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Center for Human Rights

15 Post-Election Trials: A Window into Courts in Belarus

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TRIALWATCH FAIRNESS REPORT

A CLOONEY FOUNDATION **FOR** JUSTICE INITIATIVE

ABOUT THE AUTHOR:

Staff at the American Bar Association Center for Human Rights helped to draft this report. The **American Bar Association** (ABA) is the largest voluntary association of lawyers and legal professionals in the world. As the national voice of the legal profession, the ABA works to improve the administration of justice, promotes programs that assist lawyers and judges in their work, accredits law schools, provides continuing legal education, and works to build public understanding around the world of the importance of the rule of law. The **ABA Center for Human Rights** mobilizes lawyers to help threatened advocates, protect vulnerable communities, and hold governments accountable under law. It has monitored trials and provided pro bono assistance to at-risk human rights defenders in over 60 countries. It is an implementing partner in the Clooney Foundation for Justice's TrialWatch initiative.

ABOUT THE MONITORING ENTITY:

Human Rights Embassy is an international human rights nongovernmental organization based in Moldova and operating throughout the countries of the former Soviet Union and Europe. The organization's mission is to contribute to the promotion of and respect for human rights worldwide. To achieve this goal, Human Rights Embassy undertakes professional development trainings of judges, prosecutors, lawyers, and police officers; human rights trainings for NGOs and mass-media; trial monitoring; strategic litigation; solidarity campaigns for the protection of human rights lawyers/defenders; awareness raising campaigns; and advocacy. Human Rights Embassy monitored the trials documented in this report.

ABOUT THE CLOONEY FOUNDATION FOR JUSTICE'S TRIALWATCH INITIATIVE:

The **Clooney Foundation for Justice** (CFJ) advocates for justice through accountability for human rights abuses around the world. **TrialWatch** is an initiative of the Clooney Foundation for Justice. Its mission is to expose injustice, help to free those unjustly detained and promote the rule of law around the world. TrialWatch monitors criminal trials globally against those who are most vulnerable – including journalists, protesters, women, LGBTQ+ persons and minorities – and advocates for the rights of the unfairly convicted. Over time, TrialWatch will use the data it gathers to publish a Global Justice Ranking exposing countries' performance and use it to support advocacy for systemic change.

The views expressed herein represent the opinions of the authors. They have not been reviewed or approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the position of the Association or any of its entities. Furthermore, nothing in this report should be considered legal advice for specific cases. Additionally, the views expressed in this report are not necessarily those of the Clooney Foundation for Justice.

EXECUTIVE SUMMARY



ABA Center for Human Rights Staff who are members of the TrialWatch Experts Panel assigned these trials a grade of D:

the 15 trials monitored reveal a startling disregard for fair trial rights as well as for the rights to freedom of expression and peaceful assembly. While each of the trials has individually been assigned the grade of D due to the flouting of international standards and the significant harm caused to the defendants by the proceedings and/or convictions, these trials reflect **persistent violations** and reveal the systemic degradation of the Belarusian judicial system.

In September and October 2020, the American Bar Association (ABA) Center for Human Rights and Human Rights Embassy monitored the trials of 15 Belarusian citizens as part of the Clooney Foundation for Justice’s TrialWatch initiative. The accused – Pavel Zhuk, Siarhei Babrou, Aleh Sakovich, Iryna Kuzina, Alina Ulyashyna, Dmitry Petrov, Yuliya Novik, Renata Lyskovich, Maria Banderenka, Anna Korshun, Maksim Bazuk, Lyudmila Kazak, Ivan Yakhin, Raman Pazniak, and Andrei Sychyk – included activists, students, and a human rights lawyer.¹ They were arrested in connection with the demonstrations that spread across Belarus following President Aleksandr Lukashenko’s reelection on August 9, 2020 in a vote widely condemned as fraudulent. The accused were charged with violating Belarus’s Code of Administrative Offenses,² which – while described as “administrative” – provides for penalties of imprisonment and has become a frequent tool of the authorities in their crackdown on political opposition.

The proceedings against the defendants, from arrest to conviction, entailed severe violations of their rights under international law, including the right to be free from arbitrary detention, the right to be presumed innocent, and the right to an impartial tribunal. With trials in Belarus increasingly closed to the public, the monitored proceedings provide a window into how the authorities have systematically flouted international due process and fair trial guarantees, as well as guarantees related to humane detention conditions. The following analysis is based on the observation of trials that were open to the public.

All of the defendants were detained by riot officers or other police – some in uniform and others in civilian clothing but typically wearing balaclavas over their faces – who

¹ All of the names excepting that of Lyudmila Kazak, whose case was high-profile, have been changed due to the deteriorating security situation in Belarus.

² The underlying violation in many of the monitored cases was a violation of the procedure for holding mass events, as provided for by the Law of the Republic of Belarus “On Mass Events.” The Code of Administrative Offenses establishes administrative responsibility for violations of the Law.

failed to identify themselves or give any explanations before the arrests, causing many of the accused to believe they were being abducted. Out of the 15 defendants, 13 were arrested during or soon after demonstrations and accused of participating in an unauthorized mass event in violation of Article 23.34 of the Code of Administrative Offenses (two of these 13 defendants, Ms. Ulyashyna and Mr. Petrov, were additionally charged with disobeying lawful police orders in violation of Article 23.4 of the Code). Of the remaining two defendants, one accused, Ms. Lyskovich, was arrested for sharing information online about an allegedly unauthorized mass event and charged under Article 23.34. The other accused, Ms. Kazak – a human rights lawyer – was grabbed by police on her way to a hearing – supposedly in relation to her alleged participation in a protest almost a month earlier, although she was later prosecuted for allegedly disobeying police orders under Article 23.4.

Upon arrest, all of the accused were brought to the Internal Affairs Departments of various districts of Minsk, where Offense Protocols (i.e., charge sheets) and other case materials were prepared. Out of the 15 defendants, 13 were then transferred to the temporary detention center on Okrestina Street to await trial. They were detained for between 21 and 77 hours before their hearings started. The other two defendants were released pending trial. No justification for detention was given in any of the cases.

The defendants' unjustified and unnecessary detention was especially egregious in light of the COVID-19 pandemic. Further, the detention conditions at Okrestina Street were described by several accused as inhumane. One defendant testifying at trial recounted, among other things, that detainees were sleeping on the concrete without mattresses, that there was no drinking water available in the cells, and that detainees were forced to defecate in the cells without cleaning materials: as such, detention pretrial was a punishment in itself.

The defendants' trials were marred by absurdities. The police evidence against the defendants was so implausible, the judges' bias against the defendants so evident, and the verdicts so illogical that no reasonable observer could have deemed the proceedings and resulting convictions fair. In one flagrant example, Mr. Bazuk was convicted on the basis of police testimony despite the officer's admission that he could have confused Mr. Bazuk with someone else at the protest. In other cases, the judges returned the case files to the police to "eliminate deficiencies" rather than acquitting the defendants when it became clear the allegations could not be proven, subsequently allowing the police to revise the Offense Protocols and give new testimony that radically changed basic details of the allegations.

Out of the 15 defendants, 14 were convicted: 12 were sentenced to between five and 14 days imprisonment and two were fined. Although the underlying circumstances differed across the cases, the guilty verdicts appeared to be variations of a template (at times even using the wrong name for the defendant) and

employed language that was similar or identical to the Offense Protocols. The remaining defendant, Ms. Kuzina, was not acquitted but released pending the return of her case file to the police for further investigation. Her case had not been reopened at the time of publication. While the majority of the defendants appealed their convictions, these appeals were all dismissed by higher courts.

In addition to grossly violating the defendants' fair trial rights, the proceedings against the accused contravened their rights to freedom of expression and peaceful assembly. In accordance with the International Covenant on Civil and Political Rights (ICCPR), restrictions on the rights to freedom of expression and peaceful assembly must (i) be prescribed by law, (ii) serve a legitimate objective, and (iii) be necessary to achieve and proportionate to that objective. Expressive assemblies concerning issues of public interest – such as the election protests in which the defendants were alleged to have participated – warrant heightened protection.

Nevertheless, the defendants in these cases were expressly charged and convicted for participation in mass protests. The alleged acts at issue, as stated in the Offense Protocols and judgments, included demonstrating “against the fact of holding fair elections” and shouting slogans such as “Long live Belarus” and “Shame” for the purpose of “expressing their socio-political views.” Peacefully challenging the government is not a legitimate reason to restrict free speech or assembly. Furthermore, the imposition of imprisonment and punitive fines for participation in peaceful protests is wholly unnecessary and disproportionate to any legitimate aim that might exist for restricting the right to freedom of expression or freedom of peaceful assembly.

Finally, it appears that Ms. Kazak was arrested and prosecuted to punish her for and/or preclude her legal representation of an opposition leader. The ICCPR protects against the use of criminal proceedings for an ulterior or improper motive. The European Court of Human Rights has set forth various indicia of improper motive, including the overarching political context and timing; lack of reasonable suspicion to bring the charges; the selective targeting of a specific individual; the conduct of the proceedings; and an improperly reasoned judgment. Ms. Kazak's case meets all of these criteria.

In sum, the proceedings against the 15 accused reveal severe, systemic violations of the defendants' right to a fair trial and right to freedom of expression and peaceful assembly. Current monitoring mechanisms, such as the ongoing Office of the High Commissioner for Human Rights investigation and the International Accountability Platform, should highlight such violations as part of their documentation efforts. Moreover, the United States and other countries should impose sanctions on repeat bad actors in the judicial system, such as the judges who presided over multiple unfair trials and wrongful convictions in the cases monitored for this report. Lastly,

international actors should push for trials to be open and transparent, permitting assessment of their compliance with human rights standards.



A. POLITICAL AND LEGAL CONTEXT

Lead-up to 2020 Election Protests

Belarus has been under the authoritarian rule of Aleksandr Lukashenko, often dubbed “Europe’s last dictator,”³ since 1994, when he became the former Soviet republic’s first president in the country’s first and last free and fair elections.⁴ As described by the U.S. State Department, since coming to power President Lukashenko “has consolidated his rule over all institutions and undermined the rule of law through authoritarian means, including manipulated elections and arbitrary decrees.”⁵ In the years leading up to the most recent election, Belarusians suffered from a wide range of human rights abuses,⁶ including severe restrictions on political participation,⁷ freedom of expression and information,⁸ and freedom of peaceful

³ BBC, “Profile: Alexander Lukashenko”, January 9, 2007. Available at <http://news.bbc.co.uk/2/hi/europe/3882843.stm>.

⁴ Freedom House has noted that elections in Belarus are characterized by “a restrictive legal framework, media coverage that fails to help voters make informed choices, irregularities in vote counting, and restrictions on free expression and assembly during the campaign period.” Freedom House, “Freedom in the World 2020: Belarus”, 2020, A1. Available at <https://freedomhouse.org/country/belarus/freedom-world/2020>; U.S. Department of State, “2019 Country Reports on Human Rights Practices: Belarus”, March 11, 2020, pg. 22. Available at <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/belarus/>; Human Rights Committee, Concluding observations on the fifth periodic report of Belarus, U.N. Doc. CCPR/C/BLR/CO/5, November 22, 2018, para. 56.

⁵ U.S. Department of State, “2019 Country Reports on Human Rights Practices: Belarus”, March 11, 2020, pg. 1.

⁶ Id. See also Freedom House, “Freedom in the World 2020: Belarus”, 2020; Human Rights Council, Report of the Special Rapporteur on the situation of human rights in Belarus, U.N. Doc. A/HRC/44/55, April 8, 2020; Human Rights Committee, Concluding observations on the fifth periodic report of Belarus, U.N. Doc. CCPR/C/BLR/CO/5, November 22, 2018; Human Rights Watch, “World Report 2020, Events of 2019: Belarus”, 2020, pgs. 65-69. Available at https://www.hrw.org/sites/default/files/world_report_download/hrw_world_report_2020_0.pdf; Amnesty International, “Human Rights in Eastern Europe and Central Asia: Review of 2019”, 2020, pgs. 11-13. Available at <https://www.amnesty.org/download/Documents/EUR0113552020ENGLISH.PDF>.

⁷ See U.S. Department of State, “2019 Country Reports on Human Rights Practices: Belarus”, March 11, 2020, pgs. 1, 22-24; Human Rights Committee, Concluding observations on the fifth periodic report of Belarus, U.N. Doc. CCPR/C/BLR/CO/5, November 22, 2018, para. 56; Freedom House, “Freedom in the World 2020: Belarus”, 2020, A-B.

⁸ See U.S. Department of State, “2019 Country Reports on Human Rights Practices: Belarus”, March 11, 2020, pgs. 1, 9-15; Human Rights Council, Report of the Special Rapporteur on the situation of human rights in Belarus, U.N. Doc. A/HRC/44/55, April 8, 2020, paras. 40-41, 52-55; Freedom House, “Freedom in the World 2020: Belarus”, 2020, D1, D4; Human Rights Watch, “World Report 2020, Events of 2019: Belarus”, 2020, pgs. 65-67; Human Rights Committee, Concluding observations on the fifth periodic report of Belarus, U.N. Doc. CCPR/C/BLR/CO/5, November 22, 2018, para. 49; Amnesty International, “Human Rights in Eastern Europe and Central Asia: Review of 2019”, 2020, pg. 12; American Bar Association, “Monitoring of the Trial of Marina Zolotova (Belarus)”, July 2019, pg. 4. Available at https://www.americanbar.org/content/dam/aba/administrative/human_rights/trialwatch/fair-trial-report-belarus-marina-zolotova.pdf.

assembly.⁹ The government, for example, has historically exercised broad control over the media, employing repressive tactics such as censorship and the blocking of websites,¹⁰ while the Law on Mass Events creates often insurmountable obstacles to obtaining authorization for protests.¹¹

In this regard, during Lukashenko's rule the Code of Administrative Offenses has been a key tool for repressing dissent.¹² The authorities have systematically used provisions such as Articles 17.1 (petty hooliganism), 17.11 (distribution, production, storage or transportation of extremist information), 22.9 (violating the Law on Mass Media), 23.4 (disobeying the orders of a police officer or other official), and 23.34 (violating the Law on Mass Events) to silence critics and activists by placing them in preventive detention prior to significant events¹³ and/or punishing them with fines and short prison sentences¹⁴ for exercising their rights.¹⁵ In particular, throughout the

⁹ See U.S. Department of State, "2019 Country Reports on Human Rights Practices: Belarus", March 11, 2020, pgs. 1, 15-17; Human Rights Committee, Concluding observations on the fifth periodic report of Belarus, U.N. Doc. CCPR/C/BLR/CO/5, November 22, 2018, paras. 51-52; Amnesty International, "Human Rights in Eastern Europe and Central Asia: Review of 2019", 2020, pg. 12; Human Rights Council, Report of the Special Rapporteur on the situation of human rights in Belarus, U.N. Doc. A/HRC/44/55, April 8, 2020, paras. 45-47; Freedom House, "Freedom in the World 2020: Belarus", 2020, E1.

¹⁰ See U.S. Department of State, "2019 Country Reports on Human Rights Practices: Belarus", March 11, 2020, pgs. 10-14; Freedom House, "Freedom in the World 2020: Belarus", 2020, D1; Human Rights Watch, "World Report 2020, Events of 2019: Belarus", 2020, pgs. 65-67.

¹¹ U.S. Department of State, "2019 Country Reports on Human Rights Practices: Belarus", March 11, 2020, pgs. 15-17; Human Rights Council, Report of the Special Rapporteur on the situation of human rights in Belarus, U.N. Doc. A/HRC/44/55, April 8, 2020, paras. 45-46; Human Rights Committee, Concluding observations on the fifth periodic report of Belarus, U.N. Doc. CCPR/C/BLR/CO/5, November 22, 2018, para. 51; Human Rights Center Viasna et al., "Monitoring the Right to Free Assembly: Belarus 2019", April 2020, pgs. 5-9. Available at <https://ecnl.org/sites/default/files/files/Monitoring-the-Right-to-Free-Assembly-Belarus-report.pdf>.

¹² Code of the Republic of Belarus on Administrative Offenses, 2003 [hereinafter "Code of Administrative Offenses"].

¹³ See FIDH and Human Rights Center Viasna, "Arbitrary Preventive Detention of Activists in Belarus", September 2014, pgs. 6, 8, 13-16. Available at <https://www.refworld.org/pdfid/547732ea4.pdf>; Human Rights Council, Report of the Special Rapporteur on the situation of human rights in Belarus, U.N. Doc. A/HRC/44/55, April 8, 2020, para. 47; Human Rights Committee, Concluding observations on the fifth periodic report of Belarus, U.N. Doc. CCPR/C/BLR/CO/5, November 22, 2018, para. 33.

¹⁴ Article 6.7 of the Code of Administrative Offenses limits imprisonment as a penalty for the commission of an administrative offense (referred to as "administrative arrest") to 15 days. However, under Article 7.4 of the Code, if two or more administrative offenses are committed, separate sentences of administrative arrest may be imposed up to a total of 25 days. There are, however, many examples of consecutive 15-day sentences being imposed on a single person, resulting in terms of administrative arrest far longer than 15 or 25 days. See Amnesty International, "Belarus: Growing Crackdown on Human Rights Ahead of Presidential Election", June 29, 2020, pgs. 3-4. Available at https://www.amnesty.be/IMG/pdf/belarus_growing_crackdown_on_human_rights_ahead_of_presidential_election_2020.pdf; FIDH and Human Rights Center Viasna, "Arbitrary Preventive Detention of Activists in Belarus", September 2014, pgs. 6, 8, 13-16.

¹⁵ See Human Rights Council, Report of the Special Rapporteur on the situation of human rights in Belarus, U.N. Doc. A/HRC/44/55, April 8, 2020, paras. 47, 52, 54; Commission on Human Rights, Report of the Working Group on Arbitrary Detention: Mission to Belarus, U.N. Doc. E/CN.4/2005/6/Add.3, November 25, 2004, pg. 3; U.S. Department of State, "2019 Country Reports on Human Rights Practices: Belarus", March 11, 2020, pg. 4; Amnesty International, "Belarus: Growing Crackdown on Human Rights Ahead of Presidential Election", June 29, 2020, pgs. 3-4.

Lukashenko years unauthorized yet peaceful demonstrations have regularly been suppressed and protesters have been arbitrarily arrested and charged with administrative offenses, with many fined or jailed¹⁶ after trials severely lacking in due process and fair trial guarantees (discussed more below).¹⁷

Fair Trial and Due Process Rights

Various international and domestic organizations and institutions have raised concerns about the independence of the Belarusian judiciary.¹⁸ The executive exerts significant influence over the appointment and removal of judges and prosecutors.¹⁹ The President, for example, is empowered by the Belarusian Code on Judicial Systems and Status of Judges to dismiss any judge without initiating disciplinary proceedings: this decision is within the sole discretion of the President.²⁰ Per Freedom House's 2018 assessment, "the strongest indicator of the dependence of the judicial system on executive bodies ... was the process of ruling on politically significant cases in lockstep with government positions, primarily against political activists and participants in the social protests."²¹

Against this backdrop, even prior to the current wave of trials related to the 2020 election protests, fair trial violations were rampant in both criminal and administrative proceedings. The U.S. State Department reported in its 2019 country assessment that the authorities did not always respect a defendant's "right to attend proceedings, confront witnesses, and present evidence on their own behalf," while "[d]efense lawyers were unable to examine investigation files, be present during investigations

¹⁶ See Human Rights Center Viasna et al., "Monitoring the Right to Free Assembly: Belarus 2019", April 2020, pgs. 22-23; Human Rights Watch, "World Report 2020, Events of 2019: Belarus", 2020, pg. 67; Human Rights Council, Report of the Special Rapporteur on the situation of human rights in Belarus, U.N. Doc. A/HRC/44/55, April 8, 2020, paras. 38-40, 47; U.S. Department of State, "2019 Country Reports on Human Rights Practices: Belarus", March 11, 2020, pgs. 5, 16-17; Human Rights Committee, Concluding observations on the fifth periodic report of Belarus, U.N. Doc. CCPR/C/BLR/CO/5, November 22, 2018, para. 51; Amnesty International, "Human Rights in Eastern Europe and Central Asia: Review of 2019", 2020, pg. 12; Human Rights Watch, "Belarus: 'Freedom Day' Crackdown", April 3, 2017. Available at <https://www.hrw.org/news/2017/04/03/belarus-freedom-day-crackdown>; Human Rights Watch, "Shattering Hopes Post-Election Crackdown in Belarus", March 14, 2011. Available at <https://www.hrw.org/report/2011/03/14/shattering-hopes/post-election-crackdown-belarus>.

¹⁷ See Human Rights Watch, "Belarus: 'Freedom Day' Crackdown", April 3, 2017; Human Rights Watch, "Shattering Hopes Post-Election Crackdown in Belarus", March 14, 2011.

¹⁸ See U.S. Department of State, "2019 Country Reports on Human Rights Practices: Belarus", March 11, 2020, pg. 6; Freedom House, "Nations in Transit 2020: Belarus." Available at <https://freedomhouse.org/country/belarus/nations-transit/2020>; National Human Rights Coalition, "Alternative Report on Implementation of the International Covenant on Civil and Political Rights in the Republic of Belarus", 2018, pgs. 13-14. Available at https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/BLR/INT_CCPR_CSS_BLR_31288_E.pdf.

¹⁹ National Human Rights Coalition, "Alternative Report on Implementation of the International Covenant on Civil and Political Rights in the Republic of Belarus", 2018, pgs. 13-14.

²⁰ Id.

²¹ Freedom House, "Nations in Transit 2018: Belarus." Available at <https://freedomhouse.org/country/belarus/nations-transit/2018>.

and interrogations, or examine evidence against defendants until a prosecutor formally brought the case to court.”²² Defendants have correspondingly faced challenges in obtaining legal assistance in light of government “pressure on and harassment of lawyers, particularly those taking on politically sensitive cases.”²³

Amidst such “pressure,” courts have reportedly failed to respect the presumption of innocence, with the vast majority of cases resulting in a guilty verdict.²⁴ As documented by Freedom House, “[l]ess than 0.3 percent of verdicts in criminal trials in 2019 were acquittals.”²⁵ As described below, the cases initiated in connection with the 2020 protests followed this same pattern.

August 2020 Election and Related Protests

The recent presidential election on August 9, 2020 – the official results of which pronounced President Lukashenko the winner with 80% of the vote – was quickly deemed to have been neither free nor fair by outside observers, including the European Council and the U.S. State Department.²⁶ In particular, the months leading up to the election were characterized by internet blackouts and curtailed media access; increased intimidation, arrests, and prosecutions of journalists, bloggers, and peaceful protesters; and the arrest of opposition candidates.²⁷ According to

²² U.S. Department of State, “2019 Country Reports on Human Rights Practices: Belarus”, March 11, 2020, pgs. 6-7.

²³ Human Rights Committee, Concluding observations on the fifth periodic report of Belarus, U.N. Doc. CCPR/C/BLR/CO/5, November 22, 2018, para. 41. See also National Human Rights Coalition, “Alternative Report on Implementation of the International Covenant on Civil and Political Rights in the Republic of Belarus”, 2018, pgs. 14-15; FIDH et al., “Belarus: Control Over Lawyers Threatens Human Rights”, June 2018. Available at http://spring96.org/files/book/en/2018-control-over-lawyers_en.pdf.

²⁴ U.S. Department of State, “2019 Country Reports on Human Rights Practices: Belarus”, March 11, 2020, pg. 6; Freedom House, “Nations in Transit 2020: Belarus.”

²⁵ Freedom House, “Nations in Transit 2020: Belarus.”

²⁶ European Council, “Conclusions by the President of the European Council following the video conference of the members of the European Council on 19 August 2020”, August 19, 2020. Available at <https://www.consilium.europa.eu/en/press/press-releases/2020/08/19/conclusions-by-the-president-of-the-european-council-following-the-video-conference-of-the-members-of-the-european-council-on-19-august-2020/>; U.S. Department of State, “Presidential Elections in Belarus”, August 10, 2020. Available at <https://by.usembassy.gov/presidential-elections-in-belarus/>; Human Rights Center Viasna, Belarusian Helsinki Committee, Belarusian Association of Journalists, “Belarus After Election: Report on the Human Rights Situation in Belarus in the Post-Election Period”, October 2020. Available at https://spring96.org/files/book/en/2020_elections_tortures_en.pdf.

²⁷ See Amnesty International, “Belarus: Growing Crackdown on Human Rights Ahead of Presidential Election”, June 29, 2020; Access Now, “Human Rights Groups Appeal to President Lukashenko of Belarus to #KeepitOn During the Elections”, August 6, 2020. Available at <https://www.accessnow.org/appeal-to-president-lukashenko-of-belarus-to-keepit-on-during-elections/>; Human Rights Center Viasna, “Human Rights Situation in Belarus: August 2020”, September 2, 2020. Available at <http://spring96.org/en/news/99352>; Human Rights Watch, “Belarus: Crackdown on Political Activists, Journalists”, July 30, 2020. Available at <https://www.hrw.org/news/2020/07/30/belarus-crackdown-political-activists-journalists>; FIDH, “Belarus: Crackdown on Peaceful Protesters Marks Beginning of Presidential Campaign Season”, May 13, 2020. Available at <https://www.fidh.org/en/issues/human-rights-defenders/belarus-crackdown-on-peaceful-protesters-mars-beginning-of>.

observers, the election process itself was marred by fraud and irregularities, such as voter coercion and restrictions on observers.²⁸

Following the release of the “official” election results, massive protests erupted across Belarus. The authorities responded to these protests with escalating levels of violence and repression.²⁹ Peaceful protesters have been subjected to excessive force by police during mass arrest operations, including the use of stun grenades, water cannons, tear gas, beatings, and rubber bullets at close range.³⁰ Those subsequently detained have faced ill-treatment and torture in holding facilities, including beatings, electric shock, sexual assault, humiliation, and psychological torture.³¹

Notably, after an extensive fact-finding mission the Organisation for Security and Co-operation in Europe (OSCE) Rapporteur concluded that “there [was] overwhelming evidence that the presidential elections of 9 August 2020 ha[d] been falsified” and that “massive and systematic human rights violations ha[d] been committed by the Belarusian security forces in response to peaceful demonstrations and protests.”³² The OSCE Rapporteur further stated that the conditions of detention in “overcrowded cells, with insufficient food and water, sanitary needs or clothing ... by themselves ha[d] to be qualified as torture,” noting that the detention center at Okrestina Street in Minsk, where those arrested have often been held for days

²⁸ See Human Rights Defenders for Free Elections, “2020 Presidential Election: Report on election observation”, August 11, 2020. Available at <http://elections2020.spring96.org/en/news/98942>; OSCE Office for Democratic Institutions and Human Rights, “OSCE Rapporteur’s Report under the Moscow Mechanism on Alleged Human Rights Violations related to the Presidential Elections of 9 August 2020 in Belarus”, October 29, 2020. Available at <https://www.osce.org/files/f/documents/2/b/469539.pdf>; Office of the High Commissioner for Human Rights, “Statement of Mrs. Anais Marin, UN Special Rapporteur on the situation of human rights in Belarus, at the Arria Formula meeting at UN Security Council (Unofficial translation)”, September 4, 2020. Available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26212&LangID=E>.

²⁹ See Human Rights Watch, “Belarus: Violence, Abuse in Response to Election Protests”, August 11, 2020. Available at <https://www.hrw.org/news/2020/08/11/belarus-violence-abuse-response-election-protests>; Financial Times, “Europe’s ‘last dictator’ in a brutal fight for survival”, August 14, 2020. Available at <https://www.ft.com/content/4b9c32a1-2494-4f36-a10f-2777ec429e5d>; Associated Press, “UN investigator says Belarus must stop repressing its people”, October 26, 2020. Available at <https://apnews.com/article/belarus-europe-united-nations-general-assembly-united-nations-4a745fbe5a99d577f901364dc4c173fb>; Human Rights Center Viasna, “Human Rights Situation in Belarus: December 2020”, December 12, 2020. Available at <http://spring96.org/en/news/101166>.

³⁰ See OSCE Office for Democratic Institutions and Human Rights, “OSCE Rapporteur’s Report under the Moscow Mechanism on Alleged Human Rights Violations related to the Presidential Elections of 9 August 2020 in Belarus”, October 29, 2020, pgs. 23, 41-48; Human Rights Watch, “Belarus: Systematic Beatings, Torture of Protesters”, September 15, 2020. Available at <https://www.hrw.org/news/2020/09/15/belarus-systematic-beatings-torture-protesters>.

³¹ See OSCE Office for Democratic Institutions and Human Rights, “OSCE Rapporteur’s Report under the Moscow Mechanism on Alleged Human Rights Violations related to the Presidential Elections of 9 August 2020 in Belarus”, October 29, 2020, pgs. 41-48; Human Rights Watch, “Belarus: Systematic Beatings, Torture of Protesters”, September 15, 2020.

³² OSCE Office for Democratic Institutions and Human Rights, “OSCE Rapporteur’s Report under the Moscow Mechanism on Alleged Human Rights Violations Related to the Presidential Elections of 9 August 2020 in Belarus”, October 29, 2020, pg. 55.

before release or trial, was especially inhumane:³³ essentially a punishment in itself. In some cases, police mistreatment has resulted in death.³⁴

As acknowledged by the government, by November 2020 at least 4,644 complaints had been filed with the Belarusian Investigative Committee on “the use of violence and anti-riot equipment by law enforcement officers during the protests.”³⁵ Despite such allegations, reports indicate that the authorities have failed to initiate a single criminal investigation to date.³⁶ Post-election repression by the authorities has been of such grave concern that in late 2020 eleven UN Special Rapporteurs and other human rights experts called on Lukashenko’s government to “conduct a prompt, independent and impartial investigation” into “the legality of the actions of police officers.”³⁷ Amnesty International reported in January 2021 that the “brutal suppression of peaceful protest and all forms of dissent in Belarus ha[d] continued [to] escalate to new levels.”³⁸

The justice system has been a key tool in the quashing of dissent in Belarus. As of the writing of this report, the number of protesters detained since the elections has surpassed 35,000.³⁹ Although many of those detained have been released without charge after being subjected to up to three days in detention,⁴⁰ hundreds have been criminally prosecuted,⁴¹ thousands of criminal investigations have been opened,⁴² and thousands more have been prosecuted under the Code of Administrative

³³ Id. at pgs. 42-43. See also Human Rights Watch, “Belarus: Systematic Beatings, Torture of Protesters”, September 15, 2020.

³⁴ Id. at pgs. 44-45; Human Rights Center Viasna, “Three months after, still no justice for people who died in protests”, November 11, 2020. Available at <http://spring96.org/en/news/100344>.

³⁵ Office of the High Commissioner for Human Rights, “Situation of Human Rights in Belarus in the Context of the 2020 Presidential Election”, U.N. Doc. A/HRC/46/4, March 2021, para. 73.

³⁶ Human Rights Center Viasna, “Human Rights Situation in Belarus: December 2020”, December 12, 2020. See also Office of the High Commissioner for Human Rights, “Situation of Human Rights in Belarus in the Context of the 2020 Presidential Election”, U.N. Doc. A/HRC/46/4, March 2021, para. 69.

³⁷ U.N. News, “Belarus: UN Experts Call for Probe into Violence Against Protesters”, November 19, 2020. Available at <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26520&LangID=e>.

³⁸ Amnesty International, “Belarus: ‘You Are Not Human Beings’”, Index Number: EUR 49/3567/2021, January 27, 2021, pg. 4. Available at <https://eurasia.amnesty.org/wp-content/uploads/2021/01/belarus-you-are-not-human-beings.pdf>.

³⁹ See Voice of America, “UN Official Likens Belarus to ‘Totalitarian’ State”, July 5, 2021. Available at <https://www.voanews.com/europe/un-official-likens-belarus-totalitarian-state>. See also Office of the High Commissioner for Human Rights, “Situation of Human Rights in Belarus in the Context of the 2020 Presidential Election”, U.N. Doc. A/HRC/46/4, March 2021, para. 27; Human Rights Center Viasna, “Human Rights Situation in Belarus: November 2020”, December 3, 2020. Available at <http://spring96.org/en/news/100777>.

⁴⁰ See Belarusian Helsinki Committee, et al., “Belarus After Election: Report on the human rights situation in Belarus in the post-election period”, October 2020, pg. 15.

⁴¹ Report of the Special Rapporteur on the Situation of Human Rights in Belarus, U.N. Doc. A/HRC/47/49, May 12, 2021, para. 46. See also Human Rights Center Viasna, “Human Rights Situation in Belarus: June 2021”, July 3, 2021. Available at <https://spring96.org/en/news/104120>; Human Rights Center Viasna, “Human Rights Situation in Belarus: May 2021”, June 2, 2021. Available at <https://spring96.org/en/news/103670>.

⁴² See Report of the Special Rapporteur on the Situation of Human Rights in Belarus, U.N. Doc. A/HRC/47/49, May 12, 2021, para. 56.

Offenses,⁴³ the most common charge being participation in an unauthorized event in violation of Article 23.34 of that Code. Local human rights organization Viasna has named over 500 individuals as political prisoners.⁴⁴

With respect to demonstrations, those arrested include not only protesters but also individuals grabbed off the street at random by the police.⁴⁵ Journalists, lawyers, activists, and human rights defenders have likewise been arrested.⁴⁶ No arrests have been reported during pro-Lukashenko demonstrations.⁴⁷

Documented arrests have followed a common pattern: without providing any explanation, masked security officers force people into vehicles and transfer them to a police station or detention center, where detainees are compelled (either through physical beatings or psychological pressure) to sign “rubber-stamped charge sheets for participating in an unsanctioned gathering, chanting slogans, waving hands, and disturbing public order.”⁴⁸ According to reports, the authorities have generally failed to explain detainees’ rights to them, have failed to provide copies of Offense Protocols (i.e., charge sheets) after forcing detainees to sign them, have denied detainees access to lawyers, and have neglected to notify detainees’ families of their arrests.⁴⁹

⁴³ See Human Rights Center Viasna, “Human Rights Situation in Belarus: May 2021”, June 2, 2021; Human Rights Center Viasna, “Human Rights Situation in Belarus: April 2021”, May 3, 2021. Available at <https://spring96.org/en/news/103195>.

