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Center for Human Rights



Belarus v. Katsiaryna Andreyeva and Daria Chultsova

October 2021

TRIALWATCH FAIRNESS REPORT
A CLOONEY FOUNDATION **FOR** JUSTICE INITIATIVE

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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 trial 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 supporting 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



Beth Van Schaack, who is a member of the Trial Watch Experts Panel, assigned this trial a grade of D on the grounds that:

- the charges and guilty verdict were clearly motivated by improper purposes, namely an intent to infringe on the accused’s rights to free expression and assembly and to punish the accused for their journalistic coverage of an anti-government protest;
- the charges and verdict were wholly unsubstantiated given the facts in the record and the fatally vague provision under which the accused were charged; and
- the multiple violations of the accused’s due process and fair trial rights during the pretrial and trial proceedings, including the presumption of innocence and the right to mount a defense, irretrievably compromised the fairness of the trial and ensuing verdict.

Over the course of four hearings held in February 2021, the American Bar Association (ABA) Center for Human Rights and Human Rights Embassy monitored the trial of journalists Katsiaryna Andreyeva and Daria Chultsova in Belarus as part of the Clooney Foundation for Justice’s Trial Watch initiative. Ms. Andreyeva and Ms. Chultsova were charged with the “organization of group actions that grossly violated public order” on the basis of their live reporting on a demonstration. They were convicted and sentenced to two years in prison. From their initial arrest in November 2020 to their convictions three months later, the proceedings constituted a severe abuse of their fair trial rights: among others, their right to the presumption of innocence, their right to call and examine witnesses, and their right to judicial impartiality.

The entirety of the case, as evinced by the absolute lack of evidence against Ms. Andreyeva and Ms. Chultsova, was geared towards suppressing independent journalism and sending a warning signal to other media outlets reporting on mass demonstrations in Belarus. The prosecution of Ms. Andreyeva and Ms. Chultsova is just the tip of the iceberg with respect to the stifling of independent media in Belarus and the harassment of journalists attempting to report accurately on events in the country. Indeed, since the conviction of Ms. Andreyeva and Ms. Chultsova, the Belarusian authorities have passed laws prohibiting reporting on unauthorized protests altogether; have forced the landing of a passenger jet carrying an opposition blogger; and have raided and shut down the few remaining independent outlets in the country. With trials in Belarus increasingly closed to the public, the observation of the proceedings against Ms. Andreyeva and Ms. Chultsova provides a window into how the Belarusian authorities are using the

justice system to smother independent journalism and attack those who would expose these dangerous developments.

Ms. Andreyeva and Ms. Chultsova are both correspondents for Belsat TV, a Poland-based media outlet operating in Belarus. On November 15, 2020, they were assigned to cover a demonstration. The demonstration was in honor of a protester reportedly killed by the police. For the purposes of their assignment, a Belsat producer secured permission to use an apartment overlooking the demonstration, from which Ms. Andreyeva and Ms. Chultsova would be allowed to broadcast live. Ms. Andreyeva reported on the demonstration while Ms. Chultsova operated the camera. Apart from a 15-30 minute period during which the two journalists left the apartment to interview protesters down below, they remained inside the apartment for the duration of the protest until their arrest.

Approximately five hours after the broadcast started, police officers burst through the door and arrested Ms. Andreyeva and Ms. Chultsova. They were initially convicted of an administrative offense but were subsequently charged with the criminal offense of organizing group actions that grossly violate public order under Article 342 of the Criminal Code. Their trial started on February 9, 2021, before the Frunzensky District Court in Minsk, and ended on February 18 with their conviction.

The guilty verdict against Ms. Andreyeva and Ms. Chultsova flouted the presumption of innocence. The prosecution alleged that Ms. Chultsova and Ms. Andreyeva had organized the protests, relying heavily on excerpts from their coverage of the demonstration; however, the broadcast contained no sign that the two journalists had galvanized protesters or issued any other calls to action. Instead, an objective analysis of the broadcast reveals that it constituted routine coverage of a nationally newsworthy event. Despite this lack of any incriminating evidence, the court convicted the accused.

