

ATTACKS ON JUSTICE - BELARUS

Highlights

Belarus has become increasingly isolated from the international community in recent years due to President Lukashenka's *de facto* dictatorship. The Parliamentary elections and constitutional referendum held in October 2004 fell significantly short of international democratic norms. The government continued to crack down on those opposing the existing regime. In November 2002, most European Union member states declared President Lukashenka *persona non grata*. The UN and the Council of Europe issued resolutions in 2003 and 2004 on the forced disappearances of Belarusian opposition leaders. The many political trials throw doubts on the judiciary's independence. Executive interference threatens judges' security of tenure by exerting political and economic pressures. Lawyers are constrained by the licence system controlled by the executive and those defending human rights are harassed and persecuted. In 2003, 51 case courts ruled to close down local non-governmental organizations.

BACKGROUND

President Alyaksandr Lukashenka, in power since 1994, has initiated a new crackdown against democracy activists and independent journalists. People connected with the opposition are systematically harassed, arrested, removed from their posts or attacked. Newspapers continue to be suspended or closed down.

In **January 2003**, the Belarusian authorities and the OSCE reached a compromise concerning the new **OSCE Minsk-based mission**. President Lukashenka, who had previously expelled all mission diplomats from Belarus, went against the position, held in common by the European countries, USA and Canada, to impose travel bans on the country's top officials. It was agreed that the new mission, with a restricted mandate, should resume its functions on **3 February 2003**.

Belarus is the last country in Europe carrying out capital punishment, but an unexpected ruling of the **Belarus Constitutional Court** on **11 March 2004** could bring about a renewed dialogue with Europe. Concluding an investigation requested by parliamentary deputies into the legality of abolishing the death penalty, the Court ruled that both a moratorium and a subsequent total ban would be permissible under the Belarusian Constitution. Banning the death penalty is a prerequisite for Council of Europe membership, and the authorities might be prepared to approve a ban on capital punishment in the hope of finally entering the European institution.

On **30 June 2004**, the Belarusian lower house amended the **law on non-governmental organisations**. NGOs may be closed or suspended for six months for violating laws regarding the use of foreign aid and street demonstration.

Belarus held a controversial **constitutional referendum** on **17 October 2004** called by President Lukashenka one month before. By a majority of 86.2 percent he gained the power to seek a third term in office by eliminating the existing constitutional limit to two presidential terms. The next presidential election is due in 2006. In parallel with the referendum, Belarus was electing a new lower chamber of parliament – the **House of Representatives**. The referendum overshadowed the parliamentary election campaign to a great extent. The election fell significantly short of international standards, according to the OSCE election observation mission. Ballot-box stuffing and coercion were reported, along with biased state-run media and restrictive campaign rules in the run-up to the election. Democratic principles were largely disregarded. Many candidates were actively excluded from registering or de-registering. The state administration dominated all levels of the election process. The EU expressed its fear that these results will increase the self-imposed isolation of Belarus and will detract from the democratic process. In **October 2004** the US signed the *Belarus Democracy Act*, which restricts contacts with Belarus on grounds that it has completely turned into a repressive regime.

Outraged by what Lukashenka hailed as a convincing victory on election day, thousands of Belarusians took to the streets of Minsk. The demonstrations reached a climax on **19 October 2004**, when a group of young protesters tried to break through the police lines and reach Lukashenka's residence. More than 50 civilians, journalists and opposition leaders were detained and beaten.

Judiciary

The President has excessive power and continues to rule by presidential decree. Due to excessive executive influence over judges, an independent judiciary in Belarus is almost non-existent.

According to the UNDP, in **2003** only 9 percent of Belarusians stated that they trusted the courts, which are considered part of the state's repressive mechanism. The judiciary is far from independent and impartial. Poor conditions of service and the President's influence on appointment and dismissal of judges seriously threaten the judiciary's independence. Constant executive control intimidates judges and forces them to work according to the government's will instead of on the basis of the laws and of the evidence available. Courts rarely base their rulings on the Constitution and international covenants, and Constitutional Court decisions are often ignored.