⁴⁴ Human Rights Center Viasna, “Political Prisoners.” Available at <https://prisoners.spring96.org/en>.

⁴⁵ Human Rights Watch, “Witness: Tortured in Belarus”, September 15, 2020. Available at <https://www.hrw.org/news/2020/09/15/witness-tortured-belarus>; Financial Times, “Europe’s ‘last dictator’ in a brutal fight for survival”, August 14, 2020; Belarusian Helsinki Committee, et al., “Belarus After Election: Report on the human rights situation in Belarus in the post-election period”, October 2020, pg. 11.

⁴⁶ See OSCE Office for Democratic Institutions and Human Rights, “OSCE Rapporteur’s Report under the Moscow Mechanism on Alleged Human Rights Violations related to the Presidential Elections of 9 August 2020 in Belarus”, October 29, 2020, pgs. 29-41; Human Rights Center Viasna, “Human Rights Situation in Belarus: December 2020”, December 12, 2020; U.N. News, “Belarus: UN Experts Call for Probe into Violence Against Protesters”, November 19, 2020; Office of the High Commissioner for Human Rights, “Situation of Human Rights in Belarus in the Context of the 2020 Presidential Election”, U.N. Doc. A/HRC/46/4, March 2021, para. 37. See also Human Rights Watch, “Belarus: Unprecedented Crackdown”, January 13, 2021. Available at <https://www.hrw.org/news/2021/01/13/belarus-unprecedented-crackdown>.

⁴⁷ See Human Rights Center Viasna, “Human Rights Situation in Belarus: September 2020”, October 2, 2020. Available at <http://spring96.org/en/news/99793>; Human Rights Center Viasna, “Protesters detained in dozens again”, August 26, 2020. Available at <http://spring96.org/en/news/99246>.

⁴⁸ See Human Rights Watch, “Witness: Tortured in Belarus”, September 15, 2020; Belarusian Helsinki Committee, et al., “Belarus After Election: Report on the human rights situation in Belarus in the post-election period”, October 2020, pgs. 13-15. Available at https://belhelcom.org/sites/default/files/belarus_after_election_report_2020_en.pdf; OSCE Office for Democratic Institutions and Human Rights, “OSCE Rapporteur’s Report under the Moscow Mechanism on Alleged Human Rights Violations related to the Presidential Elections of 9 August 2020 in Belarus”, October 29, 2020, pgs. 32, 42.

⁴⁹ See Belarusian Helsinki Committee, et al., “Belarus After Election: Report on the human rights situation in Belarus in the post-election period”, October 2020, pg. 15; OSCE Office for Democratic Institutions and Human Rights, “OSCE Rapporteur’s Report under the Moscow Mechanism on Alleged Human Rights Violations related to the Presidential Elections of 9 August 2020 in Belarus”, October 29, 2020, pgs. 32, 42.

Trials have likewise been characterized by procedural irregularities, raising significant fairness concerns. Lawyers, for example, are often given only a few minutes to review case materials prior to trial and in certain cases lawyers have been barred from hearings altogether. Convictions have consistently been based on little to no evidence, and police have often testified using pseudonyms and with their faces covered.⁵⁰ Moreover, courts have increasingly closed trials to the public.⁵¹

While, as discussed above, the majority of prosecutions thus far have been for violations of the Code of Administrative Offenses, such as “participation in an unauthorized mass event,”⁵² there has been a recent escalation of the use of charges carrying more severe penalties.⁵³ In November 2020, for example, Belsat journalists Katsiaryna Andreyeva and Daria Chultsova were arrested while broadcasting a live video feed of protests. They were subsequently charged with the “organizing and preparing of actions that grossly violate public order,”⁵⁴ convicted, and sentenced to two years in prison, in a trial monitored by the American Bar Association Center for Human Rights as part of the TrialWatch initiative.⁵⁵ The report on their trial is being issued in parallel with this report.

Authorities have also used criminal charges to distract from their own likely unlawful actions. In one case, police reportedly shot a man in the back of the head after he told them he had voted for the opposition party; the man’s friend, Alexander Karduykou, allegedly witnessed the extrajudicial killing.⁵⁶ Subsequently, Mr.

⁵⁰ See Report of the Special Rapporteur on the Situation of Human Rights in Belarus, U.N. Doc. A/HRC/47/49, May 12, 2021, paras. 53-55; OSCE Office for Democratic Institutions and Human Rights, “OSCE Rapporteur’s Report under the Moscow Mechanism on Alleged Human Rights Violations related to the Presidential Elections of 9 August 2020 in Belarus”, October 29, 2020, pg. 51; Belarusian Helsinki Committee, et al., “Belarus After Election: Report on the human rights situation in Belarus in the post-election period”, October 2020, pgs. 15, 39; Report of the Special Rapporteur on the Situation of Human Rights in Belarus, Anaïs Marin, U.N. Doc. A/75/173, July 17, 2020, paras. 70-71 (on trials in the lead up to the election).

⁵¹ See Clooney Foundation for Justice, “Court Should Reconsider Closure of Trial of Belarusian Blogger and Activist”, July 1, 2021. Available at https://cfj.org/news_posts/court-should-reconsider-closure-of-trial-of-belarusian-blogger-and-activist/; Reuters, “Belarus Court Starts Trial of Journalist and Doctor After Protester’s Death”, February 19, 2021. Available at <https://www.reuters.com/article/belarus-politics-trial/belarus-court-starts-trial-of-journalist-and-doctor-after-protesters-death-idUSL8N2KP3SO>; Human Rights Center Viasna, “Human Rights Situation in Belarus: May 2021”, June 2, 2021.

⁵² Office of the High Commissioner for Human Rights, “Situation of Human Rights in Belarus in the Context of the 2020 Presidential Election”, U.N. Doc. A/HRC/46/4, March 2021, para. 41.

⁵³ See Human Rights Watch, “Joint Statement on Belarus: End Reprisals Against Human Rights Defenders”, March 18, 2021. Available at <https://www.hrw.org/news/2021/03/18/joint-statement-belarus-end-reprisals-against-human-rights-defenders>; Report of the Special Rapporteur on the Situation of Human Rights in Belarus, U.N. Doc. A/HRC/47/49, May 12, 2021, para. 62.

⁵⁴ Committee to Protect Journalists, “Daria Chultsova”, 2020. Available at <https://cpj.org/data/people/daria-chultsova>.

⁵⁵ Clooney Foundation for Justice, “Conviction of Journalists in Belarus Shows Magnitude of Crackdown on Protests”, February 18, 2021. Available at <https://cfj.org/wp-content/uploads/2021/03/CFJ-Conviction-of-Journalists-in-Belarus-Shows-Magnitudde-of-Crackdown-on-Protests.pdf>.

⁵⁶ Amnesty International, “Belarus: Witness in Police Killing of Protester Faces Life Sentence”, December 16, 2020. Available at <https://www.amnesty.org/en/latest/news/2020/12/belarus-witness-in-police-killing->

Kardiyukou was charged with attempted murder of a police officer, ostensibly “to cover up the killing,”⁵⁷ convicted, and sentenced to ten years in prison.⁵⁸ The State then prosecuted and convicted the *deceased* protester for the same offense.⁵⁹ According to the UN High Commissioner for Human Rights, as of February 2021 “nearly 250 people ha[d] received prison sentences on allegedly politically-motivated charges [in the] context of the 2020 presidential election.”⁶⁰

Concurrently, the use of raids and mass arrests has escalated. In February 2021, in an apparent attempt to “eviscerate what’s left of Belarus’ civil society,” authorities instigated a series of raids on journalists, union members, civil society organizations, and their members.⁶¹ Law enforcement confiscated equipment, documents, and cash and detained dozens of human rights defenders.⁶² The government stated that its purpose was to “establish[] the circumstances of the financing of the protests.”⁶³

On May 18, the police raided the offices of independent news outlet Tut.by in several cities and also searched the homes of individual journalists, ultimately arresting at least 15 Tut.by staff.⁶⁴ The operation was ostensibly part of a criminal investigation into tax evasion.⁶⁵ On the same day, Tut.by’s website was blocked.⁶⁶ Several Tut.by employees remain in detention on tax evasion charges.⁶⁷

of-protester-faces-life-sentence; Vice World News, “He’s A Witness in the Killing of a Protester by Police. Now He’s Been Charged with Attempted Murder”, December 16, 2020. Available at <https://www.vice.com/en/article/jgqjwk/hes-a-witness-in-the-killing-of-a-protester-by-police-now-hes-been-charged-with-attempted-murder>.

⁵⁷ Amnesty International, “Belarus: Witness in Police Killing of Protester Faces Life Sentence”, December 16, 2020.

⁵⁸ See Human Rights Center Viasna, “Dead Protester Convicted of Attempted Murder”, February 25, 2021. Available at <http://spring96.org/en/news/102143>.

⁵⁹ *Id.*

⁶⁰ U.N. News, “Belarus Human Rights Situation Deteriorating Further, Warns UN Rights Chief”, February 25, 2021. Available at <https://news.un.org/en/story/2021/02/1085712>.

⁶¹ Human Rights Watch, “Belarus: Crackdown Escalates”, February 17, 2021. Available at <https://www.hrw.org/news/2021/02/17/belarus-crackdown-escalates>.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ See Committee to Protect Journalists, “Belarusian Authorities Briefly Detain 4 Tut.by Journalists; At Least 13 Staff Remain in Custody”, May 25, 2021. Available at <https://cpj.org/2021/05/belarusian-authorities-briefly-detain-4-tut-by-journalists-at-least-13-staff-remain-in-custody/>; Office of the High Commissioner, “Belarus: ‘Black Hole’ for media freedoms after egregious attacks, say UN experts”, June 7, 2021; Human Rights Center Viasna, “Human Rights Situation in Belarus: May 2021”, June 2, 2021.

⁶⁵ Office of the High Commissioner, “Belarus: ‘Black Hole’ for media freedoms after egregious attacks, say UN experts”, June 7, 2021.

⁶⁶ Human Rights Center Viasna, “Human Rights Situation in Belarus: May 2021”, June 2, 2021.

⁶⁷ Committee to Protect Journalists, “Belarusian authorities raid news outlets, detain journalists amid nationwide crackdown”, July 8, 2021. Available at <https://cpj.org/2021/07/belarusian-authorities-raid-news-outlets-detain-journalists-amid-nationwide-crackdown/>.

On July 8, the authorities raided the offices of several media outlets, including Nasha Niva – the country’s oldest newspaper.⁶⁸ Nasha Niva had previously extensively reported on the post-election protests and police brutality.⁶⁹ The authorities arrested Nasha Niva’s editor-in chief, who was reportedly beaten in detention,⁷⁰ along with at least 10 other journalists.⁷¹ The authorities also searched the homes of several journalists and shut down Nasha Niva’s website.⁷² Several Nasha Niva staff are currently under investigation for “allegedly ‘organizing or preparing acts that violate public order’ and ‘mass riots.’”⁷³ As of the writing of this report, they remain in detention.

Starting on July 16 and continuing into July 19, the police raided the offices of several independent media outlets as well as the homes of journalists, including correspondents for Radio Free Europe/Radio Free Liberty.⁷⁴ Multiple journalists were arrested and detained.⁷⁵ In a statement on July 19, the Belarusian Association of Journalists said that “a total of 64 searches ha[d] been conducted over the last 10 days.”⁷⁶ A representative of the Belarusian Investigative Committee stated that “the committee had acted on information about a ‘shadow movement of significant financial resources, primarily from abroad, tax evasion and financing of various kinds of protest activity.’”⁷⁷

Notably, lawyers willing to take on these politically-sensitive cases face an uphill battle, ranging from a lack of notice that their client’s case is being heard to risks of disbarment and even arrest and detention “for their work with the opposition.”⁷⁸ As documented by the American Bar Association’s Center for Human Rights, the

⁶⁸ Committee to Protect Journalists, “Belarusian authorities raid news outlets, detain journalists amid nationwide crackdown”, July 8, 2021; Radio Free Europe/Radio Free Liberty, “Belarus Raids Independent News Outlets, Blocks Newspaper that Reported on Protests”, July 8, 2021. Available at <https://www.rferl.org/a/belarus-niva-website-raided/31348777.html>.

⁶⁹ Radio Free Europe/Radio Free Liberty, “Belarus Raids Independent News Outlets, Blocks Newspaper that Reported on Protests”, July 8, 2021.

⁷⁰ Belsat, “Nasha Niva: Editor-in-Chief Yahor Martsinovich Was Beaten in Detention, Deprived of Food”, July 9, 2021. Available at <https://belsat.eu/en/news/09-07-2021-nasha-niva-editor-in-chief-yahor-martsinovich-was-beaten-during-detention-deprived-of-food/>.

⁷¹ Reporters Without Borders, “RSF Denounces Coordinated Raids on Media Outlets in Belarus”, July 9, 2021. Available at <https://rsf.org/en/news/rsf-denounces-coordinated-raids-media-outlets-belarus>.

⁷² Id.

⁷³ Committee to Protect Journalists, “Belarusian authorities raid news outlets, detain journalists amid nationwide crackdown”, July 8, 2021.

⁷⁴ Reuters, “Belarus Conducts New Raids on Journalists and Rights Activists”, July 16, 2021. Available at <https://www.reuters.com/world/europe/belarus-police-raid-homes-offices-journalists-rights-activists-2021-07-16/>; Radio Free Europe/Radio Liberty, “RFE/RFL, Other Media Raided as Belarusian police Search Offices, Homes, of Journalists”, July 16, 2021. Available at <https://www.rferl.org/a/belarus-raids-rferl-journalists/31361517.html>.

⁷⁵ See id; Al Jazeera, “Belarus Arrests 3 Journalists in Media Crackdown”, July 19, 2021. Available at <https://www.aljazeera.com/news/2021/7/19/belarus-arrests-3-journalists-in-media-crackdown>.

⁷⁶ Al Jazeera, “Belarus Arrests 3 Journalists in Media Crackdown”, July 19, 2021.

⁷⁷ Reuters, “Belarus Conducts New Raids on Journalists and Rights Activists”, July 16, 2021.

⁷⁸ Radio Free Europe/Radio Liberty, “Lawyers in Belarus Face Disbarment, Arrest Just for Representing Opponents of Lukashenka” October 17, 2020. Available at <https://www.rferl.org/a/lawyers-in-belarus-face-disbarment-arrest-just-for-representing-opponents-of-lukashenka/30898088.html>.

Ministry of Justice's Qualification Commission, which "is not an independent body," has disbarred a number of lawyers who have represented individuals connected with the protests or otherwise critical of the government.⁷⁹ Correspondingly, because the Ministry of Justice "exercises broad control" over the Belarusian Bar Association,⁸⁰ the Bar has "turned against members of the profession who have worked in support of opposition figures," initiating disciplinary proceedings and issuing reprimands.⁸¹ Lawyers have also been disbarred for refusing to sign restrictive and vague non-disclosure agreements preventing them from sharing information about their clients' cases.⁸² Family members have also been warned against sharing information about their relatives' cases.

Lyudmila Kazak, who previously represented opposition leader Maria Kolesnikova, was disbarred in February 2021 on the basis of an unjust administrative conviction in a trial that violated numerous international human rights guarantees (the trial is assessed in this report).⁸³ In March, Siarhei Zikratski, who represented journalist Katsiaryna Andreyeva in her aforementioned criminal trial, was disbarred and fled Belarus.⁸⁴ According to Human Rights Watch, at least 17 lawyers have been disbarred since 2020.⁸⁵ As stated by the Special Rapporteur on Belarus in her July 2021 report to the UN General Assembly, "the already existing degree of pressure and harassment of lawyers ... intensified in 2020 and persists in 2021."⁸⁶

As referenced above, international outcry has remained steady. In June 2020, a group of six UN Special Rapporteurs collectively decried government crackdowns in advance of the presidential elections.⁸⁷ UN mandate holders have since continued to raise concerns about the Belarusian government's actions on a regular basis.⁸⁸ In

⁷⁹ American Bar Association Center for Human Rights, "Analysis of Arbitrary Disbarments of Liudmila Kazak, Konstantin Mikhel, Maxim Konon, and Mikhail Kirilyuk", May 21, 2021, pgs. 2-4. Available at https://www.americanbar.org/content/dam/aba/administrative/human_rights/justice-defenders/belarus-disbarment-english.pdf.

⁸⁰ Office of the High Commissioner for Human Rights, "Situation of Human Rights in Belarus in the Context of the 2020 Presidential Election", U.N. Doc. A/HRC/46/4, March 2021, para. 59.

⁸¹ American Bar Association Center for Human Rights, "Analysis of Arbitrary Disbarments of Liudmila Kazak, Konstantin Mikhel, Maxim Konon, and Mikhail Kirilyuk", May 21, 2021, pg. 4.

⁸² Human Rights Watch, "Another Critic Detained in Belarus on Undisclosed Charges", July 8, 2021. Available at <https://www.hrw.org/news/2021/07/08/another-critic-detained-belarus-undisclosed-charges>.

⁸³ International Bar Association, "IBA and CFJ Condemn the Revocation of Law Licenses in Belarus and Call for Their Reinstatement", March 2, 2021. Available at <https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=e0b7d120-1e19-46f8-a462-a65cc7fa0c8b>.

⁸⁴ Lawyers for Lawyers, "Lawyers Who Have Represented Belarusian Opposition Leaders Are Subject to Persecution", April 14, 2021. Available at <https://lawyersforlawyers.org/en/lawyers-who-have-represented-belarusian-opposition-leaders-are-subject-to-persecution/>.

⁸⁵ Human Rights Watch, "Another Critic Detained in Belarus on Undisclosed Charges", July 8, 2021.

⁸⁶ Report of the Special Rapporteur on the Situation of Human Rights in Belarus, U.N. Doc. A/HRC/47/49, May 12, 2021, para. 57.

⁸⁷ U.N. News, "Belarus Must Stop Crackdown to Silence Opposing Views – UN Experts", June 5, 2020. Available at <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25932&LangID=E>.

⁸⁸ U.N. News, "UN Experts Demand End to Crackdown on Protesters in Belarus Ahead of Elections", July 1, 2020. Available at

September 2020, the UN Human Rights Council held an urgent debate on Belarus, ultimately adopting a resolution requesting the UN High Commissioner for Human Rights to monitor and report on the situation⁸⁹ – a resolution the Belarusian government declined to recognize.⁹⁰ The High Commissioner reported to the Human Rights Council in February 25, 2021 that the human rights situation in Belarus – which she and others have described as “unprecedented”⁹¹ – was continuing to deteriorate.⁹²

In March 2021, the Human Rights Council adopted a resolution requesting immediate action from the UN High Commissioner for Human Rights. In particular, the Council requested the Commissioner

with assistance from relevant experts and special procedure mandate holders ... to monitor and report on the situation of human rights, to carry out a comprehensive examination of all alleged human rights violations committed in Belarus since 1 May 2020, including the possible gender dimensions of such violations, to establish the facts and circumstances surrounding the alleged violations, and to collect, consolidate, preserve and analyse information and evidence with a view to contributing to accountability for perpetrators and justice for victims and, where possible, to identify those responsible.⁹³

The Office of the High Commissioner is due to present an interim report on the investigation at the Human Rights Council’s 48th session, scheduled for September to October.

<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26023&LangID=E>; U.N. News, “Belarus Must Stop Attacking Peaceful Protesters, UN Human Rights Experts Say”, August 13, 2020.

Available at <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26164&LangID=E>; U.N. News, “UN Human Rights Experts: Belarus Must Stop torturing Protesters and Prevent Enforced Disappearances”, September 1, 2020. Available at

<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26199&LangID=E>; U.N. News, “UN Human Rights Experts: Belarus Must Release Opposition Leader Maria Kalesnikava”, September 25, 2020. Available at

<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26296&LangID=E>; U.N. News, “Belarus: UN Experts Decry Threats Against Women Human Rights Defenders”, November 2, 2020.

Available at <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26470&LangID=E>; U.N. News, “Belarus: UN Experts Call for Probe into Violence Against Protesters”, November 19, 2020.

⁸⁹ Human Rights Council, “Resolution 45/1: Situation of Human Rights in Belarus in the Run-up to the 2020 Presidential Election and its Aftermath”, U.N. Doc. A/HRC/45/L.1, September 18, 2020.

⁹⁰ Office of the High Commissioner for Human Rights, “Situation of Human Rights in Belarus in the Context of the 2020 Presidential Election”, U.N. Doc. A/HRC/46/4, March 2021, para. 3.

⁹¹ Id. at para. 74; Human Rights Watch, “Belarus: Unprecedented Crackdown”, January 13, 2021.

⁹² U.N. News, “Belarus Human Rights Situation Deteriorating Further, Warns UN Rights Chief”, February 25, 2021.

⁹³ U.N. Geneva, “Human Rights Council Renews Mandate of Special Rapporteur on Myanmar, Adopts Resolutions on Belarus and the Right to Food”, March 24, 2021. Available at <https://www.ungeneva.org/en/news-media/meeting-summary/2021/03/le-conseil-des-droits-de-lhomme-condamne-les-graves-violations>.

In March 2021, 19 countries, including the U.S., the U.K., the Netherlands, and Austria, committed to supporting the “International Accountability Platform for Belarus,” which will be led by international and domestic human rights organizations and will focus on the collection and preservation of evidence “of serious violations of international human rights law committed in Belarus in the run-up to the 2020 presidential election and its aftermath.”⁹⁴

In response to the violent crackdown on peaceful election protests, neighboring governments, such as Lithuania and Latvia, have banned certain Belarusian officials from entering their respective countries.⁹⁵ Similarly, the U.K, Canada, and the European Union have moved to freeze assets and impose travel bans,⁹⁶ while the U.S. has likewise imposed sanctions entailing visa restrictions and freezing of assets⁹⁷ – citing, among other things, “excessive force and brute violence.”⁹⁸ In particular, the U.S. State Department has imposed visa restrictions on “high-ranking justice sector officials” complicit in human rights violations.⁹⁹

In May, the Belarusian government’s forced diversion to Minsk of an aircraft traveling from Greece to Lithuania and subsequent arrest of passenger Raman Pratasevich, a Belarusian journalist and activist living in exile in Poland, generated another round of sanctions: European Union sanctions are aimed at the country’s economic sector.¹⁰⁰ Most recently, in August 2021, U.S. President Joe Biden issued an executive order “that expanded U.S. sanctions authority against Belarus, authorizing the designation of government officials, oligarchs and various companies linked to the Lukashenko regime.”¹⁰¹

⁹⁴ Gov.UK, “Establishing the International Accountability Platform for Belarus: 19 States’ Joint Statement”, March 24, 2021. Available at <https://www.gov.uk/government/news/joint-statement-by-19-states-in-support-of-the-establishment-of-the-international-accountability-platform-for-belarus>.

⁹⁵ Human Rights Watch, “World Report 2021: Belarus, Events of 2020”, January 13, 2021. Available at <https://www.hrw.org/world-report/2021/country-chapters/Belarus>.

⁹⁶ Id.; Council of the EU, “Belarus: EU Imposes Third Round of Sanctions over Ongoing Repression”, December 17, 2020. Available at <https://www.consilium.europa.eu/en/press/press-releases/2020/12/17/belarus-eu-imposes-third-round-of-sanctions-over-ongoing-repression>.

⁹⁷ Reuters, “U.S. Expands Sanctions on Belarus over August Election, Crackdown on Protesters”, December 23, 2020. Available at <https://www.reuters.com/article/us-belarus-election-usa-sanctions/u-s-expands-sanctions-on-belarus-over-august-election-crackdown-on-protesters-idUSKBN28X1ZG>.

⁹⁸ U.S. Department of the Treasury, “Treasury Sanctions Additional Belarusian Regime Actors for Undermining Democracy”, December 23, 2020. Available at <https://home.treasury.gov/news/press-releases/sm1222>.

⁹⁹ Al Jazeera, “U.S. Hits Belarusian Officials with Travel Bans for Crackdown”, February 19, 2021. Available at <https://www.aljazeera.com/news/2021/2/19/us-hits-belarusian-officials-with-travel-bans-for-crackdown>.

¹⁰⁰ Human Rights Center Viasna, “Human Rights Situation in Belarus: June 2021”, July 3, 2021; Voice of America, “EU Sanctions Belarus Over Plane Diversion, Blogger Arrest”, May 25, 2021. Available at <https://www.voanews.com/europe/eu-sanctions-belarus-over-plane-diversion-blogger-arrest>; Associated Press, “EU Weighs Belarus Sanctions at Sectors Close to Leader”, May 27, 2021. Available at <https://apnews.com/article/belarus-europe-business-government-and-politics-e9fc60430b371aa0f3d8ac0f586efa5e>.

¹⁰¹ JD Supra, “United States and Global Community Adopt Broad Sanctions Targeting Belarus”, September 9, 2021. Available at jdsupra.com/legalnews/united-states-and-global-community-5670957/.

B. CASE HISTORY

The present report concerns 15 trials that took place in Minsk during the months of September and October 2020.

Overview of All Cases

Pretrial Detention (“Administrative Detention”)

All of the defendants in the monitored cases were detained before trial. Under certain circumstances, discussed in more detail below, Belarus’s Administrative Procedure Code allows for “administrative detention” for up to three hours. Where the charged offense under the Code of Administrative Offenses carries a potential penalty of imprisonment, this period extends to 72 hours.¹⁰² The Code of Administrative Offenses provides that imprisonment may be imposed for up to 15 days (or up to 25 days for multiple offenses) upon conviction for certain offenses.¹⁰³ If an individual has been held in detention prior to trial and conviction, the term of subsequent imprisonment must include time spent in detention before and during trial.¹⁰⁴

Most of the initial detentions in the monitored cases occurred during or after large demonstrations that allegedly had not received authorization from the Minsk Executive Committee, meaning that the authorities deemed them as violating the procedure for holding mass events set out in Article 10 of the Law on Mass Events. In many of the cases the arrests were carried out by OMON (riot) officers or police in civilian clothing, often wearing balaclavas over their faces, who failed to identify themselves or provide reasons for the arrests. The arrested individuals were then put into minibuses or other vehicles and taken to the Internal Affairs Departments of various districts of Minsk, where Offense Protocols (i.e., charge sheets) and other case materials were prepared.¹⁰⁵

While these materials were signed by the defendants in some of the cases, theoretically indicating their familiarization with the documents and their rights, the accused commonly reported that they had no opportunity to review the materials, were psychologically pressured to sign them, did not receive any explanation of their rights, and/or subsequently did not receive copies of the Offense Protocols (or

¹⁰² Procedural and Executive Code of the Republic of Belarus on Administrative Offenses, 2006, Articles 8.1-8.2, 8.4 [hereinafter “Administrative Procedure Code”].

¹⁰³ Code of Administrative Offenses, 2003, Articles 6.7, 7.4. As noted above, however, consecutive 15-day sentences are sometimes imposed for different offenses, resulting in longer prison terms.

¹⁰⁴ *Id.* at Article 7.7.

¹⁰⁵ In addition to the Offense Protocol, the case files generally included documents such as a police report, report of an interview with a police officer witness, report of an interview with the accused, protocol of administrative detention, personal search report, and record of clarification of rights and obligations.

anything else), in contravention of Belarusian law.¹⁰⁶ Further, none of the defendants had access to a lawyer while being questioned by police, despite having the right to counsel from the start of detention under Belarusian law.¹⁰⁷

After processing, 13 of the defendants were transferred to the temporary detention center on Okrestina Street in Minsk, spending between 21 and 77 hours there before their hearings started. The remaining two defendants were released, respectively, three and nine hours after arrest.

Charges

All but one of the defendants in the monitored cases were charged under Article 23.34(1) of the Code of Administrative Offenses, while a few defendants were also charged under Article 23.4 of that Code.¹⁰⁸ Article 23.34(1) prohibits participation in an unauthorized mass event, providing:

Violation of the established procedure for holding an assembly, rally, street march, demonstration, picketing, other mass events committed by a participant in such events, as well as public calls for organizing or holding an assembly, rally, street march, demonstration, picketing, other mass events in violation of the established order, their organization or conduct, committed by a participant in such events or by another person, if there is no corpus delicti in these acts, -entail a warning, or the imposition of a fine in the amount of up to thirty basic units, or an administrative arrest.¹⁰⁹

Article 23.4 of the Code provides:

Disobedience to a lawful order or request of an official of a state body (organization) exercising their official powers by a person who is not subordinate to them in service, shall entail the imposition of a fine in the amount of two to fifty basic units or administrative arrest.¹¹⁰

¹⁰⁶ See Administrative Procedure Code, 2006, Articles 10.2, 10.6, 10.26, 10.28. See also Article 4.1(1)(9).

¹⁰⁷ See *id.* at Articles 4.1(1)(5)-(6), 4.5(5) & (6)(2). Detainees must also be explained their rights, including the right to defense counsel from the moment of detention, and the authorities must “take measures to ensure that he/she has the actual opportunity to use all the means and methods established by this Code for his/her protection.” See *id.* at Articles 2.8(2), 8.5, 10.6.

¹⁰⁸ Ms. Kazak was brought to trial on a charge under Article 23.4 although the police claimed they had originally been investigating her for violating Article 23.34. Some sources say she was charged under the latter article as well, but that charge was apparently dropped. See FIDH, “Belarus: Sentencing and release of Ms. Liudmila Kazak”, September 28, 2020. Available at <https://www.fidh.org/en/issues/human-rights-defenders/belarus-sentencing-and-release-of-ms-liudmila-kazak>.

¹⁰⁹ Code of Administrative Offenses, 2003, Article 23.34(1).

¹¹⁰ *Id.* at Article 23.4.

These offenses, because they carry potential penalties of imprisonment, permit the imposition of pretrial detention.

The Offense Protocols generally used similar or identical language, even though the defendants were charged with participating in a wide range of events occurring on different days and the protocols were ostensibly drawn up by different police officers. For charges under Article 23.34(1), for example, the protocols typically stated that the defendant “took an active part in an unauthorized march/rally/picketing without the appropriate permission of the Minsk City Executive Committee, in violation of Article 10 of the Law on Mass Events, for the purpose of publicly expressing his/her socio-political sentiments” and that “by his/her participation, s/he publicly protested against the fact of holding fair elections, shouting provocative slogans” such as “Long live Belarus!”, “Shame,” and “Go away!”.

Trials

The trials in the monitored cases were held between September 1, 2020, and October 27, 2020, at the Central, Sovetsky, Leninsky, Partizansky, Moskow, and Oktyabrsky District Courts in Minsk. The 13 defendants who were held at temporary detention centers pending trial remained there for their hearings, attending via video link, while the remaining two defendants attended their hearings in person. The hearing schedule was typically published at the courthouse less than an hour before the hearing started, and sometimes not at all. Most of the hearings lasted an hour or less, excluding breaks, with the shortest one lasting 14 minutes.

Four of the defendants were not represented by counsel at trial and 11 of the defendants were at least partially assisted by counsel at trial. In the latter cases, lawyers were often assigned at the beginning of hearings, when they also met their clients for the first time. Consultations between lawyer and client were generally limited to a few minutes at the start of the hearings, with no opportunity for confidential communication during the proceedings. In some cases, due to the lack of notice, lawyers either had no opportunity to review case materials or were given minutes to review materials at the beginning of hearings.

Although defense witnesses were permitted to testify in eight cases, courts consistently refused defense requests to admit evidence and call witnesses. All of the witnesses who testified on behalf of the State were police officers, who attended via video link in most cases, often with their identities obscured. Defense witnesses testified in person unless they were in detention at the time of the trial.

In line with Belarusian procedure (but contrary to international standards, as discussed below), there was no prosecutor in any of the observed trials: the judges were left to interrogate witnesses and request evidence. In finding all but one of the defendants guilty, the judges relied entirely on police testimony and case materials

prepared by the police – which were generally contradictory, inconsistent, and lacking in detail – while discrediting or ignoring defense witness testimony and evidence where it had been admitted. The decisions, like the charge sheets, appeared to largely be based on a single template, with different judgments using almost identical language to assess the evidence. All but two of the 13 defendants who had been in pretrial detention were sentenced to imprisonment upon conviction, with sentences spanning between five and 15 days. With respect to the remaining two defendants, one – Lyudmila Kazak – was fined, and the other – Iryna Kuzina – had her case sent back to the authorities to resolve factual discrepancies (more on this below). The two defendants who were released pretrial were fined, respectively, 510 and 540 rubles. After the trials, those who were sentenced to imprisonment were transferred to temporary detention centers in Zhodino or Baranovichi to serve their sentences.¹¹¹

While at least ten of the defendants appealed their convictions, all of these appeals were dismissed.¹¹²

Overview of Individual Cases

Pavel Zhuk

Pavel Zhuk, a member of a Christian Evangelical community near Minsk, was arrested in August 2020 while praying alongside other worshippers near the Red Church in Independence Square in Minsk (the prayer was for those who were suffering because of the spate of violence in Belarus), as a peaceful protest was occurring in the same location.¹¹³ The police arrested approximately 300 people, targeting the men while releasing the women.¹¹⁴ Mr. Zhuk was taken to a District Department of Internal Affairs, where an Offense Protocol charging him under Article 23.34(1) of the Code of Administrative Offenses was drawn up. He was released after about three hours.¹¹⁵ While he did not receive a copy of the Offense Protocol, he was able to review his case materials two days before his hearing after going to the courthouse and making an application, at which time he was also informed of the hearing details.¹¹⁶

Mr. Zhuk was tried in person in September 2020 before a District Court in Minsk. Information about the hearing was already posted on the court schedule when the

¹¹¹ Additional Information from Monitors, November 9, 2020; Additional Information from Monitors, July 7, 2021.

¹¹² *Id.*

¹¹³ Monitor's Notes, Pavel Zhuk Trial, September 2020. See also Human Rights Center Viasna, "Nearly 300 detained in Minsk protest", August 28, 2020. Available at <http://spring96.org/en/news/99274>.

¹¹⁴ *Id.*

¹¹⁵ Monitor's Notes, Pavel Zhuk Trial, September 2020.