The verdict is riddled with absurdities. For example, it cites as evidence of the women's guilt the testimony of a prosecution witness (a resident of a neighboring apartment), who stated that the protest had already started before the journalists arrived, that he never saw them, and that he instead saw four other men outside who appeared to be coordinating the protests. The court further cited interviews the journalists conducted with protesters as evidence that they themselves had participated in the protests. Meanwhile, defense witnesses, exonerating evidence, and arguments in support of the accused were summarily dismissed, in some cases without explanation and in other cases with the court simply referring back to the supposedly incendiary broadcast.

The trial proceedings themselves were marred by violations of fair trial rights. The prosecution, for example, alleged that Ms. Andreyeva and Ms. Chultsova's

organization of the protest had caused traffic blockages. In support of this assertion, the prosecution called as a witness a representative of a public transport company. On cross examination, however, the witness was unable to answer basic questions about how and why traffic had stopped, including which specific tram and trolley routes were obstructed, and had no information about the journalists' responsibility for any such blockages. When the witness ultimately acknowledged that he had not been directly involved in the traffic assessment and that he could identify another witness who might be able to provide more details, the court simply shut down further questions, denying the defense the opportunity to obtain information relevant to its case. The court further denied defense requests to obtain official records of why traffic was stopped on the day of the protests and whether law enforcement had perhaps played a role. This conduct violated the women's right to adequate facilities to prepare their defense as well as their right to call and examine witnesses and to confront the evidence against them.

The dearth of evidence supporting the criminal charges, the conduct of the proceedings, and the overarching crackdown on independent media in Belarus clearly indicate that the accused were prosecuted for their journalistic endeavors, in violation of guarantees against abuse of process. Tellingly, at closing argument, the prosecution explicitly stated: "that the accused carried out a live broadcast already confirms the fact that they organized illegal actions." This assertion essentially equates routine reporting with the commission of a crime. Additionally, throughout the proceedings, the court and prosecution arbitrarily highlighted the accused's lack of formal media accreditation as somehow dispositive of their role in the protests.

The court's verdict, for example, foregrounds this issue, stating that the accused's claims that they were engaged in "exclusively journalistic activity" were undermined by the fact that they are "not accredited as any correspondents of foreign media" and that "the professional activities of journalists of foreign mass media on the territory of the Republic of Belarus without accreditation is prohibited." The question of accreditation status, however, was not probative of whether Ms. Andreyeva and Ms. Chultsova were guilty of organizing group actions that grossly violated public order. In fact, the women were operating without accreditation precisely because the authorities have consistently refused to accredit independent media. The court's unjustified focus on this point thus suggests that Ms. Andreyeva and Ms. Chultsova were targeted solely for conveying reportage that was critical of the government.

Meanwhile, the verdict, echoing allegations made by the prosecution, highlights the fact that the accused broadcast information "provided by destructive accounts of social networks": namely, Telegram channels involved in spreading word about the protests. Again, this phrasing suggests a predisposition against channels on

Telegram – to which the verdict was presumably referring – that host speech that is critical of the government and, according to the court, therefore “destructive.” All of the above suggests a prosecution driven by improper motives. That the charges were used to retaliate against Ms. Andreyeva and Ms. Chultsova for their work as journalists also violated their right to freedom of expression.

While the accused’s appeals against their conviction have already been dismissed and all domestic remedies exhausted, the international community must continue to pressure the Belarusian government to cease abuse of the justice system for political ends and to protect independent media. 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 bad actors within the judicial system, such as the judge who presided over the unfair trial and wrongful conviction that is the subject of this report, the prosecutor who brought charges in the first place, the investigative authorities that imposed pretrial detention, and the police who conducted the investigation and prepared the indictment. The EU has already imposed sanctions on some of these individuals, a measure which would be strengthened by multilateral coordination.



A. POLITICAL AND LEGAL CONTEXT

2020 Election Protests and Crackdown

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.¹ 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.² According to observers, the election process itself was marred by fraud and irregularities, such as voter coercion and restrictions on observers.³

In response to the release of the “official” election results, massive protests erupted across Belarus. The authorities have met these protests with escalating levels of violence and repression.⁴ Peaceful protesters have been subjected to

¹ 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.

² See Amnesty International, “Belarus: Growing Crackdown on Human Rights Ahead of Presidential Election”, June 29, 2020. Available at <https://www.amnesty.org/en/documents/eur49/2620/2020/en/>; 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>.