Judges' security of tenure is threatened through their salaries and material and social subsistence. A judge has a right to move into a service apartment within six months from his appointment. However, apartments are distributed by the local executive authorities. Salaries and the social security of judges are established by the President, but the set salary amount cannot ensure their independence as it is hardly enough to pay for housing and modest food. Judges may get additional monthly bonuses at 50 percent of their salary. However, the bonuses are distributed by the head of the department of justice and the chairman of the court, implying economic control over judges and violating the principle of internal independence.

Courts fail to admit authorized representatives of human rights organizations to court sittings (see below [Access to Justice](#)). They avoid considering cases related to electoral disputes, as well as cases addressing the constitutional invalidity of acts or legal proceedings, through fear of reprisals from the executive. In **February 2002**, President Lukashenka established a commission to examine the work of the courts, the prosecutor's offices, advocacy, the militia and the Ministry of Justice. The officers of the executive power included in this commission were given additional means to pressurise and control the judiciary.

The **COE Assembly** condemned the new appointment of Sheyman as General Prosecutor to lead the official investigation of the **1999 and 2000 forced disappearances** of political opposition leaders and independent journalists in **Resolution 1371 (2004) of 28 April 2004**. Sheyman himself had been accused of masterminding the actions that led to those disappearances (see below [Access to Justice](#)).

Cases

The Supreme Court liquidated the **Belarusian Labour Party** on **2 August 2004**. That month, the Ministry of Justice sent a warning to four other influential opposition parties that they would be liquidated if they continued to make statements on behalf of the opposition party "People's Coalition 5+".

A judge of the Leninsky District Court in Grodno sentenced two politicians, **Valery Levonevsky** and his deputy **Alexander Vasilyev**, on **7 September 2004** to two years' imprisonment for defaming the President of Belarus. Levonevsky, who chairs a market vendor's strike committee in Grodno, stood accused with Vasilyev of slandering the President after distributing leaflets with a poem at an unsanctioned rally in May 2004. Levonevsky had intended to run in the parliamentary election of October 2004, but dropped his candidature after these criminal charges were announced. According to the Head of the OSCE Office in Minsk, E. Heyken, "the outcome of these court cases represents an instance where the sentence is unjustifiably harsh in relation to the alleged deed".

Legal Profession

Lawyers are still constrained by the licence system controlled by the executive (see "Attacks on Justice 2002"). Lawyers, especially those defending civil liberties, continue to suffer harassment and persecution from the executive.

Cases

On **30 September 2002**, the **Minsk Collegium of Lawyers** (Bar association) did not allow **Vera Stremkovskaya**, lawyer and director of the **Centre for Human Rights**, to travel abroad to participate in international conferences. She had recently attended a meeting organised by the Organization for Security and Co-operation in Europe (OSCE) in Warsaw, Poland, where she had openly criticised the Collegium for pressurising human rights lawyers. On **21 June 2003**, the Minsk city court sentenced Stremkovskaya to pay BRB 600,000 (about USD 500) in damages for her remarks during her client Vasil Staravoitaw's trial, on the whereabouts of 40 bottles of cognac confiscated by the authorities. The newspaper "Naviny" (*News*) that had published an article on the issue was also fined BRB 800,000.

On **11 October 2002**, the **Leninsky District Court** in Minsk convicted lawyer **Igor Aksenchik** of criminal libel and sentenced him to an 18-month suspended prison term. He had publicly named a leading state official during the closed trial in February 2002 of those accused of the “disappearance” of Russian Public Television cameraman Dmitry Zavadsky. Aksenchik had represented Zavadsky’s mother in the trial. The **Collegium of Lawyers** subsequently expelled him, preventing him from practicing. At the time of writing, he still cannot practice.

