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### **Promotion and protection of human rights: human rights situations and reports of special rapporteurs and representatives**

## **Situation of human rights in Belarus**

### **Note by the Secretary-General**

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the situation of human rights in Belarus, Anaïs Marin, submitted in accordance with Human Rights Council resolution [38/14](#).

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\* [A/74/150](#).



## Report of the Special Rapporteur on the situation of human rights in Belarus

### *Summary*

The present report is submitted by the Special Rapporteur on the situation of human rights in Belarus, Anaïs Marin, in accordance with Human Rights Council resolution 38/14. This is her first report to the General Assembly. In it, she focuses on the structural conditions that hamper the conduct of elections in Belarus according to international human rights standards and highlights how laws and practices continue to limit the full enjoyment of civil and political rights by voters in Belarus. The findings of the Special Rapporteur indicate that insufficient progress has been made in electoral reform and that there continue to be restrictions on fundamental freedoms. Ahead of the upcoming electoral cycle, the Special Rapporteur recalls the universality and indivisibility of human rights in electoral processes. Based on her conclusions, she makes recommendations to the Government of Belarus and the international community.

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## **I. Introduction**

### **A. Executive summary**

1. The Human Rights Council established the mandate of the Special Rapporteur on the situation of human rights in Belarus in its resolution [20/13](#), on the basis of a report by the United Nations High Commissioner for Human Rights ([A/HRC/20/8](#)). The Council requested the mandate-holder to report to it and the General Assembly annually. It has since renewed the mandate seven times, for one year at a time, the latest being on 12 July 2019. This is the first report to the General Assembly since the current Special Rapporteur, Anaïs Marin, assumed her functions on 1 November 2018.

2. Over the past 25 years, Belarus has known cyclic periods of serious deterioration in the human rights situation, usually prompted by major political or social events. More specifically, elections have been a catalyst for human rights violations, in particular with regard to civil and political rights. There is a risk of a further deterioration with parliamentary and presidential elections due to be held in 2019 and 2020.

3. The way in which elections have been conducted in the past has been criticized for a lack of compliance with international standards. The United Nations and other inter-governmental bodies have repeatedly called on the Government to address shortcomings and implement reforms. Most of those recommendations have yet to be implemented. The lack of substantial reform implies that the legal and institutional structure for the holding of elections remains conducive to practices that undermine the integrity of electoral processes. The Government's reluctance to implement recommendations indicates a lack of willingness to guarantee pluralistic and transparent conditions for elections.

4. The wider legal and institutional environment remains hostile to dissident opinions and unduly restricts civil and political rights. Disproportionate and discriminatory restrictions on freedom of opinion and expression, freedom of assembly and freedom of association were highlighted in the previous report of the Special Rapporteur ([A/HRC/41/52](#)). They have a negative impact on civil society and are particularly worrisome, given that respect for fundamental freedoms is essential in electoral processes. Recent adverse developments in the media space do not augur well for any improvement in the situation.

5. Ahead of the coming electoral cycle, the Special Rapporteur wishes to recall the universality and indivisibility of human rights in electoral processes. She believes that the current situation should be examined in order to understand whether conditions are being met to hold elections according to international human rights standards and allow citizens to fully enjoy their right to participate in public affairs.

### **B. Methodology**

6. The Special Rapporteur is committed to acting in accordance with the principles of independence, impartiality and objectivity, as spelled out in the Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council. She wishes to engage constructively and cooperate with all actors, in particular the Government, and is disappointed that her request to visit Belarus, sent to the Government on 22 November 2018, went unanswered. She regrets the Government's apparent intention to maintain its policy of non-recognition of and non-engagement with the mandate, as she believes that there is room for a constructive dialogue.

7. As in the past, the Special Rapporteur has based her report on a variety of sources, including open-source information such as government statements, publicly available official documents and news articles, as well as information provided by civil society organizations, representatives of international and regional organizations and the diplomatic community.

8. In the report, the Special Rapporteur focuses on the human rights issues most relevant to the upcoming parliamentary and presidential elections. It should be read in conjunction with the report presented to the Human Rights Council ([A/HRC/41/52](#)), in which an overview was provided of the most recent developments.

## II. International legal framework

9. According to international standards, the authority of governments may derive only from the will of the people, expressed in genuine, periodic and free elections (International Covenant on Civil and Political Rights, art. 25). “Genuine” elections reveal and give effect to the freely expressed will of the people, including with regard to the transfer of power. The periodicity of elections is meant to ensure that a government’s authority continues to reflect that will. Elections should therefore be held at intervals that are not unduly long ([CCPR/C/21/Rev.1/Add.7](#), para. 9). In “free” elections, all persons entitled to vote have the right to be registered, to vote and to make their choice free from pressure or interference. The freedom to make an informed choice means that “voters should be able to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind” ([CCPR/C/21/Rev.1/Add.7](#), para. 19).

10. Pluralism is essential for giving electors a real choice, as is transparency at all stages of the electoral process ([A/HRC/26/30](#) and [A/68/299](#)). For elections to be held fairly and impartially, States should establish an independent electoral authority. The secrecy of the vote and the security and integrity of the voting process must be ensured, including through independent scrutiny of the voting and counting process, as well as access to judicial review and redress ([CCPR/C/21/Rev.1/Add.7](#), para. 20).

11. Clear obligations for the holding of genuine, periodic and free elections are contained in several international instruments. The right to take part in government either directly or through representatives, the right of equal access to public service and the need for legitimacy to derive from the will of the people are enshrined in article 21 of the Universal Declaration of Human Rights. The rights to vote and be elected is underlined in the International Covenant on Civil and Political Rights (art. 25 (b)).

12. States are required to ensure that every citizen has the right and opportunity to participate in elections, either as a voter or as a candidate, on an equal basis (International Covenant on Civil and Political Rights, art. 25 (b)). Restrictions on the rights to stand for election and to vote must be based on objective and reasonable criteria (see [CCPR/C/21/Rev.1/Add.7](#), paras. 14 and 15). Provisions on non-discrimination appear in other international instruments with regard to equal participation in political and public life for women (Convention on the Elimination of All Forms of Discrimination against Women, art. 7) and persons with disabilities (Convention on the Rights of Persons with Disabilities, art. 29).

13. The requirement for elections to be held periodically is expressly stated in several instruments, including the Universal Declaration of Human Rights (art. 21 (3)) and the International Covenant on Civil and Political Rights (art. 25 (b)). Although they stipulate no specific schedule of periodicity, those provisions should be read as leaving limited discretion to governments to alter the planned schedule. Under the Covenant,

only an emergency or extraordinary situation may justify altering the electoral calendar (art. 4.1).

14. Freedom of opinion and expression, freedom of assembly and freedom of association, which are enshrined in articles 19, 21 and 22, respectively, of the Covenant, are key to the conduct of free and fair elections. By enabling individuals to debate, make an informed choice and express their will freely, those fundamental freedoms are the bedrock of society. Limiting them will inevitably have an impact on the creation of political parties and on political campaigns, electoral rallies and general political debate, thereby having an effect on the quality of the process and the outcome of elections.

15. If people are to fully enjoy their fundamental freedoms, they should not feel threatened when they exercise them. Intimidation can take several forms: discouragement of individuals from taking part in public life, a restrictive media landscape, the arbitrary prohibition of peaceful demonstrations or, on the contrary, compulsory membership of political parties or compulsory participation in demonstrations.

16. Particular attention should be paid to the fundamental freedoms of all the main actors in the electoral process: the voters, the candidates and their political organizations and the media ([A/HRC/26/30](#), para. 11). Voters should be able to receive information on the different candidates and their programmes and express their will free from pressure or intimidation. Candidates should be able to organize themselves, campaign and communicate their programmes, including through the media. The latter should be able to inform the public about the electoral process and the different candidates and investigate problematic issues. The legitimate and vital role of civil society regarding participation in public affairs should be recognized. The independence and pluralism of such actors should be respected, protected and supported, and States should not unduly restrict their ability to discuss or question issues or express criticism ([A/68/299](#), paras. 43, 47 and 49).