³ 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>.

⁴ 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>

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.⁵ Those subsequently detained have faced ill-treatment and torture in holding facilities, including beatings, electric shock, sexual assault, humiliation, and psychological torture.⁶

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.”⁷ 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 on Okrestina Street in Minsk, where those arrested have often been held for days before release or trial, was especially inhumane:⁸ essentially a punishment in itself. In some cases, police mistreatment has resulted in death.⁹

The justice system has been a key tool in the quashing of dissent within Belarus. As of the writing of this report, the number of protesters detained since the elections has surpassed 35,000.¹⁰ Although many of those detained have been

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>.

⁵ 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>.

⁶ 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.

⁷ 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.

⁸ Id. at pgs. 42-43. See also Human Rights Watch, “Belarus: Systematic Beatings, Torture of Protesters”, September 15, 2020.

⁹ 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>.

¹⁰ 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>.

released without charge after being subjected to up to three days in detention,¹¹ hundreds have been criminally prosecuted,¹² thousands of criminal investigations have been opened,¹³ and thousands more have been prosecuted for administrative offenses.¹⁴ (These abusive administrative prosecutions are described in greater detail in a companion TrialWatch report.). Local human rights organization Viasna has named over 500 individuals as political prisoners.¹⁵ In the past several months, the use of criminal trials has escalated.¹⁶

Judicial Independence and Fair Trial Rights

Various international and domestic organizations and institutions have raised concerns about the independence of the Belarusian judiciary.¹⁷ The executive exerts significant influence over the appointment and removal of judges and prosecutors.¹⁸ 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.¹⁹ 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."²⁰

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

¹¹ 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.

¹² 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>.

¹³ 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.

¹⁴ 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>.

¹⁵ Human Rights Center Viasna, "Political Prisoners." Available at <https://prisoners.spring96.org/en>.

¹⁶ 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. 62.

¹⁷ 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.

¹⁸ 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.

¹⁹ Id.

²⁰ Freedom House, "Nations in Transit 2018: Belarus." Available at <https://freedomhouse.org/country/belarus/nations-transit/2018>.

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 and interrogations, or examine evidence against defendants until a prosecutor formally brought the case to court."²¹ 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."²²

Amidst such "pressure," courts have reportedly failed to respect the presumption of innocence, with the vast majority of cases resulting in a guilty verdict.²³ As documented by Freedom House, "[l]ess than 0.3 percent of verdicts in criminal trials in 2019 were acquittals."²⁴

This pattern has persisted in cases connected to the 2020 protests. Trials have 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.²⁵ Moreover, courts have increasingly closed trials to the public.²⁶

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

²¹ U.S. Department of State, "2019 Country Reports on Human Rights Practices: Belarus", March 11, 2020, pgs. 6-7.

²² 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.

²³ 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."

²⁴ Freedom House, "Nations in Transit 2020: Belarus."

²⁵ 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, U.N. Doc. A/75/173, July 17, 2020, paras. 70-71 (on trials in the lead up to the election).

²⁶ 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.

disbarment and even arrest and detention “for their work with the opposition.”²⁷ As documented by the American Bar Association’s Center for Human Rights, the 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.²⁸ Correspondingly, because the Ministry of Justice “exercises broad control” over the Belarusian Bar Association,²⁹ the Bar has “turned against members of the profession who have worked in support of opposition figures,” initiating disciplinary proceedings and issuing reprimands.³⁰ Lawyers have also been disbarred for refusing to sign restrictive and vague non-disclosure agreements preventing them from sharing information about their clients’ cases.³¹

Liudmila 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 guarantees³² and was also monitored by the Center for Human Rights as part of the TrialWatch initiative. In March, Siarhei Zikratski, who represented journalist Katsiaryna Andreyeva in the criminal trial that is the subject of the current report, was disbarred and fled Belarus.³³ According to Human Rights Watch, at least 17 lawyers have been disbarred since 2020.³⁴ 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.”³⁵

²⁷ 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>.

²⁸ 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.

²⁹ 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.

³⁰ 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.

³¹ 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>.

³² 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>.

³³ 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/>.

³⁴ Human Rights Watch, “Another Critic Detained in Belarus on Undisclosed Charges”, July 8, 2021.

