



Office for Democratic Institutions and Human Rights

**Information Submitted to the  
Office of the United Nations High Commissioner for  
Human Rights  
as a Stakeholder in the  
Universal Periodic Review of the Republic of Belarus**



**WARSAW, 15 SEPTEMBER 2014**

**The following information is submitted by the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODIHR) about an OSCE participating State or Partner for Co-operation under consideration in the Universal Periodic Review process:**

**Participating/Partner State:** The Republic of Belarus

**UPR Session and Date of Review:** 22d Session, April-May 2015

**Background**

The Republic of Belarus is a participating State of the Organization for Security and Co-operation in Europe (OSCE) and has thus undertaken and has recently reaffirmed a wide range of political commitments in the “human dimension” of security as outlined in relevant OSCE documents.<sup>1</sup> The OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) has been mandated by OSCE participating States, including the Republic of Belarus, to assist them in implementing their human dimension commitments. OSCE/ODIHR assistance includes election observation and assessment activities as well as monitoring and providing assessments, advice and recommendations relating to implementation of commitments in the fields of human rights, democracy, tolerance and non-discrimination, and the situation of Roma and Sinti in the OSCE area. The present submission provides publicly available country-specific information that may assist participants in the Universal Periodic Review process in assessing the situation in the Republic of Belarus and its implementation of past recommendations, as well as to formulate new recommendations that may be relevant to enhancing the enjoyment of human rights and fundamental freedoms.

**Election-related activities**

Presidential Election, 19 December 2010: Following an invitation from the Ministry of Foreign Affairs of Belarus and based on the recommendation of a Needs Assessment Mission (NAM) conducted in Minsk from 27 to 29 September 2010, the OSCE/ODIHR deployed an Election Observation Mission (EOM) on 15 November 2010 to observe the 19 December 2010 presidential election. The OSCE/ODIHR EOM was headed by Ambassador Geert-Hinrich Ahrens of Germany and consisted of a 14 core team experts based in Minsk and 40 long-term observers deployed throughout the country. For Election Day, the OSCE/ODIHR EOM joined efforts with a delegation of the OSCE Parliamentary Assembly (OSCE PA). In total, 452 short-term observers from 44 OSCE participating States observed Election Day proceedings.

The final report concluded that: “The presidential election indicated that Belarus has a considerable way to go in meeting its OSCE commitments for democratic elections. There was a lack of independence and impartiality of the election administration, an uneven playing field and a restrictive media environment, as well as a continuous lack of transparency at key stages of the electoral process. Election night was marred by detentions of most presidential candidates, and hundreds of citizens, among them journalists, human rights activists and other civil society representatives. Belarusian authorities explained at the time that a number of participants in “unsanctioned activities” have been sentenced by the courts to

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<sup>1</sup> Compendium of OSCE Human Dimension Commitments, vol 1 and 2; Astana Commemorative Declaration, 2010.

administrative arrests and fines, in addition to which criminal proceedings have been instituted under the title of “mass disturbances”. Overall, these circumstances undermined confidence in the election.”

See the full report and recommendations at: <http://www.osce.org/odihr/elections/75713>.

Parliamentary Elections, 23 September 2012: Following an official invitation from the Ministry of Foreign Affairs of Belarus and based on the recommendation of a NAM conducted in Minsk from 16 to 18 July 2012, the OSCE/ODIHR deployed an EOM on 22 August 2012 to observe the 23 September 2012 parliamentary elections. The OSCE/ODIHR EOM was headed by Antonio Milošoski of the former Yugoslav Republic of Macedonia and consisted of 11 core team experts based in Minsk and 36 long-term observers deployed throughout the country. For election-day, OSCE/ODIHR EOM joined efforts with a delegation of the OSCE PA. In total, 330 short-term observers from 37 OSCE participating States were deployed to observe Election Day proceedings.