On **24 September 2003**, **Oleg Volchek**, lawyer and director of the NGO **Legal Aid to the Population** (closed down earlier that month, see below [Access to Justice](#)), was provoked and physically attacked by an unknown person after a trial. He had to receive medical attention in hospital and submitted a complaint to the police. Volchek fears that the attack was orchestrated in order to discredit him and his organization.

On **23 August 2004**, the **Biaroza district court** heard the case of **Alexander Shavel**, lawyer of the human rights organization **Viasna 96**. Shavel was accused of insulting the district prosecutor during proceedings held on **18 August 2004**. After the hearing was over and all process participants had left the courtroom, Shavel made a critical remark to the prosecutor. The police took him from the courtroom to a police station where he was detained. Finally he was fined for the alleged insult to the prosecutor and released.

Access to Justice

Lawyers run about one-third of criminal cases on the request of the bodies initiating criminal procedures, i.e. without fees. However, these lawyers do not receive salaries, as there are no public funds for that purpose. Local and international organizations (NGOs) currently provide free legal assistance on a wide number of issues, among them the defence of civil liberties and human rights, to people unable to afford legal aid.

In **2003**, the government closed down at least **51 NGOs** for directly or indirectly promoting and defending civil liberties. This was based on controversial legislation (see [Background](#)) and rulings by the judiciary whose independence has been repeatedly called into question by the international community. None of the organizations thus closed down were able to appeal successfully in court, implying total judicial subservience to the executive.

Impunity for forced disappearances remains a problem in Belarus to date. The **Parliamentary Assembly of the Council of Europe (PACE)** issued *Resolution 1371 (2004)* on **28 April 2004** expressing concern over the disappearances of **Yuri Zakharenko**, former Minister of the Interior (disappeared 7 May 1999), **Victor Gonchar**, former Vice-President of Belarus (disappeared 16 September 1999), **Anatoly Krasovski**, businessman (disappeared 16 September 1999), and **Dmitri Zavadski**, cameraman for the Russian television channel ORT (disappeared 7 July 2000). A non-governmental committee (leading member lawyer Oleg Volchek, (see above [Legal Profession](#)) has also demanded an independent investigation into a spate of forced “disappearances” of political opponents.

These politically motivated disappearances led to the creation of an ad hoc COE sub-committee of the Committee on Legal Affairs and Human Rights in **September 2002**, and to a motion for a COE resolution in **April 2003**. The Belarusian authorities refused to allow the ad hoc sub-committee to visit Minsk after learning about its preliminary findings by intercepting confidential communications. This implies impunity for committed crimes tolerated by the government.

In the *resolution of 2004* mentioned above, the **COE Assembly** condemned the new appointment of **Sheyman** as General Prosecutor to lead the official investigation of the said crimes: Sheyman himself had been accused of masterminding the actions that led to the disappearances. The COE Assembly concluded that the competent authorities had not conducted a proper investigation, but instead had actively dissimulated the true circumstances of the disappearances. This led to the suspicion that senior state officials **General Prosecutor Sheyman, Minister for Sports and Tourism Sivakov**, and high-ranking officer of the special forces, **Pavlichenko** may be involved in these crimes. The COE Assembly concluded that the presence of Belarusian parliamentarians in its sessions is still inappropriate.

Furthermore, **PACE President Peter Schnieder** on **4 October 2004** welcomed the EU and the US State Department's support for the appeal contained in the *April 2004 Resolution 1371*, stating that the international community will not tolerate impunity for forced disappearances.

The **UN Commission on Human Rights** had previously adopted *Resolution 2003/14* on **17 April 2003**, urging the Government of Belarus to dismiss or suspend law enforcement officers implicated in forced disappearances and to undertake the necessary measures for the full and impartial investigation of all cases.