17. Electors cannot express their will where freedom of opinion and expression is stifled. The free flow and advocating of ideas is a core principle of democratic societies, allowing candidates to communicate their programme to the people and people to communicate their aspirations and expectations to candidates. Being informed and able to openly discuss, contradict and challenge opinions is especially important at election time. Possible restrictions must respond to specific conditions provided for under international law and considered necessary either to uphold the rights or reputation of others or to protect national security, public order or public health or morals (International Covenant on Civil and Political Rights, art. 19 (3)). In the context of elections, the threshold for determining the need for restrictions should be higher, because restrictions on freedom of expression would inevitably call into question the legitimacy of any electoral process.

18. Freedom of opinion and expression is closely linked to the freedom to seek, receive and impart information and, thus, the role of the media. The media, whether online (including bloggers), print, radio, television or others, play a key role in providing election information. They are also the main platform used by candidates to promote their ideas and a tool for overseeing the electoral process. Hence the importance of free media and the need to protect journalists and bloggers, prevent State interference in media content and guarantee the existence of a broad range of media sources and high professional standards in the reporting of information ([CCPR/C/GC/34](#), para. 20).

19. Freedom of assembly is a key element of electoral campaigning in that it allows candidates to meet their supporters and reach out to potential voters. It also enables people to protest peacefully against elections that they consider illegitimate or marred

by irregularities. Expression of dissatisfaction with the way elections are conducted or their results is also part of the democratic exercise. No matter for what reasons people protest, States should not only allow them to do so but also accept their explicit duty to ensure the security of demonstrators (A/68/299).

20. Freedom of association guarantees the possibility of forming political parties, which ensure plurality and political competition and are the essence of the electoral process. Any individual or group seeking to establish a political party should be able to do so, on the basis of equality before the law. No-one should be unduly favoured or disadvantaged in such endeavours and regulations must be applied uniformly (A/68/299, paras. 33 and 38). At election time, organizations and political parties act as a bridge between individuals and those who aim to represent them by bringing forward concerns for debate. Certain organizations also play a particular role by monitoring elections and verifying that they are held in compliance with international standards.

21. The enjoyment of fundamental freedoms shapes societies and their capacity to handle a multiplicity of opinions. It is inevitable that the repeated and recurrent violation of those freedoms will erode the degree to which they are upheld during electoral periods. Such violations during elections often represent an intensification of pre-existing trends. At times, however, some improvement may be noted prior to or during elections due to the increased level of oversight exercised by national and international actors such as election observers. To assess the situation objectively, one must examine the overall situation of fundamental freedoms, taking into account the pre- and post-electoral periods too.

### III. Past elections

22. By endorsing the 1999 Istanbul Document of the Organization for Security and Cooperation in Europe (OSCE), Belarus pledged to conduct elections in accordance with its commitments to OSCE standards and follow up on assessments and recommendations of the OSCE Office for Democratic Institutions and Human Rights (ODIHR).<sup>1</sup> In its final report following the 2016 parliamentary elections, ODIHR reiterated previously identified shortcomings, which included unbalanced election commissions strongly influenced by the executive and a lack of transparency; undue restrictions on candidacy rights; lack of procedural safeguards for early voting, voting, counting and tabulation; undue limitations on observer rights; and inadequate electoral dispute resolution. It also noted a tendency for an overly formalistic interpretation of the law, whereby everything that is not explicitly allowed is forbidden. The Office called for an interpretation and implementation of the law to ensure an equal playing field for contestants, genuine competition, the free expression of the will of the voters and the integrity of the electoral process<sup>2</sup>.

23. Based on information from local and international stakeholders, the Special Rapporteur cannot report significant steps taken to address earlier recommendations made by ODIHR. Because some of the key procedural issues that arose in the organization of past elections in Belarus are key to the conduct of elections in line

<sup>1</sup> Recommendations are contained in the final reports of election observation missions deployed for parliamentary elections in 2004, 2008, 2012 and 2016 and for presidential elections in 2001, 2006, 2010 and 2015. Available at [www.osce.org/odihr/elections/belarus](http://www.osce.org/odihr/elections/belarus).

<sup>2</sup> Office for Democratic Institutions and Human Rights (ODIHR), *Republic of Belarus Parliamentary Elections 11 September 2016 OSCE/ODIHR Election Observation Mission Final Report* (Warsaw, OSCE, 2016), p. 6. Available at [www.osce.org/odihr/elections/287486?download=true](http://www.osce.org/odihr/elections/287486?download=true).

with international standards, the Special Rapporteur would like to recall some of the main problems.

24. The right to vote is closely linked with voter registration, which must be conducted in an effective, impartial, non-discriminatory and accurate manner. In Belarus, the absence of a centralized voter register does not enable cross-checking against multiple registrations, while the possibility of registering voters until election day does not protect against potential multiple voting.<sup>3</sup> Transparency of voter lists and the voter registration process is important to ensure that eligible voters are not disenfranchised and to safeguard voter lists from manipulation. It is recommended voter registers be publicly available but in Belarus access to the lists is limited.<sup>4</sup>

25. Under article 53 of the Electoral Code of Belarus, voters physically unable to vote in their electoral precinct on election day have the option of doing so up to five days beforehand. Concerns about insufficient legal safeguards in the application of early voting arrangements have been raised in the past but recommendations calling to limit and better regulate the practice have not been implemented.<sup>5</sup> Early voting should be an exceptional measure but, in practice, it has become widespread. In the last parliamentary elections, held on 11 September 2016, 31 per cent of voters cast their votes before election day. In the last presidential elections, held on 11 October 2015, the share was 36 per cent.<sup>6</sup>

26. Voting is not compulsory in Belarus but in previous elections civil servants, conscripts, students and factory workers have been regularly urged, and at times implicitly obliged, to vote early in groups, often under the supervision of their hierarchy.<sup>7</sup> This can be seen as a way to increase voter turnout in the polling stations set up in State enterprises and public institutions. In the 2016 parliamentary elections, independent observers from the Human Rights Defenders for Free Elections group identified cases of persons being compelled to vote in 18 per cent of the polling stations where they observed early voting.<sup>8</sup>

27. During the 2016 parliamentary elections, media monitoring showed that State media provided little coverage of the election campaign and candidates, thereby limiting voters' chances to make an informed choice.<sup>9</sup> During the 2015 presidential elections, ODIHR observers noted that broadcast and print media devoted greater coverage to the incumbent, which led them to question media impartiality and independence.<sup>10</sup> Moreover, during the early voting period, news outlets showed celebrities and senior officials casting their ballots while declaring their support for the incumbent's political programme.<sup>11</sup>

28. Domestic and international election observation is considered good practice and Belarus always extends invitations to international observers in a timely manner. In past elections, however, independent domestic election observers have faced

<sup>3</sup> For this reason, in the explanatory report of the 2002 Council of Europe Venice Commission's Code of Good Practice in Electoral Matters it is recommended that "polling stations should not be permitted to register voters on election day itself" (chap. I, sect. 1.2, para. 7 (iv)).

<sup>4</sup> ODIHR, *Republic of Belarus Parliamentary Elections*, p. 9 (footnote 2).

<sup>5</sup> *Ibid.*, p. 21.

<sup>6</sup> Office for Democratic Institutions and Human Rights (ODIHR), *Republic of Belarus Presidential Elections 11 October 2015 OSCE/ODIHR Election Observation Mission Final Report* (Warsaw, OSCE, 2016), p. 6. Available at [www.osce.org/odihr/elections/belarus/218981?download=true](http://www.osce.org/odihr/elections/belarus/218981?download=true).

<sup>7</sup> ODIHR, *Republic of Belarus Parliamentary Elections*, p. 21 (footnote 2).

<sup>8</sup> *Ibid.*, p. 21.

<sup>9</sup> ODIHR, *Republic of Belarus Parliamentary Elections* (footnote 2).

<sup>10</sup> ODIHR, *Republic of Belarus Presidential Elections*, p. 17 (footnote 6).