The final report concluded that: “many OSCE commitments including citizens’ rights to associate, to stand as candidates, and to express themselves freely were not respected, despite some improvements to the electoral law. While there was an increase in the number of candidates put forward by parties, prominent political figures who might have played a role in this contest remained imprisoned or were not eligible to register due to their criminal record. The field of contestants was also constricted by arbitrary administrative actions, leading to a limitation of choice for voters. The elections were not administered in an impartial manner and the complaints and appeals process did not guarantee effective remedy.”

See the full report and recommendations at <http://www.osce.org/odihr/elections/98146>.

### **Legislation reviewed by ODIHR**

Joint Opinion on the Amendments to the Electoral Code of the Republic of Belarus as of 17 December 2009 (Opinion No. 521/2009, issued jointly by ODIHR and the Venice Commission on 4 June 2010): This opinion was prepared jointly by ODIHR and the Venice Commission and noted that: “The Amendments represent a step towards removing some flaws in Belarus’ election legislation, although they are unlikely to resolve the underlying concern that the legislative framework for elections in Belarus continues to fall short of providing a basis for genuinely democratic elections.” See the full joint opinion at <http://www.osce.org/odihr/elections/belarus/68711>

### **Tolerance and non-discrimination issues, including incidents of and responses to hate crime**

OSCE participating States have made a number of commitments to promote tolerance and non-discrimination and specifically to combat hate crime, and the OSCE/ODIHR supports states in their implementation of those commitments. In this context, the OSCE/ODIHR produces an annual report on hate crime – *Incidents and Responses* – to highlight the prevalence of hate crimes and good practices that participating States and civil society have adopted to tackle them. It also helps participating States to design and draft legislation that effectively addresses hate crimes; provides training that builds the capacity of participating States’ criminal justice systems and the law-enforcement officials, prosecutors and judges that staff them; raises awareness of hate crimes among governmental officials, civil society

and international organizations; and supports the efforts of civil society to monitor and report hate crimes.

The report relies mainly on information and statistics provided by governments, since such data collection is primarily the responsibility of states, as is the responsibility to respond to hate crimes. As of 2012, 55 of the 57 OSCE participating States had appointed National Points of Contact on Combating Hate Crimes, to support ODIHR in its task of serving “as a collection point for information and statistics collected by participating States”. The bulk of information for the report was gathered through the completion of an online questionnaire by National Points of Contact. The questionnaire for 2012 contained questions about the following areas: data-collection methods; legislation; reported hate crime data; and policies and initiatives.

Information concerning Belarus in the most recent edition of the annual hate crimes report covering 2012 (<http://tandis.odihr.pl/hcr2012/>) includes the following:

- The Criminal Code of Belarus contains hate crime laws in the form of general and specific penalty-enhancement provisions and a substantive offence.
- Hate crime data is collected by the Ministry of Interior.
- Belarus has reported hate crime data to ODIHR, although not always hate crime statistics.
- In 2012, Belarus has not reported any hate crimes. see Belarus’s data reported to ODIHR at <http://hatecrime.osce.org/belarus>

## **Roma and Sinti issues**

### **NTR**

## **Country-specific ODIHR monitoring, assessment, co-operation and assistance activities (other than elections)**

Adherence to Fair Trial Standards: ODIHR report *Trial Monitoring in Belarus (March – July 2011)* (<http://www.osce.org/odihr/84873?download=true>) outlines the findings and recommendations of the monitoring of trials of individuals, who were criminally charged in the aftermath of the events in central Minsk following the elections on 19 December 2010, undertaken by ODIHR in line with its mandate and the applicable OSCE commitments. In the period from 9 March 2011 to 23 July 2011, ODIHR monitored 10 criminal cases in the first instance and on appeal, and two additional cases only on appeal, involving a total of 41 defendants.