Cases

On **8 September 2003**, the **Minsk City Court** closed down the NGO **Legal Assistance to the Population (LAP)**, which offered free legal advice on a wide number of issues to people unable to afford legal aid, basing its action on allegations brought by the Minsk Justice Department that LAP had exercised its activities without the required licence. LAP had received two official warnings in **2002** for providing free legal assistance to non-members of the organization and for using a different organizational symbol from that submitted at registration. It is reported that during the proceedings, the court decided to continue with the hearing in the absence of the defence (while representatives were reportedly in the building trying to arrange a larger room to ensure that those who wished to do so could attend). Another representative of the organization was refused entry into the court building by the police. Reportedly the judge presiding over this case had ruled in a number of other court cases against the organization and apparently used information that was not provided by the plaintiff, but obtained from the cases he had previously presided over.

LAP's chairperson, lawyer **Oleg Volchek**, is a leading member of the non-governmental committee that has demanded an independent investigation into the spate of forced "disappearances" of political opponents (see above). Volchek was physically attacked later that month (see above [Legal Profession](#)).

On **28 October 2003**, the Supreme Court ruled to close down the NGO **Spring-96** indefinitely. On **13 September 2003**, Spring-96 had received a court summons from the Supreme Court in which the organization was threatened with closure based on charges filed by the Ministry of Justice. The Supreme Court concluded that the NGO had violated procedures concerning the nomination of election observers in 2001. Other alleged violations included legal representation of non-members, not charging membership fees and irregularities in registration documents. Reportedly it was persecuted due to its public activities, including providing free legal assistance to victims of political repression.

In **January 2004**, the **tax inspection office** of the Minsk Moskovskaya District issued a fine of BRB 385 million (about USD 180,000) to the local NGO **Belarusian Helsinki Committee** (BHC), which provides legal assistance to relatives of disappeared political leaders and to journalists charged with libel against the President. The tax authorities accused the BHC of using a grant provided by the EU without registering it and not paying taxes in accordance with a decree. On **10 February 2004** the **European Commission** reportedly sent a '*note verbale*' to the Belarusian government expressing its concern about the situation surrounding the human rights association and the taxation of technical assistance programmes. On **29 July 2004** the **Cassation Instance** rejected the complaint of the tax inspection office, but the authorities decided to continue the criminal case against the BHC's lawyers. Judicial proceedings were pending in **November 2004**. The BHC also received on **19 August 2004** a warning from the Ministry of Justice for the incorrect use of its name in letterheads and seals, the main reason for reprimand being the absence of quotation marks in the organization's name.

Legal Reforms During the Period

- 2002:** Presidential decree issued requiring government agencies, factories and schools to hold "political information" meetings.
- March 2004:** Constitutional Court ruled that a moratorium and a subsequent total ban on the death penalty would be permissible under Constitution.
- June 2004:** *Law on non-governmental organizations* amended.
- October 2004:** Referendum passed. *Constitution* will be amended to allow three presidential terms.

II. General Country Information

a. Legal System Overview

1. Rule of Law and Independence of the Judiciary

The *Constitution* of Belarus, which was amended in 1996 by unconstitutional means according to a Constitutional Court decision (see below [c.1.4. Security of Tenure](#)), remains in force. Chapter 6, Article 110 stipulates that judges shall be independent and subordinate to law alone and that any interference in the administration of justice is unlawful. However, the President has excessive power and continues to rule by presidential decree. Poor conditions of service and the President's influence on appointment and dismissal of judges seriously threaten the judiciary's independence. Due to excessive executive influence over judges, an independent judiciary in Belarus is almost non-existent.

b. The Judiciary

1. Judicial Structure

Chapter 6 of the Constitution regulates the court system. Art. 109 vests the exercise of judicial power in the courts. Art. 110 stipulates that judges shall be independent and subordinate to law alone and that any interference in the administration of justice is unlawful.