<sup>11</sup> *Ibid.*, p. 17.



obstruction and restrictions.<sup>12</sup> The most active domestic observers have been accused of meddling in the election process or obstructing the work of the electoral commissions, an offence under the Criminal Code (art. 191).

29. The electoral process should be supervised by an independent election authority to ensure that it is conducted fairly, impartially and in accordance with international obligations (CCPR/C/21/Rev.1/Add.7, para. 20). Practice shows, however, that in Belarus State institutions, notably the executive, exert undue influence on the forming and functioning of the electoral administration.<sup>13</sup> The President appoints 6 of the 12 members of the Central Election Commission, a permanent body with a five-year mandate, which has been highlighted as contrary to the independence of election management bodies.<sup>14</sup> Appointments at lower levels of the electoral administration also indicate interference by the executive branch. Members of regional, district and precinct electoral commissions are nominated by political parties, public associations, labour collectives and initiative groups. The composition of commissions, however, has been criticized for its lack of pluralism, with members of the local executive administration overrepresented in comparison with those of opposition nominating bodies. While 90 per cent of the members appointed for the last parliamentary elections were nominated by pro-Government parties or State-subsidized public associations, 10 per cent were put forward by opposition bodies.<sup>15</sup>

30. Limitations on the right to stand for election have also been reported. Legal provisions for candidate registration in the 2016 parliamentary elections allowed for selective implementation and arbitrary decisions.<sup>16</sup> Regional-level electoral commissions, responsible for registering candidates to parliamentary elections, enjoyed wide discretionary powers in this process, which raised concerns about an inconsistent application of the law and unequal treatment of candidates.<sup>17</sup> Barriers to candidacy were therefore assessed as disproportionate and unreasonable in those elections.<sup>18</sup>

31. Legislation must ensure effective remedy for any alleged violations of the rights of parties and their candidates. That includes the right to appeal to an appropriate court with authority to review and exercise jurisdiction on the matter, the issuing of a decision that has adequate legal effects, including potentially ordering a vote recount, the invalidation of final election results or sanctions. In Belarus, certain decisions by electoral commissions may not be appealed against and, in practice, very few appeals are granted. During the 2015 presidential elections, almost all of the 2,000 complaints filed were rejected.<sup>19</sup>

#### IV. Upcoming elections

32. The Constitution of Belarus provides that the President of the Republic is elected for a five-year term, whereas members of the House of Representatives, the lower house of the Parliament of Belarus, are elected for a four-year term. After the 2015 presidential elections, the incumbent was sworn in for his fifth consecutive term in office on 6 November 2015. The 110 members of the House of Representatives

<sup>12</sup> Human Rights Defender for Free Elections, Analytical report, 2016. Available at [http://spring96.org/files/misc/analytical\\_report\\_en.pdf](http://spring96.org/files/misc/analytical_report_en.pdf), p. 5.

<sup>13</sup> ODIHR, *Republic of Belarus Parliamentary Elections*, pp. 7–8 (footnote 2).

<sup>14</sup> *Ibid.*, p. 7.

<sup>15</sup> *Ibid.*, p. 8.

<sup>16</sup> *Ibid.*, p. 10.

<sup>17</sup> *Ibid.*, p. 11.

<sup>18</sup> *Ibid.*, p. 2.

<sup>19</sup> ODIHR, *Republic of Belarus Presidential Elections*, p. 3 (footnote 6).

took up their mandates in October 2016, one month after the last parliamentary elections. The next presidential and parliamentary elections were thus both expected to be held in the autumn of 2020.

33. On 19 April 2019, the President announced that parliamentary elections would be held sooner than planned, in November 2019.<sup>20</sup> The chairperson of the Central Election Commission justified that decision on the grounds that two elections in the same year could destabilize the country politically and socially.<sup>21</sup> The term of the outgoing parliamentarians will thus be reduced by 20 per cent, or some 10 to 11 months. The opposition and human rights defenders have criticized the move as unconstitutional.<sup>22</sup> Although it is not specified in the Constitution how long before the termination of a term new elections may be held, they view the decision as going beyond the framework provided therein: that is, that the President may dissolve Parliament only after a vote of non-confidence against the Government or two refusals to endorse the nomination of the Prime Minister.<sup>23</sup>

34. It has been recommended on numerous occasions that Belarus reform its electoral legislation in line with international human rights standards. In its more recent election observation mission report, ODIHR stated that legal reform should be undertaken early enough in advance of elections through a transparent and inclusive legislative process with all relevant stakeholders.<sup>24</sup> In February 2016, the Central Election Commission established an inter-agency expert working group to consider prior recommendations by ODIHR on improving the electoral process. The working group submitted seven proposals on a few technical aspects, some of which were addressed by the Central Election Commission in resolutions it adopted in May and June 2016. The Special Rapporteur is unaware of recent activities or meetings of the working group. According to information received, human rights defenders who had participated in working group meetings in 2016 were not invited to participate again in the period covered by the present report. Moreover, the Central Election Commission discussed recently suggested amendments to the Electoral Code but did not endorse them.<sup>25</sup> The Special Rapporteur regrets that the legislative framework which had earned Belarus criticism in the past mostly remains in place.

35. Several propositions and announcements have been made regarding potential amendments to be introduced in view of the upcoming elections. Currently, under the Electoral Code (art. 4), individuals in pre-trial detention may not vote, in contradiction of the principle of the presumption of innocence enshrined in international human rights law (A/HRC/39/28, para. 41). According to international standards, any restrictions to the right to vote must be based on grounds established by law and be objective and reasonable. Moreover, individuals deprived of their liberty but not convicted should retain their right to vote (CCPR/C/21/Rev.1/Add.7, para. 14). Belarus has been encouraged to remedy this situation on several occasions and the Commission passed a resolution granting voting rights to citizens who are under arrest for no more than three months.<sup>26</sup> On 27 May 2019, the Chairperson of the Central Election Commission, Lidzija Jarmošyna, suggested repealing the

<sup>20</sup> [www.belta.by/president/view/lukashenko-objjavil-o-provedenii-v-2019-godu-parlamentskih-vyborov-344656-2019](http://www.belta.by/president/view/lukashenko-objjavil-o-provedenii-v-2019-godu-parlamentskih-vyborov-344656-2019).

<sup>21</sup> <https://news.tut.by/economics/576785.html>.

<sup>22</sup> <https://euroradio.fm/en/lukashenka-hot-water-over-calling-2019-parliamentary-election> and <http://spring96.org/ru/news/92706>.

<sup>23</sup> [www.house.gov.by/ru/porjadok-obrazovanija-palaty-predstavitelej-ru/#label2](http://www.house.gov.by/ru/porjadok-obrazovanija-palaty-predstavitelej-ru/#label2).

<sup>24</sup> ODIHR, *Republic of Belarus Parliamentary Elections*, p. 5 (footnote 2).

<sup>25</sup> <https://naviny.by/article/20190529/1559127017-cik-priglasil-oppoziciyu-na-svoe-zasedanie-no-otklonil-ih-predlozheniya>.

<sup>26</sup> ODIHR, *Republic of Belarus Parliamentary Elections*, p. 9 (footnote 2).

provision that prohibits people held in pre-trial detention from voting.<sup>27</sup> The Special Rapporteur welcomes that initiative and looks forward to the introduction of amendments to guarantee that such voters will be able to cast their ballot in the forthcoming elections. Another potential change concerns the number of signatures necessary to register as a candidate: the Chairperson suggested adopting the recommended standard<sup>28</sup> of a 1 per cent threshold.<sup>29</sup> The issue of the excessively high threshold of signatures required has been raised in the past but has so far remained unaddressed.

36. In the absence of amendments to the Electoral Code, improvements in the legal electoral framework are contained in resolutions adopted by the Commission that do not have the force of law. The Special Rapporteur therefore encourages the Government to legislate the suggested changes swiftly.

37. On 12 June 2019, Hanna Kanapackaja, an opposition member of Parliament, submitted a bill to amend the Electoral Code with the aim of expanding the rights of election observers.<sup>30</sup> The amendments would allow observers to become acquainted with voter lists, record their observations using audio, photo and video equipment and see the ballots during the vote count. They were made by members of the opposition to the Central Election Commission in May but were rejected.<sup>31</sup> The Special Rapporteur encourages the Government to accept them, as that would increase transparency and faith in the process.