³⁵ 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.

Targeting of Journalists

The post-election crackdown has seen journalists targeted for their independent reporting. As described in a statement issued by several UN Special Procedures in June 2021, “[r]ecent events indicate that media freedom in Belarus has entered a black hole with no end in sight.”³⁶ In Reporters Without Borders’ 2021 World Press Freedom Index, Belarus was rated 158th out of 179 countries with respect to press freedom, sandwiched between Uzbekistan and Sudan.³⁷

Since the August 2020 elections and as of the writing of this report, there have been “more than 550 instances of journalists being arbitrarily detained and they have spent more than 3,000 days in jail collectively.”³⁸ As documented by Human Rights Watch and as demonstrated by the trial that is the subject of this report, the Belarusian authorities have consistently equated reporting on protests with participation in protests, “particularly if the reporter works for an outlet that the authorities refuse to grant accreditation.”³⁹ At least 18 criminal cases have been opened against journalists,⁴⁰ and as of July 2021 over thirty journalists were incarcerated, “either awaiting trial or serving their sentences.”⁴¹ There have been reports of the beating and torture of journalists in prison;⁴² as stated by the Special Rapporteur on Belarus in her July 2021 report to the General Assembly, “[a]t least 62 journalists were subjected to violence or ill-treatment in 2020.”⁴³

Other forms of harassment of journalists include the raiding of media offices⁴⁴ and the revocation of the accreditation of both individual journalists and entire news outlets.⁴⁵ In October 2020, the Belarusian government canceled all existing foreign

³⁶ Office of the High Commissioner, “Belarus: ‘Black Hole’ for media freedoms after egregious attacks, say UN experts”, June 7, 2021. Available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27146&LangID=E>.

³⁷ Reporters Without Borders, “2021 World Press Freedom Index”, 2021. Available at <https://rsf.org/en/ranking/2021>.

³⁸ International Freedom of Expression Exchange, “Joint Call to Make Respect for Press Freedom a Cornerstone of All Demands Towards Belarus”, June 10, 2021. Available at <https://ifex.org/joint-call-to-make-respect-for-press-freedom-a-cornerstone-of-all-demands-towards-belarus/>. See also Human Rights Watch, “Belarus: Crackdown on Independent Journalism”, March 29, 2021. Available at <https://www.hrw.org/news/2021/03/29/belarus-crackdown-independent-journalism>.

³⁹ Human Rights Watch, “Belarus: Crackdown on Independent Journalism”, March 29, 2021.

⁴⁰ *Id.*

⁴¹ Newsweek, “Human Rights Group Says Belarus Holding Over 360 Political Prisoners”, July 19, 2021. Available at <https://www.newsweek.com/human-rights-group-says-belarus-holding-over-560-political-prisoners-1611175>.

⁴² Human Rights Watch, “Belarus: Crackdown on Independent Journalism”, March 29, 2021.

⁴³ Report of the Special Rapporteur on the Situation of Human Rights in Belarus, U.N. Doc. A/HRC/47/49, May 12, 2021, para. 72.

⁴⁴ International Freedom of Expression Exchange, “Joint Call to Make Respect for Press Freedom a Cornerstone of All Demands Towards Belarus”, June 10, 2021; Report of the Special Rapporteur on the Situation of Human Rights in Belarus, U.N. Doc. A/HRC/47/49, May 12, 2021, para. 74.

⁴⁵ See Human Rights Watch, “Belarus: Crackdown on Independent Journalism”, March 29, 2021; Office of the High Commissioner, “Belarus: ‘Black Hole’ for media freedoms after egregious attacks, say UN experts”, June 7, 2021.

accreditations, requiring journalists affiliated with foreign networks to reapply for accreditation,⁴⁶ and suspended the license of Tut.by, one of the most prominent independent domestic outlets, for purportedly spreading false information, “expos[ing] journalists [who thereafter continued] working for Tut.by to liability for reporting without accreditation.”⁴⁷

Informal news platforms have also been subject to intensive harassment. In late 2020, for example, a court in Minsk designated the Telegram-based channel NEXTA as “extremist,” making anyone reposting or sharing materials from NEXTA vulnerable to being charged with an administrative offense.⁴⁸ In early July 2021, Tut.by received the same classification,⁴⁹ and in late July 2021, Belsat, the Poland-based channel for which the accused in the present case worked, was likewise designated as “extremist.”⁵⁰ As stated by the International Freedom of Expression Exchange, “[t]o suppress the free flow of information further, over 20 websites have been blocked.”⁵¹