ODIHR observed a number of problematic issues with the right to a competent, independent and impartial tribunal. Foremost among the difficulties was the pervasive influence of the executive in matters that are normally the reserved purview of the judiciary. Manifestations of a too-close relationship between the prosecutor and the judge lent credence to suspicions of judicial bias as did the statistics related to motions and sentencing. The difficulties in structural independence center on the appointment and dismissal procedures, tenure, discipline, and access to benefits, interference of the executive, and bias in favor of the prosecution. The presence of Ministry of Interior and, reportedly, KGB personnel at the trials may have influenced the judges, lawyers and, in general, the conduct of the proceedings. Many judges showed patterns that may be interpreted as prosecutorial bias.

ODIHR noted that the prosecution enjoys a number of legal and procedural powers that are not available to the defense, or at least not in the same manner. Significant concerns emerged over the right to the presumption of innocence, raising doubts as to whether the defendants were in fact presumed innocent until proven guilty. The prosecution did not appear to meet the substantial burden of proof with regard to the requisite intent under Article 293 of the Criminal Code. ODIHR observed that Belarusian authorities made an effort to ensure the right to a public hearing as access to the trials for some members of the public and the media was provided in all of the monitored trials. The exclusion of an internationally organized coalition of NGO observers, however, was not in line with the right to a public hearing and applicable OSCE commitments. Moreover, the lack of public access to verdicts is also inconsistent with the right to a public trial. ODIHR observed that the right to defend oneself or through legal counsel of one's choosing was respected in these cases insofar as every accused was represented at trial by counsel, whether privately hired or state appointed. Nevertheless, the rights of some defendants were in some instances hampered by license revocations of defense counsel, which is perceived as undue executive interference with the professional independence and ethical obligations required of those in the legal profession. ODIHR observed that in relation to the right to silence and the exclusion of unlawfully obtained evidence, judges failed to follow up allegations that statements were obtained under duress, intimidation, inhuman treatment and possibly torture in the manner required by international standards. The observed practice during the trials revealed heavy reliance of judges on pre-trial witness affidavits which impacted negatively on the right to examine opposing witnesses.

*Main recommendations of ODIHR's trial monitoring report:*

- To reform and improve the system of judicial self-governance with a view to freeing it from executive/Presidential decision-making on issues such as discipline or benefits and bonuses by establishing an independent judicial council for selection, promotion and disciplining of judges.
- To reform the judicial appointment system, eliminating the executive's role until the final stage.
- To refrain from the practice of temporary judicial appointments which may be prone to abuse and strengthen the lifetime tenure model for judges.
- To remove any influence from the executive branch on detention decisions.
- To ensure unhindered access for international NGO monitors at public trials.
- To amend Criminal Procedure Code provisions related to detention.
- To review and amend the relevant provisions of the Criminal Procedure Code to equalize the parties' procedural powers.
- To take additional steps to eliminate prosecutorial bias.
- To revise the relevant legislative provisions concerning public access to court judgments and ensure that such access is guaranteed, subject to lawful restrictions on personal data disclosure and matters of national security.
- To clarify for each criminal offence, particularly those that reference both actions and consequences/results, the precise mental element (*mens rea*) that the prosecution is required to prove.
- To permit only judges to authorize wiretapping and similar investigative measures that violate privacy.
- To undertake an independent investigation into the allegations of maltreatment raised by the suspects in these cases. Ensure the investigation meets the standards set out by the UN in "The Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment".

- To undertake an independent investigation into the propriety of wiretaps as authorized in these cases.
- To cooperate with international human rights procedures and mechanisms.
- To compel the in-court testimony of important witnesses, especially those deemed necessary by the defense, as a means of safeguarding the right to confrontation.
- To eliminate the practice of keeping defendants in cages during the trial. Every effort must be made to prevent humiliating and degrading treatment.
- To revise the practice of holding perfunctory appellate hearings. The defendant should be present at his or her appeal hearing.
- To review and revise the existing procedures in order to ensure prompt access to counsel for those detained in the KGB facility.