¹¹⁶ *Id.* While defendants have a right to familiarize themselves with their case materials, they must petition to do so. See Administrative Procedure Code, Article 10.28.

monitor arrived. While technically public, the hearing took place in the judge's office and, as such, space was limited.¹¹⁷ The hearing lasted 25 minutes, plus ten minutes for the judge to deliberate, and Mr. Zhuk was not assisted by counsel.¹¹⁸ Mr. Zhuk maintained that he went to the square with the sole purpose of praying and did not take an active part in the rally.¹¹⁹ The police officer witness testified that he had participated in arrests at the square and had been five meters away from Mr. Zhuk. On cross-examination by Mr. Zhuk, the officer was unable to recall what slogans Mr. Zhuk was alleged to have shouted and incorrectly guessed what Mr. Zhuk was wearing at the time.¹²⁰

Nevertheless, in a one-page decision containing no reference to any evidence, and reproducing the language of the charges, the judge found Mr. Zhuk guilty of participating in an unauthorized mass event in violation of Article 23.34(1) – specifically stating that he “took an active part in a rally, without the appropriate permission ... shouting the slogans ‘Long live Belarus!’, ‘Shame!’, ‘Ganba!’” – and ordered him to pay a fine of 540 rubles.¹²¹ Mr. Zhuk appealed this decision, but it was upheld by the higher court.

Siarhei Babrou

Over 150 people – reportedly all men – were detained in August 2020 during the March for Peace and Independence.¹²² **Siarhei Babrou**, an electrician, was arrested that same day. According to Mr. Babrou, he was walking home with his wife and friend on the same street where protesters were marching when he was grabbed by masked men, put in a car, and taken to a District Department of Internal Affairs.¹²³ Mr. Babrou was charged under Article 23.34(1) of the Code of Administrative Offenses and transferred to the temporary detention center on Okrestina Street, where he remained until the start of his hearing almost 44 hours later.¹²⁴ It is unclear whether Mr. Babrou signed or was given copies of relevant procedural documents.

The hearing took place in September 2020 before a District Court in Minsk, with information regarding the hearing posted 10 minutes before it began.¹²⁵ It lasted 36 minutes, excluding breaks, and Mr. Babrou, who was not represented by counsel, attended via video link from the detention facility.¹²⁶ Although Mr. Babrou had admitted guilt during his interrogation at the police station, at trial he testified that he

¹¹⁷ Id.

¹¹⁸ Id.

¹¹⁹ Id.

¹²⁰ Id.

¹²¹ District Court of Minsk, Decision on Administrative Offense (Pavel Zhuk Trial), September 2020.

¹²² Human Rights Center Viasna, “150 detained in weekend protests”, August 31, 2020. Available at <http://spring96.org/en/news/99301>.

¹²³ Monitor's Notes, Siarhei Babrou Trial, September 2020.

¹²⁴ Id.

¹²⁵ Id.

¹²⁶ Id.

was told to do so by police and explained that in reality he had not participated in any protest or shouted any slogans.¹²⁷

Two police officers testified. One officer, who stated that he had detained Mr. Babrou, could not recall the time of the arrest, could not recall what Mr. Babrou had been doing when he was arrested since “a lot of time has passed” (two days had passed), and said he could “only assume” which slogans Mr. Babrou had been shouting.¹²⁸ The other officer corroborated Mr. Babrou’s account that he had initially denied participating in the protest.¹²⁹ Despite acknowledging contradictions in the police officers’ explanations,¹³⁰ the judge found Mr. Babrou guilty.¹³¹ While the judge noted there were “extenuating circumstances in the form of a dependent minor child,” she nevertheless sentenced him to five days imprisonment.¹³² It is unknown whether Mr. Babrou appealed the ruling.

Aleh Sakovich and Iryna Kuzina

Aleh Sakovich and **Iryna Kuzina**, friends from Minsk, were arrested together in September 2020, and charged under Article 23.34(1) of the Code of Administrative Offenses for allegedly participating in a student rally at Independence Square.¹³³ Their trials began in September 2020 before a District Court in Minsk, with Mr. Sakovich and Ms. Kuzina, who were unassisted by counsel, attending via video link from the temporary detention center on Okrestina Street where they had already been detained for 21 and 22 hours, respectively.¹³⁴ Mr. Sakovich and Ms. Kuzina signed relevant procedural documents, including the Offense Protocols, but did not receive copies.¹³⁵

Information regarding Mr. Sakovich’s hearing was posted at the courthouse six minutes before the scheduled start,¹³⁶ while information was apparently never posted for Ms. Kuzina’s hearing. However, after filing a petition Ms. Kuzina’s mother received a call notifying her of the start time about an hour before the hearing began.¹³⁷

¹²⁷ Id.

¹²⁸ Id.

¹²⁹ Id.

¹³⁰ Id.

¹³¹ Id.

¹³² Id.

¹³³ Monitor’s Notes, Aleh Sakovich Trial, September 2020; Monitor’s Notes, Iryna Kuzina Trial, September 2020. See also Washington Post, “Scores detained as students march against Belarus president”, September 1, 2020. Available at https://www.washingtonpost.com/world/europe/detentions-resume-in-belarus-as-students-take-to-the-streets/2020/09/01/6cfbe176-ec3e-11ea-bd08-1b10132b458f_story.html.

¹³⁴ Monitor’s Notes, Aleh Sakovich Trial, September 2020; Monitor’s Notes, Iryna Kuzina Trial, September 2020.

¹³⁵ Id.

¹³⁶ Monitor’s Notes, Aleh Sakovich Trial, September 2020.

¹³⁷ Monitor’s Notes, Iryna Kuzina Trial, September 2020.

The Offense Protocols alleged that Mr. Sakovich and Ms. Kuzina “deliberately violated the picketing procedure established by Article 10” of the Law on Mass Events when, “from 7.15 p.m. to 7.25 p.m. on Independence Square in Minsk,” they took “an active part in a group of citizens in an unauthorized picketing ... for the purpose of publicly expressing [their] socio-political sentiments, during which [they] shouted the slogans ‘We will not forget!’, ‘We will not forgive!’, ‘Shame!’”¹³⁸

While police officers’ testimony at both of the initial hearings in September largely mirrored the above allegations, other materials contained contradictory information about the time and place of the arrests (the administrative detention reports, for example, stated that Mr. Sakovich and Ms. Kuzina were detained on Independence Avenue, not at Independence Square).¹³⁹ Mr. Sakovich and Ms. Kuzina further provided detailed and consistent testimony that they had met up at around 6:50 p.m., had spent a brief period at a café, and had then walked along Independence Avenue towards the metro, where they were ambushed by men in balaclavas sometime between 7:15 and 7:30 p.m. There was no protest going on at that time or location.¹⁴⁰ The judges returned the case files to the police for the “elimination of deficiencies,” and new Offense Protocols were drawn up alleging that the offense (the protest) had occurred “from 6.00 to 6.30 p.m. on Independence Avenue.”¹⁴¹

Later in September, on the basis of these new Protocols, Mr. Sakovich and Ms. Kuzina were once again brought before the District Court for their respective trials. They participated via video link from the temporary detention center on Okrestina Street: by the end of these second hearings, they had been detained for over 65 and 68 hours, respectively.

During their second hearings, Mr. Sakovich and Ms. Kuzina were represented by lawyers. At the top of Mr. Sakovich’s hearing, the court gave Mr. Sakovich’s lawyer 45 minutes to communicate with Mr. Sakovich and review case materials.¹⁴² At the top of Ms. Kuzina’s hearing, the court gave Ms. Kuzina’s lawyer approximately 20 minutes to communicate with Ms. Kuzina – it is unclear whether Ms. Kuzina’s lawyer was able to review case materials and if so how much time she was given for that review.¹⁴³

At the second hearings, both Mr. Sakovich and Ms. Kuzina confirmed their account of events regarding their meeting at the café and detention thereafter and produced

¹³⁸ Monitor’s Notes, Aleh Sakovich Trial, September 2020; Monitor’s Notes, Iryna Kuzina Trial, September 2020.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² Monitor’s Notes, Aleh Sakovich Trial, September 2020.

¹⁴³ Monitor’s Notes, Iryna Kuzina Trial, September 2020.

corroborating video evidence and witness testimony.¹⁴⁴ The police officers' testimony, on the other hand, changed radically between the first and second hearings in order to match the new Offense Protocols, asserting that the protest had actually occurred between 6:00 and 6:30 p.m. at Independence Square and that the accused had subsequently been detained on Independence Avenue (no mention was made of the fact that the new Protocols changed the protest location from Independence Square to Independence Avenue).¹⁴⁵ Defense counsel in Mr. Sakovich's case was prevented from questioning the testifying officer about the significant inconsistencies in his account.¹⁴⁶

Mr. Sakovich was found guilty under Article 23.34(1) and sentenced to 12 days of imprisonment.¹⁴⁷ His appeal against the decision was dismissed.¹⁴⁸ The judge in Ms. Kuzina's case determined that the case file should once again be sent back for the police to eliminate deficiencies and conduct further investigations – in particular regarding Ms. Kuzina's phone records, which she argued would show she was still at home at the purported time of her arrest – and ordered that Ms. Kuzina be released from pretrial detention by the time the 72-hour limit expired that day.¹⁴⁹ Her case was never sent back to court.¹⁵⁰

Alina Ulyashyna and Dmitry Petrov

Alina Ulyashyna and Dmitry Petrov are students at a university in Belarus. They were arrested in September 2020 along with dozens of other students while participating in a spontaneous march in solidarity with arrested protesters.¹⁵¹ Upon arrest, Ms. Ulyashyna and Mr. Petrov were taken to a District Department of Internal Affairs in Minsk, where they spent about six hours, and were charged with participating in an unauthorized street march under Article 23.34(1) of the Code of Administrative Offenses, as well as with deliberately disobeying the lawful demands of police officers in violation of Article 23.4 of that Code.¹⁵²

¹⁴⁴ Monitor's Notes, Aleh Sakovich Trial, September 2020; Monitor's Notes, Iryna Kuzina Trial, September 2020. Ms. Kuzina further called witnesses who corroborated her claim that she was still at home working until at least 6:30 p.m.

¹⁴⁵ Id. Notably, although the new Offense Protocols stated that the rally took place on Independence Avenue, the officers continued to state that it occurred on Independence Square, albeit at 6-6:30 p.m., while the arrest occurred later on Independence Avenue. This discrepancy was never addressed by the judge.

¹⁴⁶ Monitor's Notes, Aleh Sakovich Trial, September 2020.

¹⁴⁷ Monitor's Notes, Aleh Sakovich Trial, September 2020; District Court of Minsk, Decision on Administrative Offense (Aleh Sakovich Trial), September 2020.

¹⁴⁸ Additional Information from Monitors, November 9, 2020.

¹⁴⁹ Monitor's Notes, Iryna Kuzina Trial, September 2020

¹⁵⁰ Additional Information from Monitors, November 9, 2020.

¹⁵¹ Monitor's Notes, Alina Ulyashyna Trial, September 2020; Monitor's Notes, Dmitry Petrov Trial, September 2020. See also Tut.by, "I protested against the fact of fair elections.' How students detained at protests are judged", September 7, 2020. Available at <https://news.tut.by/society/699576.html>.

¹⁵² Monitor's Notes, Alina Ulyashyna Trial, September 2020; Monitor's Notes, Dmitry Petrov Trial, September 2020.

While Ms. Ulyashyna and Mr. Petrov signed case materials at the police station, in acknowledgment that they were familiar with the documents and had been read their rights, they both testified that they were under psychological pressure to do so, had not had time to fully review the documents before signing, and did not receive any copies; Mr. Petrov further stated that his rights were not explained to him and that he was told by police that if he signed the documents he would be released immediately.¹⁵³ Mr. Petrov, along with Ms. Ulyashyna, was nevertheless transferred to the temporary detention center on Okrestina Street to await trial.¹⁵⁴ As noted by Mr. Petrov's defense counsel, the Offense Protocols drawn up against Ms. Ulyashyna and Mr. Petrov were identical.¹⁵⁵

In September 2020, the cases of Ms. Ulyashyna and Mr. Petrov were heard by the same judge before a District Court in Minsk; the defendants participated via video link from the detention center, having – respectively – already spent about 49 and 52.5 hours in detention by the time the hearings started.¹⁵⁶ Information regarding Ms. Ulyashyna's hearing was posted approximately two hours before it started.¹⁵⁷ Information regarding Mr. Petrov's hearing was posted approximately five hours before it started.¹⁵⁸ During the accused's hearings, which each lasted approximately one hour excluding breaks, the judge granted Ms. Ulyashyna's request to finally access her case file, including the Offense Protocols, giving defense counsel 40 minutes to examine the materials, while inexplicably denying the same request from Mr. Petrov.¹⁵⁹

The defendants were represented by defense counsel, who produced video and eyewitness evidence showing that they had not disobeyed any lawful police orders and thus had not committed any offense under Article 23.4, and that the details alleged regarding the Article 23.34(1) charges – namely, that the defendants were clapping, shouting slogans, and impeding traffic – were false.¹⁶⁰ Notably, the judge rejected defense requests that the police officers who had drawn up the investigation reports and/or who had been interviewed as witnesses during the investigation testify at trial.¹⁶¹

¹⁵³ Id.

¹⁵⁴ Id.

¹⁵⁵ Monitor's Notes, Dmitry Petrov Trial, September 2020.

¹⁵⁶ Monitor's Notes, Alina Ulyashyna Trial, September 2020; Monitor's Notes, Dmitry Petrov Trial, September 2020.

¹⁵⁷ Monitor's Notes, Alina Ulyashyna Trial, September 2020.

¹⁵⁸ Monitor's Notes, Dmitry Petrov Trial, September 2020.

¹⁵⁹ Monitor's Notes, Alina Ulyashyna Trial, September 2020; Monitor's Notes, Dmitry Petrov Trial, September 2020. The judge further refused Mr. Petrov's request to attach video evidence to the case file (although she reviewed the footage) as well as Mr. Petrov's request to obtain the police officers' own video recording of the detention.

¹⁶⁰ Monitor's Notes, Alina Ulyashyna Trial, September 2020; Monitor's Notes, Dmitry Petrov Trial, September 2020.

¹⁶¹ Id.

Subsequently, the judge found Ms. Ulyashyna and Mr. Petrov guilty of all charges, disregarding the aforementioned discrepancies and relying on the statements of police officers in the case files.¹⁶² Ms. Ulyashyna and Mr. Petrov were each sentenced to ten days of imprisonment.¹⁶³ Their appeals were dismissed.¹⁶⁴

Yuliya Novik

In September 2020, **Yuliya Novik** and others were walking along Chebotarev Street to participate in a march in the center of Minsk when they were cordoned off by security forces, loaded into police transport vehicles, and taken to a District Department of Internal Affairs.¹⁶⁵ Ms. Novik was charged under Article 23.34(1) of the Code of Administrative Offenses and was released after about nine hours.¹⁶⁶ She was never given copies of her case materials, despite making a request.¹⁶⁷

Ms. Novik, who was unassisted by counsel, pled guilty in person in September 2020 before a District Court in Minsk; her hearing lasted just 14 minutes.¹⁶⁸ At trial there was one witness, a police officer, who testified via video link and was not visible to the courtroom, including to the defendant.¹⁶⁹ Correspondingly, the video monitor was set up in such a manner that the police officer was unable to see the defendant in the courtroom, calling into question his testimony identifying her as the guilty party.¹⁷⁰ The judge convicted Ms. Novik of violating Article 23.34(1) and sentenced her to a fine of 510 rubles.¹⁷¹

Renata Lyskovich

Renata Lyskovich, an activist, was arrested in September 2020 near her home in Minsk for posting information online in August about an upcoming women's march.¹⁷² At the same time, the police raided her apartment, seizing a computer, telephone, and flash drives.¹⁷³ Ms. Lyskovich was taken to a District Department of

¹⁶² District Court of Minsk, Decision on Administrative Offense (Alina Ulyashyna Trial), September 2020; District Court of Minsk, Decision on Administrative Offense (Dmitry Petrov Trial), September 2020.

¹⁶³ Id.

¹⁶⁴ Additional Information from Monitors, November 9, 2020.

¹⁶⁵ Monitor's Notes, Yuliya Novik Trial, September 2020. See also Tut.by, "'The whole army seemed to be here.' What happened on Chebotarev, where people were surrounded by security forces", September 6, 2020. Available at <https://news.tut.by/society/699454.html>; Onliner, "Detentions took place on Chebotarev Street in Minsk: protesters were blocked and taken out in paddy wagons", September 6, 2020. Available at <https://people.onliner.by/2020/09/06/na-minskoj-ulice-chebotareva-proizoshli-zaderzhaniya>.

¹⁶⁶ Monitor's Notes, Yuliya Novik Trial, September 2020.

¹⁶⁷ Id.

¹⁶⁸ Id.

¹⁶⁹ Id.

¹⁷⁰ Id.

¹⁷¹ Id.

¹⁷² Monitor's Notes, Renata Lyskovich Trial, September 2020. See also Radio Free Europe/Radio Liberty, "Thousands of Women March In Minsk Against Lukashenka", August 29, 2020. Available at <https://www.rferl.org/a/belarus-antilukashenka-protests-women-minsk/30810620.html>.

¹⁷³ Id.

Internal Affairs for processing before being transferred to the temporary detention center on Okrestina Street pending trial. Ms. Lyskovich signed relevant procedural documents, ostensibly indicating her familiarity with them, but was not given a copy of the Offense Protocol.

Ms. Lyskovich's trial started in September 2020 before a District Court in Minsk, approximately 28 hours after her arrest.¹⁷⁴ Information about the scheduling of Ms. Lyskovich's hearing was posted on the morning of the trial, which started in the afternoon.

Ms. Lyskovich was charged under Article 23.34(1) of the Code of Administrative Offenses. The Offense Protocol issued on the day of her arrest stated that she had posted "information on the date, time and place of the mass event ... which violated the procedure for preparing a mass event established by Article 8 of the Law [on Mass Events]."¹⁷⁵

However, as in the cases of Aleh Sakovich and Iryna Kuzina, a revised Offense Protocol – changing the time that Ms. Lyskovich made her post and adding more details about the post – was issued after the first hearing.¹⁷⁶ Her trial therefore started anew the next day on the basis of this new Protocol. Information about the hearing was posted approximately 40 minutes before it began.¹⁷⁷ By the time the trial concluded, Ms. Lyskovich had been in detention for approximately 51 hours.¹⁷⁸

Ms. Lyskovich attended both hearings – neither of which lasted more than 15 minutes, excluding breaks – via video link.¹⁷⁹ A lawyer appeared on her behalf at the first hearing. At the top of the hearing, the judge gave counsel 20 minutes to consult with Ms. Lyskovich.¹⁸⁰ The lawyer, however, was not informed of the second hearing and was thus not in attendance.¹⁸¹ Although Ms. Lyskovich requested the assistance of counsel at the outset of the hearing, the judge proceeded to consider the case without defense counsel present.¹⁸²

¹⁷⁴ Id.

¹⁷⁵ Id. See also Law of the Republic of Belarus on Mass Events in the Republic of Belarus, 1997, Article 8 [hereinafter "Law on Mass Events"] ("A mass event shall be prepared by its organiser(s) and other citizens authorised by them. Prior to receiving authorisation to hold the mass event, the organiser(s) or other individuals shall not be entitled to announce the date, place and time of the event in the media, on the Internet global computer network or on other information networks or to produce and disseminate leaflets, placards and other materials for this purpose.")

¹⁷⁶ Id.

¹⁷⁷ Id.

¹⁷⁸ Id.

¹⁷⁹ Id.

¹⁸⁰ Id.

¹⁸¹ Id.

¹⁸² Id.

During that hearing Ms. Lyskovich admitted her guilt in the hopes that doing so would persuade the judge to sentence her to a fine.¹⁸³ She was nevertheless sentenced to 11 days of imprisonment.¹⁸⁴ After she was released, she and her husband left Belarus.¹⁸⁵

Maria Bandarenka, Anna Korshun, and Maksim Bazuk

Maria Bandarenka, Anna Korshun, and Maksim Bazuk were all arrested on the same day in mid-September 2020 during protests that took place throughout Minsk. They all claimed they were not participating in the protests and were arrested accidentally.¹⁸⁶ Ms. Bandarenka, a volunteer for an NGO, and Ms. Korshun, a project coordinator at another NGO, were both grabbed by officers in Freedom Square, the former reportedly while on her way to the trolleybus to go visit her mother,¹⁸⁷ and the latter reportedly while out for a walk with her mother and friend.¹⁸⁸ Mr. Bazuk, a business analyst, was detained in a nearby square while – according to Mr. Bazuk – he was out for a bike ride.¹⁸⁹

All three were taken to the same District Department of Internal Affairs for processing and then transferred to the temporary detention center on Okrestina Street, spending about 68-70 hours in detention before trial.¹⁹⁰ Ms. Bandarenka and Mr. Bazuk both stated that their requests to call a lawyer or relatives were denied by the police.¹⁹¹ All three signed relevant procedural documents, ostensibly indicating their familiarity with them, but did not receive copies of the Offense Protocols.¹⁹²

The three accused were charged under Article 23.34(1) of the Code of Administrative Offenses, and the Offense Protocols in their cases were almost identical, alleging that each charged person “took an active part in an unauthorized mass event” in violation of the picketing procedure under Article 10 of the Law on Mass Events, and that “by participating, [she/he] publicly expressed [her/his] protest against the fact of holding fair elections, during which [she/he] shouted provocative slogans ‘Long live Belarus!’”¹⁹³

¹⁸³ Id.

¹⁸⁴ Id.

¹⁸⁵ Additional Information from Monitors, November 9, 2020.

¹⁸⁶ See Monitor’s Notes, Maria Bandarenka Trial, September 2020; Monitor’s Notes, Anna Korshun Trial, September 2020; Monitor’s Notes, Maksim Bazuk Trial, September 2020.

¹⁸⁷ Monitor’s Notes, Maria Bandarenka Trial, September 2020.

¹⁸⁸ Monitor’s Notes, Anna Korshun Trial, September 2020.

¹⁸⁹ Monitor’s Notes, Maksim Bazuk Trial, September 2020.

¹⁹⁰ Monitor’s Notes, Maria Bandarenka Trial, September 2020; Monitor’s Notes, Anna Korshun Trial, September 2020; Monitor’s Notes, Maksim Bazuk Trial, September 2020.

¹⁹¹ Monitor’s Notes, Maksim Bazuk Trial, September 2020; Additional Information from Monitors, November 9, 2020.

¹⁹² Monitor’s Notes, Maria Bandarenka Trial, September 2020; Monitor’s Notes, Anna Korshun Trial, September 2020; Monitor’s Notes, Maksim Bazuk Trial, September 2020.

¹⁹³ Id.

Ms. Bandarenka, Ms. Korshun, and Mr. Bazuk were all tried via video link on the same day in September 2020 before a District Court in Minsk. The hearing schedules in Ms. Bandarenka’s and Mr. Bazuk’s cases were never posted, with notification limited to oral announcements by the court secretary shortly before the start of the trials, while the schedule in Ms. Korshun’s case was posted five minutes before the hearing started.¹⁹⁴

The accused were represented by lawyers, who had been able to review case materials but had yet to meet with their clients prior to the beginning of their trials.¹⁹⁵ The court gave Ms. Bandarenka seven minutes at the top of her hearing to consult with counsel, while Ms. Korshun and Mr. Bazuk received ten minutes and eight minutes respectively for consultations.¹⁹⁶ All three accused called defense witnesses who corroborated their stories, although the judges either ignored this evidence or decided it was unreliable and not credible because the witnesses knew the defendant or only saw the defendant “fragmentarily” at the relevant time.¹⁹⁷

Instead, the judges relied on the testimony of a police officer – who testified in person in each case using the false name “Viktar”¹⁹⁸ and wore a mask to cover his face¹⁹⁹ – which was lacking in information and appeared not to be based on personal knowledge. At Mr. Bazuk’s hearing, for instance, the officer started off his testimony by reading from a sheet of paper,²⁰⁰ and, when asked whether he may have confused the defendant with someone else at the protest, responded “anything is possible,” that he had seen “more than a hundred people who, in one way or another, attracted [his] attention,” and that he “doubt[ed] even what happened in the morning.”²⁰¹

At Ms. Bandarenka’s trial, witness “Viktar” stated that he could not remember whether she was shouting or was holding a poster as his memory had deteriorated since the afternoon of the protest (three days prior to the hearing).²⁰² The request by Ms. Korshun’s lawyer to examine two additional police officers who prepared the

¹⁹⁴ Id.

¹⁹⁵ Id.

¹⁹⁶ Id.

¹⁹⁷ District Court of Minsk, Decision on Administrative Offense (Maria Bandarenka Trial), September 2020; District Court of Minsk, Decision on Administrative Offense (Anna Korshun Trial), September 2020; District Court of Minsk, Decision on Administrative Offense (Maksim Bazuk Trial), September 2020.

¹⁹⁸ The false name used by the officer has been changed.

¹⁹⁹ While this name was used by the police officer testifying in all three cases, it is unclear whether it was the same officer testifying or different officers using the same false name. Moreover, as Ms. Korshun’s defense counsel argued, the Administrative Procedure Code does not provide for keeping the identities of witnesses secret in trials initiated under the Code of Administrative Offenses. See Monitor’s Notes, Anna Korshun Trial, September 2020.

²⁰⁰ Monitor’s Notes, Maksim Bazuk Trial, September 2020.

²⁰¹ Id.

²⁰² Monitor’s Notes, Maria Bandarenka Trial, September 2020.

case file was denied because, according to the judge, they did not want to be questioned.²⁰³

Notably, although witness “Viktar” claimed that he had proceeded to the police station immediately after arresting Ms. Korshun and Ms. Bandarenka in Freedom Square around 4 p.m., he claimed to have been back in Freedom Square in time to witness the arrest of Mr. Bazuk at 5:30 p.m.²⁰⁴

Despite the above, all three defendants were found guilty based entirely on police officer “Viktar’s” testimony and case files prepared by the police. Ms. Bandarenka’s trial lasted approximately 40 minutes, excluding breaks;²⁰⁵ Ms. Korshun’s trial lasted approximately 35 minutes, excluding breaks;²⁰⁶ and Mr. Bazuk’s trial lasted approximately 50 minutes, excluding breaks.²⁰⁷ Ms. Bandarenka was sentenced to ten days imprisonment while Ms. Korshun and Mr. Bazuk were sentenced to 12 days imprisonment each. Their appeals were all dismissed.²⁰⁸

Lyudmila Kazak

Lyudmila Sergeevna Kazak is a 45-year-old human rights lawyer who – at the time of her arrest – was representing Maria Kolesnikova, an opposition leader detained on criminal charges.²⁰⁹ On September 24, 2020, as Ms. Kazak was on her way to a hearing, she was grabbed by three uniformed and masked men, forced into an unmarked car, and taken first to the Central District Department of Internal Affairs and then to the temporary detention center on Okrestina Street.²¹⁰

While Ms. Kazak has stated that she was not informed of the reasons for her arrest at the time of her arrest, police later claimed that they had told Ms. Kazak she needed to come with them to the police station for proceedings regarding a charge under Article 23.34(1) of the Code of Administrative Offenses (the charge being that Ms. Kazak had allegedly participated in an unauthorized protest on August 30, which she denied).²¹¹

²⁰³ Monitor’s Notes, Anna Korshun Trial, September 2020.

²⁰⁴ Monitor’s Notes, Maria Bandarenka Trial, September 2020; Monitor’s Notes, Anna Korshun Trial, September 2020; Monitor’s Notes, Maksim Bazuk Trial, September 2020.

²⁰⁵ Monitor’s Notes, Maria Bandarenka Trial, September 2020.

²⁰⁶ Monitor’s Notes, Anna Korshun Trial, September 2020.

²⁰⁷ Monitor’s Notes, Maksim Bazuk Trial, September 2020.

²⁰⁸ Additional Information from Monitors, November 9, 2020.

²⁰⁹ See Human Rights Center Viasna, “UN human rights experts: Belarus must release opposition leader Maria Kalesnikava”, September 25, 2020. Available at <http://spring96.org/en/news/99694>; BBC, “Belarus protests: Maria Kolesnikova charged under security law”, September 16, 2020. Available at <https://www.bbc.com/news/world-europe-54183281>.

²¹⁰ Monitor’s Notes, Lyudmila Kazak Trial, September 25, 2020. See also FIDH, “Belarus: Arbitrary arrest and judicial harassment of human rights lawyer Ms. Liudmila Kazak”, September 25, 2020. Available at <https://www.fidh.org/en/issues/human-rights-defenders/belarus-arbitrary-arrest-and-judicial-harassment-of-human-rights>; Human Rights Center Viasna, “Kalesnikava’s lawyer detained”, September 25, 2020. Available at <http://spring96.org/en/news/99683>.

²¹¹ Id.

However, Ms. Kazak stood trial not for charges under Article 23.34(1) but for charges under Article 23.4 of the Code: the arresting police officers claimed that she disobeyed their order to accompany them into the police vehicle.²¹² It appears that the police took no further action on the Article 23.34 charge. In light of such discrepancies and the broader political context, Ms. Kazak, her lawyers, and human rights organizations have inferred that she was arrested in retaliation for her defense of Ms. Kolesnikova and in order to prevent her from attending a hearing in the Kolesnikova case on September 25.²¹³

According to Ms. Kazak, during her pretrial detention her requests for medical attention were ignored, as were her requests to call her lawyers, husband, and employers,²¹⁴ in contravention of the Administrative Procedure Code.²¹⁵ Moreover, while Ms. Kazak was being held at the Central District Department of Internal Affairs, her husband and lawyers, who were actively looking for her, were told she was not there, and her husband was prevented from filing a missing person report.²¹⁶ They were finally informed that Ms. Kazak was at the temporary detention center on Okrestina Street about six hours after her arrest but were prevented from seeing her.²¹⁷ Ms. Kazak's two lawyers were allowed to meet with her, one at a time, at the detention center on September 25, the day of her trial, after waiting there for three hours.²¹⁸ During her detention, Ms. Kazak signed various procedural documents, including the Offense Protocol, but noted in writing that she disagreed with the allegations and that her rights had been violated.²¹⁹ She was not provided a copy of the Offense Protocol.²²⁰

Ms. Kazak's case was heard before the Oktyabrsky District Court on September 25, 2020. Since the offense was allegedly committed in the Central District of Minsk, the monitor initially went to the Central District Court but found no information about the hearing. Only after Ms. Kazak's lawyers sent an email to every court in Minsk were they notified of the hearing's time and location, 45 minutes before it was scheduled to begin.²²¹ By the time the hearing started, Ms. Kazak had been in detention for about 27 hours, and she remained there throughout the hearing, attending via video link.²²² She was represented by counsel. At the top of the hearing, Ms. Kazak's

²¹² Id.

²¹³ Id.; FIDH, "Belarus: Sentencing and release of Ms. Liudmila Kazak", September 28, 2020; OSCE Office for Democratic Institutions and Human Rights, "OSCE Rapporteur's Report under the Moscow Mechanism on Alleged Human Rights Violations related to the Presidential Elections of 9 August 2020 in Belarus", October 29, 2020, pg. 40.

²¹⁴ Monitor's Notes, Lyudmila Kazak Trial, September 25, 2020.

²¹⁵ Administrative Procedure Code, 2006, Article 8.2 (requiring such notification within three hours upon the detainee's request).

²¹⁶ Monitor's Notes, Lyudmila Kazak Trial, September 25, 2020.

²¹⁷ Id.

²¹⁸ Id.

²¹⁹ Id.

²²⁰ Id.

²²¹ Id.

²²² Id.

lawyers petitioned the court for Ms. Kazak to get access to and have time to review the case materials, such as the Offense Protocol.²²³ This request was denied.²²⁴

Two of the police officers who allegedly conducted the arrest also testified via video link; they wore full face coverings over their heads and used the false names “Ivan Ivanovich Ivanov” and “Alexander Alexandrovich Alexandrovich” due to “security concerns” about which little information was provided.²²⁵ The officers stated that on the day of Ms. Kazak’s arrest they had introduced themselves and instructed Ms. Kazak to accompany them to the station, at which point she resisted, including by grabbing at one of the officer’s uniforms.²²⁶ At times the officers contradicted each other’s accounts: one officer, for example, stated that they had only decided to detain Ms. Kazak when she resisted arrest, while the other said that they had decided to detain her in advance.²²⁷ Ms. Kazak testified that the police officers had not explained who they were or why they were arresting her and, believing she was being kidnapped, she yelled “Help” but did not grab at their uniforms.²²⁸

Ms. Kazak was allowed to call two witnesses in her defense.²²⁹ One of these witnesses had seen Ms. Kazak’s arrest and corroborated Ms. Kazak’s account.²³⁰ Ms. Kazak’s requests to call additional witnesses and to admit evidence were denied.²³¹ In total, the trial lasted a little over two hours.

In finding Ms. Kazak guilty of violating Article 23.4, the judge, without providing any reasons, did not take into account the testimony of Ms. Kazak or defense witnesses, instead relying on the case file and the inconsistent and contradictory testimony of the police officers.²³² The judge sentenced Ms. Kazak to a fine of 675 rubles, considering the fact that Ms. Kazak has dependent minor children to be a mitigating circumstance.²³³ Ms. Kazak was released after the hearing.²³⁴ Her appeal against her conviction was dismissed.

Ivan Yakhin

²²³ Id.

²²⁴ Id.

²²⁵ Id.

²²⁶ Id.

²²⁷ Id.

²²⁸ Id.

²²⁹ Id.

²³⁰ Id.

²³¹ Id.

²³² Oktyabrsky District Court of Minsk (Judge Rudenko), Decision on Administrative Offense (Lyudmila Kazak Trial), September 25, 2020; Oktyabrsky District Court of Minsk (Judge Rudenko), Reasons for Decision on Administrative Offense (Lyudmila Kazak Trial), October 1, 2020.

²³³ Id.

²³⁴ Additional Information from Monitors, November 9, 2020.

In October 2020, the same day as the “Partisan March” in Minsk, **Ivan Yakhin** was arrested by riot police in unmarked vehicles²³⁵ and accused of taking part in an unauthorized mass protest, in violation of Article 23.34(1) of the Code of Administrative Offenses.²³⁶ Mr. Yakhin was initially taken to a District Department of Internal Affairs for processing and then transferred to the temporary detention center on Okrestina Street. According to Mr. Yakhin, he requested an attorney while in detention but was ignored.²³⁷ It appears that Mr. Yakhin signed and was given copies of relevant procedural documents.