38. Since the last elections, Belarus has ratified the Convention on the Rights of Persons with Disabilities. The Special Rapporteur looks forward to seeing how key provisions will be translated into national law so that persons with disabilities may participate fully in political and public life. According to available information, polling station and early voting procedures have been improved to facilitate the capacity of persons with disabilities, in particular those with reduced mobility and visual impairment, to vote. Equal access to information about candidates remains problematic, specifically for persons with hearing impairment, who are not guaranteed sign language interpretation in key election processes. In practical terms, it remains difficult for persons with disabilities to run as candidates.

39. In Belarus, people whose legal capacity has been withdrawn by a court may not take part in elections and referendums.<sup>32</sup> However, international provisions pertaining to the right of persons with disabilities to participate in political and public life do not provide for any reasonable restrictions or exception to this right. The Special Rapporteur recalls that exclusion from the right to vote on the basis of a perceived or actual psychosocial or intellectual disability constitutes discrimination.<sup>33</sup> She therefore encourages the Government to review its policy in line with international obligations to ensure that persons with psychosocial and intellectual disabilities remain fully enfranchised.

<sup>27</sup> <https://naviny.by/new/20190527/1558974296-cik-razrabotal-svoi-predlozheniya-po-izmeneniyu-konstitucii>.

<sup>28</sup> Code of Good Practice in Electoral Matters (Guidelines on Elections, chap. I, sect. 1.3 (ii)).

<sup>29</sup> <http://house.gov.by/ru/interview-ru/view/v-parlamente-obsudili-vozmozhnye-izmenenija-v-konstitutsiju-5646>.

<sup>30</sup> <https://naviny.by/article/20190617/1560780314-v-parlament-vnesen-paket-popravok-v-izbiratelnyy-kodeks>.

<sup>31</sup> <https://naviny.by/article/20190529/1559127017-cik-priglasil-oppoziciyu-na-svoe-zasedanie-notklonil-ih-predlozheniya>.

<sup>32</sup> Electoral Code of the Republic of Belarus (art. 4). Available at <http://www.rec.gov.by/sites/default/files/pdf/kodeks.pdf>.

<sup>33</sup> See *Bujdosó and others. v. Hungary* (CRPD/C/10/D/4/2011), para. 9.4.

40. Belarus offers the option of voting from home for persons who, due to health issues or any other valid reason,<sup>34</sup> are unable to cast their ballot at the polling station on election day.<sup>35</sup> The Special Rapporteur welcomes that system but is concerned that it entails a serious risk of compromising voting secrecy, while also subjecting voters to influence. The obligation to guarantee that secrecy should be interpreted as prohibiting the linking of voters' identity to their electoral choice before, during or after their ballot is cast. The overriding concern of voting secrecy is to protect electors from any form of coercion or compulsion to disclose how they intend to vote or how they voted (CCPR/C/21/Rev.1/Add.7, para. 20).

41. On 24 September 2015, in response to criticism for not having paid sufficient attention to voters with disabilities, the Commission adopted a resolution that included a request to the Belarusian Republican Youth Union to provide volunteers to facilitate access for persons with disabilities to polling stations at the last elections and assist them during voting. The measure was seen as problematic, as that organization was also participating in the collection of signatures and campaigning in favour of the incumbent.<sup>36</sup> The Special Rapporteur therefore encourages the Government to do more to enable persons with disabilities to cast their ballot at polling stations.

## V. Situation with fundamental freedoms ahead of parliamentary and presidential elections in 2019 and 2020

42. By ratifying the International Covenant on Civil and Political Rights, Belarus took upon itself the obligations to respect, protect and promote fundamental freedoms and the right to participate in public affairs. In her last report (A/HCR/41/52), the Special Rapporteur provided numerous examples of problems in relation to the upholding of those rights in Belarus. Drawing on her previous findings and in view of the upcoming electoral cycle (with parliamentary elections scheduled for autumn 2019 and presidential elections for 2020) and an announced referendum to amend the Constitution, the Special Rapporteur believes a closer examination of the current situation with regard to freedom of opinion and expression, freedom of assembly and freedom of association is crucial for a better understanding of the limitations on their realization and how that affects electoral rights in particular.

### A. Freedom of opinion and expression and freedom of the media

43. Freedom of opinion and expression is at the core of any political campaign and the media play a key role in ensuring that candidates and parties can present their programmes, while also guaranteeing that voters are informed about the technicalities of the process. It is essential for voters to be adequately informed of the views and programmes of candidates in order to form an independent opinion free from pressure or intimidation. That requires a diverse and dynamic media landscape guided by a strong professional ethic.

44. In the latest World Press Freedom Index, Belarus ranks 153 out of 180 countries.<sup>37</sup> In the past couple of years, the legal framework for the media has become

<sup>34</sup> [www.belta.by/society/view/vybory-2016-vremja-mesto-i-porjadok-golosovanija-dosrochnoe-golosovanie-dosje-belta-208591-2016/](http://www.belta.by/society/view/vybory-2016-vremja-mesto-i-porjadok-golosovanija-dosrochnoe-golosovanie-dosje-belta-208591-2016/).

<sup>35</sup> Electoral Code (art. 54).

<sup>36</sup> ODIHR, *Republic of Belarus Presidential Elections*, p. 9 (footnote 6).

<sup>37</sup> <https://rsf.org/en/ranking>.

increasingly restrictive and journalists and bloggers have been regularly detained, fined or prevented from doing their work.

45. In Belarus, television is the primary source of information and State-owned television outlets (as well as radio and newspapers) dominate the media landscape.<sup>38</sup> The Internet represents an important alternative source of information and the latest amendments to the law on mass media<sup>39</sup> that specifically target the Internet are a source of particular concern.

46. According to amendments that entered into force on 1 December 2018, online media outlets must register for authorization to operate. By not doing so, they can incur administrative fines. Moreover, owners of registered online media may be held criminally liable for content posted by others on their websites and may be required to submit information to the Ministry of Information within five working days about individuals commenting on online publications.<sup>40</sup> Allegedly, at the beginning of 2019, only five websites had been registered, raising concerns as to the consequences for the remaining websites.<sup>41</sup>

47. Media, and the Internet in particular, seem to come under especially tight control at times of international exposure. During preparations for the Second European Games, which were held in Minsk in May and June 2019, a presidential decree was issued introducing exceptional security measures.<sup>42</sup> Under one of them, law enforcement agencies were authorized to block calls on the Internet for mass riots or participation in unauthorized mass events. Temporary restrictions were also envisaged for certain websites. At the time of writing, no negative effects resulting from those measures had been reported but this nevertheless shows how easily additional restrictions on the media can be introduced.

48. As documented in the past, journalists and bloggers continue to encounter numerous problems in their daily work, including obstacles preventing them from operating, administrative fines and even criminal prosecution. In 2018, the Belarusian Association of Journalists documented 26 police searches of journalists' and bloggers' homes and of media offices.<sup>43</sup> Moreover, they found that, in 2018 alone, journalists were fined under the Code of Administrative Offences (art. 22.9) for "unlawful production and distribution of mass media products" more often than in the four previous years taken together.<sup>44</sup>

49. The latest and most emblematic case of intimidation and pressure applied to independent media is the so-called BelTA case of August 2018, when a criminal investigation was initiated against several editors and journalists from independent media outlets under the Criminal Code (art. 349.2) for "unauthorized access to computer information leading to significant harm" because they allegedly shared passwords to access a paid subscription to the State news agency BelTA. In total, at least 18 journalists were arrested for questioning and 8 of them spent several days in

<sup>38</sup> East Center, *Information Security in Belarus: Challenges and Ways to Improve*, 2017. Available at <http://east-center.org/information-security-belarus-challenges>.

<sup>39</sup> <http://pravo.by/document/?guid=12551&p0=H11800128>.