The court system consists of the **Constitutional Court** and two court systems, one of general application and one dealing with economic questions. The general court system comprises the **District Courts**, the **Regional Courts** (the *oblast* and Minsk City Courts), the **Supreme Court** and the **Military Courts**. The economic court system comprises the **Higher Economic Court** and the *oblast* and **Minsk City Economic Courts**.

c. Judicial Actors

c.1. Judges

1. Qualifications, Appointment and Training

Article 62 of the *Law on the Judicial System and the Status of Judges* sets out the requirements for becoming a judge: citizenship of the Republic of Belarus, higher legal education, good moral reputation, age above 25 years. Potential judges must have at least two years of legal experience or two years of fieldwork and practical study. Supreme Court judges must have at least five years of experience. The judges of the Regional, Minsk City, and Belarusian Military Courts, however, are required to have at least three years of experience.

The procedures for the appointment of judges were changed considerably by the **1996 referendum**. The main role in this process is no longer played by Parliament, but rather by the **President of the Republic of Belarus**. The President appoints the **Chairperson of the Constitutional Court** and the **Chairperson** and the other **judges of the Supreme and Economic Courts**. Such appointments must receive the consent of the **Council of the Republic**, of which one-third is appointed by the President himself. The President directly appoints six of the 12 Constitutional Court judges and all the other judges of the Republic of Belarus. The remaining six judges of the Constitutional Court are appointed by the Council of the Republic.

The **Chairpersons of the Supreme Court and the Higher Economic Court** are selected by the **(Supreme) Council of the Republic** on the basis of proposals made by the President. The other judges of these courts are chosen by the (Supreme) Council of the Republic. The **President** appoints the **Vice-Chairs** of these courts, the **Presidents and Vice-Presidents of the District Courts and the oblast Regional Court** on the basis of proposals made by the Minister of Justice and the President of the Supreme Court.

The candidates for all other judges are chosen by the local administration of the **Ministry of Justice**. They must pass a qualifying examination held by a judge's qualification board made up of representatives of the judiciary and the organs of justice, and must then be recommended for appointment by that board. After the Ministry of Justice approves the recommendation, the **Presidential Administration** makes the final decision. Candidates are also subject to clearance by the Security Council of Belarus.

1. Security of Tenure

Overall, poor conditions of service for judges threaten the independence of the judiciary. Low salaries always entail the risk of corruption. Judges are dependent on the executive for provision of a monthly bonus, adequate housing and promotion, thus making them susceptible to the executive's influence. The widespread practice of "telephone justice" confirms this concern: allegedly, executive or local authorities often dictate the outcome of trials they have an interest in. As another example, the **President** blatantly disregarded the **Constitutional Court's** decision in **1996** that the Constitution of Belarus could not be amended by referendum.

Judges are appointed for an initial period of five years. After that period, they are evaluated by the Presidential Administration and are either appointed for life or removed. The local administration of the Ministry of Justice continues to be heavily involved in the evaluation. Article 116 of the Constitution stipulates that judges of the Constitutional Court are appointed for a term of 11 years and can serve until they are 70.

According to Article 63 of the *Law on the Judicial System and the Status of Judges*, judges in all courts may not be removed nor transferred to another position or court without their consent.

Principle 12 of the *UN Basic Principles on the Independence of the Judiciary* provides that judges shall have guaranteed tenure either until a mandatory retirement age or until the expiry of their term of office. However, the initial period of five years is too short to guarantee an independent judiciary. Judges who fear that they may not be reappointed may be prone to decide in favour of the institution evaluating their performance, i.e. executive.

3. Discipline, Suspension and Removal

Article 73 of the *Law on the Judicial System and the Status of Judges* provides that the *Regulations on Disciplinary Responsibilities of Judges*, set out in the *Presidential Edict No. 626 of 1997*, shall prescribe the grounds and procedures for disciplinary proceedings against judges. Grounds for discipline are, *inter alia*, breaking the law in

the consideration of cases, an occupational misdemeanour, or a failure to observe the work rules.