His trial began in October 2020 before a District Court in Minsk, 26.5 hours after Mr. Yakhin was first detained.²³⁸ Mr. Yakhin was present via videoconference and information regarding the hearing was posted 15 minutes before its start.²³⁹ After the hearing began, Mr. Yakhin requested counsel: an attorney from the applicable District Legal Advice Office was assigned.²⁴⁰ Although the judge immediately announced a break upon Mr. Yakhin’s request, less than an hour was provided for counsel to be summoned, arrive, and review case materials.²⁴¹ After the proceedings resumed, defense counsel immediately requested time to confer with her client but was only granted ten minutes to do so.²⁴²

Mr. Yakhin maintained throughout the hearing that he had not participated in any protest and at the time of his arrest was alone and walking on the sidewalk while speaking on the phone.²⁴³ Mr. Yakhin’s attorney repeatedly requested that the court obtain surveillance footage of the area as well as Mr. Yakhin’s cell phone records (relating to his phone conversation at the time of his arrest), which Mr. Yakhin said would corroborate his account.²⁴⁴ The court refused, reasoning that “the petition to demand the video recording [was] not specific ... [and] a telephone conversation is not proper evidence for the case under consideration.”²⁴⁵ Notably, the reason the request regarding surveillance was not “specific” was because the lawyer had insufficient time to locate the exact building where the cameras were located, having been assigned to the case mid hearing.²⁴⁶

The sole witness in the case was a police officer, whose identity was concealed. The officer stated that he had seen Mr. Yakhin protesting and shouting slogans and had

²³⁵ Monitor’s Notes, Ivan Yakhin Trial, October 2020.

²³⁶ Id.

²³⁷ Complaint Against the Decision in the Case of Administrative Offense, October 2020; Monitor’s Notes, Ivan Yakhin Trial, October 2020.

²³⁸ Monitor’s Notes, Ivan Yakhin Trial, October 2020.

²³⁹ Id.

²⁴⁰ Id.

²⁴¹ Id.

²⁴² Id.

²⁴³ Id.

²⁴⁴ Id.

²⁴⁵ Id.

²⁴⁶ Id.

also witnessed his arrest.²⁴⁷ The officer, however, was unable to answer questions regarding how many people were in the crowd, whether Mr. Yakhin was wearing something on his head or wearing a mask on his face, and when the riot police arrived or what vehicle they used.²⁴⁸ Furthermore, the judge repeatedly interrupted questions asked by Mr. Yakhin and his lawyer, at times striking them before the witness could answer.²⁴⁹

In all, excluding breaks, the proceedings lasted approximately one hour. The judge found Mr. Yakhin guilty and sentenced him to 14 days imprisonment, one day less than the maximum.²⁵⁰ The defense had requested that the court impose a fine instead of imprisonment, citing the mitigating circumstance that Mr. Yakhin had five young children and was the sole financial provider for the household.²⁵¹ In the verdict, the judge deemed the officer's explanations "objective, reliable and consistent."²⁵² Mr. Yakhin appealed in October 2020²⁵³ and in November, the appeal was denied by the Minsk City Court.²⁵⁴

Raman Pazniak

Raman Pazniak, a schoolteacher, was arrested by riot police at 7:30 a.m. on a day in late October 2020 while on his way to work.²⁵⁵ He was charged with participating in the September 6th "March for Unity" in Minsk, held one and a half months prior to his arrest, in alleged violation of Article 23.34(1) of the Code of Administrative Offenses.²⁵⁶ Mr. Pazniak was one of tens of thousands of participants in the protest.

Mr. Pazniak was initially taken to an unknown location, and transferred to a District Department of Internal Affairs approximately six and a half hours later.²⁵⁷ Procedural documents stated that the time of Mr. Pazniak's arrest was 3:30 p.m. at the District Department of Internal Affairs (there appears to be no information in the documents about his arrest near his home at 7:30 a.m. and this disparity was never resolved by the court).²⁵⁸ Under interrogation and without the benefit of a lawyer, Mr. Pazniak admitted his guilt, signed the Offense Protocol, and requested that he not "be judged

²⁴⁷ Id.

²⁴⁸ Id.

²⁴⁹ Id.

²⁵⁰ District Court of Minsk, Decision on Administrative Offense (Ivan Yakhin Trial), October 2020.

²⁵¹ Monitor's Notes, Ivan Yakhin Trial, October 2020.

²⁵² District Court of Minsk, Decision on Administrative Offense (Ivan Yakhin Trial), October 2020.

²⁵³ Complaint Against the Decision in the Case of Administrative Offense, October 2020; Monitor's Notes, Ivan Yakhin Trial, October 2020.

²⁵⁴ Monitor's Notes, Ivan Yakhin Trial, October 2020.

²⁵⁵ Monitor's Notes, Raman Pazniak Trial, October 2020.

²⁵⁶ Id. The March for Unity was a large-scale protest held by Belarusian opposition parties. See BBC, "Protests in Belarus: Tens of Thousands at 'March of Unity' in Minsk, Hundreds Detained", September 6, 2020. Available at <https://www.bbc.com/russian/news-54048700>.

²⁵⁷ Monitor's Notes, Raman Pazniak Trial, October 2020.

²⁵⁸ Id.

too harshly.”²⁵⁹ He was subsequently taken to the temporary detention center on Okrestina Street pending trial.²⁶⁰

Mr. Pazniak’s hearing was held approximately 77 hours after his arrest, before a District Court in Minsk. By the time the monitor arrived at court, information regarding Mr. Pazniak’s hearing had already been posted on the court schedule. Mr. Pazniak was not represented by counsel and participated via videoconferencing technology from the temporary detention facility.²⁶¹ The only witness examined was Mr. Pazniak. During questioning, Mr. Pazniak indicated that he had participated in the march so as to express his opposition to the government’s response to the election protests, proclaiming: “In the future, I will renounce [march participation] and completely devote myself to work.”²⁶²

Additional evidence contained contradictions. Screenshots of three different photos of Mr. Pazniak apparently participating in a protest were presented as evidence: Mr. Pazniak confirmed that the photos were of the September 6 protest.²⁶³ The judge, however, stated that the screenshots were of photos taken on, respectively, September 6, September 12, and September 27.²⁶⁴ Given that Mr. Pazniak was charged exclusively with participating in a protest on September 6, the judge’s comments created confusion.

Further, the arresting officer’s interview was conducted a month and a half after the events in question. The officer was not summoned to testify and thus was not examined about how he was able to identify Mr. Pazniak among thousands of participants over a month and a half after the event. As with other cases, the officer’s identity was kept secret.

The entire hearing lasted less than 20 minutes. The judge imposed a sentence of 14 days. Mr. Pazniak subsequently served his sentence at the temporary detention center in Zhodino.²⁶⁵

Andrei Sychyk

Andrei Sychyk, a former opposition movement leader, was detained on a day in late October 2020 at approximately 5:30 p.m. as he was leaving a restaurant.²⁶⁶ Over the past two decades, Mr. Sychyk has repeatedly been arrested and imprisoned for his political activism.

²⁵⁹ Id.

²⁶⁰ Id.

²⁶¹ Id.

²⁶² Id.

²⁶³ Id.

²⁶⁴ Id.

²⁶⁵ Id.

²⁶⁶ Monitor’s Notes, Andrei Sychyk Trial, October 2020.

Prior to eating at the restaurant, Mr. Sychyk had been handing out leaflets about the commemoration of the Night of the Executed Poets, which is traditionally held on October 29 – the anniversary of the execution of more than 100 Belarusian poets, writers and intellectuals in 1937.²⁶⁷ Mr. Sychyk stated that he was also holding a sign featuring the slogan “Let my people go” and that when protesters shouted “Long Live Belarus” he responded, “Long Live!”²⁶⁸

According to Mr. Sychyk, his arrest was effected by three people in black uniforms without insignia, who did not introduce themselves or produce identification.²⁶⁹ A friend with whom Mr. Sychyk had just finished eating was also arrested at the same time by another three unidentified men.²⁷⁰

After his arrest, Mr. Sychyk was put in a minibus and transported to a District Department of Internal Affairs.²⁷¹ His phone was confiscated.²⁷² While Mr. Sychyk signed procedural documents related to the confiscation of his phone, he was not informed of the reasons for his arrest and was not allowed to see the administrative detention report or the Offense Protocol.²⁷³ At approximately 11 p.m., Mr. Sychyk was transferred to the Okrestina temporary detention facility, where he was held pending trial.²⁷⁴ Mr. Sychyk was charged with participating in an unauthorized mass event under Article 23.34(1) of the Code of Administrative Offenses.²⁷⁵

Mr. Sychyk’s trial commenced in October 2020 before a District Court in Minsk, approximately 22 and a half hours after he was first detained.²⁷⁶ He participated via videoconference from the temporary detention facility and was represented by counsel.²⁷⁷ After the court established Mr. Sychyk’s identity, his lawyer requested time to familiarize herself with the case materials and speak with her client: the court postponed the hearing to the following day.²⁷⁸

At the next day’s hearing, Mr. Sychyk again joined the hearing via videoconference. Notably, the telemonitor faced away from the courtroom and Mr. Sychyk was not visible to anyone but the judge. The volume on the video conferencing laptop was so low that it was difficult to hear Mr. Sychyk at times and in turn, Mr. Sychyk explained

²⁶⁷ Id.

²⁶⁸ Id.

²⁶⁹ Id.

²⁷⁰ Id.

²⁷¹ Id.

²⁷² Id.

²⁷³ Id.

²⁷⁴ Id.

²⁷⁵ Id.

²⁷⁶ Id.

²⁷⁷ Id.

²⁷⁸ Id. The monitor was present for the second hearing: the first hearing did not involve the examination of evidence.

that he was having trouble hearing the court participants, an issue that the court did not address.²⁷⁹

The primary evidence presented during the trial was a report written by an official from the District Department of Internal Affairs stating:

a mass protest was held at a predetermined place and at a predetermined time at about 5:00 p.m., and no later than 5:50 p.m. ... in the city of Minsk, and permission was not granted by the Minsk City Executive Committee. This event was attended by about a hundred people. During this event, in order to protest against the current government, citizens, with symbols of the white-red-white color scheme, shouted the slogans “Go away!”, “Long live Belarus!” and others. Andrei Sychyk, who was taken to a police department in Minsk and arrested for further investigation, participated in the protest.

This report was supplemented by a record of an interview with a police officer, whose name had been changed.²⁸⁰ The officer stated that Mr. Sychyk participated in an unauthorized mass protest and shouted slogans such as “Let my people go!”²⁸¹ Although Mr. Sychyk requested that the officer testify at the hearing, the court stated that this would not be possible because “he [was] participating in other events.”²⁸² The defense therefore was unable to question the officer on alleged discrepancies, such as whether Mr. Sychyk shouted “Let my people go” as opposed to holding a sign stating as much. The defense further noted that video camera evidence from outside the restaurant should have been presented to prove that a mass protest had been taking place and that Mr. Sychyk was indeed participating.²⁸³

In both hearings, Mr. Sychyk and defense counsel repeatedly brought up the issue of detention conditions, including that Mr. Sychyk was being held in solitary confinement.²⁸⁴ In addition, Mr. Sychyk noted that detainees were sleeping on concrete without mattresses, that there was no drinking water available in the cells, and that detainees were being forced to defecate in the cells without access to cleaning materials.²⁸⁵ The judge repeatedly responded that such issues were not within the court’s purview, recommending that Mr. Sychyk instead submit a formal

²⁷⁹ Id.

²⁸⁰ Id.

²⁸¹ Id.

²⁸² Id.

²⁸³ Id.

²⁸⁴ Id.

²⁸⁵ Id.

complaint.²⁸⁶ Mr. Sychyk replied that he had no opportunity to do so, lacking access to either paper or pens in detention.²⁸⁷

At the close of the hearing, the judge told attendees that the judgement would be announced no earlier than 2:00 p.m. and asked everyone to leave the courtroom.²⁸⁸ At 1:05 p.m., the court was opened for sentencing but defense counsel and all media representatives were absent.²⁸⁹ Mr. Sychyk was found guilty of violating Article 23.34(1) of the Code of Administrative Offenses and sentenced to 15 days of detention.²⁹⁰ He was transferred to the Baranovichi detention facility to serve his sentence.²⁹¹ Mr. Sychyk's appeal against his conviction was dismissed.

Notably, about 20 minutes after Mr. Sychyk joined the hearing remotely, four men who identified themselves as "court security" entered the courtroom.²⁹² Representatives of a local human rights group explained that the men often attended protest cases involving the presiding judge and that they had previously checked observers' notebooks and phones and insulted observers during court breaks.²⁹³

²⁸⁶ Id.

²⁸⁷ Id.

²⁸⁸ Id.

²⁸⁹ Id.

²⁹⁰ Id.

²⁹¹ Id.

²⁹² Id.

²⁹³ Id.

METHODOLOGY



A. THE MONITORING PHASE

As part of the Clooney Foundation for Justice's TrialWatch initiative, Human Rights Embassy deployed monitors to the trials of 15 individuals in connection with the post-election protests in Belarus. The trials took place between September and October 2020 before various district courts in Minsk and usually lasted an hour at most. For some cases, the monitors were already at the court in question and happened upon the hearing based on the posting of a schedule or other available information. Other cases were selected based on information the monitors were able to glean in advance about the hearings of cases involving protesters.

The hearings were in Russian and the monitors were able to follow the proceedings. The monitors did not experience any impediments in entering the courtrooms and were present for the entirety of the trials. The monitors used the CFJ TrialWatch App to record and track what transpired in court and the degree to which the defendants' fair trial rights were respected.

Due to the deteriorating security situation in Belarus, the names of all defendants excepting Lyudmila Kazak, whose case was high-profile, have been changed. Likewise, information regarding the dates of trials as well as the courts at which trials were held has been omitted. Notably, the present report's assessment is derived from the observation of proceedings that were open to the public.

B. THE ASSESSMENT PHASE

To evaluate the trials' fairness and arrive at a grade, ABA Center for Human Rights staff who are members of the TrialWatch Experts Panel reviewed notes taken during the public proceedings, and, where available, court verdicts. The trials entailed severe violations of the defendants' fair trial rights and rights to freedom of expression and peaceful assembly. The monitoring made clear that the courts were wholly invested in convicting the defendants, in line with the priorities of the Lukashenko government and with no regard for international human rights guarantees.

ANALYSIS



A. APPLICABLE LAW AND STANDARDS

This report draws upon the International Covenant on Civil and Political Rights (ICCPR); jurisprudence from the United Nations Human Rights Committee, tasked with monitoring implementation of the ICCPR; commentary and reporting from various human rights treaty bodies and mechanisms; and widely accepted principles and guidelines that establish best practices related to detention, due process, and fair trials. Belarus acceded to the ICCPR in 1973. Additionally, the report references relevant jurisprudence from regional human rights courts, including the European Court of Human Rights.

Applicability of due process and fair trial rights to administrative proceedings

At the outset, it should be noted that certain provisions of the Covenant are only applicable to individuals facing criminal charges, such as Article 14(2)-(7),²⁹⁴ Article 9(3), and the second half of Article 9(2).²⁹⁵ Although “[c]riminal charges relate in principle to acts declared to be punishable under domestic criminal law,”²⁹⁶ the UN Human Rights Committee has commented that “[t]he notion may also extend to acts that are criminal in nature with sanctions that, regardless of their qualification in domestic law, must be regarded as penal because of their purpose, character or severity.”²⁹⁷ In this regard, the Committee has explained that

the concept of a “criminal charge” bears an autonomous meaning, independent of the categorisations employed by the national legal system of the States parties, and has to be understood within the meaning of the Covenant. Leaving State parties the discretion to transfer the decision over a criminal offence, including imposition of punishment, to administrative authorities and, thus, to avoid the application of the fair trial guarantees under article 14, might lead to

²⁹⁴ Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, August 23, 2007, para. 3.

²⁹⁵ Human Rights Committee, General Comment No. 35, U.N. Doc. CCPR/C/GC/35, December 16, 2014, para. 4.

²⁹⁶ Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, August 23, 2007, para. 15.

²⁹⁷ Id. The Committee has taken a similar view of Article 9, stating that any regime “involving deprivation of liberty must also be established by law and must be accompanied by procedures that prevent arbitrary detention. The grounds and procedures prescribed by law must not be destructive of the right to liberty of person. The regime must not amount to an evasion of the limits on the criminal justice system by providing the equivalent of criminal punishment without the applicable protections.” Human Rights Committee, General Comment No. 35, U.N. Doc. CCPR/C/GC/35, December 16, 2014, para. 14.

results incompatible with the object and purpose of the Covenant.²⁹⁸

Correspondingly, the Committee has found prosecutions for offenses classified as “administrative” under domestic law to be criminal in nature for the purposes of the ICCPR in a number of cases. For instance, in *Osiyuk v. Belarus* – a case concerning an individual who was prosecuted and fined under Belarus’s Code of Administrative Offenses for allegedly unlawfully driving across the national frontier between Belarus and Ukraine – the Committee noted that “the sanctions imposed on the author had the aims of repressing, through penalties, offences alleged against him and of serving as a deterrent for the others, the objectives analogous to the general goal of the criminal law,” and that “the rules of law infringed by the author are directed, not towards a given group possessing a special status ... but towards everyone in his or her capacity as individuals crossing the national frontier of Belarus; they prescribe conduct of a certain kind and make the resultant requirement subject to a sanction that is punitive.”²⁹⁹ The Committee therefore concluded that “the general character of the rules and the purpose of the penalty, being both deterrent and punitive, suffice to show that the offences in question were, in terms of article 14 of the Covenant, criminal in nature”³⁰⁰ and that as such “the provisions of article 14, paragraphs 2 to 7, also apply in the present communication.”³⁰¹ The Committee has taken a similar approach where the administrative offense in question has concerned “violating the laws on organizing and holding peaceful assemblies.”³⁰²

The European Court of Human Rights has likewise found that the domestic classification of an offense as “administrative” is not dispositive when it comes to determining whether the offense is criminal in nature.³⁰³ To make this determination, the Court looks outside the legislative framework to assess “the ‘very nature of the offence’ and the degree of severity of the penalty risked.”³⁰⁴ In this respect, the Court has considered factors such as the applicability of the provision to the entire

²⁹⁸ Human Rights Committee, *Osiyuk v. Belarus*, U.N. Doc. CCPR/C/96/D/1311/2004, July 30, 2009, para. 7.3.

²⁹⁹ *Id.* at para. 7.4.

³⁰⁰ *Id.*

³⁰¹ *Id.* at para. 7.5.

³⁰² Human Rights Committee, *Zhagiparov v. Kazakhstan*, U.N. Doc. CCPR/C/124/D/2441/2014, October 25, 2018, paras. 13.7-13.8.

³⁰³ See European Court of Human Rights, *Galstyan v. Armenia*, App. No. 26986/03, February 15, 2008, paras. 57-58.

³⁰⁴ *Id.* at para. 56. See also European Court of Human Rights, *Ziliberberg v. Moldova*, App. No. 61821/00, May 1, 2005, paras. 29, 31.

population,³⁰⁵ the purpose of the sanction as “purely punitive and deterrent,”³⁰⁶ the relevant procedure,³⁰⁷ and the existence of other provisions of the given Administrative Code “indicative of the criminal nature of the administrative offences,” such as provisions “relating to such matters as mitigating and aggravating circumstances, responsibility for attempt to commit an offence and legitimate defence.”³⁰⁸

Notably, both the UN Human Rights Committee and the European Court of Human Rights generally consider the imposition of imprisonment as a sanction to be “penal in character”³⁰⁹ and have found fines “not intended as pecuniary compensation for damage” to be “punitive and deterrent in nature.”³¹⁰

While the accused in the present cases were charged and tried under Articles 23.34 and 23.4 of Belarus’s Code of Administrative Offenses, and thus under domestic law were not facing criminal charges, strong grounds exist for finding that the alleged offenses were criminal in nature. The provisions were directed at the general population, rather than a specific group possessing a special status. The Code of Administrative Offenses further contains other provisions “indicative of the criminal nature of the administrative offences,”³¹¹ including provisions relating to mitigating and aggravating circumstances and attempt.³¹² Moreover, the defendants were all arrested, detained, and interrogated by police officers. Subsequently, although no harm was found to have resulted in any of the cases as a consequence of the alleged commission of the offenses, 11 of the defendants were sentenced to terms of imprisonment of between five and 14 days, while three of the defendants were ordered to pay fines of 510-675 rubles. These sanctions thus “had the aims of

³⁰⁵ European Court of Human Rights, *Galstyan v. Armenia*, App. No. 26986/03, February 15, 2008, para. 58; European Court of Human Rights, *Ziliberberg v. Moldova*, App. No. 61821/00, May 1, 2005, para. 32 (“That provision [outlawing participation in an unauthorized demonstration] regulates offences against public order and is designed to regulate the manner in which demonstrations are to be held. Accordingly, the legal rule infringed by the applicant is directed towards all citizens and not towards a given group possessing a special status.”).

³⁰⁶ European Court of Human Rights, *Galstyan v. Armenia*, App. No. 26986/03, February 15, 2008, paras. 58-59 (the accused served a three-day sentence in a detention center, and the maximum penalty under the Code was 15 days in jail); European Court of Human Rights, *Ziliberberg v. Moldova*, App. No. 61821/00, May 1, 2005, paras. 33-34 (finding the offense was criminal in nature where the sanction imposed was a fine).

³⁰⁷ European Court of Human Rights, *Ziliberberg v. Moldova*, App. No. 61821/00, May 1, 2005, para. 34 (noting that the accused “was taken to the police where he was held for a few hours and interrogated by criminal investigators” and that cases of these administrative offenses are heard by criminal chambers of the courts).

³⁰⁸ *Id.* at para. 34.

³⁰⁹ Human Rights Committee, *Fardon v. Australia*, U.N. Doc. CCPR/C/98/D/1629/2007, May 10, 2010, para. 7.4; European Court of Human Rights, *Galstyan v. Armenia*, App. No. 26986/03, February 15, 2008, para. 59.

³¹⁰ European Court of Human Rights, *Ziliberberg v. Moldova*, App. No. 61821/00, May 1, 2005, para. 33. See also Human Rights Committee, *Osiyuk v. Belarus*, U.N. Doc. CCPR/C/96/D/1311/2004, July 30, 2009, para. 7.4.

³¹¹ European Court of Human Rights, *Ziliberberg v. Moldova*, App. No. 61821/00, May 1, 2005, para. 34.

³¹² See Code of Administrative Offenses, 2003, Articles 2.3, 7.1-7.3.

repressing, through penalties, offences alleged against [the defendants] and of serving as a deterrent for the others.”³¹³ As in *Osiyuk v. Belarus*, “the general character of the rules and the purpose of the penalty, being both deterrent and punitive, suffice to show that the offences in question were ... criminal in nature.”³¹⁴ The ICCPR’s protections for individuals facing criminal charges are therefore applicable to the present cases.

In any event, the general fairness and due process guarantees contained in Articles 14(1) and 9(1) of the ICCPR apply to all proceedings, whether or not they are criminal. In particular, the UN Human Rights Committee has explained that “[t]he right to equality before courts and tribunals [protected by Article 14(1)] also ensures equality of arms,” which “means that the same procedural rights are to be provided to all the parties unless distinctions are based on law and can be justified on objective and reasonable grounds, not entailing actual disadvantage or other unfairness to the defendant.”³¹⁵ As discussed in the following sections, the principles of fairness and equality of arms encompass many of the rights specifically applicable to criminal proceedings, and as a result some of these rights are, to an extent, also applicable to all proceedings.

B. INVESTIGATION AND PRETRIAL STAGE VIOLATIONS

Unlawful and Arbitrary Deprivation of Liberty

Article 9(1) of the ICCPR protects the right to liberty and security of person, providing that “[n]o one shall be subjected to arbitrary arrest or detention” and “[n]o one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.” Belarusian authorities violated Article 9(1) in the present cases by arbitrarily and unlawfully arresting the defendants and arbitrarily and unlawfully holding them in detention.

Unlawful Arrests and Detention

Article 9(1) of the ICCPR provides that arrests and detention must be in line with domestic legislation. The UN Human Rights Committee, for example, has noted that

³¹³ Human Rights Committee, *Osiyuk v. Belarus*, U.N. Doc. CCPR/C/96/D/1311/2004, July 30, 2009, para. 7.4.

³¹⁴ *Id.* at paras. 7.4-7.5.

³¹⁵ Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, August 23, 2007, para. 13. See also Human Rights Committee, *Fei v. Colombia*, U.N. Doc. CCPR/C/53/D/514/1992, April 26, 1995, para. 8.4 (“The concept of a ‘fair trial’ within the meaning of article 14, paragraph 1, however, also includes other elements. Among these ... are the respect for the principles of equality of arms, of adversary proceedings and of expeditious proceedings.”); Human Rights Committee, *Evrezov et al. v. Belarus*, U.N. Doc. CCPR/C/112/D/1999/2010, November 25, 2014, para. 8.9 (“The Committee recalls that the Covenant gives everyone the right to a fair and public hearing by a competent, independent and impartial tribunal established by law, and that the equality of arms is an indispensable aspect of the fair trial principle.”).

“deprivation of liberty is permissible only when it takes place on such grounds and in accordance with such procedure as are established by domestic law.”³¹⁶

All of the arrests and detentions in the present cases appear to have flouted applicable domestic laws.

Initial Detention and Transport to the Police Station

Belarusian law only permits administrative detention – i.e., the deprivation of liberty based on an administrative offense, which includes arrest – in limited circumstances. The Administrative Procedure Code defines administrative detention as “the actual short-term restriction of the freedom of an individual in respect of whom the administrative process is being conducted, ... bringing him to a place determined by the body conducting the administrative process, and keeping him in that place,”³¹⁷ and caps such detention at a maximum length of three hours unless the charged offense carries a potential penalty of imprisonment, in which case the maximum length is 72 hours.³¹⁸ Administrative detention is allowed for the following purposes: “suppression of illegal activities”; “drawing up a protocol on an administrative offense, if drawing it up at the place of detection (commission) of an administrative offense is not possible”; “identification of the person”; “ensuring participation in the consideration of a case on an administrative offense”; “suppression of concealment or destruction of evidence”; and “securing the execution of an administrative penalty in the form of administrative arrest or deportation.”³¹⁹ While questionable in most of the monitored cases, it is especially clear that none of the circumstances legally justifying arrest were present in Ms. Lyskovich’s and Ms. Kazak’s cases.

In September 2020, Ms. Lyskovich was arrested near her home and put into a minibus by four men in balaclavas for posting a message in August about a march that took place two days later.³²⁰ As such, at the time of her arrest, there were no “illegal activities” to suppress. Because the arrest was planned in advance, the officers also knew Ms. Lyskovich’s identity prior to arresting her, and there was no reason the Offense Protocol could not have been prepared beforehand or drawn up on the spot. Arresting Ms. Lyskovich was likewise unnecessary to prevent interference with the evidence, as the officers conducted a search of her home with her husband present that same day;³²¹ there is nothing to suggest Ms. Lyskovich could have interfered with the search if she had also been present and, in any event, the alleged act at issue was an online post, which the authorities already had in their possession. Finally, there was no indication that Ms. Lyskovich was a flight risk. As

³¹⁶ Human Rights Committee, *Khoroshenko v. Russian Federation*, U.N. Doc. CCPR/C/101/D/1304/2004, March 29, 2011, para. 9.3.

³¹⁷ Administrative Procedure Code, 2006, Article 8.2.

³¹⁸ *Id.* at Article 8.4.

³¹⁹ *Id.* at Article 8.2.

³²⁰ Monitor’s Notes, *Renata Lyskovich Trial*, September 2020.

³²¹ *Id.*

such, Ms. Lyskovich's arrest was unjustified under Belarusian legislation on permissible justifications for administrative detention, in violation of Article 9(1) of the ICCPR.

Ms. Kazak's arrest on September 24 – during which she was grabbed off the street by three unidentified men and forced into an unmarked car – was likewise planned in advance and took place almost a month after the protest in which the police alleged she had participated.³²² Although no reasons for the arrest were given to Ms. Kazak at the time of her arrest, at trial the police officers testified that the purpose of her arrest was to conduct proceedings in relation to her alleged violation of Article 23.34 of the Code of Administrative Offenses (her alleged participation in a protest on August 30).³²³ However, as Ms. Kazak's lawyers established in their cross-examination of the officers, no attempt was made to summon Ms. Kazak to participate of her own accord before forcibly detaining her.³²⁴ as such, there was no indication that detention was necessary in order to ensure her participation in the investigation. Detention was likewise unnecessary to suppress ongoing illegal activities and there was no indication that Ms. Kazak was a flight risk or would attempt to interfere with evidence of her alleged participation in the protest: Ms. Kazak is a lawyer who does not have any previous criminal or administrative convictions carrying custodial penalties and who has a family and deep roots in Minsk.

Once Ms. Kazak arrived at the police station, the officers did not undertake any procedural steps with respect to her alleged violation of Article 23.34 and indeed she was eventually charged and tried under Article 23.4 for allegedly disobeying the orders of a police officer,³²⁵ suggesting that there was no evidence supporting the Article 23.34 charge in the first place (more on this below). Accordingly, Ms. Kazak's arrest was unlawful under domestic law on permissible justifications for administrative detention, contrary to Article 9(1) of the ICCPR.

Pretrial Detention

The defendants' pretrial detention was likewise unlawful. Mr. Zhuk and Ms. Novik were released from administrative detention after three and nine hours, respectively, once their Offense Protocols were drawn up. The 13 remaining defendants were transferred to the temporary detention center on Okrestina Street to await trial, where they were held for up to three days before commencement of their trials and

³²² Monitor's Notes, Lyudmila Kazak Trial, September 25, 2020.

³²³ Id. While the officers also alleged that they arrested Ms. Kazak for refusing their order to get in the car, an eyewitness testified that the men got out of an unmarked car, grabbed Ms. Kazak, and forced her into the car, corroborating Ms. Kazak's claim that no such order was ever made. The officers moreover contradicted this claim by testifying multiple times that the arrest was planned in advance on the basis of Article 23.34.

³²⁴ Id.

³²⁵ Id.

where they remained even during their hearings, attending via video link. As noted above, Belarussian law permits administrative detention for the following purposes: “suppression of illegal activities”; “drawing up a protocol on an administrative offense, if drawing it up at the place of detection (commission) of an administrative offense is not possible”; “identification of the person”; “ensuring participation in the consideration of a case on an administrative offense”; “suppression of concealment or destruction of evidence”; and “securing the execution of an administrative penalty in the form of administrative arrest or deportation.”³²⁶

In this regard, after the suspect is processed and the Offense Protocol is drawn up, continued detention is only appropriate in the event of risk of flight, interference with the evidence, or recurrence of crime. There was no indication, however, that any of the defendants presented a risk of flight, reoffending, or interference with the evidence. As such, their detention pending trial contravened domestic law.

Arbitrary Arrests and Detention

The detention of the defendants in these cases, which started from the moment they were arrested, was arbitrary.

As noted by the UN Human Rights Committee, “[a]n arrest or detention may be authorized by domestic law and nonetheless be arbitrary. The notion of ‘arbitrariness’ ... must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality.”³²⁷ Accordingly, the Human Rights Committee generally considers mass arrests, including during demonstrations, to be arbitrary.³²⁸

In the present cases, the arrests, which followed a similar pattern, were conducted indiscriminately, as deemed arbitrary by the UN Human Rights Committee. All of the defendants were arrested by officers who failed to provide any reasons for the arrests. Witnesses reported that the officers variously grabbed people at random off the street³²⁹ or cordoned people off to detain them en masse³³⁰ – at times arresting

³²⁶ Administrative Procedure Code, 2006, Article 8.2.

³²⁷ Human Rights Committee, General Comment No. 35, U.N. Doc. CCPR/C/GC/35, December 16, 2014, para. 12. See also Human Rights Committee, *Izmet Oselik et al. v. Turkey*, U.N. Doc. CCPR/C/125/D/2980/2017, May 28, 2019, para. 9.3.

³²⁸ Human Rights Committee, *Concluding observations of the Human Rights Committee: Canada*, U.N. Doc. CCPR/C/CAN/CO/5 (2005), April 20, 2006, para. 20; Human Rights Committee, *Concluding observations of the Human Rights Committee: Colombia*, U.N. Doc. CCPR/C/COL/CO/6, August 4, 2010, para. 20.

³²⁹ See Monitor’s Notes, *Siarhei Babrou Trial*, September 2020; Monitor’s Notes, *Aleh Sakovich Trial*, September 2020; Monitor’s Notes, *Iryna Kuzina Trial*, September 2020.

³³⁰ See Monitor’s Notes, *Alina Ulyashyna Trial*, September 2020; Monitor’s Notes, *Dmitry Petrov Trial*, September 2020; Monitor’s Notes, *Yuliya Novik Trial*, September 2020.

only the men and releasing the women³³¹ – before putting them into unmarked cars or police transport vehicles and bringing them to the Internal Affairs Departments of various districts of Minsk for processing.

At least seven of the defendants alleged they were not participating in the demonstrations but merely walking or biking nearby and were thus arrested accidentally.³³² Further, as noted above, the Offense Protocols and other case materials prepared by the police used similar or identical language, even where the defendants were arrested at different events, on different days, and by different officers.³³³ Such mass, indiscriminate arrests violate the prohibition of arbitrariness in Article 9(1) of the ICCPR.

The pretrial detention of the defendants after their Offense Protocols were drawn up further violated Article 9(1), which requires that: “remand in custody [be] reasonable in the circumstances. Remand in custody must further be necessary in all the circumstances, for example, to prevent flight, interference with evidence or the recurrence of crime.”³³⁴ If detention is not reasonable or necessary, it becomes arbitrary.³³⁵

In *Bakur v. Belarus*, for example, the UN Human Rights Committee found that Belarus had violated the author’s rights under Article 9. The author was apprehended at a public meeting of the Belarusian Popular Front political party, detained for six-and-a-half hours, and charged with “the administrative offence of participating in an unauthorized meeting.”³³⁶ The Committee noted that Belarus “had not explained why it was necessary to detain the author after he had been identified and after the preparation of an official record,” rendering the author’s time in custody arbitrary.³³⁷

The European Court of Human Rights has taken a similar approach. In *Korneyeva v. Russia*, for instance, the European Court found that the arrest and administrative

³³¹ See Monitor’s Notes, Pavel Zhuk Trial, September 2020.