<sup>40</sup> Belarusian Association of Journalists, "Mass media in Belarus", e-newsletter, vol. 2, No. 52 (January–June 2018). Available at <https://baj.by/en/analytics/mass-media-belarus-no-2-55-january-june-2018>.

<sup>41</sup> Human Rights Watch, "Belarus: Media under attack as European Games loom", 17 May 2019. Available at <https://www.hrw.org/news/2019/05/17/belarus-media-under-attack-european-games-loom>.

<sup>42</sup> <http://president.gov.by/uploads/documents/2019/191uk.pdf>.

<sup>43</sup> Human Rights Watch, *Belarus: Media under attack* (footnote 41).

<sup>44</sup> Belarusian Association of Journalists, "Mass media in Belarus 2018". Available at [https://baj.by/sites/default/files/analytics/files/2019/media\\_monitoring\\_2018\\_eng.pdf](https://baj.by/sites/default/files/analytics/files/2019/media_monitoring_2018_eng.pdf).

custody.<sup>45</sup> By November 2018, criminal charges had been dropped but 14 of the journalists were fined. On 25 February 2019, Maryna Zolatava, Chief Editor of Tut.by and the only person still facing criminal charges, was ordered to pay a fine of approximately \$3,620 and about \$2,840 in legal costs for BelTA for “administrative negligence” after admitting that she had been aware that her staff were sharing login data for BelTA’s paid subscription.<sup>46</sup> The fact that the lawsuit was launched one year before the next electoral cycle gives rise to particular concern, as it appears to have encouraged increased self-censorship among journalists.

50. Electoral campaigns necessarily lead to more heated political debates. In Belarus, however, pre-election periods are traditionally a time of further restrictions on fundamental freedoms. The criminalization of defamation remains an issue of concern. Human rights actors, most recently the Human Rights Committee (CCPR/C/BLR/CO/5), have long advocated its decriminalization. Yet, in Belarus, journalists and bloggers can be prosecuted under the Criminal Code for insulting an authority figure (art. 369) or discrediting the Republic of Belarus (art. 369.1).

51. On 9 April 2019, a search was conducted in the Minsk office of Belsat TV, a Poland-based satellite and online TV channel, as part of a criminal investigation for libel linked to the publication of an article in July 2018, in which a public official was wrongly implicated in a corruption case, even though Belsat TV had rapidly published an erratum.<sup>47</sup> Another emblematic case is that of the blogger Siarhiej Piatruchin, who on 18 April 2019 was sentenced to pay a fine of approximately \$8,690 for insulting and slandering the police.<sup>48</sup> The sentence was in response to a video he posted on YouTube in March 2018, in which mention was made of the case of a person who claimed to have been beaten by a police inspector in 2016,<sup>49</sup> and critical comments about the police that he subsequently posted on his social media page.<sup>50</sup> In relation to that, on 12 May 2018, law enforcement officers searched Mr. Piatruchin’s flat and seized his laptop, tablet and smartphone.<sup>51</sup> In August 2018, a second search was conducted additional equipment was seized and he was taken to the police station.<sup>52</sup>

52. Freelance journalists and bloggers working for foreign media continue to be impeded in their work because they must be accredited, as must the foreign media outlets for which they work. Certain bloggers have faced recurring issues and been repeatedly fined significant amounts. In 2018, Volha Čajčyc, a freelance journalist working for Belsat TV, was fined 14 times for a total of approximately \$6,400 under the Code of Administrative Offenses (art. 22.9) for “unlawful production and distribution of mass media products”.<sup>53</sup> She was also temporarily barred from leaving

<sup>45</sup> <https://baj.by/ru/content/delo-belta-sk-snova-otkazalsya-prekratit-ugolovnoe-presledovanie-glavreda-tutby>.

<sup>46</sup> See <https://baj.by/en/analytics/tutby-editor-maryna-zolatava-trial-witnesses-claim-coercion-part-investigation> and <https://baj.by/en/analytics/belta-case-facts-lists-related-links>.

<sup>47</sup> See <https://belsat.eu/news/abvyarzhenne-u-sprave-andreya-shveda>.

<sup>48</sup> <https://belsat.eu/ru/in-focus/vyshel-iz-suda-i-poshel-delat-blog-sergeyu-petruhinu-prisudili-17680-rublej-shtrafa-za-oskorblenie-militsionerov/>.

<sup>49</sup> [www.dw.com/ru/суд-в-бресте-оштрафовал-блогера-за-клевету-и-оскорбление-милиционеро-а-48389231](http://www.dw.com/ru/суд-в-бресте-оштрафовал-блогера-за-клевету-и-оскорбление-милиционеро-а-48389231) and <http://spring96.org/ru/news/92581>.

<sup>50</sup> <https://belsat.eu/ru/news/blogera-sergeya-petruhina-hotyat-privlech-k-otvetstvennosti-po-ugolovnomu-delu/>.

<sup>51</sup> <https://naviny.by/new/20180512/1526131778-v-breste-u-blogera-sergeya-petruhina-miliciya-izyala-orgtehniku>.

<sup>52</sup> <https://news.tut.by/society/606295.html>.

<sup>53</sup> Belarusian Association of Journalists, “Fines to journalists for violating article 22.9 of the Administrative Code (Chart). Available at <https://baj.by/en/analytics/fines-journalists-violating-article-229-administrative-code-chart-updated>.



Belarus to attend an event organized by the International Federation of Journalists, allegedly because it could not be verified that she had paid the latest fine.<sup>54</sup>

53. Some journalists prefer to leave the country. One, Kastus Žukoŭski, decided to leave Belarus in January 2019 after facing continuing pressure and threats. In 2018, he had received fines totalling approximately \$6,100 for his work.<sup>55</sup> According to Mr. Žukoŭski, he started to receive threats by email and on social media after the publication of an article in which he criticized the lack of action by the security services with regard to irregular migration.<sup>56</sup> On 13 January 2019, he and a friend were attacked by four unknown men who knocked him off his feet, after which he decided to leave the country.<sup>57</sup>

54. The adoption at its first reading on 6 December 2018 of a draft law on strengthening efforts to combat Nazi and extremist propaganda,<sup>58</sup> which supplements existing legislation, raises concerns about potential additional restrictions on freedom of opinion and expression and on freedom of the media. The legislation contains unclear definitions and imprecise procedures for determining what is considered extremist.<sup>59</sup> Examples show that the previous legislation already limited freedom of expression. In November 2018, a city court of Hrodna sentenced the journalist and musician Alies Dzianisaŭ to a fine of approximately \$300 for reposting on social media, in March 2017, two videos from the page of an anarchist group that had been included in 2016 in the list of extremist materials.<sup>60</sup> The videos showed members of that group taking part in protests against the notorious Decree No. 3 introducing the so-called social parasite tax.

55. The above findings raise serious concerns about the ability of the media to work without interference. That is problematic, given the important role they play in any electoral process. The Special Rapporteur would like to recall that critical thinking and dissent are essential aspects of the freedom of opinion and expression.

## B. Freedom of association

56. In Belarus, all political parties, non-governmental organizations (NGOs) and trade unions must be officially registered.<sup>61</sup> Operating a non-registered association was a criminal offence (Criminal Code, art. 193.1) until 19 December 2018. One can, however, still be held liable under the Code of Administrative Offences (art. 23.88). The Special Rapporteur welcomes the decriminalization of the offence but recalls that the right to freedom of association extends equally to registered and non-registered associations (A/HRC/20/27, para. 56). If registration is required, the process should be simple, straightforward and expeditious. There should be no liability for failing to register an organization (A/HRC/20/27, paras. 57 and 60).

57. According to official statements, as of 1 January 2019, Belarus had 15 political parties, 28 trade unions and about 3,000 public associations.<sup>62</sup> Practice shows that it

<sup>54</sup> <http://spring96.org/ru/news/90801>.

<sup>55</sup> <https://belsat.eu/ru/news/konstantin-zhukovskij-posle-napadeniya-uehal-iz-belarusi>.

<sup>56</sup> <https://belsat.eu/ru/in-focus/kgb-propuskaet-cherez-granitsu-terroristov>.