Several recent raids on news outlets and corresponding mass arrests are worth noting:

- On February 16, the authorities carried out nationwide raids, searching the houses of journalists and human rights defenders as well as the office of the Belarusian Association of Journalists.⁵² Approximately 40 individuals were detained, with most released that same day,⁵³ and the authorities seized

⁴⁶ Human Rights Watch, “Belarus: Crackdown on Independent Journalism”, March 29, 2021. See also Organization for World Peace, “US, EU, UK, and Canada Expand Sanctions on Belarus”, July 6, 2021. Available at <https://theowp.org/us-eu-uk-and-canada-expand-sanctions-on-belarus/>.

⁴⁷ Report of the Special Rapporteur on the Situation of Human Rights in Belarus, U.N. Doc. A/HRC/47/49, May 12, 2021, para. 72.

⁴⁸ Article 19, “Belarus: Authorities designate Telegram channel NEXTA as ‘extremist’ in further crackdown on independent media”, October 23, 2020. Available at <https://www.article19.org/resources/belarus-nexta-crackdown/>.

⁴⁹ 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/>; International Freedom of Expression Exchange, “High treason charges, new anti-LGBTQ+ legislation, and progress against impunity”, July 2, 2021. Available at <https://ifex.org/high-treason-charges-new-anti-lgbtqi-legislation-and-progress-against-impunity/>.

⁵⁰ Seattle Times, “Belarus Labels Polish-Funded TV Channel Extremist”, July 27, 2021. Available at <https://www.seattletimes.com/business/belarus-labels-polish-funded-tv-channel-extremist/>.

⁵¹ International Freedom of Expression Exchange, “Joint Call to Make Respect for Press Freedom a Cornerstone of All Demands Towards Belarus”, June 10, 2021.

⁵² Article 19, “Belarus: Raid on Journalists’ Homes Signals New Crackdown”, February 16, 2021. Available at <https://www.article19.org/resources/belarus-raid-on-journalists-homes-signals-fresh-crackdown/>; Organization for Security and Cooperation in Europe, “OSCE Media Freedom Representative Deeply Concerned About State of Media Freedom and Freedom of Expression in Belarus”, February 16, 2021. Available at <https://www.osce.org/representative-on-freedom-of-media/478693>.

⁵³ Human Rights Watch, “Belarus: Crackdown Escalates”, February 17, 2021. Available at <https://www.hrw.org/news/2021/02/17/belarus-crackdown-escalates>.

computers, telephones, and documents.⁵⁴ According to the Interior Ministry, the purpose of the operation was to target groups “positioning themselves as human rights organizations,” so as to “establish[] the circumstances of the financing of the protests.”⁵⁵

- On May 18, the police raided Tut.by offices in several cities and also searched the homes of individual journalists, ultimately arresting at least 15 Tut.by staff.⁵⁶ Eyewitnesses stated that the authorities broke down a door while attempting to get into the apartment of editor-in-chief Marina Zolotova.⁵⁷ The operation was ostensibly part of a criminal investigation into tax evasion charges.⁵⁸ On the same day, Tut.by’s website was blocked.⁵⁹ Several Tut.by employees remain in detention on putative tax evasion charges.⁶⁰
- On July 8, the authorities raided the offices of several media outlets, including Nasha Niva – the country’s oldest newspaper.⁶¹ Previously, Nasha Niva had extensively reported on the post-election protests and police brutality.⁶² The authorities arrested Nasha Niva’s editor-in-chief, who was reportedly beaten in detention,⁶³ along with at least ten other journalists.⁶⁴ The authorities also searched the homes of several journalists and shut down Nasha Niva’s website.⁶⁵ Several Nasha Niva staff are currently under investigation for “allegedly ‘organizing or preparing acts that violate public order’ and ‘mass riots.’”⁶⁶ As of the writing of this report, they remain in detention.

⁵⁴ Organization for Security and Cooperation in Europe, “OSCE Media Freedom Representative Deeply Concerned About State of Media Freedom and Freedom of Expression in Belarus”, February 16, 2021.