### **Other assessments and recommendations contained in ODIHR reports on thematic human issues**

[The Death Penalty in the OSCE Area: Background Paper \(2010, 2011, 2012, 2013\)](http://www.osce.org/odihr/94219?download=true)  
<http://www.osce.org/odihr/94219?download=true>

The Republic of Belarus continues to retain the death penalty in law and in practice. The country's Constitution and the Criminal Code provide for the application of the death penalty as an exceptional punishment for particularly grave crimes. In Belarus, the death penalty is classified as a "state secret" and, under the Belarusian Criminal Executive Code, death row inmates, the families of the convicted and the public are not notified about the dates of executions. The bodies of those executed are not handed over to their families for burial and the place of burial is kept secret, in accordance with Article 175(5) of the Code.

On 6 December 2010, at the Fourth All Belarus People's Assembly, President Alexander Lukashenko stated that "the issue of capital punishment should be revisited", as there are "strong [arguments] for the non-use of capital punishment." On 21 December 2010, at the 65th UN General Assembly, Belarus abstained from voting on the resolution on a Moratorium on the Use of the Death Penalty.

The Belarusian authorities have stressed the importance of public opinion when considering the issue of the abolition of the death penalty. In its response to the 2013 ODIHR questionnaire on the death penalty, Belarus restated the outcome of a 1996 referendum, when approximately 80 per cent of the voters voted against the abolition of the death penalty.

The Belarusian parliamentary working group on the death penalty, which was established in 2010, continues its activities. The working group temporarily suspended its activities in September 2012 due to parliamentary elections. According to the Permanent Delegation of the Republic of Belarus to the OSCE (2013), the working group is not guided by a conviction that the death penalty should be abolished or retained; its objectives are informing the public about various aspects of the death penalty and monitoring the situation in this respect. In January 2013, the Chairman of the Constitutional Court, Petr Miklashevich, stressed that the question of a moratorium on the death penalty in Belarus remains open and that the Court is ready to consider the issue if relevant requests are made.

Recommendations were made to Belarus at the Human Dimension Implementation Meetings in 2010, 2011, 2012 and 2013, to introduce moratoriums on executions, as a step towards complete abolition of the death penalty. The OSCE Parliamentary Assembly, at its 22nd

annual session in Istanbul from 29 June to 3 July 2013, adopted a resolution calling on Belarus to withdraw all current death sentences and abolish the death penalty.

#### Human Rights Defenders

In a statement in November 2013 (<http://www.osce.org/odihr/108899>) Ambassador Janez Lenarčič, the then Director of the OSCE Office for Democratic Institutions and Human Rights, reminded the Belarusian authorities of previous calls by the OSCE Chairpersons-in-Office for the release of human rights defender Ales Bialiatski, who was found guilty on tax-evasion charges in 2011, calling Bialiatski's case a violation of OSCE commitments. In the statement it was noted: "Belarus has committed itself to enhance, rather than obstruct, the ability of NGOs to promote respect for human rights and fundamental freedoms. But Bialiatski's conviction is the result of just such obstruction."

The charges were filed after Viasna was denied several requests to re-register with the Belarusian authorities, following a 2003 decision by the Supreme Court ordering the dissolution of the organization. The UN Human Rights Committee, in 2007, deemed the decision a violation of the right to freedom of association. "None of this, the charges and subsequent conviction, would have happened had Viasna not been repeatedly denied registration – had Bialiatski not been denied his fundamental right to freedom of association," Lenarčič said. "Like all OSCE participating States, Belarus has committed itself to guaranteeing that right."

Lithuania's then Foreign Minister, Audronius Ažubalis, and Ireland's Minister of Foreign Affairs and Trade, Eamon Gilmore, each issued calls for Bialiatski's immediate release during their countries' OSCE chairmanships, in 2011 and 2012, respectively.

Bialiatski was released from prison on 21 June 2014.