³³² Monitor’s Notes, Siarhei Babrou Trial, September 2020; Monitor’s Notes, Aleh Sakovich Trial, September 2020; Monitor’s Notes, Iryna Kuzina Trial, September 2020; Monitor’s Notes, Maria Bandarenka Trial, September 2020; Monitor’s Notes, Anna Korshun Trial, September 2020; Monitor’s Notes, Maksim Bazuk Trial, September 2020; Monitor’s Notes, Ivan Yakhin Trial, October 2020.

³³³ On this point, defense counsel for Ms. Bandarenka stated at trial while questioning the police officer who allegedly witnessed the defendant violating the law: “I got the impression that the report was printed in advance and Bandarenka’s name was simply inserted into it. The story is presented as in other cases.” Monitor’s Notes, Maria Bandarenka Trial, September 2020.

³³⁴ Human Rights Committee, *Womah Mukong v. Cameroon*, U.N. Doc. CCPR/C/51/D/458/1991, August 10, 1994, para. 9.8. See also Human Rights Committee, *Van Alphen v. the Netherlands*, U.N. Doc. CCPR/C/39/D/305/1988, July 23, 1990, para. 5.8.

³³⁵ See Human Rights Committee, *Womah Mukong v. Cameroon*, U.N. Doc. CCPR/C/51/D/458/1991, August 10, 1994, para. 9.8; Human Rights Committee, *Toregozhina v. Kazakhstan*, U.N. Doc. CCPR/C/112/D/2137/2012, October 21, 2014, para. 7.2.

³³⁶ Human Rights Committee, *Bakur v. Belarus*, U.N. Doc. CCPR/C/114/D/1902/2009, July 15, 2015, paras. 2.1-2.2.

³³⁷ *Id.* at para. 7.2.

detention of a participant in an unauthorized protest violated her right to liberty because the government could provide no compelling reasons for why it was necessary to bring her to the police station instead of issuing the Offense Protocol on the spot,³³⁸ and, subsequently, could provide no compelling reasons for why it was necessary to detain her for 24 hours after the Protocol had been issued, considering that there was no demonstrated risk of flight, risk of reoffending, or risk of interference with the proceedings.³³⁹ In *Navalnyy v. Russia*, the Grand Chamber of the European Court likewise found an applicant’s administrative detention pending trial on two occasions – once for several hours and a second time overnight – to be unlawful and arbitrary because the government failed to provide “explicit reasons” (apart from the fact that the offense was punishable with an administrative sentence) for the necessity of extended custody following the issuance of a Protocol.³⁴⁰

As mentioned above, after their Offense Protocols were drawn up 13 of the defendants were transferred to the temporary detention center on Okrestina Street to await trial, where they were held for up to three days before the commencement of their trials and where they remained even during their hearings, attending via video link. As in *Bakur, Korneyeva, and Navalnyy*, none of the available materials contain any explanation for why continued detention was necessary after the defendants had been identified and their Offense Protocols compiled. Correspondingly, there is no indication that any of the defendants presented a risk of flight, reoffending, or interference with the evidence. The detention of 13 of the defendants pending trial was therefore not reasonable or necessary and, as a result, was arbitrary.³⁴¹

The UN Human Rights Committee has further stated that “[a]rrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant is arbitrary,” including freedom of expression, freedom of peaceful assembly, and freedom of association.³⁴² As discussed in more detail below, the defendants in

³³⁸ European Court of Human Rights, *Korneyeva v. Russia*, App. No. 72051/17, October 8, 2019, paras. 34, 36. The Court rejected the government’s “reference to the rally venue being ‘full of other participants’ or to the applicant’s active conduct during the rally.” See also European Court of Human Rights (Grand Chamber), *Navalnyy v. Russia*, App. Nos. 29580/12, 36847/12, 11252/13, 12317/13 and 43746/14, November 15, 2018, paras. 71-72.

³³⁹ *Id.* at paras. 35-36.

³⁴⁰ European Court of Human Rights (Grand Chamber), *Navalnyy v. Russia*, App. Nos. 29580/12, 36847/12, 11252/13, 12317/13 and 43746/14, November 15, 2018, paras. 71-72. See also European Court of Human Rights, *Frumkin v. Russia*, App. No. 74568/12, January 5, 2016, paras. 147-152 (finding the applicant’s 36-hour administrative detention pending trial arbitrary and unjustified due to insufficient reasoning as to why he could not be released).

³⁴¹ It should further be noted that in addition to violating Article 9(1)’s prohibition of arbitrariness, this unjustified pre-trial detention violated Article 9(3) of the ICCPR—which instructs that “[i]t shall not be the general rule that persons awaiting [criminal] trial shall be detained in custody”—since, as discussed above, these administrative trials were criminal in nature. See Human Rights Committee, General Comment No. 35, U.N. Doc. CCPR/C/GC/35, December 16, 2014, paras. 31, 33, 38.

³⁴² Human Rights Committee, General Comment No. 35, U.N. Doc. CCPR/C/GC/35, December 16, 2014, para. 17. See also Human Rights Committee, *Bakur v. Belarus*, U.N. Doc. CCPR/C/114/D/1902/2009,

these cases were arrested for the exercise – whether real or perceived – of their rights to freedom of assembly and expression in relation to demonstrations, and in Ms. Kazak’s case, for her legal representation of an opposition leader. This constitutes further grounds to conclude that the arrests and detentions were arbitrary.

Right to be Informed of the Reasons for Arrest

Article 9(2) of the ICCPR requires that “[a]nyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest.”³⁴³

The UN Human Rights Committee has stated that an individual must be provided with this explanation “immediately upon arrest” barring exceptional circumstances, such as the need for an interpreter.³⁴⁴ In *M.T. v. Uzbekistan*, for example, the Committee found a violation of Article 9(2) where police officers failed to promptly inform a human rights activist of the reasons for her arrest, charging her the subsequent day with “offending an officer” and “refusing to follow police orders.”³⁴⁵

The Committee has further stated that notification of the reasons for arrest: “must include not only the general legal basis of the arrest, but also enough factual specifics to indicate the substance of the complaint, such as the wrongful act and the identity of an alleged victim. The ‘reasons’ concern the official basis for the arrest, not the subjective motivations of the arresting officer.”³⁴⁶

According to the defendants as well as witnesses in the present cases, the arresting officers did not provide any reasons for the arrests. Ms. Kazak, for example, reported that the officers arresting her merely stated “[y]ou are going to be detained” and “[y]ou know what’s going on” in response to her demands to know why they had grabbed her off the street.³⁴⁷ Other defendants’ questions were met with complete silence:

July 15, 2015, para. 7.2; Human Rights Committee, *Zhagiparov v. Kazakhstan*, U.N. Doc. CCPR/C/124/D/2441/2014, October 25, 2018, para. 13.6.

³⁴³ See also UN General Assembly, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, U.N. Doc. A/RES/43/173 (Annex), December 9, 1988, Principle 10. Available at https://www.euromed-justice.eu/en/system/files/20090707131444_ONUBodyofPrinciplesfortheProtectionofAllPersonsunderAnyFormofDetentionorImprisonment.pdf.

³⁴⁴ Human Rights Committee, General Comment No. 35, U.N. Doc. CCPR/C/GC/35, December 16, 2014, para. 27.

³⁴⁵ Human Rights Committee, *M.T. v. Uzbekistan*, U.N. Doc. CCPR/C/114/D/2234/2013, October 21, 2015, paras. 2.1, 7.7-7.8. See also UN Working Group on Arbitrary Detention, Opinion No. 3/2019 concerning Uon Chhin and Yeang Sothearin (Cambodia), U.N. Doc. A/HRC/WGAD/2019/3, April 24-May 3, 2019 session, para. 43 (finding a violation of Article 9(2) where the individuals in question “were arrested without an arrest warrant and without being informed of the reasons for their arrest”). Available at https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session84/A_HRC_WGAD_2019_3.pdf.

³⁴⁶ Human Rights Committee, General Comment No. 35, U.N. Doc. CCPR/C/GC/35, December 16, 2014, paras. 25-26.

³⁴⁷ Monitor’s Notes, Lyudmila Kazak Trial, September 25, 2020.

Defense attorney: Did you ask those who brought you to the minibus, who they were and why you were being detained, what was happening?

Ulyashyna: Yes, I asked who they were, because it was very scary. Initially, I did not see the faces, they took me from the back, pressed my face against the wall. I asked who was taking me away, why and where they were bringing me. I received no answer. I received answers to my questions in the minibus only upon arriving to the District Department of Internal Affairs. We were never told who those people were and why they had arrested us.³⁴⁸

There was no possible justification for delaying this notification.

Detention Conditions

Right to Humanity and Dignity Under Article 10

Article 10(1) of the ICCPR states that “[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.” Poor detention conditions can violate Article 10(1): small cells, lack of natural light, deprivation of sleep, deprivation of food/water, and limitations on bathroom access.³⁴⁹ In *Pavlyuchenkov v. Russia*, for example, the UN Human Rights Committee found a violation of Article 10(1) where “the detention facility did not have a functioning ventilation system, adequate food or proper hygiene,” while the author “remained inside his cell at all times, with no opportunity for outdoor exercise,” and “had to eat his meals and use the toilet in cramped conditions in one room.”³⁵⁰

It appears that some of the defendants in the present cases were subjected to similar conditions in detention. Several reported that windows were only opened once every few days; inmates were rarely taken outside to walk; the cells were unhygienic and smelled of feces and urine; and inmates were unable to shower for days on end.³⁵¹ At his trial, defendant Andrei Sychyk highlighted such issues, stating, among other things, that detainees were sleeping on concrete without

³⁴⁸ Monitor’s Notes, Alina Ulyashyna Trial, September 2020. See also Monitor’s Notes, Dmitry Petrov Trial, September 2020 (when asked at what point he realized who had detained him and why, Mr. Petrov responded: “[p]robably, when they brought us to the police station, then I realized that the police had detained us. We were put into a minibus and taken in an unknown direction.”).

³⁴⁹ See Human Rights Committee, *Barkovsky v. Belarus*, U.N. Doc. CCPR/C/123/D/2247/2013, July 13, 2018, paras. 6.2-6.3; Human Rights Committee, *Xavier Evans v. Trinidad and Tobago*, U.N. Doc. CCPR/C/77/D/908/2000, May 5, 2003, paras. 2.3, 6.4; Human Rights Committee, *Sannikov v. Belarus*, U.N. Doc. CCPR/C/122/D/2212/2012, April 6, 2018, paras. 2.9, 6.2 (finding a violation of Article 7 and thereby finding it unnecessary to examine potential violations under Article 10).

³⁵⁰ Human Rights Committee, *Pavlyuchenkov v. Russia*, U.N. Doc. CCPR/C/105/D/1628/2007, July 20, 2012, para. 9.2.

³⁵¹ Additional Information from Monitors, November 9, 2020. Inhumane conditions were reported at both the temporary detention center on Okrestina street and the detention center in Zhodino.

mattresses, that there was no drinking water available in the cells, and that detainees were forced to defecate in the cells without cleaning materials.³⁵²

These accounts are consistent with documented conditions in detention in Belarus. Prisons are notoriously overcrowded, unsanitary, and lacking in proper ventilation, including temporary detention centers like the one on Okrestina Street in Minsk,³⁵³ where many of the defendants were detained. Human rights monitors have observed that “[c]onditions deteriorate significantly at the times of mass arrests [such as during presidential elections], when cells become extremely over-crowded.”³⁵⁴ Individuals arrested in the crackdown following the August 9 election reported being held in cells with so many inmates “that they could only stand” or “squat tightly pressed against each other” and likewise recounted being deprived of food, sleep, and water.³⁵⁵

The conditions described by defendants in the monitored cases, which fall in line with fact-finding conducted by other organizations and institutions, reflect a violation of Article 10(1).

COVID-19 Concerns Related to Detention

Cramped and unsanitary detention conditions are conducive to the spread of COVID-19. In this regard, human rights bodies are strongly counseling against detention during the ongoing pandemic.

The United Nations Office of the High Commissioner for Human Rights, for example, has offered guidance on managing detention in light of COVID-19, calling on states to “only deprive persons of their liberty as a last resort.”³⁵⁶ As stated by the OHCHR, “States should pay specific attention to the public health implications of overcrowding in places of detention and to the particular risks to detainees created

³⁵² Monitor’s Notes, Andrei Sychyk Trial, October 2020.

³⁵³ See FIDH and Human Rights Center Viasna, “International fact-finding mission: Conditions of Detention in the Republic of Belarus”, June 2008, pgs. 17-19. Available at <https://www.osce.org/files/f/documents/7/d/33759.pdf>; U.S. Department of State, “2019 Country Reports on Human Rights Practices: Belarus”, March 11, 2020, pg. 3. The State Department notes that “[o]bservers believed ... communicable diseases were widespread in prisons because of generally poor medical care.”

³⁵⁴ FIDH and Human Rights Center Viasna, “International fact-finding mission: Conditions of Detention in the Republic of Belarus”, June 2008, pg. 17.

³⁵⁵ FIDH, “Belarus - Human Rights NGOs call on torture and arbitrary arrests of peaceful protesters to stop”, August 24, 2020. Available at <https://www.fidh.org/en/region/europe-central-asia/belarus/belarus-human-rights-ngos-call-on-torture-and-arbitrary-arrests-of>. See also OSCE Office for Democratic Institutions and Human Rights, “OSCE Rapporteur’s Report under the Moscow Mechanism on Alleged Human Rights Violations Related to the Presidential Elections of 9 August 2020 in Belarus”, October 29, 2020, pg. 42; The Jerusalem Post, “Belarus starts to release prisoners as EU weighs sanctions”, August 13, 2020. Available at <https://www.jpost.com/breaking-news/belarus-starts-to-release-prisoners-as-eu-weighs-sanctions-638488>.

³⁵⁶ Office of the High Commissioner for Human Rights, “Emergency Measures and COVID-19: Guidance”, April 27, 2020, pg. 4. Available at https://www.ohchr.org/Documents/Events/EmergencyMeasures_COVID19.pdf.

by the COVID-19 emergency, in assessing appropriateness of detaining someone.”³⁵⁷ The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment has likewise asserted:

[a]s close personal contact encourages the spread of the virus, concerted efforts should be made by all relevant authorities to resort to alternatives to deprivation of liberty. Such an approach is imperative, in particular, in situations of overcrowding. Further, authorities should make greater use of alternatives to pre-trial detention.³⁵⁸

The overcrowding, lack of sanitation, and lack of ventilation described by defendants in the present cases create precisely the type of environment that “encourages the spread of the virus.” One of the defendants observed two detainees with respiratory symptoms in her cell; a doctor was not called for two days, after their symptoms had worsened, and the sick inmates were not isolated.³⁵⁹ Defendants additionally stated that they were not given masks during their pretrial detention at Okrestina Street and, while serving sentences at Zhodino after trial, received only one mask, which was not replaced for the remainder of their detention.³⁶⁰ This is consistent with other accounts of the authorities refusing to provide masks to those in detention facilities.³⁶¹ Unsurprisingly, there have been reports of positive COVID-19 cases among people tested after their release from detention.³⁶²

As discussed above, the pretrial detention of the defendants in the monitored cases was arbitrary in normal circumstances. Keeping them in cramped and unsanitary detention conditions during a pandemic for no discernible reason and without appropriate safety measures put them at unnecessary risk of contracting COVID-19. This treatment was lacking in humanity and dignity and thus violated Article 10(1).

Failure to Provide Medical Care

According to the UN Human Rights Committee, “unimpeded access to ... doctors” should be “guarantee[d] in practice ... immediately after arrest and during

³⁵⁷ Id.

³⁵⁸ Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, “Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic”, March 20, 2020, Principle 5. Available at <https://rm.coe.int/16809cfa4b>. See also UNODC, WHO, UNAIDS and OHCHR, “Joint Statement on COVID-19 in Prisons and Other Closed Settings”, May 13, 2020. Available at <https://www.who.int/news/item/13-05-2020-unodc-who-unaid-and-ohchr-joint-statement-on-covid-19-in-prisons-and-other-closed-settings>.

³⁵⁹ Additional Information from Monitors, November 9, 2020.

³⁶⁰ Id.

³⁶¹ FIDH, “Belarus - Human Rights NGOs call on torture and arbitrary arrests of peaceful protesters to stop”, August 24, 2020.

³⁶² Id.

detention.”³⁶³ In this regard, the Committee has found a violation of Article 10(1) where the State Party failed to provide “the medical care appropriate to the author’s condition, despite the author’s requests.”³⁶⁴

Ms. Kazak testified that both after being forced into the police vehicle and upon her arrival at the police station, she repeatedly asked the arresting officers for an ambulance because she “started having heart issues,” got a headache, and had high blood pressure.³⁶⁵ According to Ms. Kazak, no ambulance or medical assistance was ever provided.³⁶⁶ This reported failure of the authorities to provide medical care to Ms. Kazak in detention, which is consistent with broader documentation regarding inadequate medical care in detention facilities in Belarus,³⁶⁷ constitutes an additional violation of Article 10(1) of the ICCPR.

Right to Counsel

The defendants’ right to counsel was violated throughout their administrative detention.

Under Article 14(3)(b) and (d) of the ICCPR, everyone charged with a criminal offense has the right to the assistance of counsel of his or her choosing, including the right to communicate with counsel. The UN Human Rights Committee has explained that the right to counsel “is an important element of the guarantee of a fair trial and an application of the principle of equality of arms.”³⁶⁸ The right to counsel applies at all stages of criminal proceedings and is particularly vital during periods of

³⁶³ Human Rights Committee, Concluding observations of the Human Rights Committee: Thailand, U.N. Doc. CCPR/CO/84/THA, July 8, 2005, para. 15. See also UN General Assembly, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, U.N. Doc. A/RES/43/173 (Annex), December 9, 1988, Principle 24.

³⁶⁴ Human Rights Committee, *Engo v. Cameroon*, U.N. Doc. CCPR/C/96/D/1397/2005, August 17, 2009, para. 7.5. See also Human Rights Committee, *Umarova v. Uzbekistan*, U.N. Doc. CCPR/C/100/D/1449/2006, November 3, 2010, para. 8.7; Human Rights Committee, *Simpson v. Jamaica*, U.N. Doc. CCPR/C/73/D/695/1996, October 31, 2001, para. 7.2.

³⁶⁵ Monitor’s Notes, Lyudmila Kazak Trial, September 25, 2020.

³⁶⁶ *Id.*

³⁶⁷ See FIDH, “Belarus - Human Rights NGOs call on torture and arbitrary arrests of peaceful protesters to stop”, August 24, 2020.

³⁶⁸ Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, August 23, 2007, para. 32.

detention.³⁶⁹ In this regard, the Committee has stated that “all persons who are arrested must immediately have access to counsel.”³⁷⁰

In *Zhuk v. Belarus*, for example, the Committee found a violation of Article 14(3)(b) and (d) where a detainee had “only been allowed to see a lawyer for five minutes and ha[d] effectively been deprived of legal assistance during the initial phases of the investigative proceedings, and ... was forced to participate in investigative actions [including police interrogation] without legal advice, despite his requests for a lawyer.”³⁷¹

The European Court of Human Rights has reached similar conclusions, holding that access to an attorney at the investigation stage is critical. As stated by the Court, such access should be provided “from the moment [a suspect] is taken into police custody or pre-trial detention”³⁷² and, as a baseline whether or not the individual is in detention, “from the first interrogation of a suspect by the police, unless it is demonstrated in the light of the particular circumstances of each case that there are compelling reasons to restrict this right.”³⁷³ According to the Court, these principles

³⁶⁹ See UN Basic Principles on the Role of Lawyers, September 7, 1990, Principle 1. Available at <https://www.ohchr.org/en/professionalinterest/pages/roleoflawyers.aspx>; UN General Assembly, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, U.N. Doc. A/RES/43/173 (Annex), December 9, 1988, Principles 17(1), 18. See also Council of Europe, 21st General Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1 August 2010-31 July 2011), November 10, 2011, para. 20. Available at <https://rm.coe.int/1680696a88> (“The right of access to a lawyer should be enjoyed by everyone who is deprived of their liberty, no matter how ‘minor’ the offence of which they are suspected,” including “persons ... deprived of their liberty ... for so-called ‘administrative’ offences.”).

³⁷⁰ Human Rights Committee, Concluding observations of the Human Rights Committee: Georgia, U.N. Doc. CCPR/C/79/Add.75, May 5, 1997, para. 28. See also Human Rights Committee, General Comment No. 35, U.N. Doc. CCPR/C/GC/35, December 16, 2014, para. 35; European Court of Human Rights, *Dayanan v. Turkey*, App. No. 7377/03, October 13, 2009, paras. 30-32; European Court of Human Rights, *Brusco v. France*, App. No. 1466/07, October 14, 2010, para. 45.

³⁷¹ Human Rights Committee, *Zhuk v. Belarus*, U.N. Doc. CCPR/C/109/D/1910/2009, October 30, 2013, paras. 2.1, 8.5. See also Human Rights Committee, *Lyashkevich v. Uzbekistan*, U.N. Doc. CCPR/C/98/D/1552/2007, May 11, 2010, para. 9.4; Human Rights Committee, *Gridin v. Russian Federation*, U.N. Doc. CCPR/C/69/D/770/1997, July 18, 2000, para. 8.5; Human Rights Committee, *Saidov v. Tajikistan*, U.N. Doc. CCPR/C/122/D/2680/2015, April 4, 2018, para. 9.5; Human Rights Committee, *Carranza Alegre v. Peru*, U.N. Doc. CCPR/C/85/D/1126/2002, October 28, 2005, para. 7.5; Human Rights Committee, *Krasnova v. Kyrgyzstan*, U.N. Doc. CCPR/C/101/D/1402/2005, March 29, 2011, para. 8.6.

³⁷² European Court of Human Rights, *Dayanan v. Turkey*, App. No. 7377/03, October 13, 2009, paras. 30-32; European Court of Human Rights, *Brusco v. France*, App. No. 1466/07, October 14, 2010, para. 45. In *Dayanan v. Turkey* the Court elaborated that “the fairness of proceedings requires that an accused be able to obtain the whole range of services specifically associated with legal assistance. In this regard, counsel has to be able to secure without restriction the fundamental aspects of that person’s defence: discussion of the case, organisation of the defence, collection of evidence favourable to the accused, preparation for questioning, support of an accused in distress and checking of the conditions of detention.”

³⁷³ European Court of Human Rights (Grand Chamber), *Salduz v. Turkey*, App. No. 36391/02, November 27, 2008, paras. 54-55; European Court of Human Rights, *Pishchalnikov v. Russia*, App. No. 7025/04, September 24, 2009, para. 70. See also European Court of Human Rights, *Panovits v. Cyprus*, App. No. 4268/04, December 11, 2008, para. 66; European Court of Human Rights, *Murray v. United Kingdom*,

lie “at the core of the concept of a fair trial” and “contribute to the prevention of miscarriages of justice and the fulfilment of the aims of Article 6 [the European Convention provision on the right to a fair trial], notably equality of arms between the investigating or prosecuting authorities and the accused.”³⁷⁴

Under Article 14(3)(d) of the ICCPR, individuals facing criminal charges are further entitled to be informed of the right to legal assistance – including free legal aid if necessary – and such notification should occur immediately upon arrest.³⁷⁵ In *Saidova v. Tajikistan*, for instance, although the defendant was eventually assigned a lawyer towards the end of the investigation, the UN Human Rights Committee found a violation of Article 14(3)(d) since he “was not informed of his right to be represented by a lawyer upon arrest.”³⁷⁶ As numerous international principles and guidelines have elaborated, authorities must provide detainees with a clear “explanation of [their] rights and how to avail [themselves] of such rights,” including the right to counsel, while also supplying them “with reasonable facilities for exercising [their rights].”³⁷⁷ This explanation should ideally be given orally and in writing,³⁷⁸ and detainees should receive a copy to keep.³⁷⁹

None of the defendants in the present cases were provided access to counsel in detention, despite the fact that they were all interrogated. As a threshold matter, they were insufficiently notified of their right to counsel upon arrest, in violation of Article

App. No. 18731/91, February 8, 1996, paras. 65-66; European Court of Human Rights, *Mader v. Croatia*, App. No. 56185/07, June 21, 2011, paras. 150-158.

³⁷⁴ European Court of Human Rights, *Pishchalnikov v. Russia*, App. No. 7025/04, September 24, 2009, para. 68. See also European Court of Human Rights, *Dayanan v. Turkey*, App. No. 7377/03, October 13, 2009, para. 30.

³⁷⁵ See Human Rights Committee, Concluding Observations of the Human Rights Committee: Netherlands, U.N. Doc. CCPR/C/NLD/CO/4, August 25, 2009, para. 11.

³⁷⁶ Human Rights Committee, *Saidova v. Tajikistan*, U.N. Doc. CCPR/C/81/D/964/2001, August 20, 2004, para. 6.8. See also European Court of Human Rights, *Talat Tunç v. Turkey*, App. No. 32432/96, March 27, 2007, paras. 53-54, 59-62 (finding a violation of the right to legal aid even though the accused had not requested it since the authorities failed to actively ensure “that the applicant knew that he could request the assignment of a free lawyer”).

³⁷⁷ UN General Assembly, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, U.N. Doc. A/RES/43/173 (Annex), December 9, 1988, Principles 13, 17(1); UN General Assembly, United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, U.N. Doc. A/RES/67/187 (Annex), December 20, 2012, Principles 3, 8, Guidelines 2-3. Available at https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidelines_on_access_to_legal_aid.pdf; Council of Europe, *European Prison Rules*, 2006, Rules 23, 98, and Commentary on Rule 98. Available at <https://rm.coe.int/european-prison-rules-978-92-871-5982-3/16806ab9ae>; UN Basic Principles on the Role of Lawyers, September 7, 1990, Principle 5.

³⁷⁸ Council of Europe, 12th General Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1 January-31 December 2001), September 3, 2002, para. 44. Available at <https://rm.coe.int/1680696a76>. See also Human Rights Committee, General Comment No. 35, U.N. Doc. CCPR/C/GC/35, December 16, 2014, para. 58.

³⁷⁹ Subcommittee on Prevention of Torture, Report on the Visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to the Maldives, U.N. Doc. CAT/OP/MDV/1, February 26, 2009, para. 98. Available at https://www.un.org/ga/search/view_doc.asp?symbol=CAT/OP/MDV/1.

14(3)(d) of the ICCPR. Although some defendants were shown a document containing a notification of their rights and obligations, none of them were given copies to keep and it appears that they generally did not have enough time to review the document and understand their rights. Ms. Ulyashyna, for example, testified that after being given a copy of the document stating her rights and obligations, it was immediately taken away again and “[e]verything happened quickly and incomprehensibly,”³⁸⁰ while Mr. Petrov testified that although he signed a document indicating he had received an explanation of his rights, he was pressured to do so and in reality his rights were never explained to him by the police, including the right to counsel.³⁸¹ Another of the accused further reported that police told her and other detainees: “your rights are limited.”³⁸²

Additionally, it appears no effort was made to facilitate access to counsel for any of the accused and that in several cases the accused’s express requests for lawyers were ignored or denied, contravening both Article 14(3)(b) and Article 14(3)(d) of the ICCPR.³⁸³ Mr. Yakhin, for example, testified that he requested an attorney while in detention but was ignored.³⁸⁴ Ms. Kazak testified that in response to her request for a lawyer the police “laughed impudently in [her] face,” later snatching her phone away when she attempted to get in touch with counsel.³⁸⁵ As such, none of the defendants received legal assistance during their interrogations. In at least two cases this allowed the police to extract a confession:³⁸⁶ in one such case, the defendant, Siarhei Babrou, later tried to retract this confession at trial (while still unassisted by counsel).³⁸⁷

Finally, the defendants were prevented from communicating with counsel to prepare for trial during their detention. Ms. Kazak’s lawyers, for instance, were only allowed to meet with their client at the detention center on the day of her hearing after being made to wait three hours, and then only one at a time; they had been barred from visiting her the day before.³⁸⁸ The lawyers representing Mr. Sakovich, Ms. Kuzina, Ms. Lyskovich, Ms. Bandarenka, Ms. Korshun, Mr. Bazuk, Mr. Yakhin, and Mr. Sychyk, moreover, all petitioned to be allowed to communicate with their clients for a few minutes at the beginning of their hearings, indicating that they had not had the

³⁸⁰ Monitor’s Notes, Alina Ulyashyna Trial, September 2020.

³⁸¹ Monitor’s Notes, Dmitry Petrov Trial, September 2020.

³⁸² Additional Information from Monitors, November 9, 2020.

³⁸³ See Monitor’s Notes, Maksim Bazuk Trial, September 2020; Monitor’s Notes, Lyudmila Kazak Trial, September 25, 2020; Additional Information from Monitors, November 9, 2020.

³⁸⁴ Monitor’s Notes, Ivan Yakhin Trial, October 2020.

³⁸⁵ Monitor’s Notes, Lyudmila Kazak Trial, September 25, 2020.

³⁸⁶ Monitor’s Notes, Siarhei Babrou Trial, September 2020; Monitor’s Notes, Raman Pazniak Trial, October 2020.

³⁸⁷ Monitor’s Notes, Siarhei Babrou Trial, September 2020.

³⁸⁸ Monitor’s Notes, Lyudmila Kazak Trial, September 25, 2020.

opportunity to do so beforehand.³⁸⁹ These circumstances represent a violation of Article 14(3)(b) of the ICCPR.

C. VIOLATIONS AT TRIAL

Right to a Public Trial

Although the right to a public hearing was respected on the whole in the observed cases, certain actions attributable to the authorities undermined this guarantee.

Article 14(1) of the ICCPR entitles those facing criminal charges to a fair and public hearing. “The publicity of hearings ensures the transparency of proceedings and thus provides an important safeguard for the interest of the individual and of society at large.”³⁹⁰ As stated by the UN Human Rights Committee, “[c]ourts must make information regarding the time and venue of the oral hearings available to the public and provide for adequate facilities for the attendance of interested members of the public, within reasonable limits.”³⁹¹

In the present cases, although the hearings were open to the public and the defendants’ friends and families were generally able to attend, the courts were not sufficiently forthcoming about the hearing details, undermining interested parties’ ability to take part. Namely, the hearing times and locations in most of the monitored cases were posted at the courthouses on the day of the hearings, with the result that the defendants’ friends, family, and lawyers had to go to the courts in the morning and wait until the details were revealed, at times returning multiple days in a row to ensure they were able to attend the hearings.³⁹²

In particular, details for four of the hearings were posted less than ten minutes before the scheduled start;³⁹³ in Mr. Sakovich’s case, for instance, his second hearing started just three minutes after the schedule had been posted, which resulted in his lawyer, who had not otherwise been notified, arriving late.³⁹⁴ Similarly,

³⁸⁹ Monitor’s Notes, Aleh Sakovich Trial, September 2020; Monitor’s Notes, Iryna Kuzina Trial, September 2020; Monitor’s Notes, Renata Lyskovich Trial, September 2020; Monitor’s Notes, Maria Bandarenka Trial, September 2020; Monitor’s Notes, Anna Korshun Trial, September 2020; Monitor’s Notes, Maksim Bazuk Trial, September 2020; Monitor’s Notes, Ivan Yakhin Trial, October 2020; Monitor’s Notes, Andrei Sychyk Trial, October 2020.

³⁹⁰ Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, August 23, 2007, para. 28.

³⁹¹ *Id.* See also Human Rights Committee, *Van Meurs v. The Netherlands*, U.N. Doc. CCPR/C/39/D/215/1986, July 13, 1990, para. 6.2.

³⁹² See Monitor’s Notes, Maria Bandarenka Trial, September 2020; Monitor’s Notes, Anna Korshun Trial, September 2020.

³⁹³ The details for Mr. Babrou’s and Ms. Korshun’s hearings were posted ten minutes and five minutes, respectively, before the scheduled starts, while the details for Mr. Sakovich’s two hearings were posted just six and three minutes beforehand. Monitor’s Notes, Siarhei Babrou Trial, September 2020; Monitor’s Notes, Anna Korshun Trial, September 2020; Monitor’s Notes, Aleh Sakovich Trial, September 2020.

³⁹⁴ Monitor’s Notes, Aleh Sakovich Trial, September 2020.

and as discussed in more depth below, Ms. Lyskovich's lawyer was not notified of the schedule for her client's second hearing, and as such was not able to attend.³⁹⁵ It further appears that the details for Ms. Bandarenka's and Mr. Bazuk's hearings were never posted at the courthouse, with notification limited to vague oral announcements in the courthouse hallway by the court secretary.³⁹⁶ The schedule was likewise not posted for Ms. Kuzina's first hearing; after filing a petition, however, Ms. Kuzina's mother received a call notifying her of the start time about an hour before the hearing began.³⁹⁷ Moreover, while the details of Ms. Ulyashyna's and Mr. Petrov's hearings were initially posted about one and a half to two hours before they were supposed to begin, the schedules were then removed and attendees were advised they would have to wait until the courtroom became available, without further information.³⁹⁸

The authorities in Ms. Kazak's case were particularly obstructive with respect to notification. Since the offense was allegedly committed in the Central District of Minsk, the trial monitor initially went to the Central District Court to observe the trial but found no information about the hearing posted there.³⁹⁹ Only after Ms. Kazak's lawyers sent an email to every court in Minsk were they notified that the hearing would take place at the Oktyabrsky District Court 45 minutes later.⁴⁰⁰

In light of these circumstances, the right to a public hearing was inappropriately undermined in the observed cases.

Part of the guarantee of a public hearing is that "any judgement rendered in a criminal case or in a suit at law shall be made public."⁴⁰¹ In the case of Andrei Sychyk, the court obstructed public access to the reading of the verdict, in violation of the spirit of this guarantee. Namely, at the close of the final hearing, the judge told attendees that the judgement would be announced no earlier than 2:00 p.m. and asked everyone to leave the courtroom.⁴⁰² At 1:05 p.m., the court was opened for sentencing but defense counsel and all media representatives were absent.⁴⁰³

This obstruction of public attendance of the issuing of the verdict represented an additional breach of the right to a public hearing.