⁵⁵ Human Rights Watch, “Belarus: Crackdown Escalates”, February 17, 2021.

⁵⁶ 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.

⁵⁷ Belsat, “Popular Media Outlet Tut.by in Crosshairs: Raids on Offices, Journos’ Homes, Website Blocked”, May 18, 2021. Available at <https://belsat.eu/en/news/18-05-2021-popular-media-outlet-tut-by-in-crosshairs-raids-on-offices-journos-homes/>.

⁵⁸ Office of the High Commissioner, “Belarus: ‘Black Hole’ for media freedoms after egregious attacks, say UN experts”, June 7, 2021.

⁵⁹ Human Rights Center Viasna, “Human Rights Situation in Belarus: May 2021”, June 2, 2021.

⁶⁰ Committee to Protect Journalists, “Belarusian authorities raid news outlets, detain journalists amid nationwide crackdown”, July 8, 2021.

⁶¹ 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>.

⁶² Radio Free Europe/Radio Free Liberty, “Belarus Raids Independent News Outlets, Blocks Newspaper that Reported on Protests”, July 8, 2021.

⁶³ 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/>.

⁶⁴ 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>.

⁶⁵ Id.

⁶⁶ Committee to Protect Journalists, “Belarusian authorities raid news outlets, detain journalists amid nationwide crackdown”, July 8, 2021.

- Starting on July 16 and continuing into July 19, the police raided the offices of several independent media outlets as well as journalists' homes, including those of correspondents for Radio Free Europe/Radio Free Liberty.⁶⁷ Multiple journalists were arrested and detained.⁶⁸ 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.”⁶⁹ 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.’”⁷⁰

Notable and troubling criminal cases against journalists over the past several months, pursued under a diverse array of criminal provisions, include:

- The case of Katsiaryna Barysevich, a Tut.by journalist who was prosecuted for reporting on various pieces of evidence, including medical documents, indicating that protester Raman Bandarenka, who died in November of brain and other injuries, was killed by the police.⁷¹ Barysevich was convicted for “breaching medical confidentiality that led to grave consequences” and sentenced to six months in prison.⁷²
- The case of journalist Andrej Aliaksandraŭ, who has been detained since January on charges that he allegedly helped pay the fines of detained journalists and protesters (which the authorities equated with financing unauthorized protests).⁷³ In June, the authorities charged Aliaksandraŭ with high treason, which carries a sentence of 15 years, based on the same allegations.⁷⁴
- The case of investigative journalist Dzianis Ivashyn, who has been detained since March on dubious charges of “‘influencing a police officer’ in order to

⁶⁷ 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>.

⁶⁸ 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>.

⁶⁹ Al Jazeera, “Belarus Arrests 3 Journalists in Media Crackdown”, July 19, 2021.

⁷⁰ Reuters, “Belarus Conducts New Raids on Journalists and Rights Activists”, July 16, 2021.

⁷¹ Human Rights Watch, “Belarus: Crackdown on Independent Journalism”, March 29, 2021; Associated Press, “Belarus Journalist Sentenced for Report on Protester’s Death”, March 2, 2021. Available at <https://apnews.com/article/katsiaryna-barysevich-sentenced-belarus-protester-death-1309daeee6882331bbc68181dd2ab868>.

⁷² Id.

⁷³ International Freedom of Expression Exchange, “High treason charges, new anti-LGBTQ+ legislation, and progress against impunity”, July 2, 2021; Human Rights Watch, “Joint Statement on Journalist and Human Rights Defender Andrej Aliaksandrau”, July 2, 2021. Available at <https://www.hrw.org/news/2021/07/02/joint-statement-journalist-and-human-rights-defender-andrei-aliaksandrau>.

⁷⁴ Id.