<sup>57</sup> See <https://naviny.by/new/20190128/1548668243-gomelskiy-zhurnalist-frilanser-konstantin-zhukovskiy-vmeste-ssemey-pokinul> (in Russian) and <https://baj.by/be/content/kastus-zhukouski-paslya-napadu-zehau-z-belarusi> (in Belarusian).

<sup>58</sup> <http://pravo.by/document/?guid=12551&p0=H21800336&p1=1>.

<sup>59</sup> <http://mininform.gov.by/documents/respublikanskiy-spisok-ekstremistskikh-materialov>.

<sup>60</sup> See <https://naviny.by/new/20181102/1541149066-lider-gruppy-dzieciuki-aleksandr-denisov-oshtrafovan-za-rasprostranenie> (in Russian) and <http://mininform.gov.by/documents/respublikanskiy-spisok-ekstremistskikh-materialov/> (in Russian).

<sup>61</sup> The Act on associations (art. 13) and the Act on political parties (art. 7).

<sup>62</sup> See <https://news.tut.by/society/625143.html>.

remains difficult to register human rights organizations, independent groups or political parties. In 2018, 92 new public associations were registered, fewer than the annual average over the past decade (110 registrations).<sup>63</sup>

58. Political pluralism is critical to ensuring effective democracy and providing citizens with a real say in how they will be governed. In Belarus, the difficulty of registering political parties is illustrated by the fact that no new party has been registered since 2000.<sup>64</sup> The Belarusian Christian Democracy Party has applied to register seven times since 2009, to no avail.<sup>65</sup> Grounds for refusal have included, for example, the failure to provide home telephone numbers of several party founders in the application.<sup>66</sup> On 27 April 2019, they filed a complaint with the Supreme Court but it was dismissed.<sup>67</sup> The Special Rapporteur recalls that peaceful dissent is legitimate and that political parties play a key role in that regard, especially at election time (A/68/299, para. 16). The Special Rapporteur has been informed that Government representatives, members of the opposition and civil society are discussing the possible amendment of the law on political parties by the end of the year, notably to simplify registration procedures.<sup>68</sup> She regrets that the long-recommended reform will not be implemented in time for the parliamentary elections but hopes that changes will be effected at least by the next presidential elections.

59. NGOs face similar issues and their applications for registration are often turned down on minor technical grounds. On 28 January 2019, the Minsk City Executive Committee rejected the second application for registration by the public association Immortal Regiment, a movement originally launched in Russia in 2014 to commemorate relatives who died during the Second World War.<sup>69</sup> One reason given for the refusal was that the founders were indicated as members of the organization, whereas, by law, membership only starts at the time of registration.<sup>70</sup> An appeal against the decision was rejected. Registration is also made more arduous by the difficulty organizations face in having their legal address registered in private residential houses.

60. Obtaining registration has proven especially difficult for organizations promoting ideas not in line with those of the authorities. On 3 June 2019, the Brest Regional Court upheld a decision to refuse the registration of a group of residents of the Brest region wishing to hold a local referendum against the construction of a battery plant.<sup>71</sup> Many organizations, after numerous attempts, have given up trying to register. The Special Rapporteur recalls the conclusion of the Human Rights Committee that the existence and operation of associations, including those that peacefully promote ideas not necessarily viewed favourably by the Government or the majority of the population, is a cornerstone of any society.<sup>72</sup>

<sup>63</sup> Legal Transformation Center (Lawtrend) and Assembly of Pro-Democratic NGOs, “Freedom of association and legal conditions for non-commercial organizations in Belarus: review period 2018”, p. 7. Available at <http://belngo.info/wp-content/uploads/2019/03/SA-2018-Eng.pdf>.

<sup>64</sup> <http://rec.gov.by/ru/spisok-politicheskikh-partiy>.

<sup>65</sup> <http://spring96.org/ru/news/89814>.

<sup>66</sup> <http://spring96.org/ru/news/89889>.

<sup>67</sup> <https://www.svaboda.org/a/29250682.html>.

<sup>68</sup> <https://naviny.by/article/20190611/1560240229-oppozitsiya-dobivaetsya-izmeneniy-v-zakon-opartiyah-kotorye-malo-chno>.

<sup>69</sup> <https://news.tut.by/economics/624248.html>.

<sup>70</sup> <https://regnum.ru/news/society/2599885.html> and <https://naviny.by/article/20190327/1553694517-bessmertnomu-polku-v-belarusi-otkazyvayut-v-registracii>.

<sup>71</sup> <https://belsat.eu/ru/news/protivniki-brestskogo-akkumulyatornogo-zavoda-obratyatsya-v-komitet-po-pravam-cheloveka-oon>.

<sup>72</sup> See *Vladimir Katsora, Leonid Sudalenko and Igor Nemkovich v. Belarus* (CCPR/C/100/D/1383/2005).



61. The impossibility of receiving foreign funding is an additional restriction. In Belarus, political parties and organizations are not allowed to receive any funding from foreign States, organizations or citizens. Even a donation by a non-Belarusian national can be seen as a violation of the legislation and entail administrative or even criminal liability, resulting in the dissolution of the political party or organization and, potentially, the seizure of its assets. Allegations of violations of this legislation and subsequent prosecution under tax evasion charges is often perceived by activists as a way of putting pressure on them for their activities. In June 2018, the authorities began to investigate Alies Lipaj, head of the independent BelaPAN news agency, on those grounds.<sup>73</sup> The case was only closed following his death in August 2018. In another example, two independent trade union leaders, Hienadz Fyadyniĭch and Ihar Komlik, were convicted of tax evasion and sentenced on 24 August 2018 to four years of restriction of liberty on parole and banned from holding managerial positions for five years.<sup>74</sup> The tax evasion charge was brought against them for having received funds in a foreign bank account in the period 2011–2012 and bringing it back to Belarus without declaring it. A result of that case and the constant pressure applied to members of independent trade unions, Belarus was categorized as a country “without rights guarantees” in the 2019 yearly ranking by the International Trade Union Confederation.<sup>75</sup> The Special Rapporteur would like to underline that the ability for associations to secure funding is an integral part of the right to freedom of association and that funding restrictions should be removed (A/68/299, para. 54).<sup>76</sup>

62. Forced membership of organizations known to be close to the authorities has also been reported. For example, in October 2018, recordings published online showed how school administrations threatened pupils and pressured them to join the pro-Government Belarusian Republican Youth Union.<sup>77</sup>

### C. Freedom of peaceful assembly

63. In Belarus, the legal framework is not conducive to peaceful assembly and, although certain amendments to the law have been introduced recently, many provisions and practices contravening international standards remain in place. Issues reported in the past remain and little has been done to address criticism or implement recommendations made by human rights actors.

64. The main recent changes concern amendments to the Law on mass events, which entered into force on 26 January 2019. They include a notification procedure for assemblies taking place in pre-approved locations designated for that purpose by the authorities.<sup>78</sup> That replaced a system of requests for authorization that had been repeatedly criticized by human rights activists and the international community. The change could be considered a slight improvement if it were not for the fact that the designated places are reportedly far from city centres. The purpose of holding assemblies is to be visible and heard by the authorities, the general public and the

<sup>73</sup> Belsat, “Belarus State Control Committee: BelaPAN director suspected of tax evasion”, 14 June 2018 (available at <https://belsat.eu/en/news/belarus-state-control-committee-belapan-director-suspected-of-tax-evasion>) and Viasna, “Human rights defenders call to drop criminal charges against BelaPAN director”, 18 July 2018 (available at <http://spring96.org/en/news/90352>).

<sup>74</sup> Radio Free Europe, “Belarusian union leaders sentenced to four years of ‘restricted freedom’”. Available at [www.rferl.org/a/belarusian-union-leaders-fyadynich-komlik-sentenced-four-years-of-restricted-freedom-/29451501.html](http://www.rferl.org/a/belarusian-union-leaders-fyadynich-komlik-sentenced-four-years-of-restricted-freedom-/29451501.html).

<sup>75</sup> <https://naviny.by/new/20190619/1560952552-profsoyuzy-mira-vnesli-belarus-v-chernyy-spisok>.

