⁶⁴ See for example: [Adoption unanime de la "loi Magnitski" européenne, une avancée majeure de l'UE en matière de droits humains - Opinion Internationale \(opinion-internationale.com\)](#); [EU to use Magnitsky-style law to impose sanctions on human rights abusers | European Union | The Guardian](#); [EU Adopts 'Magnitsky' Sanctions Regime To Target Rights Abusers \(rferl.org\)](#)

⁶⁵ [OHCHR | Second Optional Protocol to the International Covenant on Civil and Political Rights.](#)

general rapporteur on the abolition of the death penalty, currently Mr Vladimir Vardanyan (Armenia, EPP/CD), follows closely the situation in this country.⁶⁶

74. In 2017 a Working Group was set up within the Belarussian National Assembly to study the abolition of the death penalty and to raise public awareness of the need to introduce a moratorium on executions, but with no tangible results so far. According to recent reports, a package of legislative amendments removing the death penalty from the Criminal Code is being developed at the initiative of law enforcement agencies.⁶⁷

75. The abolition of the death penalty remains a priority also in the current work of the Council of Europe on the situation in Belarus following the presidential elections of 9 August 2020. If the aforementioned legislative package reaches the Belarussian National Assembly, the Assembly should welcome it and encourage the Belarussian parliament to adopt it without delay.

6. Conclusions

76. As we have seen, there are already credible and consistent reports that grave human rights violations have occurred and continue to occur – violations of the right to free elections of the entire Belarusian people; violations of freedom of expression, information and association of all those who have been prevented from peacefully protesting and keeping abreast of the news in free media; violations of the right to freedom and safety of all those who have been arbitrarily placed in more or less lengthy custody; violations of the right to a fair trial of all those subjected to the judicial system at the beck and call of the regime; and finally the most serious violations involving torture and inhuman and degrading treatment already documented by numerous statements and photos, temporary "disappearances" of people abducted and imprisoned without being able to contact their family and even violations of the right to life.

77. For each and every one of these violations there are individual perpetrators and others who ordered or at least tolerated these exactions. Those fighting for their freedom have sometimes had to resort to somewhat unorthodox methods to expose the perpetrators of the worst exactions. Balaclavas were pulled off and identities disclosed and video evidence was obtained by some courageous individuals. It is clear that the competent authorities of Belarus are not willing to exercise justice in their country and it is therefore for the international community to ensure that human rights violations in Belarus do not go unpunished. This is necessary out of principle, in the name of universal justice, and it is necessary as a preventive measure to send out a strong message to those who might perpetrate human rights violations in the future: that they risk being prosecuted for their misdeeds or at least deprived of the possibility of freely travelling in Europe and benefiting from their ill-gotten gains.

78. As we have seen, real possibilities do exist – notably the universal jurisdiction of numerous national courts and the national and European Magnitsky laws. They could be rendered considerably more potent through the addition of an international mechanism, in the form of the "coordination platform" devised in the European Parliament which gathers, analyses and assesses the information passed on by Belarusian civil society, with input from experts and international players, which must include the European Parliament, the Council of Europe, the OSCE and the competent special rapporteurs of the United Nations.

79. These conclusions are elaborated upon in the draft resolution and draft recommendation preceding this report.

⁶⁶ For more information see the information note by the previous general rapporteur, Mr Titus Corlăţean (Romania, SOC), AS/Jur (2020) 30 declassified, 15 October 2020.

⁶⁷ [Belarus MPs to mull over abolishing death penalty \(belsat.eu\)](https://belsat.eu)