According to Article 111 of the Constitution, the grounds for the dismissal of judges shall be determined by law. Article 84 (11) gives the **President** the power to dismiss the **Chairperson and judges of the Constitutional, Supreme and Economic Courts** in the order determined by law and with notification to the Council of the Republic. Article 72 of the *Law on the Judicial System and the Status of Judges* provides that a judge may be removed from his position when he has committed a “disgraceful act” or deliberately breached the law in a manner that is incompatible with the status of a judge. The organ that elects or appoints the judge makes the removal decision.

As the **President** appoints the judges of the **Supreme Court**, he may also dismiss them. The same applies for the six judges of the **Constitutional Court**, who are directly appointed by the President.

All other judges can be dismissed on any basis determined by law, a provision that also gives the President the potential to manipulate the judiciary through his power to render decrees.

c.2. The Legal Professions

1. Independence

On **3 May 1997**, **President Lukashenko** issued *Decree No. 12* regarding the activities of lawyers and notaries, thereby amending the rules governing the legal profession significantly. Every lawyer is obliged to become a member of the **Collegium of Advocates** in order to be allowed to practise. The Collegium of Advocates is a centralised body whose activities are controlled by the **Ministry of Justice**. The Ministry of Justice has the power to make the final decision to grant a licence. However, a licence is only granted for a period of five years, after which the candidates must apply to the Ministry of Justice for its renewal. Lawyers can reportedly be expelled from the Collegium of Advocates after two official warnings for which no objective proof is required. Expelled lawyers are not allowed to practise and face considerable financial hardships. This system constitutes a blatant lack of respect by the Government for the independence of lawyers. Principles 16, 17, 18 and 20 of the *UN Basic Principles on the role of Lawyers, inter alia*, provide that governments shall ensure that lawyers are able to perform their professional duties without intimidation, harassment or interference and that they should not be threatened with prosecution or sanctions for any action taken in accordance with their recognised professional duties.

Human rights lawyers also face difficulties in providing legal aid. Article 22 of the *Law on Public Associations* provides that public associations can only represent and defend the rights and legal interests of its members and not third parties. This law contravenes the *UN Basic Principles on the Role of Lawyers* that provide in principles 2, 3 and 4 that governments shall ensure efficient procedures and mechanisms for effective and equal access to lawyers and shall furthermore ensure the provision of sufficient funding for legal services to the poor.

c.3. Prosecutors

1. Independence

Prosecutors are highly dependent on executive powers. There have been numerous allegations of the undertaking of or omission to undertake prosecutions for apparent political reasons. In the report (E/CN.4/2001/65/Add.1) of his June 2000 mission to Belarus, the **Special Rapporteur on the independence of judges and lawyers** expressed concern over “the prosecution of many leading members of the opposition in situations that connote a political motivation”.

2. Qualifications, Selection and Training

The **Procurator-General** (General Prosecutor) is the head of a unified and centralised system of bodies of the Procurator’s office and is appointed by the President with the consent of the Council of the Republic.

3. Role in Criminal Proceedings

The Procurator-General and the subordinate public prosecutors supervise the implementation of laws, decrees and regulations, and the execution of court verdicts. Furthermore, they carry out preliminary investigation and support state charges in the courts.

d. Access to Justice

1. Access to Justice

The Constitution guarantees citizens the right to seek court protection. However, this right is conditioned by payment of huge state duty and some categories of citizens are deprived of this right. Thus, labour disputes involving citizens whose positions are included in the personnel register of the President are not subject to court proceedings. The register includes all the heads of ministries and agencies, their deputies and other governmental officers.

2. Fair Trial

The current legislation fails to ensure a complete right of convicts to apply for revision of court decisions by a higher court authority. Thus, sentences and decisions determined in the first instance by the Supreme Court, are not subject to protest and appeal.

3. Legal Aid

Every third criminal case is undertaken by lawyers at the request of the bodies initiating the criminal procedures, i.e. without fees. However, these lawyers do not receive salaries from financial bodies, as there are no budget funds allocated for that purpose.