³⁹⁵ Monitor's Notes, Renata Lyskovich Trial, September 2020.

³⁹⁶ Monitor's Notes, Maria Bandarenka Trial, September 2020 (secretary announced the hearing would begin "soon" about an hour before it started); Monitor's Notes, Maksim Bazuk Trial, September 2020 (the secretary informed the defense attorney that the case would be heard after 1 p.m., and the hearing eventually started at 3:40 p.m.).

³⁹⁷ Monitor's Notes, Iryna Kuzina Trial, September 2020.

³⁹⁸ Monitor's Notes, Alina Ulyashyna Trial, September 2020; Monitor's Notes, Dmitry Petrov Trial, September 7, 2020.

³⁹⁹ Monitor's Notes, Lyudmila Kazak Trial, September 25, 2020.

⁴⁰⁰ Id.

⁴⁰¹ Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, August 23, 2007, para. 28.

⁴⁰² Monitor's Notes, Andrei Sychyk Trial, October 2020.

⁴⁰³ Id.

Right to Counsel

As discussed above, the right to be assisted by counsel of one's choosing and the right to communicate with counsel throughout the proceedings are key to a fair trial. These principles were violated during the administrative trials in the present cases.

Right to Legal Assistance

Under Article 14(3)(d) of the ICCPR, “[i]n the determination of any criminal charge against him, everyone shall be entitled ... [t]o be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right.” According to the UN Human Rights Committee, “[t]he availability or absence of legal assistance often determines whether or not a person can access the relevant proceedings or participate in them in a meaningful way.”⁴⁰⁴ In *Brown v. Jamaica*, for example, the Committee found a violation of Article 14(3)(d) where a court deposed two witnesses in a preliminary hearing although defense counsel was absent.⁴⁰⁵

In the present cases, 11 of the 15 defendants were represented by counsel – mostly contracted by their friends and family while they were in pretrial detention – during all or part of their trials. Mr. Zhuk, Mr. Babrou, Ms. Novik, and Mr. Pazniak, however, were not represented by defense counsel. As with the pretrial proceedings, it appears that the authorities failed to make a sufficient effort to ensure that the accused were informed of and understood their right to legal assistance or how to exercise it beyond quickly reading out a list of rights and obligations at the beginning of the hearings. This undermined the Article 14(3)(d) guarantee. Notably, none of the four defendants who lacked counsel put on any defense presentation, whether calling witnesses or introducing evidence. Ms. Novik and Mr. Pazniak pled guilty.

Meanwhile, Mr. Sakovich and Ms. Kuzina – whose trials were split over two days after their case files were sent back to the police to “eliminate deficiencies” – were only able to retain lawyers for the second day of hearings.⁴⁰⁶ In the case of Ms. Lyskovich (whose case file was also sent back to the police), although she was represented by counsel during the first hearing, her lawyer was not notified of the details for the second hearing and was thus not in attendance.⁴⁰⁷ After Ms. Lyskovich asked for her lawyer at the beginning of the hearing and expressed confusion at the

⁴⁰⁴ Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, August 23, 2007, para. 10.

⁴⁰⁵ Human Rights Committee, *Brown v. Jamaica*, U.N. Doc CCPR/C/65/D/775/1997, May 11, 1999, para. 6.6 (holding that the judge, who was “aware of the absence of the author's defence counsel, should not have proceeded with the deposition of the witnesses [at the preliminary hearing] without allowing the author an opportunity to ensure the presence of his counsel”). See also Human Rights Committee, *Hendricks v. Guyana*, U.N. Doc CCPR/C/76/D/838/1998, October 25, 2002, para. 6.4.

⁴⁰⁶ Monitor's Notes, Aleh Sakovich Trial, September 2020; Monitor's Notes, Iryna Kuzina Trial, September 2020.

⁴⁰⁷ Monitor's Notes, Renata Lyskovich Trial, September 2020.

judge's response that a different lawyer could be provided, the judge went ahead with the proceedings in the absence of defense counsel.⁴⁰⁸ At the hearing without defense counsel present, Ms. Lyskovich admitted her guilt in the hopes that she would receive a lighter punishment. She was swiftly convicted and sentenced to 11 days in prison. This violated not only Belarusian law,⁴⁰⁹ but also the right to counsel under the ICCPR.

Right to Communicate with Counsel

As discussed above, under Article 14(3)(b) of the ICCPR, a defendant is entitled to "have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing." This provision requires that defendants "be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications."⁴¹⁰ The UN Human Rights Committee has found a violation of Article 14(3)(b) where meetings between the accused and his or her lawyer took place in the presence of investigators.⁴¹¹ In this regard, consultations between detained individuals and their lawyers may be within sight but not hearing of law enforcement officials.⁴¹²

According to the UN Human Rights Committee, Article 14(3)(b) also requires that a defendant be afforded sufficient opportunity to meet with counsel and discuss the case: in *Rayos v. The Philippines*, for example, the Committee found a violation of Article 14(3)(b) where a defendant "was only granted a few moments each day during the trial to communicate with counsel."⁴¹³ Moreover, as stated by the European Court of Human Rights, defendants must be able to confer with counsel in real time during the proceedings.⁴¹⁴ Special care must be taken to ensure "that

⁴⁰⁸ *Id.*

⁴⁰⁹ Administrative Procedure Code, 2006, Article 11.4(2) ("If the defense attorney fails to appear, the consideration of the case is postponed, but no more than five days.").

⁴¹⁰ Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, August 23, 2007, para. 34.

⁴¹¹ Human Rights Committee, *Sirageva v. Uzbekistan*, U.N. Doc. CCPR/C/85/D/907/2000, November 1, 2005, paras. 3.3, 6.3; Human Rights Committee, *Khomidova v. Tajikistan*, U.N. Doc. CCPR/C/81/D/1117/2002, July 29, 2004, para. 6.4. See also European Court of Human Rights, *Adamkiewicz v. Poland*, App. No. 54729/00, March 2, 2010, para. 86.

⁴¹² UN General Assembly, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, U.N. Doc. A/RES/43/173 (Annex), December 9, 1988, Principle 18(3)-(4); UN Basic Principles on the Role of Lawyers, September 7, 1990, Principle 8.

⁴¹³ Human Rights Committee, *Rayos v. Philippines*, U.N. Doc. CCPR/C/81/D/1167/2003, July 27, 2004, para. 7.3.

⁴¹⁴ See European Court of Human Rights, *Yaroslav Belousov v. Russia*, App. Nos. 2653/13 & 60980/14, October 4, 2016, paras. 149-154; European Court of Human Rights, *Alekhina et al. vs. Russia*, App. No. 38004/12, July 17, 2018, paras. 169-173.

effective and confidential communication with a lawyer is provided for” where an accused participates in a trial through a video link.⁴¹⁵

With respect to the courtroom proceedings in the present cases, the authorities did not afford the defendants who had legal representation – all of whom were tried via video link from the detention center – sufficient opportunity to communicate with counsel. Indeed, the defendants were only able to speak to their lawyers during short breaks at the beginning of their hearings for between five and 30 minutes, which was also the first time most of the defendants had ever met their lawyers.⁴¹⁶ In at least four of the cases these short consultations were conducted in the presence of a court employee, in some instances per the judges’ instructions,⁴¹⁷ constituting a violation of Article 14(3)(b)’s guarantee of confidential communication.

Moreover, the monitors on which the defendants appeared in court via video link were located on the judges’ tables, and the authorities did not set up any channel for the accused to either provide counsel with real-time input in response to courtroom developments or to receive the benefit of real-time legal expertise and assistance. These circumstances parallel those condemned by the UN Human Rights Committee and the European Court of Human Rights as a violation of the right to communicate with counsel.

Right to Adequate Time and Facilities to Prepare a Defense

In addition to being denied adequate access to counsel, the defendants had inadequate facilities to prepare their defense before trial. The right of an individual facing criminal charges “[t]o have adequate time and facilities for the preparation of his defence” is protected by Article 14(3)(b) of the ICCPR, and, as confirmed by the UN Human Rights Committee, is “an important element of the guarantee of a fair trial and an important aspect of the principle of equality of arms.”⁴¹⁸

⁴¹⁵ European Court of Human Rights, *Sakhnovskiy v. Russia*, App. No. 21272/03, November 2, 2010, para. 98. The Court further noted that care must be taken to ensure “that the applicant is able to follow the proceedings and to be heard without technical impediments.”

⁴¹⁶ See Monitor’s Notes, *Aleh Sakovich Trial*, September 2020; Monitor’s Notes, *Iryna Kuzina Trial*, September 2020; Monitor’s Notes, *Renata Lyskovich Trial*, September 2020; Monitor’s Notes, *Maria Bandarenka Trial*, September 2020; Monitor’s Notes, *Anna Korshun Trial*, September 2020; Monitor’s Notes, *Maksim Bazuk Trial*, September 2020; Monitor’s Notes, *Lyudmila Kazak Trial*, September 25, 2020; Monitor’s Notes, *Ivan Yakhin Trial*, October 2020; Monitor’s Notes, *Andrei Sychyk Trial*, October 2020.

⁴¹⁷ Monitor’s Notes, *Renata Lyskovich Trial*, September 2020; Monitor’s Notes, *Maria Bandarenka Trial*, September 2020; Monitor’s Notes, *Anna Korshun Trial*, September 2020; Monitor’s Notes, *Maksim Bazuk Trial*, September 2020. This information with respect to the other cases was not provided.

⁴¹⁸ Human Rights Committee, *Kelly v. Jamaica*, U.N. Doc. CCPR/C/41/D/253/1987, April 8, 1991, para. 5.9. See also Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, August 23, 2007, para. 32; Human Rights Committee, *Sawyers and McLean v. Jamaica*, U.N. Doc. CCPR/C/41/D/226/1987, April 11, 1991, para. 13.6; Human Rights Committee, *McLawrence v. Jamaica*, U.N. Doc. CCPR/C/60/D/702/1996, July 18, 1997, para. 5.10.

The requirement of adequate facilities for the preparation of a defense “in turn, requires access to the documents necessary to prepare such arguments.”⁴¹⁹ In this regard, it is fundamental to the fairness of proceedings that “individuals cannot be condemned on the basis of evidence to which they, or those representing them, do not have full access.”⁴²⁰ The UN Human Rights Committee has further elaborated:

“Adequate facilities” must include access to documents and other evidence; this access must include all materials that the prosecution plans to offer in court against the accused or that are exculpatory. Exculpatory material should be understood as including not only material establishing innocence but also other evidence that could assist the defence (e.g. indications that a confession was not voluntary).⁴²¹

Under Article 14(3)(b), defendants must be given the opportunity to review key case materials. In *Esergepov v. Kazakhstan*, for example, the UN Human Rights Committee found a violation of the right to adequate facilities where “the author was provided only with a redacted version of the indictment” and was denied “access to the majority of the documents related to his case,” considering that, “even if the lawyer had full access to the prosecution evidence, the author himself lacked information permitting him to instruct his lawyer and to refute the criminal charges against him.”⁴²² In *Zhirnov v. Russia*, although the author had signed the case file, the Committee found a violation of Article 14(3)(b) where it was established that “he did not have the opportunity to review parts of the case file at all, including video evidence that he saw for the first time during the trial”; he “was not allowed to familiarize himself with certain case file materials in the presence of his attorney(s)”; and he “was not provided with the opportunity to make copies of the case file materials.”⁴²³

The jurisprudence of the European Court of Human Rights is also instructive regarding the right to adequate time and facilities to prepare a defense. The Court has held, for example, that particularly where a conviction is based solely on the

⁴¹⁹ Human Rights Committee, *Perterer v. Austria*, U.N. Doc. CCPR/C/81/D/1015/2001, August 20, 2004, para. 10.6.

⁴²⁰ Human Rights Committee, *Onoufriou v. Cyprus*, U.N. Doc. CCPR/C/100/D/1636/2007, November 1, 2010, para. 6.11; Human Rights Committee, *Concluding observations of the Human Rights Committee: Canada*, U.N. Doc. CCPR/C/CAN/CO/5, April 20, 2006, para. 13.

⁴²¹ Human Rights Committee, *General Comment No. 32*, U.N. Doc. CCPR/C/GC/32, August 23, 2007, para. 33. See also Human Rights Committee, *Khoroshenko v. Russian Federation*, U.N. Doc. CCPR/C/101/D/1304/2004, April 29, 2011, para. 9.7 (where the author “did not receive copy of the trial’s records immediately after the first instance verdict was issued, that despite numerous requests, he was not given some documents, he considered relevant for his defence, and that he was even limited in the amount of paper he was given to prepare his appeal.”).

⁴²² Human Rights Committee, *Esergepov v. Kazakhstan*, U.N. Doc. CCPR/C/116/D/2129/2012, March 29, 2016, para. 11.4.

⁴²³ Human Rights Committee, *Zhirnov v. Russian Federation*, U.N. Doc. CCPR/C/109/D/1795/2008, October 28, 2013, paras. 10.2-10.4.

material in the case file, denying an accused access to that case file and the ability to make copies thereof undermines the right to prepare a defense.⁴²⁴ In *Galstyan v. Armenia*, moreover, the Court found a violation of the right to adequate facilities for the preparation of a defense in a case involving administrative proceedings where the applicant had signed the case file while at the police station. As stated by the Court, the right to adequate facilities includes "the opportunity [for an accused] to acquaint himself for the purposes of preparing his defence with the results of investigations carried out throughout the proceedings."⁴²⁵ According to the Court:

[N]othing in law or in the materials of the applicant's administrative case suggests that the applicant's signing of the record pursued any other purpose than confirming the fact of him having been familiarised with it and made aware of his rights and the charge against him. ... The Court notes that the record of an administrative offence, which contained the charge and was the main evidence against the applicant, does not indicate precisely at what time he was presented with this document and how much time he was given to review it. Nor can this be established in respect of the police report and other materials prepared by the police. The parties disagreed as regards the exact length of the pre-trial period but, in any event, it is evident that this period was not longer than a few hours. The Court further notes that during this time the applicant was either in transit to the court or was being kept in the police station without any contact with the outside world. Furthermore, during this short stay at the police station, the applicant was subjected to a number of investigative activities, including questioning and a search. Even if it is accepted that the applicant's case was not a complex one, the Court doubts that the circumstances in which the applicant's trial was conducted – from the moment of his arrest up until his conviction – were such as to enable him to familiarise himself properly with and to assess adequately the charge and evidence against him, and to develop a viable legal strategy for his defence.⁴²⁶

In the present cases, defendants' rights to adequate time and facilities were violated in several ways, which are discussed below.

Defendants' Access to Case Materials

⁴²⁴ European Court of Human Rights, *Foucher v. France*, App. No. 22209/93, March 18, 1997, paras. 31-38. See also European Court of Human Rights, *Öcalan v. Turkey*, App. No. 46221/99, May 12, 2005, paras. 147-148.

⁴²⁵ European Court of Human Rights, *Galstyan v. Armenia*, App. No. 26986/03, November 15, 2007, para. 84.

⁴²⁶ *Id.* at paras. 86-87.

Although the defendants in the present cases generally signed their Offense Protocols, it does not appear – as in *Galstyan v. Armenia* – that there was an opportunity for substantive review. Since the accused were not given copies of the Protocols or other materials (excepting one case, discussed below), the only opportunity they had to review the materials was while they were “being kept in the police station without any contact with the outside world” and during which time they were “subjected to a number of investigative activities, including questioning.”⁴²⁷ Several defendants further testified that they had not been able to review the materials at all and/or had been pressured into signing that they were familiarized with the materials.⁴²⁸ In this regard, Ms. Ulyashyna testified that she felt psychological pressure to sign the documents despite not having truly reviewed them, stating:

I didn't have time enough to fully familiarize myself with [the Protocols]. ... Everything happened quickly and incomprehensibly. At night, everyone was tired, no one was attentive enough to do something, we were given protocols to familiarize ourselves with, in that state we signed them. I was under the influence of fatigue, a lot of time spent in the District Department of Internal Affairs.⁴²⁹

The one defendant who appeared to have obtained access to his case file prior to trial was Pavel Zhuk, who was released after his arrest and who was able to go to the courthouse to make an application for familiarization with the documents two days before his hearing.⁴³⁰ Such an opportunity was not available to the 13 defendants detained pending trial.

Moreover, in two of the monitored cases where defendants were detained, the accused were entirely unrepresented at trial⁴³¹ and in three other cases, the defendants were only represented at one of two hearings:⁴³² given that they had no legal assistance, their direct access to and opportunity to review the case file was all the more essential. In the remaining eight cases the defendants were represented by counsel and it appears that their lawyers were generally provided an opportunity to review the case file – albeit often for short chunks of time at the top of or in the

⁴²⁷ Id. at para. 87.

⁴²⁸ See Monitor's Notes, Alina Ulyashyna Trial, September 2020; Monitor's Notes, Dmitry Petrov Trial, September 2020; Monitor's Notes, Lyudmila Kazak Trial, September 25, 2020.

⁴²⁹ Monitor's Notes, Alina Ulyashyna Trial, September 2020. See also Monitor's Notes, Dmitry Petrov Trial, September 2020.

⁴³⁰ Monitor's Notes, Pavel Zhuk Trial, September 2020.

⁴³¹ Monitor's Notes, Raman Pazniak Trial, October 2020; Monitor's Notes, Siarhei Babrou Trial, September 2020.

⁴³² Monitor's Notes, Renata Lyskovich Trial, September 2020; Monitor's Notes, Aleh Sakovich Trial, September 2020; Monitor's Notes, Iryna Kuzina Trial, September 2020.

middle of hearings.⁴³³ Although lawyers had access to relevant documents, the defendants' inability to effectively review the materials before trial meant that they were unable to instruct their lawyers as to how to refute the charges and what strategies to pursue.⁴³⁴

Notably, in the case of Dmitry Petrov, who testified that he was pressured into signing case file materials, the court denied defense counsel's petition for the accused to be given the opportunity to familiarize himself with the case file, stating that "according to the materials of the case, there are signatures of the person certifying the fact of receiving the records on administrative offenses personally by the person in respect of whom the administrative process is being conducted, and therefore the court does not see the grounds for re-serving copies of the protocols on the administrative offense."⁴³⁵ In response to a similar petition in the case of Lyudmila Kazak, who testified that she had not been able to review the case file at all, the judge stated: "the available handwritten notes ... [indicate that] both the defense attorneys and Kazak are familiar with the materials, the petition is rejected in this regard."⁴³⁶

The above circumstances reflect a violation of the right to adequate facilities. Considering that in convicting the defendants the courts relied entirely on the case materials – particularly the Offense Protocols and written police statements – and trial testimony given by the police about these materials, the violation was especially egregious.

Denial of Requests to Obtain Evidence

Apart from the issue of access to case files, defendants in some of the monitored cases were denied the opportunity to obtain exculpatory evidence (i.e., evidence that could assist in proving their innocence), in violation of Article 14(3)(b). Dmitry Petrov, for example, was charged under Article 23.4 with disobeying the lawful demands of a police officer to cease participation in a protest.⁴³⁷ He stated that he never heard police officers make any such demands and that they instead immediately started detaining people.⁴³⁸ Mr. Petrov further stated that he noticed officers filming him during his arrest:⁴³⁹ the filming of arrests by police officers is reportedly common

⁴³³ While the time provided was short, the lawyers generally did not make requests for adjournment, as required by international law in order to find a violation of the right to adequate time to prepare a defense.

⁴³⁴ Of these defendants, Ms. Ulyashyna was eventually granted access to the Offense Protocols in the middle of her hearing. See Monitor's Notes, Alina Ulyashyna Trial, September 2020. Inexplicably, the same judge denied the same request by Mr. Petrov during his trial, as described below, as did the judge in Ms. Kazak's case. The other defendants did not appear to request access during their trials.

⁴³⁵ Monitor's Notes, Dmitry Petrov Trial, September 2020.

⁴³⁶ Monitor's Notes, Lyudmila Kazak Trial, September 25, 2020.

⁴³⁷ Monitor's Notes, Dmitry Petrov Trial, September 2020.

⁴³⁸ Id.

⁴³⁹ Id.

practice.⁴⁴⁰ Mr. Petrov's counsel therefore requested police video footage to prove that Mr. Petrov did not disobey any orders given by his arresting officers.⁴⁴¹ The judge denied this request, stating: "since there is no reliable data indicating that a video recording was made that captured the essence of the offenses imputed to the person, the court refuses to satisfy the petition."⁴⁴²

The court likewise unjustifiably denied defense petitions to obtain exculpatory evidence in the case of Ivan Yakhin. Mr. Yakhin, who was charged under Article 23.34, claimed that he never participated in a protest and instead was simply walking alone on the sidewalk in the vicinity of a protest while speaking on the phone.⁴⁴³ Defense counsel asked that the court subpoena the company operating a video camera in the area to obtain surveillance footage and subpoena the telephone company to obtain Mr. Yakhin's cell phone records (of his phone conversation at the time of his arrest), which Mr. Yakhin said would corroborate his account.⁴⁴⁴ The court refused, denying "the petition to demand the video recording, since it is not specific, or to demand information about telephone connections, since a telephone conversation is not proper evidence for the case under consideration."⁴⁴⁵ Again, defendants have the right to access evidence that might assist them in establishing their innocence. There is no reason that a request for Mr. Yakhin's cellphone records would constitute "[im]proper evidence" in light of its relevance to the merits of the case. As such, the court's denial of Mr. Yakhin's request to access exculpatory evidence violated his right to adequate facilities to prepare a defense. The court's characterization of Mr. Yakhin's request for video recordings as insufficiently specific is discussed above and below.

Right to Adequate Time

As noted above, Article 14(3)(b) protects not only the right to adequate facilities but also the right to adequate time to prepare a defense. What constitutes "'adequate time' depends on the circumstances of each case,"⁴⁴⁶ taking into account factors such as the amount of time provided to review materials, how close to the trial such access is provided, the complexity of the case, the severity of the charges, and the amount of information and evidence in the case file.⁴⁴⁷ As stated by the UN Human

⁴⁴⁰ Id.

⁴⁴¹ Id.

⁴⁴² Id.

⁴⁴³ Monitor's Notes, Ivan Yakhin Trial, October 2020.

⁴⁴⁴ Id.

⁴⁴⁵ Id.

⁴⁴⁶ Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, August 23, 2007, para. 32.

⁴⁴⁷ See Human Rights Committee, *Yakubova v. Uzbekistan*, U.N. Doc. CCPR/C/122/D/2577/2015, April 6, 2018, para. 9.5 (the accused's chosen counsel "was given 11.5 hours to have access to the [case] documents, which were provided less than a week before the trial took place"); Human Rights Committee, *Zhirnov v. Russian Federation*, U.N. Doc. CCPR/C/109/D/1795/2008, October 28, 2013,

Rights Committee, courts are obligated to grant reasonable requests for adjournment.⁴⁴⁸

In the case of Ivan Yakhin, the court's refusal to grant such a request for adjournment severely impacted defense counsel's ability to defend her client. As noted above, Mr. Yakhin claimed that he never participated in a protest and instead was walking alone on the sidewalk in the vicinity of a protest while speaking on the phone.⁴⁴⁹ A lawyer was assigned at the top of Mr. Yakhin's hearing.⁴⁵⁰ Counsel subsequently requested that relevant companies be subpoenaed to provide surveillance footage and telephone records. In response, the court asked which specific company was responsible for operating the closed-circuit video camera in question.⁴⁵¹ Having been assigned mid-hearing, counsel stated that she was not sure and needed additional time to gather this information.⁴⁵² The court denied both the request for additional time and the request to subpoena the companies for video footage and phone records, stating, among other things, that "the petition to demand the video recording" was insufficiently "specific."⁴⁵³ The reason the request regarding surveillance was insufficiently "specific," however, was because the lawyer had insufficient time to identify the exact building – and the owner of the building – where the cameras were located. Subsequently, the court convicted Mr. Yakhin that very same day and sentenced him to 14 days in jail.⁴⁵⁴

Given that the court denied counsel's reasonable request for an adjournment to gather relevant evidence, Mr. Yakhin's right to adequate time to prepare his defense was violated.

Right to Call and Examine Witnesses

During the monitored trials, the defendants were variously prevented from calling witnesses and effectively cross-examining witnesses, in violation of their rights under Article 14(1) and (3)(e) of the ICCPR.

The principle of equality of arms protected by Article 14(1) of the ICCPR requires "that each side be given the opportunity to contest all the arguments and evidence

paras. 10.2-10.4 (the author "was mandated to review the entire case file, consisting of 19 volumes (over 4,000 pages), in 37 days, [and] did not manage to review all case materials"); Human Rights Committee, *Little v. Jamaica*, U.N. Doc. CCPR/C/43/D/283/1988, November 1, 1991, paras. 8.3-8.4 (the accused in a capital case had no more than 30 minutes prior to trial and 30 minutes during trial to consult with counsel).

⁴⁴⁸ Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, August 23, 2007, para. 32.

⁴⁴⁹ Monitor's Notes, Ivan Yakhin Trial, October 2020.

⁴⁵⁰ *Id.*

⁴⁵¹ *Id.*

⁴⁵² *Id.*

⁴⁵³ *Id.*

⁴⁵⁴ *Id.*

adduced by the other party.”⁴⁵⁵ The UN Human Rights Committee has found violations of Article 14(1) where courts have inexplicably denied requests to summon witnesses.⁴⁵⁶ As an application of the equality of arms principle, Article 14(3)(e) enshrines the right of defendants in criminal cases “to examine, or have examined, the witnesses against [them] and to obtain the attendance and examination of witnesses on [their] behalf under the same conditions as witnesses against [them].”

As stated by the UN Human Rights Committee, Article 14(3)(e) is “important for ensuring an effective defense by the accused and their counsel and thus guarantees the accused the same legal powers of compelling the attendance of witnesses and of examining or cross-examining any witnesses as are available to the prosecution.”⁴⁵⁷ Although defendants do not have an unlimited right to obtain the attendance of witnesses, they do have the “right to have witnesses admitted that are relevant for the defence, and to be given a proper opportunity to question and challenge witnesses against them at some stage of the proceedings.”⁴⁵⁸

In interpreting Article 14(3)(e), the Committee has found violations not only where courts have refused to call proposed defense witnesses without adequate justification,⁴⁵⁹ but also where courts have unjustifiably cut short defense cross-examination of prosecution witnesses,⁴⁶⁰ and where the prosecution has introduced out-of-court statements by key witnesses without making those witnesses available for cross-examination by the defense.⁴⁶¹ In this regard, accused cannot be convicted on the basis of evidence that has not been open to challenge.⁴⁶²

⁴⁵⁵ Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, August 23, 2007, para. 13.

⁴⁵⁶ See Human Rights Committee, *Evrezov et al. v. Belarus*, U.N. Doc. CCPR/C/112/D/1999/2010, November 25, 2014, para. 8.9; Human Rights Committee, *Khomidova v. Tajikistan*, U.N. Doc. CCPR/C/81/D/1117/2002, July 29, 2004, para. 6.5.

⁴⁵⁷ Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, August 23, 2007, para. 39.

⁴⁵⁸ *Id.*; Human Rights Committee, *Sirozhiddin Allaberdiyev v. Uzbekistan*, U.N. Doc. CCPR/C/119/D/2555/2015, March 21, 2017, para. 8.8.

⁴⁵⁹ See Human Rights Committee, *Sirozhiddin Allaberdiyev v. Uzbekistan*, U.N. Doc. CCPR/C/119/D/2555/2015, March 21, 2017, para. 8.9; Human Rights Committee, *Y.M. v. Russian Federation*, U.N. Doc. CCPR/C/116/D/2059/2011, May 13, 2016, para. 9.9; Human Rights Committee, *Dugin v. Russian Federation*, U.N. Doc. CCPR/C/81/D/815/1998, July 5, 2004, para. 9.3; Human Rights Committee, *Khomidova v. Tajikistan*, U.N. Doc. CCPR/C/81/D/1117/2002, July 29, 2004, para. 6.5; Human Rights Committee, *Larranaga v. The Philippines*, U.N. Doc. CCPR/C/87/D/1421/2005, July 24, 2006, para. 7.7.

⁴⁶⁰ Human Rights Committee, *Larranaga v. The Philippines*, U.N. Doc. CCPR/C/87/D/1421/2005, July 24, 2006, para. 7.7. See also European Court of Human Rights, *Pichugin v. Russia*, App. No. 38623/03, October 23, 2012, paras. 172, 210-212 (finding a violation of the right to call and examine witnesses where the presiding judge strictly limited and struck questions relating to the credibility of a key witness).

⁴⁶¹ See Human Rights Committee, *Y.M. v. Russian Federation*, U.N. Doc. CCPR/C/116/D/2059/2011, May 13, 2016, para. 9.9; Human Rights Committee, *Rouse v. Philippines*, U.N. Doc. CCPR/C/84/D/1089/2002, July 25, 2005, para. 7.5; Human Rights Committee, *Dugin v. Russian Federation*, U.N. Doc. CCPR/C/81/D/815/1998, July 5, 2004, para. 9.3.

⁴⁶² Human Rights Committee, *Moraël v. France*, U.N. Doc. CCPR/C/36/D/207/1986, July 28, 1989, para. 9.4. See also European Court of Human Rights, *Krčmář and Others v. the Czech Republic*, App. No. 35376/97, June 3, 2000, paras. 38-40, 45.

The European Court of Human Rights similarly treats the right to call and examine witnesses as an important element of the equality of arms principle,⁴⁶³ and has thus held that although the right is not absolute, the domestic authorities bear the burden of presenting a sufficient rationale for rejecting a witness request that is “not vexatious, and which is sufficiently reasoned, relevant to the subject matter of the accusation and could arguably have strengthened [the] position of the defense or even led to the defendant’s acquittal.”⁴⁶⁴

The Court has further emphasized that where the prosecution relies solely on the accounts of “police officers who had played an active role in the contested events,”⁴⁶⁵ the domestic court must “use every reasonable opportunity to verify their incriminating statements.”⁴⁶⁶ Thus, in *Butkevich v. Russia*, the Court found a fair trial violation because the defense was not permitted to cross-examine the applicant’s arresting officers, who had prepared pretrial reports as part of the investigation (the basis of the applicant’s conviction under the Code of Administrative Offenses).⁴⁶⁷

Turning to the present cases, the defendants were at various times prevented from exercising their right to call and examine witnesses.

First, despite relying heavily on the written statements of and reports compiled by police officers, courts denied defense requests to cross-examine police officer witnesses in several cases. In the cases of Ms. Ulyashyna and Mr. Petrov for example, the court refused counsel’s request to interrogate the officers who had prepared the investigation reports and who had provided statements regarding the accused’s alleged commission of the charged offenses: violation of Article 23.34’s proscription of participation in an unlawful protest and violation of Article 23.4’s proscription of ignoring an officer’s unlawful demands.⁴⁶⁸ Mr. Petrov’s counsel stated that it was important to question the officers because:

it is not clear how the demand [was expressed] to stop the unlawful acts. It is not clear how Dmitry did not agree with the demands of the law enforcement officers. And it is very

⁴⁶³ European Court of Human Rights, *Murtazaliyeva v. Russia*, App. No. 36658/05, December 18, 2018, para. 139.

⁴⁶⁴ European Court of Human Rights, *Kartvelishvili v. Georgia*, App. No. 17716/08, June 7, 2018, para. 61. See also European Court of Human Rights, *Polyakov v. Russia*, App. No. 77018/01, January 29, 2009, paras. 34-37.

⁴⁶⁵ European Court of Human Rights, *Navalnyy and Yashin v. Russia*, App. No. 76204/11, December 4, 2014, para. 83.

⁴⁶⁶ European Court of Human Rights, *Butkevich v. Russia*, App. No. 5865/07, February 13, 2018, para. 102. See also European Court of Human Rights, *Kasparov and Others v. Russia*, App. No. 21613/07, October 3, 2013, para. 66; European Court of Human Rights, *Navalnyy and Yashin v. Russia*, App. No. 76204/11, December 4, 2014, para. 83; European Court of Human Rights, *Frumkin v. Russia*, App. No. 74568/12, January 5, 2016, paras. 163-168.

⁴⁶⁷ European Court of Human Rights, *Butkevich v. Russia*, App. No. 5865/07, February 13, 2018, paras. 97-103.

⁴⁶⁸ Monitor’s Notes, *Alina Ulyashyna Trial*, September 2020; Monitor’s Notes, *Dmitry Petrov Trial*, September 2020.

interesting how the law enforcement officers identified themselves so that the person they detained knows and understands who is detaining him and that he does not comply with some allegedly legal requirements of law enforcement officers.⁴⁶⁹

Ms. Ulyashyna's counsel similarly noted that it was "necessary and expedient to interview" the officers "since the information contained in the documents does not correspond to reality."⁴⁷⁰ Nonetheless, in both cases the judges ruled that they "recognize[d] the reasons for the absence of the witnesses ... as hindering their attendance at the hearing," without further explanation.⁴⁷¹ In Ms. Ulyashyna's case the court additionally noted that "the case contains interrogation protocols and the corresponding reports, in connection with which there are no grounds for re-summoning the said witnesses," essentially stating that the fact that written statements had been introduced into evidence meant that there was no need for defense questioning.⁴⁷² These rulings clearly contravene the guarantee under Article 14(3)(e) that the defense be afforded the opportunity to cross-examine witnesses who have given out-of-court statements that they have yet to be able to challenge. Subsequently, Ms. Ulyashyna and Mr. Petrov were convicted entirely on the basis of the documents prepared by and statements given by the officers.⁴⁷³

In the case of Andrei Sychyk, who was charged with participation in an unauthorized protest, the Offense Protocol was supplemented by an interview with a police officer, whose name had been changed.⁴⁷⁴ The officer stated that Mr. Sychyk participated in an unauthorized mass protest and shouted slogans such as "Let my people go!"⁴⁷⁵ Although Mr. Sychyk requested that the officer testify, the court stated that this would not be possible because "he [was] participating in other events."⁴⁷⁶ The defense therefore was unable to question the officer on alleged discrepancies such as whether Mr. Sychyk shouted "Let my people go" as opposed to holding a sign stating as much.