<sup>76</sup> See *Korneenko et al. v. Belarus* (CCPR/C/88/D/1274/2004).

<sup>77</sup> See <https://www.svaboda.org/a/29604052.html> and <https://www.svaboda.org/a/29573437.html> (in Belarusian).

<sup>78</sup> <http://pravo.by/document/?guid=12551&p0=H11800125&p1=1>.

media. If specific locations for that purpose are located outside strategic or central transit areas, the assembly may not reach its target audience, thereby calling into question its relevance.

65. Gatherings organized in other places continue to require the submission of requests for specific authorization 15 days in advance. As reported in the past, it is difficult to obtain authorization and requests are often rejected on questionable grounds, even more so when assemblies are perceived as political. For example, the Minsk city authorities rejected four sites proposed by the organizers of the Freedom Day rally,<sup>79</sup> which was held on 25 March 2019, before authorizing the event.<sup>80</sup> In the case of the peaceful gatherings taking place every Sunday since 25 February 2018 in Brest against the construction of a battery plant, 189 applications to hold rallies, 16 to hold demonstrations and 12 to stage pickets were submitted up to June 2019. All but one were denied.<sup>81</sup> One justification given was that the park in which the protest was due to take place was scheduled to be treated against ticks.<sup>82</sup>

66. It is worth recalling that single-person pickets are considered mass events and therefore have to comply with the same legal requirements.<sup>83</sup> The current legal framework also does not allow for any spontaneous assemblies or for the organization of two demonstrations at the same location, as in the case of counter-demonstrations.

67. The Special Rapporteur recalls that the right to freedom of assembly means that no authorization should be required to hold an assembly. The requirement for prior notification, although acceptable if deemed necessary in the case of large assemblies or owing to potential disruption (A/68/299, para. 24), should be applied on a case-by-case basis and not as a general rule. The Special Rapporteur therefore considers that the requirements to request authorization, systematically provide notification and the designation by authorities of specific locations constitute unnecessary and unjustified restrictions on the right to peaceful assembly.

68. With regard to elections, it is worth emphasizing that mass events held five days or less prior to elections, except for events organized by the authorities, are allowed only in such designated areas. That provision clearly further limits the right to freedom of assembly at a time where, on the contrary, it should be particularly protected. During the parliamentary elections in 2016, the Central Election Commission issued a recommendation for a more permissive allocation of public venues that was followed by many local authorities.<sup>84</sup> The Special Rapporteur welcomes that initiative but is of the opinion that a more long-term, sustainable and human rights-compliant approach should be adopted.

69. Owing to the restrictive legal framework and its application, organizers and participants of mass events are regularly fined under the Code of Administrative Offences (art. 23.34) for “breaching the order of organizing or conducting mass events”. At the time of writing, article 23.34 had been used in 2019 in 87 cases against 73 individuals.<sup>85</sup> Individuals who have already been found guilty of violating the law on mass events in the previous year may not request authorization to organize a mass event. Activists and human rights defenders easily fall into that category.

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<sup>79</sup> Freedom Day is an unofficial holiday celebrated to commemorate the creation in 1918 of the Belarusian People’s Republic.

<sup>80</sup> See <https://www.dw.com/ru/оппозиция-беларуси-отмечает-день-воли/a-48043173>.

<sup>81</sup> See <https://naviny.by/article/20190614/1560510029-do-okonchatelnoy-pobedy-protivniki-akkumulyatornogo-zavoda-prodolzhat>.

<sup>82</sup> Belsat, “Brest authorities ban another rally against battery plant ‘over tricks’”. Available at <https://belsat.eu/en/news/brest-authorities-ban-another-rally-against-battery-plant>.

<sup>83</sup> Law on mass events (art. 2).

<sup>84</sup> ODIHR, *Republic of Belarus Parliamentary Elections* (footnote 2).

<sup>85</sup> See <https://spring96.org/persecution>.

70. The Special Rapporteur is concerned that previous patterns continue to be documented: participants in gatherings are often arrested and can be detained from periods of a few hours to several days. Very often they are sentenced to pay administrative fines, which can be significant in comparison with the cost of living in Belarus and the gravity of the alleged offence. As of May 2019, fines imposed on protesters in Brest since protests began there in February 2018, totalled approximately \$12,400.<sup>86</sup>

71. A recent example of the obstacles faced by protesters occurred on 4 April 2019, when activists met to protest against the destruction of wooden crosses placed by individuals at a memorial in Kurapaty, a forest outside Minsk where thousands of people are believed to have been executed in the 1930s and 1940s by the NKVD. On that occasion, 15 individuals were arrested and detained for several hours.<sup>87</sup> The following day, a 72-year-old woman, Nina Bahinskaja, was arrested after having tried to prevent machines from destroying the crosses.<sup>88</sup> She was subsequently fined approximately \$620 for “minor hooliganism” and “disobeying the legitimate demands of an official”.<sup>89</sup> In response to the arrests and the removal of more than 70 crosses, the opposition politician, Mikalaj Statkievič, and other activists called for prayers to be held in the Holy Spirit Cathedral in Minsk on 7 April.<sup>90</sup> Mr. Statkievič was detained before the event and sentenced on 9 April under the Code of Administrative Offences (art. 23.34) to 15 days in detention for “calling for an unauthorized mass event”. Similarly, the activist Maksim Viniarski was sentenced to 13 days in detention.<sup>91</sup>

72. Although the Freedom Day events in 2019 were marked by fewer arrests than in previous years, at least 15 people were detained in Minsk, including political activists and citizens expressing dissent.<sup>92</sup> For example, on 24 March, Vital Rymašeŭski, the co-chairman of the organizing committee of the Belarusian Christian Democracy Party, was apprehended during an authorized event for unknown reasons by unidentified plain clothes police officers, driven a few times around the square and brought back to the venue.<sup>93</sup> At the same event, an opposition activist, Zmicier Daškievič, was detained soon after giving a speech by men in plain clothes.<sup>94</sup> He was detained until 26 March, when he was brought before a court and fined approximately \$550 under the Code of Administrative Offences (art. 23.34) for having incited people to go to Kurapaty.<sup>95</sup> On 25 March, another activist, Aliona Talstaja, was detained for three days, denied access to a lawyer and fined after having chained herself to a pole holding a poster saying: Freedom Day in Captivity. Freedom for the People!<sup>96</sup>

<sup>86</sup> <https://belsat.eu/ru/news/prosto-hochetsya-zhit-kak-brestchane-dnem-i-nochyu-protestuyut-protiv-akkumulyatornogo-zavoda/>.

<sup>87</sup> Viasna, “Human rights situation in Belarus: April 2019.” Available at <http://spring96.org/en/news/92854>.

<sup>88</sup> <http://spring96.org/ru/news/92578>.

<sup>89</sup> <https://naviny.by/new/20190408/1554737420-ninu-baginskuyu-oshtrafovali-na-50-bazovyh-velichin>.

<sup>90</sup> Belsat, “Kurapaty protest aftershocks Another activist punished by detention, 9 April 2019. Available at <https://belsat.eu/en/news/kurapaty-protest-aftershocks-activist-punished-by-administrative-detention>.

<sup>91</sup> <http://spring96.org/be/news/92587>.

<sup>92</sup> Viasna, “Freedom Day celebrations marred by excessive police interference” (available at <http://spring96.org/en/news/92438>) and [www.dw.com/ru/в-центре-минска-прошли-массовые-задержания/a-48057218](http://www.dw.com/ru/в-центре-минска-прошли-массовые-задержания/a-48057218).

<sup>93</sup> <https://news.tut.by/economics/632475.html>.

<sup>94</sup> <https://www.dw.com/ru/в-минске-задержан-бывший-лидер-оппозиционного-молодого-фронта/a-48046465>.

<sup>95</sup> <http://spring96.org/ru/news/92441>.

<sup>96</sup> <https://naviny.by/new/20190328/1553784725-aktivistku-skovavshuyu-sebya-cepnyu-na-den-volishtrafovali-na-1020-rublej>.