Likewise, in Ms. Kazak's case, when defense counsel petitioned to question an officer who had drawn up certain documents in the case and who also potentially had information on why Ms. Kazak was arrested under Article 23.34 but never charged with this offense (indicating the spuriousness of the case against her), the court rejected the petition without further explanation.⁴⁷⁷ In the case of Ms. Korshun,

⁴⁶⁹ Monitor's Notes, Dmitry Petrov Trial, September 2020.

⁴⁷⁰ Monitor's Notes, Alina Ulyashyna Trial, September 2020.

⁴⁷¹ Id.; Monitor's Notes, Dmitry Petrov Trial, September 2020.

⁴⁷² Monitor's Notes, Alina Ulyashyna Trial, September 2020.

⁴⁷³ District Court of Minsk, Decision on Administrative Offense (Alina Ulyashyna Trial), September 2020; District Court of Minsk, Decision on Administrative Offense (Dmitry Petrov Trial), September 2020.

⁴⁷⁴ Monitor's Notes, Andrei Sychyk Trial, October 2020.

⁴⁷⁵ Id.

⁴⁷⁶ Id.

⁴⁷⁷ Monitor's Notes, Lyudmila Kazak Trial, September 25, 2020.

the court denied a request by Ms. Korshun's lawyer to examine police officers who prepared the case file because, according to the judge, the police officers themselves "rejected the request for questioning": this made it appear, as in many other cases, that the police, not the court, were controlling the development of the facts and the judicial process as a whole.⁴⁷⁸

The refusal of the courts to allow defendants the opportunity to challenge police officer statements while relying heavily on police officers' accounts in convicting the defendants constituted a severe violation of Article 14(3)(e).

Second, when police officers did testify, judges often cut off defense counsel attempts to ask about discrepancies in their accounts,⁴⁷⁹ in violation of Article 14(3)(e). For example, when counsel for Ms. Kuzina was cross-examining the police officer who allegedly witnessed Ms. Kuzina participating in a protest and being arrested, the judge struck questions about whether the officer saw the moment of detention, the distance between the officer and Ms. Kuzina, and why his testimony about the place of arrest differed from one hearing day to the next.⁴⁸⁰ Such inquiries were highly relevant to establishing not only the witness's credibility but also whether Ms. Kuzina's participation in a mass event could be proven.

In Mr. Yakhin's case, the judge prevented defense counsel and Mr. Yakhin from asking the testifying police officer similar key questions, such as how many police officers were in the crowd, what slogans Mr. Yakhin was allegedly shouting (the judge stated that this question had already been asked, but it had in fact been the judge who asked this question, not the defense), and whether the place Mr. Yakhin was arrested was close to a bus stop (the court stated that questions about the location of Mr. Yakhin's arrest had already been asked, but in fact no questions regarding the location of the bus stop had been asked).⁴⁸¹ As was true in Ms. Kuzina's case, these questions were important in probing the witness's credibility and potentially highlighting inconsistencies: indeed, Mr. Yakhin claimed that he had not participated in a protest and that the officer was falsifying his testimony.

Correspondingly, when Mr. Bazuk followed up on counsel's questioning with further inquiries into the inconsistencies in the arresting police officer's account of events, the judge interrupted him and, seemingly testifying on behalf of the officer, stated: "the witness currently does not reliably remember the events of the protest – he forgot the color of the bicycle, cannot accurately indicate the features of Bazuk's

⁴⁷⁸ Monitor's Notes, Anna Korshun Trial, September 2020.

⁴⁷⁹ See Monitor's Notes, Aleh Sakovich Trial, September 2020; Monitor's Notes, Iryna Kuzina Trial, September 2020; Monitor's Notes, Anna Korshun Trial, September 2020; Monitor's Notes, Lyudmila Kazak Trial, September 25, 2020.

⁴⁸⁰ Monitor's Notes, Iryna Kuzina Trial, September 2020.

⁴⁸¹ Monitor's Notes, Ivan Yakhin Trial, October 2020.

appearance. However, he confirms the testimony given by him during the interview on the day of the events.”⁴⁸²

This sort of interference with cross-examination impeded the defense’s ability to probe the credibility of witnesses.

Third, the police witnesses who gave testimony in the monitored cases appeared to receive special treatment, in violation of Article 14(3)(e) and the right to equality of arms. For instance, in all but three of the cases police officers testified via video link while defense witnesses were present in court (aside from two witnesses who were in detention at the time of their testimony).⁴⁸³ As Ms. Kazak’s defense counsel argued,⁴⁸⁴ there was thus no way for the defense to know whether the police witnesses were listening to each other’s testimony or to other parts of the proceedings prior to testifying. Such concerns did not appear to be merely hypothetical: for example, while the police witness in Ms. Kuzina’s trial initially testified that Ms. Kuzina was wearing a white hoodie during the events in question, at the second hearing he instead claimed Ms. Kuzina had been wearing a T-shirt and shorts after Ms. Kuzina stated as much during her own testimony a few minutes earlier.⁴⁸⁵

In at least five of the cases,⁴⁸⁶ moreover, the police witnesses were allowed to testify using false names and covering their faces – something not provided for by domestic procedural law and not sufficiently justified by the courts – depriving the defense of the ability to know whether the person testifying was truly the person who conducted the arrest and/or witnessed the alleged offense (concerns regarding the use of anonymous witnesses will be discussed in more depth below).

All of these circumstances reveal consistent violations of the right to call and examine witnesses and to contest the evidence against the defendants.

Use of Anonymous Witnesses

The anonymization of prosecution witnesses, although not prohibited, must be carefully managed by courts in order to avoid violation of defendants’ fair trial

⁴⁸² Monitor’s Notes, Maksim Bazuk Trial, September 2020.

⁴⁸³ It appears the police witnesses were present in court during the trials of Ms. Bandarenka, Ms. Korshun, and Mr. Bazuk. Mr. Sakovich and Ms. Kuzina testified as defense witnesses in each other’s cases while being held in administrative detention.

⁴⁸⁴ Monitor’s Notes, Lyudmila Kazak Trial, September 25, 2020.

⁴⁸⁵ Monitor’s Notes, Iryna Kuzina Trial, September 2020. This detail was important given that at the second hearing the officer claimed he recognized Ms. Kuzina during her arrest at least an hour after he allegedly saw her at the rally because of her clothes.

⁴⁸⁶ Monitor’s Notes, Maria Bandarenka Trial, September 2020; Monitor’s Notes, Anna Korshun Trial, September 2020; Monitor’s Notes, Maksim Bazuk Trial, September 2020; Monitor’s Notes, Lyudmila Kazak Trial, September 25, 2020; Monitor’s Notes, Ivan Yakhin Trial, October 2020.

rights.⁴⁸⁷ A general principle of the right to call and examine witnesses is that “a defendant should know the identity of his accusers so that he is in a position to challenge their probity and credibility and should be able to test the truthfulness and reliability of their evidence, by having them orally examined in his presence.”⁴⁸⁸ The European Court of Human Rights has held that a criminal conviction that depends entirely or in large part on the testimony of anonymous witnesses, particularly where the convicting court does not provide objective reasons for such anonymization or offer adequate counterbalancing safeguards, is likely to violate the defendant’s right to a fair trial.⁴⁸⁹

In *Vasilyev v. Russia*, for example, a Russian court had found the defendants guilty of terrorism for their alleged membership in Hizb-ut-Tahrir; much of the incriminating evidence regarding the accused’s association with the banned group stemmed from the testimony of two anonymous witnesses, who neither the defendants nor their attorneys were permitted to see or hear without distortion.⁴⁹⁰ The European Court noted that the defense’s ability to cross-examine these witnesses was undermined because the defense was given “virtually no details about the witnesses’ personality or background,” such that it was unable to “advance any reasons which the witness may have for lying and thereby question the credibility and reliability of their statements.”⁴⁹¹ The Court further commented that the convicting judgement was based in large part on the testimonies of the anonymous witnesses, and that there was “no indication in the judgment that the judge was alive to the need to approach the anonymous evidence with caution,” that the judge did not appropriately weight the testimonies given that they were from anonymous sources, and that the judge did not provide “detailed reasoning as to why he considered that evidence to be reliable, while having regard also to the other evidence available.”⁴⁹²

In light of these circumstances, the Court found that the defendants’ conviction largely on the basis of anonymous witness testimonies violated their right to a fair trial and their right to call and examine witnesses, citing “the absence of good

⁴⁸⁷ The European Court’s evaluation of the appropriateness of using anonymous witnesses centers on three factors. “[T]he Court must examine, firstly, whether there were good reasons to keep secret the identity of the anonymous witnesses Secondly, the Court must consider whether the evidence of those witnesses was the sole or decisive basis of the conviction. Thirdly, it must ascertain whether there were sufficient counterbalancing factors, including the existence of strong procedural safeguards, to permit a fair and proper assessment of the reliability of that evidence to take place.” European Court of Human Rights, *Vasilyev and others v. Russia*, App. No. 38891/08, September 22, 2020, para. 37.

⁴⁸⁸ See European Court of Human Rights, *Pichugin v. Russia*, App. No. 38623/03, October 23, 2012, para. 195.

⁴⁸⁹ Where sufficient objective reasons are determined to justify the anonymization of a witness, the trial court must still “subject the proceedings to the most searching scrutiny in order to be satisfied that there were sufficient counterbalancing factors, including the existence of strong procedural safeguards, to permit a fair and proper assessment of the reliability of that evidence to take place.” See European Court of Human Rights, *Vasilyev and others v. Russia*, App. No. 38891/08, September 22, 2020, para. 41.

⁴⁹⁰ *Id.* at para. 42.

⁴⁹¹ *Id.*

⁴⁹² *Id.*

reasons for granting anonymity to the witnesses,” “the importance of the evidence given by them,” and the trial court’s failure to provide counterbalancing measures such as strong procedural safeguards.⁴⁹³

Similar to the *Vasilyev* case, the consistent use of anonymous witnesses in the observed cases violated the accused’s right to call and examine witnesses. In the cases of Ms. Bandarenka, Mr. Bazuk, Ms. Korshun, Mr. Yakhin, and Ms. Kazak, the prosecution called as witnesses police officers whose faces were obscured and whose identities were kept secret. In none of these cases did the court offer a concrete explanation for granting anonymity. In the case of Ms. Kazak, for example, the court rejected the defense petition to lift the anonymity of the two police officer witnesses testifying against her, stating: “there are constant threats directed against the witnesses, their close relatives, [and] their family members.”⁴⁹⁴ When Ms. Kazak attempted to ask one of the police officers about the nature of the threats, the court cut her off.⁴⁹⁵ The anonymity of the officers undermined the defense’s ability to conduct cross-examination about the circumstances of the arrest and Ms. Kazak’s alleged disobedience of police orders: although the officers claimed that they had personally arrested Ms. Kazak, they were permitted to avoid questions about topics such as what names they had provided when they supposedly introduced themselves (Ms. Kazak claimed that the officers had not introduced themselves at all).⁴⁹⁶ Ms. Kazak thus expressed doubt that the witnesses were indeed the real arresting officers.⁴⁹⁷

In the cases of Ms. Bandarenka, Mr. Bazuk, and Ms. Korshun, the same false identity was used for the testifying police officer witness: “Viktar.” It was unclear if this was the same person or multiple individuals testifying under the same pseudonym. The court gave no explanation for why the witness’s identity was protected and the witness did not appear to be personally familiar with the case; at Mr. Bazuk’s trial, for instance, witness Viktar started off his testimony by reading from a sheet of paper, and, when asked whether he may have confused the defendant with someone else at the protest, he responded “anything is possible,” and that he “doubt[ed] even what happened in the morning”;⁴⁹⁸ at Ms. Bandarenka’s trial, witness Viktar struggled to recall details and stated that his memory had deteriorated since the afternoon of the protest (three days prior to the hearing);⁴⁹⁹ and at Ms. Korshun’s trial witness Viktar similarly stated that he could not recall details of the day, including what Ms. Korshun was wearing and whether she was carrying a poster.⁵⁰⁰ When Ms. Korshun’s counsel attempted to ask why the

⁴⁹³ Id. at para. 43 (finding a violation of Articles 6(1) and 6(3)(d)).

⁴⁹⁴ Monitor’s Notes, Lyudmila Kazak Trial, September 25, 2020.

⁴⁹⁵ Id.

⁴⁹⁶ Id.

⁴⁹⁷ Id.

⁴⁹⁸ Monitor’s Notes, Maksim Bazuk Trial, September 2020.

⁴⁹⁹ Monitor’s Notes, Maria Bandarenka Trial, September 2020.

⁵⁰⁰ Monitor’s Notes, Anna Korshun Trial, September 2020

witness's identity had been classified and if he had participated in other trials under the same pseudonym, the judge cut off the question.⁵⁰¹ The anonymity of the witnesses thus prevented the defense from "test[ing] the truthfulness and reliability of their evidence."

In addition to the lack of justification provided for anonymizing police officer witnesses' identities, there was no indication that the judges were "alive" to the need for caution in assessing the value of such testimony. As mentioned above, police officers were the only State witnesses in the cases observed and convictions were almost exclusively based on police reports and police officer testimony. In the cases of Mr. Yakhin, Mr. Bazuk, Ms. Kazak, Ms. Korshun, and Ms. Bandarenka, the courts automatically accepted the anonymous officers' testimony as credible while rejecting all other evidence available.

In light of "the absence of good reasons for granting anonymity to the witnesses," the fact that the defendants' convictions in these five cases were largely based on the testimony of anonymous witnesses, and the courts' failure to establish counterbalancing measures, the above circumstances reflect an additional violation of the right to call and examine witnesses.

Presumption of Innocence

The presumption of innocence is a cornerstone of the right to a fair trial. It requires that anyone accused of a crime be considered innocent until proven guilty in line with a prescribed procedure set forth by domestic law and in accordance with international law.⁵⁰² As stated by the United Nations Human Rights Committee, the presumption "imposes on the prosecution the burden of proving the charge, guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt, ensures that the accused has the benefit of doubt, and requires that persons accused of a criminal act must be treated in accordance with this principle."⁵⁰³ The Committee has thus found a violation of the presumption of innocence where the defendant was convicted even though "the charges and evidence ... left room for considerable doubt."⁵⁰⁴ According to the European Court of Human Rights, the presumption can also be violated where a judicial body rejects

⁵⁰¹ *Id.*

⁵⁰² ICCPR, Article 14(2) provides: "Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law." ECHR, Article 6(2) provides the same. See also Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, August 23, 2007, para. 30.

⁵⁰³ Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, August 23, 2007, para. 30. See also Human Rights Committee, *Saidov v. Tajikistan*, U.N. Doc. CCPR/C/122/D/2680/2015, September 20, 2018, para. 9.4.

⁵⁰⁴ Human Rights Committee, *Ashurov v. Tajikistan*, U.N. Doc. CCPR/C/89/D/1348/2005, March 20, 2007, para. 6.7.

relevant testimony from defense witness(es) in convicting a defendant, and fails to provide adequate justification for why such testimony lacked probative value.⁵⁰⁵

Namely, the presumption of innocence encompasses the *in dubio pro reo* principle, under which a court must resolve any remaining uncertainties at the conclusion of the presentation of evidence in the defendant's favor.⁵⁰⁶ In this regard, the case of *Navalnyy v. Russia* is particularly applicable to the present cases. In *Navalnyy*, domestic courts had "based their decisions [against Mr. Navalnyy] exclusively on the versions of events put forward by the police."⁵⁰⁷ With respect to this conduct, the Grand Chamber approvingly quoted the prior Chamber judgment as follows:

[by] dismissing all evidence in the defendant's favor without justification the domestic courts had placed an extreme and unattainable burden of proof on the applicant, contrary to the basic requirement that the prosecution has to prove its case and to one of the fundamental principles of criminal law, namely *in dubio pro reo*.⁵⁰⁸

As stated by the Court, the Russian authorities' inattention to defense arguments and evidence "resulted in judicial decisions which were not based on an acceptable assessment of the relevant facts" and thus violated the applicant's right to a fair trial.⁵⁰⁹

Lack of Evidence Proving the Commission of an Offense

The evidence in the monitored cases did not prove the guilt of any of the defendants under Articles 23.34(1) or 23.4 of the Code of Administrative Offenses.

Article 23.4

As noted above, an offense under Article 23.4 requires proof of "[d]isobedience to a lawful order or request of an official of a state body (organization) exercising their

⁵⁰⁵ European Court of Human Rights, *Melich and Beck v. Czech Republic*, App. No. 35450/04, July 24, 2008, paras. 52-55.

⁵⁰⁶ See European Court of Human Rights (Grand Chamber), *Navalnyy v. Russia*, App. Nos. 29580/12 & others, November 15, 2018, paras. 83-4 (quoting approvingly from relevant Chamber Judgment). See also European Court of Human Rights, *Ajdarić v. Croatia*, App. No. 20883/09, December 13, 2011, paras. 46-52.

⁵⁰⁷ *Id.* at para. 83 ("[T]he [domestic] courts in the six other sets of proceedings decided to base their judgments exclusively on the versions of events put forward by the police. They systematically failed to check the factual allegations made by the police, having refused the applicant's requests for additional evidence such as video recordings to be admitted, or for witnesses to be called, in the absence of any obstacles to doing so. Moreover, when the courts did examine witnesses other than the police officers, they automatically presumed bias on the part of all witnesses who had testified in the applicant's favor; on the contrary, the police officers were presumed to be parties with no vested interest. ... The Court considers that the six sets of administrative proceedings in this case were all flawed in a similar way; they resulted in judicial decisions which were not based on an acceptable assessment of the relevant facts.").

⁵⁰⁸ *Id.*

⁵⁰⁹ *Id.* at para. 84.

official powers by a person who is not subordinate to them in service.”⁵¹⁰ In order to convict an individual for this or any other administrative offense, the authorities must prove, *inter alia*, the occurrence of the alleged unlawful act (including the “time, place, method and other circumstances of committing [the] administrative offense”),⁵¹¹ and the individual’s guilt for the unlawful act, meaning “the mental attitude of a natural person to a wrongful act committed by him, expressed in the form of intent or negligence.”⁵¹²

Ms. Ulyashyna, Mr. Petrov, and Ms. Kazak were charged and convicted of disobeying police orders under Article 23.4 despite the fact that it was not proven that any police orders had been given. With respect to the trials of Ms. Ulyashyna and Mr. Petrov – during which no police officers testified – the testimony of the defendants and eyewitnesses as well as video evidence showed that the arresting officers failed to identify themselves as police, were not wearing uniforms, and started grabbing students without ever giving them an order to stop protesting, while Ms. Ulyashyna and Mr. Petrov offered no resistance to arrest.⁵¹³ In Ms. Kazak’s case, while two police officers testified that they asked Ms. Kazak multiple times to get into their vehicle,⁵¹⁴ an eyewitness stated that she saw the men get out of their car and then force Ms. Kazak into the vehicle,⁵¹⁵ corroborating Ms. Kazak’s account that the officers grabbed her without giving any orders and forced her into the car while she screamed for help, thinking she was being kidnapped.⁵¹⁶ Other details of the officers’ testimony were contradicted not only by the eyewitness but also by the case file itself, demonstrating that they were not credible witnesses.⁵¹⁷

Furthermore, even if it had been established that the police in these three cases gave the alleged orders, which it was not, the defendants were charged and convicted of “deliberately” disobeying police orders – committing the offense with intent.⁵¹⁸ Under the Code of Administrative Offenses, intent requires awareness of

⁵¹⁰ Code of Administrative Offenses, 2003, Article 23.34(1).

⁵¹¹ Administrative Procedure Code, 2006, Article 6.2.

⁵¹² Code of Administrative Offenses, 2003, Article 3.1. See also Administrative Procedure Code, 2006, Articles 2.7, 6.2.

⁵¹³ Monitor’s Notes, Alina Ulyashyna Trial, September 2020; Monitor’s Notes, Dmitry Petrov Trial, September 2020.

⁵¹⁴ Monitor’s Notes, Lyudmila Kazak Trial, September 25, 2020.

⁵¹⁵ *Id.*

⁵¹⁶ *Id.*

⁵¹⁷ *Id.* For example, while the officers testified there were only two of them conducting the arrest, one of whom drove, the eyewitness confirmed Ms. Kazak’s account that there were three men who arrested her, with two of them getting in the backseat on either side of her and the third driving. The officers also testified that Ms. Kazak never asked to exercise any of her rights, but the case file contained notations from Ms. Kazak indicating that she did in fact make such demands.

⁵¹⁸ Monitor’s Notes, Alina Ulyashyna Trial, September 2020; District Court of Minsk, Decision on Administrative Offense (Alina Ulyashyna Trial), September 2020; Monitor’s Notes, Dmitry Petrov Trial, September 2020; District Court of Minsk, Decision on Administrative Offense (Dmitry Petrov Trial), September 2020; Monitor’s Notes, Lyudmila Kazak Trial, September 25, 2020; Oktyabrsky District Court of Minsk (Judge Rudenko), Decision on Administrative Offense (Lyudmila Kazak Trial), September 25,

the unlawfulness of the act and foresight of its harmful consequences.⁵¹⁹ In light of the evidence discussed in the previous paragraph, this element was not only not established, but was patently refuted by the defense in each case. In particular, given that it appeared unclear that the people conducting the arrests were police or otherwise had authorization to give orders, it was not proven that the defendants were aware that disobeying any alleged orders would be unlawful. The evidence instead indicates the defendants thought they were being kidnapped by unidentified men. Ms. Ulyashyna, Mr. Petrov, and Ms. Kazak were thus convicted of Article 23.4 despite considerable doubts about their guilt, in violation of the presumption of innocence.

Article 23.34

An offense under Article 23.34(1) entails, in relevant part, the “[v]iolation of the established procedure for holding an assembly, rally, street march, demonstration, picketing, other mass events committed by a participant in such events, as well as public calls for organizing or holding [such an event] in violation of the established order.”⁵²⁰ As with Article 23.4 and other administrative offenses, conviction under Article 23.34(1) requires proof, *inter alia*, that an unlawful act occurred, including the “time, place, method and other circumstances of committing [the] administrative offense,”⁵²¹ and that the accused possessed the requisite mental state to establish guilt, whether intent or negligence.⁵²²

Turning to the present cases, there was typically no evidence presented that the mass events in question were in fact unauthorized by the Minsk City Executive Committee.⁵²³ As such, one of the key elements of Article 23.34(1) was never proven. Further, evidence regarding the “time, place, method and other circumstances” of the defendants’ alleged participation in the events was sorely lacking in detail, was contradictory, and was unsubstantiated, failing to prove the defendants’ guilt beyond reasonable doubt.

For instance, Mr. Sakovich and Ms. Kuzina consistently stated that between 7:15 and 7:30 p.m. on the day of their arrest they were walking towards the metro on

2020; Oktyabrsky District Court of Minsk (Judge Rudenko), Reasons for Decision on Administrative Offense (Lyudmila Kazak Trial), October 1, 2020. See also Code of Administrative Offenses, 2003, Article 3.1.

⁵¹⁹ See Code of Administrative Offenses, 2003, Article 3.2.

⁵²⁰ *Id.* at Article 23.34(1).

⁵²¹ Administrative Procedure Code, 2006, Article 6.2.

⁵²² Code of Administrative Offenses, 2003, Article 3.1. See also Administrative Procedure Code, 2006, Articles 2.7, 6.2.

⁵²³ Some of the judgments include a statement that no permission had been granted for the mass event. However, these judgments were issued immediately after the hearings, during which no effort was made to establish this fact, so it is unclear on what basis this claim was made in those judgments.

Independence Avenue when they were ambushed by men in balaclavas.⁵²⁴ This account was corroborated by eyewitness testimony and video footage.⁵²⁵ At the first hearing in their respective cases, the testifying police officers claimed that between 7 and 7:30 p.m. on the day in question they were posted at a mass event in Independence Square, where they saw the defendants shouting slogans.⁵²⁶ At the second hearing, however, the police officers radically changed their testimony without explanation (this will be discussed in further detail below), stating that the events actually occurred between 6 and 6:30 p.m. in Independence Square and the defendants were arrested later on Independence Avenue.⁵²⁷ The officer in Mr. Sakovich's case stated throughout his testimony on both days that he "could be wrong" about the timeline, as he "did not remember much": namely, he struggled to remember where Mr. Sakovich was detained, and could not provide any details about Mr. Sakovich's participation in the event beyond the fact that he was in a crowd of people.⁵²⁸ Despite the lack of evidence regarding the time and place of the alleged offense, and indeed Mr. Sakovich's presence at any rally, Mr. Sakovich was convicted of participating in an unauthorized event.⁵²⁹

Evidence regarding the defendants' alleged method of participation in the mass events was similarly inadequate. For example, allegations that Ms. Ulyashyna and Mr. Petrov had been clapping, shouting slogans, and impeding traffic while marching were confirmed only by the out-of-court statements of the law enforcement officials who allegedly conducted the arrests, while the defendants and eyewitnesses consistently and credibly refuted these circumstances.⁵³⁰ The officers who testified against Mr. Zhuk, Ms. Bandarenka, Ms. Korshun, and Mr. Bazuk stated that the information in the case file was correct but they "[could not] confirm anything concretely now" since they no longer remembered any of the details about the defendants' conduct at the time of arrest, including whether they were shouting or holding posters.⁵³¹

Moreover, while Ms. Bandarenka, Ms. Korshun, and Mr. Bazuk were specifically accused of violating Article 23.34 through picketing – which, according to the Law on Mass Events, is committed without movement⁵³² – the evidence against the

⁵²⁴ Monitor's Notes, Aleh Sakovich Trial, September 2020; Monitor's Notes, Iryna Kuzina Trial, September 2020. While the judge in Mr. Sakovich's case accused the defendant of inconsistency in his testimony regarding the timeline, his estimated timeline only varied by a few minutes throughout his testimony.

⁵²⁵ Id.

⁵²⁶ Id.

⁵²⁷ Id.

⁵²⁸ Monitor's Notes, Aleh Sakovich Trial, September 2020.

⁵²⁹ The judge in Ms. Kuzina's case once again sent the case file back to the police for revision due to deficiencies; the case had not been sent back to court at the time of publication.

⁵³⁰ Monitor's Notes, Alina Ulyashyna Trial, September 2020; Monitor's Notes, Dmitry Petrov Trial, September 2020.

⁵³¹ Monitor's Notes, Maria Bandarenka Trial, September 2020; Monitor's Notes, Anna Korshun Trial, September 2020; Monitor's Notes, Maksim Bazuk Trial, September 2020; Monitor's Notes, Pavel Zhuk Trial, September 2020.

⁵³² Law on Mass Events, 1997, Article 2.

defendants either made no mention of this element or merely asserted without support that they were motionless;⁵³³ in contrast, eyewitness testimony and/or video footage corroborated the defendants' accounts that they were walking or riding a bike at the time of the alleged offenses.⁵³⁴ Such flagrant gaps and inconsistencies in the evidence regarding key facts strongly suggest the police never witnessed the defendants committing any offenses.⁵³⁵ Indeed, when Mr. Bazuk's counsel asked whether the officer may have confused her client with someone else at the protest, he responded "anything is possible."⁵³⁶

With respect to the mental element required for conviction, in most cases the charge sheets and judgments failed to indicate any state of mind – whether intent or negligence – regarding the defendants' alleged unlawful participation in a mass event in violation of Article 23.34(1). Even where defendants were specifically charged with and convicted of "deliberately" violating the procedure for holding mass events, no evidence regarding awareness of the unlawfulness of the act and foresight of its harmful consequences was put forward.⁵³⁷ By contrast, the majority of defendants stated – and often provided supporting evidence – that they had lacked any intent.

As discussed above, Mr. Yakhin, Mr. Babrou, Mr. Sakovich, Ms. Kuzina, Ms. Bandarenka, Ms. Korshun, and Mr. Bazuk all argued they had been arrested accidentally and were not participating in any mass event – claims which were not convincingly refuted by the police evidence. Ms. Lyskovich, who admitted to posting information about an event, maintained that she "was not aware of the fact that the event was not authorized," as she was not involved in its organization and indeed did not know who the organizer was.⁵³⁸ While Ms. Ulyashyna admitted to participation in a spontaneous march, she testified that she "didn't know that the permission of the Minsk City Executive Committee was required," especially because she believed permission had been granted by his university, and had no intent to commit illegal acts.⁵³⁹ Mr. Petrov provided similar testimony.⁵⁴⁰

Assessment of Evidence by the Courts

⁵³³ Monitor's Notes, Maria Bandarenka Trial, September 2020; Monitor's Notes, Anna Korshun Trial, September 2020; Monitor's Notes, Maksim Bazuk Trial, September 2020.

⁵³⁴ Id.

⁵³⁵ Further supporting this conclusion is the fact that the officers simply referred back to their written reports and statements or at times read directly from documents while testifying, and were generally unable to answer questions regarding basic details like what the defendants were wearing or where they had allegedly been standing during the protests.

⁵³⁶ Monitor's Notes, Maksim Bazuk Trial, September 2020.

⁵³⁷ See Monitor's Notes, Aleh Sakovich Trial, September 2020.

⁵³⁸ Monitor's Notes, Renata Lyskovich Trial, September 2020.

⁵³⁹ Monitor's Notes, Alina Ulyashyna Trial, September 2020.

⁵⁴⁰ Monitor Notes, Dmitry Petrov Trial, September 2020.

The district courts that heard the monitored cases were obligated to conduct a careful assessment of the facts and evidence and, in accordance with the *in dubio pro reo* principle, to resolve any lingering uncertainties in the defendants' favor.⁵⁴¹ The courts' convicting verdicts plainly flouted these responsibilities.⁵⁴²

In particular, in finding the defendants guilty of Articles 23.34 and 23.4 of the Code of Administrative Offenses, the courts' "reasoning" consisted of briefly summarizing the defense evidence, police testimony, and case materials prepared by the police before concluding that the defendants' guilt was established, at times absent further explanation.⁵⁴³ The decisions merely endorsed the version of facts presented by the police – without adequately explaining why their accounts were given credence over those of the defendants and defense witnesses – by stating:

I recognize the explanations of the police officer as objective and reliable, since they are consistent, confirmed by the protocol on an administrative offense, which recorded the fact of its commission, [and by other materials on the case file]. This officer has no reason to discredit [the defendant] since they have not known each other until the moment of her arrest, they had no hostile relationship.⁵⁴⁴

The courts generally provided no clarification as to how they could possibly deem the testimony of the police witnesses "consistent" in light of the disparities identified above. While the judge in Mr. Sakovich's case acknowledged the existence of such discrepancies, she simply accepted the officer's explanations that he had policed a large number of mass events and detained many people during the relevant period.⁵⁴⁵ Even if true, this explains why the supposed eyewitness, per his own statements, "did not remember much" and "could be wrong" about the timeline,⁵⁴⁶ and as such only supports the conclusion that his testimony was unreliable.

⁵⁴¹ European Court of Human Rights (Grand Chamber), *Navalnyy v. Russia*, App. Nos. 29580/12 and others, November 15, 2018, para. 83 (quoting approvingly from relevant Chamber Judgment); European Court of Human Rights, *Ajdarić v. Croatia*, App. No. 20883/09, December 13, 2011, paras. 46-52.

⁵⁴² The ABA was able to obtain copies of the written judgments in nine of the monitored cases.

⁵⁴³ See District Court of Minsk, Decision on Administrative Offense (Maria Bandarenka Trial), September 2020. In at least one case, moreover, the written judgment made no reference to any evidence at all. See District Court of Minsk, Decision on Administrative Offense (Pavel Zhuk Trial), September 2020.

⁵⁴⁴ District Court of Minsk, Decision on Administrative Offense (Anna Korshun Trial), September 2020. The other judgments used almost exactly the same language: see District Court of Minsk, Decision on Administrative Offense (Aleh Sakovich Trial), September 2020; District Court of Minsk, Decision on Administrative Offense (Alina Ulyashyna Trial), September 2020 (referring to the officer's out-of-court statements only since he did not testify at trial); District Court of Minsk, Decision on Administrative Offense (Dmitry Petrov Trial), September 2020 (referring to the officer's out-of-court statements only since he did not testify at trial); Oktyabrsky District Court of Minsk (Judge Rudenko), Reasons for Decision on Administrative Offense (Lyudmila Kazak Trial), October 1, 2020; District Court of Minsk, Decision on Administrative Offense (Ivan Yakhin Trial), October 2020.

⁵⁴⁵ District Court of Minsk, Decision on Administrative Offense (Aleh Sakovich Trial), September 2020.

⁵⁴⁶ Monitor's Notes, Aleh Sakovich Trial, September 2020.

Also concerning is the verdicts' treatment of the defendants' consistent accounts disputing the allegations and the verdicts' dismissal of all testimony and evidence favorable to the defense. The judgment against Ms. Kazak, for instance, rejects the defense case in one sentence before summarily accepting the police testimony:

The court does not recognize the statement of L. S. Kazak that she did not commit the offense she is charged with as true; the court does not recognize the statement of the [eye]witness [for the defense] that L. S. Kazak did not show disobedience to an officer of the internal affairs bodies, either, based on the following. The court bases the decision on the statements of the [police officer] witnesses ..., which the court recognizes as reliable, and which are fully consistent with the investigated evidence in the case.⁵⁴⁷

Even where the verdicts provide reasons for dismissing defense evidence, such explanations are wholly unconvincing. The judge in Ms. Korshun's case, for example, determined that the defense eyewitnesses were "not objective and reliable" simply because "they are in family and friendly relations with A. Korshun,"⁵⁴⁸ while in Mr. Bazuk's case the judge rejected eyewitness testimony from a bystander with no relation to the defendant as unreliable because the witness only saw the defendant "fragmentarily,"⁵⁴⁹ while simultaneously accepting the evidence of a police officer who admitted he might have confused Mr. Bazuk for someone else.⁵⁵⁰ Video evidence proffered by Ms. Ulyashyna in her case was moreover dismissed because it "show[ed] only a short period of time which does not contain evidence rebutting the essence of the offense";⁵⁵¹ the court failed to explain how footage showing law enforcement in civilian clothes grabbing students off the street without identifying themselves as police or giving any orders could be irrelevant to the allegation that Ms. Ulyashyna deliberately disobeyed lawful police orders.

Preconceived Determination to Convict

⁵⁴⁷ Oktyabrsky District Court of Minsk (Judge Rudenko), Reasons for Decision on Administrative Offense (Lyudmila Kazak Trial), October 1, 2020. In reality the officers' testimony was not even consistent with the case file: while they testified that Ms. Kazak never asked to exercise any of her rights, the case file contained notations from Ms. Kazak indicating that she did in fact make such demands. See Monitor's Notes, Lyudmila Kazak Trial, September 25, 2020.

⁵⁴⁸ District Court of Minsk, Decision on Administrative Offense (Anna Korshun Trial), September 2020.

⁵⁴⁹ District Court of Minsk, Decision on Administrative Offense (Maksim Bazuk Trial), September 2020. See also District Court of Minsk, Decision on Administrative Offense (Dmitry Petrov Trial), September 2020; District Court of Minsk, Decision on Administrative Offense (Alina Ulyashyna Trial), September 2020.

⁵⁵⁰ District Court of Minsk, Decision on Administrative Offense (Maksim Bazuk Trial), September 2020; Monitor's Notes, Maksim Bazuk Trial, September 2020.

⁵⁵¹ District Court of Minsk, Decision on Administrative Offense (Alina Ulyashyna Trial), September 2020. See also District Court of Minsk, Decision on Administrative Offense (Dmitry Petrov Trial), September 2020; District Court of Minsk, Decision on Administrative Offense (Maksim Bazuk Trial), September 2020.

The circumstances of these cases indicate a preconceived determination to convict the defendants, in violation of the presumption of innocence. In particular, the convicting judgments followed the Offense Protocols almost, if not entirely, verbatim, and appeared to be variations of a common template.

For example, and as noted above, the judgments commonly stated: “I recognize the explanations of the police officer as objective and reliable, since they are consistent, confirmed by the protocol on an administrative offense, which recorded the fact of its commission ... This officer has no reason to discredit [the defendant] since they have not known each other until ... [the] arrest.”⁵⁵²

Similarly, where video evidence and eyewitness testimony were presented by the defense, such materials were commonly dismissed with the following language: “the video records only a short period of time which does not contain evidence rebutting the essence of the offense imputed to [the defendant]. [The witness] has also seen [the defendant] only fragmentarily.”⁵⁵³ Several judgments even used the wrong surname for the defendant in places, suggesting that they had been copied and pasted from other cases.⁵⁵⁴ This, coupled with the fact that the convictions were based on a dearth of proof, indicates that guilty verdicts were foregone conclusions.

Furthermore, and as noted above, after the trials against Mr. Sakovich and Ms. Kuzina had begun, the court decided to send the case files back to the police “in order to eliminate the deficiencies due to the presence of significant contradictions.”⁵⁵⁵ In particular, the time, place, and method of participation initially alleged by the Offense Protocols and testifying police officers contradicted official detention records and eyewitness accounts provided during the first hearing.⁵⁵⁶ In Ms. Kuzina’s case, at the end of the second hearing the judge once again decided to

⁵⁵² See District Court of Minsk, Decision on Administrative Offense (Anna Korshun Trial), September 2020; District Court of Minsk, Decision on Administrative Offense (Aleh Sakovich Trial), September 2020; District Court of Minsk, Decision on Administrative Offense (Alina Ulyashyna Trial), September 2020 (referring to the officer’s out-of-court statements only since he did not testify at trial); District Court of Minsk, Decision on Administrative Offense (Dmitry Petrov Trial), September 2020 (referring to the officer’s out-of-court statements only since he did not testify at trial); District Court of Minsk, Decision on Administrative Offense (Ivan Yakhin Trial), October 2020.

⁵⁵³ See District Court of Minsk, Decision on Administrative Offense (Maksim Bazuk Trial), September 2020. See also District Court of Minsk, Decision on Administrative Offense (Dmitry Petrov Trial), September 2020; District Court of Minsk, Decision on Administrative Offense (Alina Ulyashyna Trial), September 2020.

⁵⁵⁴ See District Court of Minsk, Decision on Administrative Offense (Maksim Bazuk Trial), September 2020 (referring to “M. Bazukevich”); District Court of Minsk, Decision on Administrative Offense (Dmitry Petrov Trial), September 2020 (referring to “A. Ulyashyna”).

⁵⁵⁵ Monitor’s Notes, Iryna Kuzina Trial, September 2020; Monitor’s Notes, Aleh Sakovich Trial, September 2020 (returning the case file “for revision and elimination of deficiencies”). Under Article 11.3 of the Administrative Procedure Code, a court is allowed to return an administrative case file to eliminate shortcomings in the form of “non-compliance with the requirements for the form or content of the protocol on an administrative offense or to the list of materials attached to it.” The article thus does not appear to cover the circumstances in these cases.

⁵⁵⁶ Monitor’s Notes, Aleh Sakovich Trial, September 2020; Monitor’s Notes, Iryna Kuzina Trial, September 2020.

return the case “to eliminate the deficiencies due to the presence of contradictions, as well as due to the need to carry out additional verification measures,” including accessing Ms. Kuzina’s phone records and information on her cell location and use of a car-sharing service, which Ms. Kuzina argued would show she was still at home during the time the offense was allegedly committed according to the second Protocol.⁵⁵⁷

The courts’ orders to return the case files to eliminate shortcomings reflect the State’s failure to meet its burden of proof with respect to key issues, demonstrating that the cases should have culminated in acquittals, in line with the presumption of innocence. That the State could not generate proof beyond a reasonable doubt on its first attempt did not mean that it should have been permitted another try at the defendants’ expense. The situation was even more egregious considering that the second Protocols did not merely add additional information supporting the allegations, but rather changed the allegations entirely after they were shown to be false, while the police offered completely new accounts of the “facts” to support the new allegations. Accordingly, the revision of the Offense Protocols revealed a preconceived determination to convict the defendants, in contravention of their right to the presumption of innocence.

In conclusion, the courts’ unquestioning acceptance of the police officers’ accounts despite obvious flaws, and wholesale dismissal of defense evidence constituted a stark violation of the defendants’ right to be presumed innocent. The courts were required to duly weigh all the evidence in each case and provide explicit reasoning for why different pieces possessed greater probative value than others, while explaining how the State had proven its case beyond a reasonable doubt, particularly in light of evidentiary gaps and discrepancies.⁵⁵⁸ As in *Navalnyy*, however, the courts’ treatment of the evidence in the present cases “placed an extreme and unattainable burden of proof” on the defendants,⁵⁵⁹ contrary to the presumption of innocence and the *in dubio pro reo* principle. The common language in the judgments and the decisions to return case files instead of acquitting the accused further indicated predetermined outcomes. The defendants’ rights under Article 14(2) of the ICCPR were thereby violated.

Judicial Impartiality

Article 14(1) of the ICCPR provides that “[a]ll persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him ...

⁵⁵⁷ Monitor’s Notes, Iryna Kuzina Trial, September 2020. At the time of publication, the case had not been sent back to court a third time.

⁵⁵⁸ See European Court of Human Rights, *Ajdarić v. Croatia*, App. No. 20883/09, December 13, 2011, paras. 46-52; European Court of Human Rights, *Melich and Beck v. Czech Republic*, App. No. 35450/04, July 24, 2008, paras. 52-55.

⁵⁵⁹ European Court of Human Rights (Grand Chamber), *Navalnyy v. Russia*, App. Nos. 29580/12 and others, November 15, 2018, para. 83.

everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.”⁵⁶⁰ The UN Human Rights Committee has stated that the competence, independence, and impartiality requirements represent “an absolute right that is not subject to any exception.”⁵⁶¹

The guarantee of judicial impartiality encompasses both a subjective dimension, meaning that judges must be free from preconceptions, prejudice, or personal bias that might influence their judgments, and that judges must refrain from taking actions that would unfairly advantage one party to the proceedings over another;⁵⁶² and an objective dimension, requiring that even in the absence of actual bias, a tribunal must appear to be impartial to a reasonable observer.⁵⁶³ In *Ashurov v. Tajikistan*, the UN Human Rights Committee found a violation of Article 14(1) where the court, as recounted by the complainant, “asked leading questions to prosecution witnesses [and] corrected and completed their answers,” “acted in an accusatory manner and effectively replaced the passive and unprepared prosecutor,” and “followed the indictment verbatim and rejected all key arguments and requests of the defence.”⁵⁶⁴

Notably, the European Court of Human Rights has determined that “the lack of a prosecuting party in the context of oral hearings resulting in the determination of administrative charges” objectively undermines judicial impartiality, since the judge or tribunal must assume roles that would normally be performed by the prosecution.⁵⁶⁵

The courts that heard the present cases violated both the objective and subjective guarantees against judicial bias.

With respect to the objective standard, in accordance with the Administrative Procedure Code the prosecutor’s office did not participate in any of the trials. The

⁵⁶⁰ See also UN Basic Principles on the Independence of the Judiciary, September 6, 1985. Available at <https://www.ohchr.org/en/professionalinterest/pages/independencejudiciary.aspx>.

⁵⁶¹ Human Rights Committee, General Comment No. 32, U.N.Doc. CCPR/C/GC/32, August 23, 2007, para. 19.

⁵⁶² *Id.* at para. 21. See also Human Rights Committee, *Ashurov v. Tajikistan*, U.N. Doc. CCPR/C/89/D/1348/2005, March 20, 2007, paras. 2.8, 6.6; Human Rights Committee, *Karttunen v. Finland*, U.N. Doc. CCPR/C/46/D/387/1989, November 5, 1992, para. 7.2.

⁵⁶³ Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, August 23, 2007, para. 21.

⁵⁶⁴ Human Rights Committee, *Ashurov v. Tajikistan*, U.N. Doc. CCPR/C/89/D/1348/2005, March 20, 2007, paras. 2.8, 6.6. See also Human Rights Committee, *Khomidova v. Tajikistan*, U.N. Doc. CCPR/C/81/D/1117/2002, July 29, 2004, paras. 2.8, 6.5 (finding a violation of the right to independence and impartiality where the only incriminating evidence was given by unreliable witnesses influenced by police and the judge acted in an accusatory manner towards the accused and unjustifiably denied defense requests to summon witnesses and undergo a medical examination of injuries allegedly received from torture).

⁵⁶⁵ European Court of Human Rights, *Korneyeva v. Russia*, App. No. 72051/17, October 8, 2019, para. 42. See also European Court of Human Rights, *Karelin v. Russia*, App. No. 926/08, September 20, 2016, paras. 69-84; European Court of Human Rights, *Mikhaylova v. Ukraine*, App. No. 10644/08, March 6, 2018, paras. 62-67.

proceedings were initiated and the case files prepared by the police, who then sent the cases to the district courts for consideration. Where a police officer participated in the hearings it was as a witness, not as a prosecuting party; it fell to the court to present the case against the defendants during the hearings. Proceedings were thus not adversarial and the tribunals were not objectively impartial, as required by Article 14(1) of the ICCPR.

In addition to effectively replacing the prosecution, the judges' conduct throughout the proceedings indicated bias against the defense, in contravention of the subjective standard of impartiality. The judge hearing Mr. Sakovich's case, for instance, acted in an accusatory manner towards the defendant when his estimate of the timeline of events varied by a few minutes throughout his testimony, asking him if he "always gave such explanations" while conversely taking no issue with the testifying police officer's vastly inconsistent testimony about the time and location of the events and even preventing defense counsel from asking the officer questions about the contradictions.⁵⁶⁶ Judges correspondingly asked witnesses leading questions. In Mr. Petrov's case, for example, the judge appeared to attempt to guide a defense witness to answer in line with the Offense Protocol, asking, "at the moment when you directly saw him, perhaps he was shouting some slogans, clapping his hands?"⁵⁶⁷ Judges in other cases further seemed to feed police witnesses information about key details,⁵⁶⁸ allowed police officers to read from what appeared to be written statements while testifying,⁵⁶⁹ and rejected defense requests to examine relevant witnesses or admit relevant evidence without providing any justification.⁵⁷⁰

Moreover, as discussed above, while the police testimony in every case was full of holes and discrepancies, the judges across the different trials treated it as reliable and credible while ignoring and discrediting the testimony of the defendants and defense witnesses. In Ms. Korshun's case, for instance, two defense eyewitnesses gave consistent testimony corroborating the defendant's account that she did not participate in any protest, while a police officer testified that he could not remember the details of Ms. Korshun's actions, including whether she was carrying a poster, what slogans she allegedly shouted, and what she was wearing.⁵⁷¹ The judge nevertheless determined that the defense witnesses were "not objective and reliable, since they are in family and friendly relations with A. Korshun," while considering the

⁵⁶⁶ Monitor's Notes, Aleh Sakovich Trial, September 2020; District Court of Minsk, Decision on Administrative Offense (Aleh Sakovich Trial), September 2020.

⁵⁶⁷ Monitor's Notes, Dmitry Petrov Trial, September 2020.

⁵⁶⁸ See Monitor's Notes, Siarhei Babrou Trial, September 2020 (appearing to give the police officer the correct answer while asking him about the exact location of the events).

⁵⁶⁹ See Monitor's Notes, Maksim Bazuk Trial, September 2020.

⁵⁷⁰ Monitor's Notes, Alina Ulyashyna Trial, September 2020; Monitor's Notes, Dmitry Petrov Trial, September 2020; Monitor's Notes, Lyudmila Kazak Trial, September 25, 2020; Monitor's Notes, Ivan Yakhin Trial, October 2020; Monitor's Notes, Andrei Sychyk Trial, October 2020.

⁵⁷¹ Monitor's Notes, Anna Korshun Trial, September 2020.

police officer's testimony to be consistent and confirmed by the documents on the case file (prepared by the police), as well as credible simply because the officer did not know the defendant.⁵⁷²

In Mr. Bazuk's case, the judge rejected eyewitness testimony from a bystander with no relation to the defendant (as well as video and photographic evidence) as unreliable because the witness only saw the defendant "fragmentarily," while accepting a police officer's testimony during which he stated he had seen hundreds of people on the date of the arrest and thus could not remember any details surrounding Mr. Bazuk's alleged offense, and might have even confused Mr. Bazuk for someone else.⁵⁷³

Finally, and as also discussed above, the guilty verdicts appeared to be variations of a template (at times even using the wrong name for the defendant) and used similar or identical language to the Offense Protocols, further highlighting the lack of judicial impartiality in the monitored cases.

Right to Freedom of Expression and Assembly

In addition to violating the defendants' fair trial rights, the proceedings also violated their rights to freedom of expression and peaceful assembly.

The right to freedom of opinion and expression is guaranteed by Article 19 of the ICCPR. The UN Human Rights Committee places a high value on "uninhibited expression," especially with respect to political discourse and public debate,⁵⁷⁴ and has commented "that freedom of opinion and freedom of expression are indispensable conditions for the full development of the person, that they are essential for any society, and that they constitute the foundation stone for every free and democratic society."⁵⁷⁵

With respect to the right to freedom of peaceful assembly under Article 21 of the ICCPR, the UN Human Rights Committee has explained: the guarantee "protects the non-violent gathering by persons for specific purposes, principally expressive ones. It constitutes an individual right that is exercised collectively. Inherent to the right is thus an associative element."⁵⁷⁶ Article 21 protection extends to organized and spontaneous assemblies alike, as well as to participants, organizers, and

⁵⁷² District Court of Minsk, Decision on Administrative Offense (Anna Korshun Trial), September 2020.

⁵⁷³ District Court of Minsk, Decision on Administrative Offense (Maksim Bazuk Trial), September 2020; Monitor's Notes, Maksim Bazuk Trial, September 2020.

⁵⁷⁴ Human Rights Committee, General Comment No. 34, U.N. Doc. CCPR/C/GC/34, September 12, 2011, para. 38.

⁵⁷⁵ Human Rights Committee, *Gryb v. Belarus*, U.N. Doc. CCPR/C/103/D/1316/2004, December 8, 2011, para. 13.3.

⁵⁷⁶ Human Rights Committee, General Comment No. 37, U.N. Doc. CCPR/C/GC/37, September 17, 2020, para. 4.

anyone disseminating information about or otherwise facilitating assemblies.⁵⁷⁷

“Given that peaceful assemblies often have expressive functions, and that political speech enjoys particular protection as a form of expression, it follows that assemblies with a political message should enjoy a heightened level of accommodation and protection.”⁵⁷⁸

Permissible restrictions on the rights to freedom of expression and peaceful assembly are strictly limited and must (i) be prescribed by law (the principle of legality), (ii) serve a legitimate objective and (iii) be necessary to achieve and proportionate to that objective.⁵⁷⁹

According to the UN Human Rights Committee, in order to comply with the principle of legality, legislation restricting freedom of expression and assembly must be “formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly ... [and] may not confer unfettered discretion ... on those charged with its execution.”⁵⁸⁰

Objectives deemed legitimate for the restriction of the right to freedom of expression under the ICCPR include the protection of public health or morals, national security, public order, and the rights and reputation of individuals.⁵⁸¹ Similarly, restrictions on the right to freedom of assembly may only be employed for the protection of national security or public safety, public order, public health or morals, or the rights and freedoms of others.⁵⁸² “This is an exhaustive list.”⁵⁸³

As the UN Human Rights Committee has commented, the rules governing freedom of expression and expressive assemblies overlap. “Restrictions on peaceful assemblies must thus not be used, explicitly or implicitly, to stifle expression of political opposition to a government, challenges to authority, including calls for democratic changes of government, the constitution or the political system, or the pursuit of self-determination.”⁵⁸⁴

⁵⁷⁷ Id. at paras. 13-14, 33-34.

⁵⁷⁸ Id. at para. 32.

⁵⁷⁹ ICCPR, Articles 19(3), 21. See also Human Rights Committee, General Comment No. 37, U.N. Doc. CCPR/C/GC/37, September 17, 2020, para. 36; Human Rights Committee, *Kim v. Republic of Korea*, U.N. Doc. CCPR/C/64/D/574/1994, 1999, para. 12.2; UN General Assembly, Report of the Special Rapporteur on the promotion and protection of the right to freedom of expression and opinion, U.N. Doc. A/74/486, October 9, 2019, para 6.

⁵⁸⁰ Human Rights Committee, General Comment No. 34, U.N. Doc. CCPR/C/GC/34, September 12, 2011, para. 25; Human Rights Committee, General Comment No. 37, U.N. Doc. CCPR/C/GC/37, September 17, 2020, para. 39. See also UN General Assembly, Report of the Special Rapporteur on the promotion and protection of freedom of expression, U.N. Doc. A/74/486, October 9, 2019, para 6; UN General Assembly, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, U.N. Doc. A/HRC/20/27, May 21, 2012, para. 16.

⁵⁸¹ ICCPR, Article 19(3).

⁵⁸² ICCPR, Article 21.

⁵⁸³ Human Rights Committee, General Comment No. 37, U.N. Doc. CCPR/C/GC/37, September 17, 2020, para. 41.

⁵⁸⁴ Id. at para. 49.

In this regard, according to the UN Human Rights Committee: “[i]f the conduct of participants in an assembly is peaceful, the fact that certain domestic legal requirements pertaining to an assembly have not been met by its organizers or participants does not, on its own, place the participants outside the scope of the protection of article 21.”⁵⁸⁵

With respect to the element of necessity and proportionality, the UN Human Rights Committee has stated that:

[r]estrictions must ... be necessary and proportionate in the context of a society based on democracy, the rule of law, political pluralism and human rights, as opposed to being merely reasonable or expedient. Such restrictions must be appropriate responses to a pressing social need, relating to one of the permissible grounds [and] must also be the least intrusive among the measures that might serve the relevant protective function. Moreover, they must be proportionate, which requires a value assessment, weighing the nature and detrimental impact of the interference on the exercise of the right against the resultant benefit to one of the grounds for interfering. If the detriment outweighs the benefit, the restriction is disproportionate and thus not permissible.⁵⁸⁶

Turning to the present cases, the defendants were generally prosecuted under Article 23.34(1) of the Code of Administrative Offenses for allegedly participating in mass events, while Ms. Ulyashyna and Mr. Petrov were also prosecuted under Article 23.4 for allegedly disobeying police orders. (Ms. Kazak was prosecuted under Article 23.4 only; her case will be dealt with separately below.) As noted above, most of the defendants claimed they were not participating in a protest and presented credible evidence to that end. Regardless of whether or not they were participating in protests, however, the prosecution of the defendants for their real or perceived exercise of their rights to freedom of peaceful assembly and expression violated Articles 19 and 21 of the ICCPR.

In particular, the authorities in the present cases failed to provide any explanation as to how the defendants walking, standing, or biking in a public place – whether or not they were clapping, shouting, holding posters, or in fact participating in any protest – or sharing information about an upcoming demonstration online threatened public order, safety, the rights and freedoms of others, or any other interest protected by the ICCPR. The Offense Protocols and judgments correspondingly stated that the defendants violated the law by participating in a mass event and shouting slogans such as “Long live Belarus” and “Shame,” for the purpose of expressing their socio-

⁵⁸⁵ Id. at para. 16.

⁵⁸⁶ Id. at para. 40. See also Human Rights Committee, General Comment No. 34, U.N. Doc. CCPR/C/GC/34, September 12, 2011, paras. 33-34.

political views and to publicly protest “against the fact of holding fair elections.”⁵⁸⁷ It is thus clear that the arrests and trials had no objective beyond punishing the defendants for allegedly exercising their rights to freedom of expression and peaceful assembly, in contravention of the ICCPR.

Even if there had been a legitimate purpose for the restrictions in the present cases, the authorities further failed to demonstrate the necessity and proportionality of the specific restrictions imposed on the defendants: namely, imprisonment and fines following their arrests and prosecutions. In this regard, the UN Human Rights Committee has repeatedly found Belarus to be in violation of Articles 19 and 21 of the ICCPR for incarcerating and fining peaceful protesters and others exercising their rights, characterizing such measures as unnecessary and disproportionate to any legitimate aim.⁵⁸⁸

Abuse of Process

It appears that Ms. Kazak was prosecuted for her work defending an opposition leader, in violation of guarantees against abuse of the judicial process.

While the ICCPR prescribes the abuse of judicial proceedings for political purposes – for example, the UN Human Rights Committee has determined that detention on the basis of human rights and journalistic work violates the right to liberty protected

⁵⁸⁷ See Monitor’s Notes, Maksim Bazuk Trial, September 2020; District Court of Minsk, Decision on Administrative Offense (Maksim Bazuk Trial), September 2020; Monitor’s Notes, Anna Korshun Trial, September 2020; District Court of Minsk, Decision on Administrative Offense (Anna Korshun Trial), September 2020; Monitor’s Notes, Maria Bandarenka Trial, September 2020; District Court of Minsk, Decision on Administrative Offense (Maria Bandarenka Trial), September 2020; Monitor’s Notes, Yuliya Novik Trial, September 2020; Monitor’s Notes, Dmitry Petrov Trial, September 2020; District Court of Minsk, Decision on Administrative Offense (Dmitry Petrov Trial), September 2020; Monitor’s Notes, Alina Ulyashyna Trial, September 2020; District Court of Minsk, Decision on Administrative Offense (Alina Ulyashyna Trial), September 2020; Monitor’s Notes, Iryna Kuzina Trial, September 2020; Monitor’s Notes, Aleh Sakovich Trial, September 2020; District Court of Minsk, Decision on Administrative Offense (Aleh Sakovich Trial), September 2020; Monitor’s Notes, Siarhei Babrou Trial, September 2020; Monitor’s Notes, Pavel Zhuk Trial, September 2020; District Court of Minsk, Decision on Administrative Offense (Pavel Zhuk Trial), September 2020; Monitor’s Notes, Andrei Sychyk Trial, October 2020; Monitor’s Notes, Raman Pazniak Trial, October 2020; Monitor’s Notes, Ivan Yakhin Trial, October 2020; District Court of Minsk, Decision on Administrative Offense (Ivan Yakhin Trial), October 2020.

⁵⁸⁸ See Human Rights Committee, Severinets v. Belarus, U.N. Doc. CCPR/C/123/D/2230/2012, August 14, 2018, para. 8.9; Human Rights Committee, Androsenko v. Belarus, U.N. Doc. CCPR/C/116/D/2092/2011, May 11, 2016, paras. 7.6-7.8; Human Rights Committee, Korol v. Belarus, U.N. Doc. CCPR/C/117/D/2089/2011, August 30, 2016, para. 7.4; Human Rights Committee, Melnikov v. Belarus, U.N. Doc. CCPR/C/120/D/2147/2012, September 4, 2017, para. 8.8 (after finding the author’s arrest, administrative prosecution, and five-day sentence to be unjustified restrictions under Articles 19 and 21, and noting the state’s failure to “explain why it was necessary and proportionate to impose a sentence of administrative arrest on the author for exercising his rights under the Covenant,” the Committee further concluded “that the deprivation of liberty to which the author was subjected was arbitrary in nature and violated his rights under article 9 (1) of the Covenant.”).

by Article 9(1)⁵⁸⁹ – the Committee has yet to establish clear standards for assessing such situations. Guidance from the European Court of Human Rights is therefore useful. The Court has found that in evaluating whether an ulterior motive for prosecution exists, circumstantial evidence – including the political climate and timing of the proceedings,⁵⁹⁰ whether there were reasonable grounds to bring the charges,⁵⁹¹ how the proceedings were conducted,⁵⁹² and whether the ultimate decision was well-reasoned and based on law⁵⁹³ – may be probative. The seemingly selective targeting of a specific individual may also be relied upon as a circumstantial indicator.⁵⁹⁴

In analyzing prosecutions that may have been brought for improper aims, the Court has emphasized that cases that implicate democratic values should be subjected to heightened scrutiny.⁵⁹⁵

Per the guideposts set forth by the European Court and as discussed in detail below, there are significant indicia that the prosecution of Ms. Kazak stemmed from political motivations.

First, with respect to the timing and broader political context, the Belarusian authorities have systematically suppressed dissent and peaceful public protest in the wake of the August 2020 election through the arrest, detention, conviction, and imprisonment of opposition activists, protesters, and those who support them, including lawyers.⁵⁹⁶ As a human rights attorney defending opposition leader Maria Kolesnikova, Ms. Kazak was an obvious target for abusive prosecution – indeed,

⁵⁸⁹ Human Rights Committee, *Khadzhiyev and Muradova v. Turkmenistan*, U.N. Doc. CCPR/C/122/D/2252/2013, April 6, 2018, para. 7.7. See also Human Rights Committee, *Melnikov v. Belarus*, U.N. Doc. CCPR/C/120/D/2147/2012, September 4, 2017, para. 8.8; Human Rights Committee, *Nasheed v. Maldives*, U.N. Doc. CCPR/C/122/D/2851/2016, April 4, 2018, para. 8.7.

⁵⁹⁰ See European Court of Human Rights, *Merabishvili v. Georgia*, App. No. 72508/13, 2017, November 28, 2017, paras. 320-322; European Court of Human Rights, *Nastase v. Romania*, App. No. 80563/12, December 11, 2014, para. 107; European Court of Human Rights, *Rasul Jafarov v. Azerbaijan*, App. No. 69981/14, March 17, 2016, paras. 159-161; European Court of Human Rights, *Mammadli v. Azerbaijan*, App. No. 47145/14, April 19, 2018, para. 103.

⁵⁹¹ See European Court of Human Rights, *Khodorkovskiy v. Russia*, App. No. 5829/04, May 31, 2011, para. 258; European Court of Human Rights, *Khodorkovskiy and Lebedev v. Russia*, App. Nos. 11082/06 and 13772/05, July 25, 2013, para. 908.

⁵⁹² European Court of Human Rights (Grand Chamber), *Navalnyy v. Russia*, App. No. 29580/12, November 15, 2018, para. 171.

⁵⁹³ European Court of Human Rights, *Nastase v. Romania*, App. No. 80563/12, December 11, 2014, para. 108.

⁵⁹⁴ European Court of Human Rights (Grand Chamber), *Navalnyy v. Russia*, App. No. 29580/12, November 15, 2018, paras. 168-170.

⁵⁹⁵ See *id.* at paras. 173-175.

⁵⁹⁶ See OSCE Office for Democratic Institutions and Human Rights, “OSCE Rapporteur’s Report under the Moscow Mechanism on Alleged Human Rights Violations related to the Presidential Elections of 9 August 2020 in Belarus”, October 29, 2020; International Bar Association Human Rights Institute, “Belarus: harassment and intimidation of lawyers is of great concern and must end, says IBAHRI”, October 29, 2020. Available at <https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=3bac5c3d-eaf1-45f2-a422-c7d503c2c47d>.

Ms. Kolesnikova's other lawyers have also faced persecution.⁵⁹⁷ The timing of Ms. Kazak's arrest moreover prevented her from representing a client in a criminal hearing the next day and occurred after Ms. Kazak had spoken publicly about the details of Ms. Kolesnikova's abduction and detention.⁵⁹⁸

Second, the facts of the case indicate there were not reasonable grounds for the prosecution of Ms. Kazak, but rather that she was specifically targeted for prosecution because of her legal work. When Ms. Kazak asked why the police had arrested her, their immediate response was "[y]ou know what's going on." When Ms. Kazak arrived at the police station, officers showed interest in privileged documents related to Ms. Kolesnikova's case and deliberately hid her location from her husband and lawyers for hours.⁵⁹⁹ Moreover, at trial the officers' testimony regarding the reasons for Ms. Kazak's arrest shifted between her alleged participation in a demonstration on August 30 in violation of Article 23.34 – in relation to which it appears that no procedural acts were undertaken, no evidence was ever produced, and for which Ms. Kazak was never tried – and her alleged violation of Article 23.4 for disobeying their orders to get into their car while arresting her under Article 23.34.⁶⁰⁰ The officers' testimony regarding the alleged Article 23.4 violation was moreover inconsistent with eyewitness testimony and entirely unsubstantiated.⁶⁰¹

Third, regarding the conduct of the proceedings, as discussed above, Ms. Kazak's trial was riddled with grave procedural errors and rights abuses from start to finish. Moreover, the poorly reasoned verdict convicting Ms. Kazak violated her right to the presumption of innocence.

Ms. Kazak's trial merits heightened scrutiny given its implications for democratic values. The United Nations Basic Principles on the Role of Lawyers state that lawyers must be able to perform their duties "without intimidation, hindrance, harassment or improper interference" and "shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics."⁶⁰² The Basic Principles further affirm that lawyers, like other citizens, have the right to "freedom of expression, belief, association and assembly."⁶⁰³ A robust and independent legal profession is one of the cornerstones for the maintenance of the rule of law and respect for human rights in a democratic society. Based on the punitive actions

⁵⁹⁷ See International Bar Association Human Rights Institute, "Belarus: harassment and intimidation of lawyers is of great concern and must end, says IBAHRI", October 29, 2020.

⁵⁹⁸ Monitor's Notes, Lyudmila Kazak Trial, September 25, 2020; FIDH, "Belarus: Arbitrary arrest and judicial harassment of human rights lawyer Ms. Liudmila Kazak", September 25, 2020.

⁵⁹⁹ Monitor's Notes, Lyudmila Kazak Trial, September 25, 2020.

⁶⁰⁰ Id.

⁶⁰¹ Id.

⁶⁰² UN Basic Principles on the Role of Lawyers, September 7, 1990, Principle 16.

⁶⁰³ Id. at Principle 23. See also ICCPR, Articles 18, 19, 21, 22.

taken against Ms. Kazak, other lawyers may be deterred from engaging in cases of public interest, which could undermine Belarusian citizens' rights to legal assistance and to seek redress and remedies for abuses.

Against this backdrop, it appears that the proceedings against Ms. Kazak were a means of intimidating and punishing her for her work as a human rights lawyer and activist, particularly with respect to her legal representation of Maria Kolesnikova.

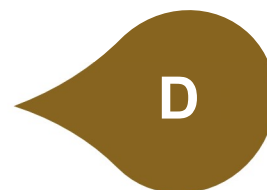
CONCLUSION AND GRADE



The monitored proceedings against the 15 defendants entailed severe abuse of their right to liberty, their right to a fair trial, and their right to freedom of expression and peaceful assembly. Not only was there no justification for arresting or prosecuting any of the defendants but also a reasonable review of the absurdities and inconsistencies in the police evidence should have resulted in acquittals in every case. The defendants should thus be compensated for their unjust convictions and sentences as well as for their arbitrary pretrial detention.

The violations described throughout this report are representative of the thousands of administrative cases that have been brought against peaceful protesters, activists, and others in Belarus since the August 9 elections. The ongoing Office of the High Commissioner for Human Rights investigation as well as the International Accountability Platform should foreground such abuse of the justice system in their documentation efforts, foreign governments should prioritize the sanctioning of judicial actors responsible for the spate of trials and wrongful convictions, and international stakeholders should advocate for trials to be open to the public so as to enable assessment of their compliance with human rights standards.

GRADE



D



GRADING METHODOLOGY

Experts should assign a grade of A, B, C, D, or F to the trial reflecting their view of whether and the extent to which the trial complied with relevant international human rights law, taking into account, *inter alia*:

- The severity of the violation(s) that occurred;
- Whether the violation(s) affected the outcome of the trial;
- Whether the charges were brought in whole or in part for improper motives, including political motives, economic motives, discrimination, such as on the basis of “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,”⁶⁰⁴ and retaliation for human rights advocacy (even if the defendant was ultimately acquitted);
- The extent of the harm related to the charges (including but not limited to whether the defendant was unjustly convicted and, if so, the sentence imposed; whether the defendant was kept in unjustified pretrial detention, even if the defendant was ultimately acquitted at trial; whether the defendant was mistreated in connection with the charges or trial; and/or the extent to which the defendant’s reputation was harmed by virtue of the bringing of charges); and
- The compatibility of the law and procedure pursuant to which the defendant was prosecuted with international human rights law.

Grading Levels

- A: A trial that, based on the monitoring, appeared to comply with international standards.
- B: A trial that appeared to generally comply with relevant human rights standards excepting minor violations, and where the violation(s) had no effect on the outcome and did not result in significant harm.
- C: A trial that did not meet international standards, but where the violation(s) had no effect on the outcome and did not result in significant harm.
- D: A trial characterized by one or more violations of international standards that affected the outcome and/or resulted in significant harm.
- F: A trial that entailed a gross violation of international standards that affected the outcome and/or resulted in significant harm.

⁶⁰⁴ ICCPR, Article 26.