73. Individuals are on occasion put under pressure not to take part in peaceful assemblies. For example, some of the most active protesters against the construction of the battery plant in Brest have reportedly been “invited to conversations” and dismissed from work.<sup>97</sup> Available information indicates that university authorities regularly attempt to prevent students from participating in rallies by warning them of the consequences or threatening them with expulsion. Allegedly, at the Belarusian State University, compulsory classes were introduced into students’ timetables on Freedom Day to prevent them from taking part in events organized on that day.<sup>98</sup> The university’s press officer denied the claim.<sup>99</sup> At the Belarussian State Technological University, students were asked to submit a written request to the dean asking to be released from classes to travel back home earlier. Those who stayed in Minsk were allegedly required to sign a paper to the effect that they would not participate in any political actions that day and monitors took note of students’ movements out of the dormitories.<sup>100</sup> On the other hand, students are sometimes forced to participate in certain celebrations, such as the 100th anniversary of the creation of the All-Union Leninist Young Communist League (Komsomol).<sup>101</sup>

74. On 24 January 2019, the Council of Ministers approved Decree No. 49 on the payment of public order services provided by the internal affairs authorities and expenses associated with medical care and the clean-up after a public event.<sup>102</sup> Organizers were already expected to pay for those services under earlier regulations. The new decree, however, sets out clear procedures and fees that, because they can be too high for potential rally organizers to cover, have a dissuasive impact on them. Under the regulations, organizers must conclude agreements with government officials no later than two days before the planned event. The costs incurred under the decree can be substantial. For example, organizers of the Chernobyl Path rally organized yearly on 26 April in remembrance of the Chernobyl nuclear accident initially received a bill for approximately \$1,850, which nearly doubled to almost \$3,085 when the number of attendants exceeded the expected 1,000 people.<sup>103</sup> The organizing committee, considering that unacceptable, sent a written refusal to the Minsk City Committee.<sup>104</sup>

75. Human rights activists and protesters have started opposing the practice by refusing to pay and challenging the decisions in court. For instance, the police filed a lawsuit against the organizers of the Freedom Day rally for not paying approximately \$3,127 for the services of police and medical staff on duty at the rally and a fine of roughly \$435 for failure to pay on time.<sup>105</sup> At the same time, the organizers of the rally filed a lawsuit seeking the termination of their contract with the police.<sup>106</sup> Court rulings on those lawsuits were pending at the time of writing.

76. The Special Rapporteur supports the view expressed in the past by the Special Rapporteur on the rights to freedom of peaceful assembly and of association in considering that organizers should not have to pay for such services (A/HRC/23/39,

<sup>97</sup> <https://belsat.eu/ru/news/prosto-hochetsya-zhit-kak-brestchane-dnem-i-nochyu-protestayut-protiv-akkumulyatornogo-zavoda/>.

<sup>98</sup> [www.dw.com/ru/kak-studentam-v-belarusi-zapreshajut-otmечать-день-воли/a-48028785](http://www.dw.com/ru/kak-studentam-v-belarusi-zapreshajut-otmечать-день-воли/a-48028785).

<sup>99</sup> [www.dw.com/ru/oppozicija-belarusi-otmечает-день-воли/a-48043173](http://www.dw.com/ru/oppozicija-belarusi-otmечает-день-воли/a-48043173).

<sup>100</sup> [www.dw.com/ru/kak-studentam-v-belarusi-zapreshajut-otmечать-день-воли/a-48028785](http://www.dw.com/ru/kak-studentam-v-belarusi-zapreshajut-otmечать-день-воли/a-48028785).

<sup>101</sup> [www.svaboda.org/a/29562998.html](http://www.svaboda.org/a/29562998.html).

<sup>102</sup> <http://pravo.by/novosti/novosti-pravo-by/2019/january/32304/>.

<sup>103</sup> <https://news.tut.by/economics/635742.html>.

<sup>104</sup> Belsat, “Unsanctioned Chernobyl Path rally held in Minsk”, 29 April 2019. Available at <https://belsat.eu/en/news/unsanctioned-chernobyl-path-rally-held-in-minsk/>.

<sup>105</sup> <https://naviny.by/article/20190617/1560766336-miliciya-trebuєt-через-суд-с-organizatorov-dnya-voli-bolee-7-tys-rublej>.

<sup>106</sup> <https://ex-press.by/rubrics/obshhestvo/2019/06/11/oni-ne-mogut-garantirovat-bezopasnost-organizatory-dnya-voli-podali-v-sud-na-minskuyu-miliciyu>.

para. 57). The Special Rapporteur is of the opinion that ensuring freedom of assembly is a positive obligation of the State and that asking organizers to pay for such services unduly limits the capacity of certain individuals to enjoy their legitimate right to freedom of assembly.

77. The right to peaceful assembly is a critical means for individuals to express their opinion and participate in public life (A/68/299, para. 6). That is all the more important at election time. Examples show that the environment in Belarus remains restrictive with regard to peaceful assemblies, thereby curtailing a central pillar of democratic society. The Special Rapporteur therefore considers that the conditions for ensuring a vibrant political and social debate ahead of the elections have not been met.

## VI. Conclusions and recommendations

78. **The Special Rapporteur concludes that the changes announced for the upcoming electoral cycle create only the illusion of compliance with international standards. Real progress on reform of the Electoral Code remains minimal. Provisions guaranteeing equal access to media, transparency in voter registration, voter turnout and vote counting, and sufficient safeguards for voting secrecy, are still missing. The implementation of the rights to vote and be elected therefore continues to be inconsistent with international standards.**

79. **Findings indicate that the environment remains hostile to dissenting voices, which unduly restricts the enjoyment of civil and political rights of those with contentious views. The freedoms of expression and opinion, peaceful assembly and association remain subject to unreasonable and disproportionate restrictions. The Special Rapporteur is therefore concerned about the adverse impact of those restrictions on voters' ability to freely make an informed choice in upcoming elections. Combined with a possible further deterioration in the situation of fundamental freedoms ahead of upcoming parliamentary and presidential elections, and considering their indispensable role in the conduct of genuine, free and fair elections, this deterioration would have direct, negative consequences for the right to participate in public affairs and the right to vote.**

80. **In view of the findings set out above and bearing in mind the recommendations made by the previous Special Rapporteur on the situation of human rights in Belarus (A/71/394), the Special Rapporteur makes the following recommendations.**

81. **The Special Rapporteur recommends that the Government of Belarus:**

- (a) **Create and maintain a safe and enabling environment conducive to the exercise of the right to participate in public affairs;**
- (b) **Ensure full respect for fundamental freedoms before, during and after the electoral cycle;**
- (c) **Refrain from detaining and prosecuting journalists, human rights activists and peaceful protesters;**
- (d) **Guarantee a favourable environment for the work of journalists and bloggers, in particular by decriminalizing libel and reviewing the media law and the law on anti-extremism;**
- (e) **Simplify registration procedures for political parties and organizations and remove administrative liability for non-registered political parties and organizations;**

(f) **Review the legislation on mass events to remove requirements for authorization, systematic notification and the payment of fees for the organization of assemblies;**

(g) **Reconsider restrictions on the right to vote for citizens serving prison sentences and citizens in pre-trial detention to make them objective and reasonable;**

(h) **Step up efforts to help persons with disabilities to participate in public affairs and freely cast their ballot on election day;**

(i) **Provide domestic and international observers with unfettered access to all stages of the electoral process, including vote count and results tabulation;**

(j) **Extend to the Special Rapporteur an invitation to visit the country, in the spirit of constructive engagement and cooperation.**

**82. The Special Rapporteur recommends that the international community:**

(a) **Use all available diplomatic instruments to remind Belarus of its human rights obligations, specifically with regard to the right to participate in public affairs and fundamental freedoms;**

(b) **Extend support and advice to Belarus in the implementation of electoral system reform, in line with ODIHR recommendations;**

(c) **Call on the authorities to prevent, stop and condemn all forms of violence or unjustified restrictions against journalists, other media professionals, activists and persons who represent alternative opinions.**

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