‘change the nature of his lawful activities’ by disclosing classified information.”⁷⁵ The charges are based on an article that Ivashyn wrote about the notorious Ukrainian Berkut force (riot police), which was reportedly hired to help the Belarusian police with the post-election crackdown.⁷⁶ In June, it was reported that Ivashyn had a heart attack in prison.⁷⁷

- In May 2021, Raman Pratasevich, the former editor-in-chief of the NEXTA Telegram channel who had been living in exile in Lithuania, was traveling from Athens back to Vilnius when his flight was forced to land in Belarus due to an ostensible bomb threat that was subsequently revealed to be a State “hijacking.”⁷⁸ He was arrested and detained along with his Russian girlfriend.⁷⁹ Over the next weeks, Pratasevich made several appearances on State television in which he confessed to allegedly “participating in a plot to oust President Alexander Lukashenko by organizing riots,” raising concerns that the statements had been coerced by torture.⁸⁰ He was reportedly moved from detention to house arrest in June and is awaiting trial for organizing mass riots, a charge that carries 15 years in prison.⁸¹

Facilitating the judicial harassment of journalists, the Belarusian legislature passed various amendments to the Mass Media Law and Law on Mass Events in May 2021 that, among other things, ban live reporting on unauthorized gatherings (by journalists or others), permit the Ministry of Information to order the closure of media outlets without a court decision, prohibit journalists from publishing opinion polls that have not been authorized by the government, and prohibit the use of crowdfunding to pay fines imposed in connection with alleged illegal activity at protests.⁸²

In July 2021, the Ministry of Justice asked the Supreme Court to close down the Belarusian Association of Journalists, the country’s largest independent media

⁷⁵ International Freedom of Expression Exchange, “Belarus: Journalist Dzianis Ivashyn Is A Political Prisoner”, March 24, 2021. Available at <https://ifex.org/belarus-journalist-dzianis-ivashyn-is-a-political-prisoner/>.

⁷⁶ Id.

⁷⁷ Human Rights Center Viasna, “Human Rights Situation in Belarus: June 2021”, July 3, 2021.

⁷⁸ Bloomberg, “Jailed Belarus Journalist, Girlfriend Moved to House Arrest”, June 25, 2021. Available at <https://www.bloomberg.com/news/articles/2021-06-25/jailed-belarus-journalist-girlfriend-moved-to-house-arrest>.

⁷⁹ Id.

⁸⁰ Voice of America, “Jailed Belarusian Journalist Raman Pratasevich Appears at Conference”, June 14, 2021. Available at <https://www.voanews.com/europe/jailed-belarusian-journalist-raman-pratasevich-appears-press-conference>; Radio Free Europe/Radio Liberty, “Online Appearance by Dissident Belarusian Journalist Pratasevich Raises Questions”, July 7, 2021. Available at <https://www.rferl.org/a/31346235.html>.

⁸¹ Id; Bloomberg, “Jailed Belarus Journalist, Girlfriend Moved to House Arrest”, June 25, 2021.

⁸² Associated Press, “Belarusian President Signs Tough New Law on Media Restrictions”, May 24, 2021. Available at <https://apnews.com/article/europe-belarus-media-business-government-and-politics-934283a5f4763a421391d8a55a89ad55>; Deutsche Welle, “Belarus Bans Journalists From Live Reporting at Protests”, May 24, 2021. Available at <https://www.dw.com/en/belarus-bans-journalists-from-live-reporting-at-protests/a-57649288>.

association.⁸³ The request was based on the Association's alleged failure to turn over thousands of organizational documents, which it was reportedly unable to access because of a previous police raid on its offices and the subsequent sealing of the premises.⁸⁴

International Response

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.⁸⁵ UN mandate holders have since continued to raise concerns about the Belarusian government's actions on a regular basis.⁸⁶ In 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 situation⁸⁷ – a resolution the Belarusian government declined to recognize.⁸⁸ 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”⁸⁹ – was continuing to deteriorate.⁹⁰

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:

⁸³ Committee to Protect Journalists, “Belarus Authorities Sue to Shut Down Independent Journalist Organization”, July 22, 2021. Available at <https://cpj.org/2021/07/belarus-authorities-sue-to-shut-down-independent-journalist-organization/>; Radio Free Europe/Radio Free Liberty, “World Urged to React ‘Vigorously’ to Belarus Closing Main Journalists’ Association”, July 22, 2021. Available at <https://www.rferl.org/a/belarus-close-journalist-association-media-/31371191.html>.

⁸⁴ *Id.*

⁸⁵ 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>.

⁸⁶ U.N. News, “UN Experts Demand End to Crackdown on Protesters in Belarus Ahead of Elections”, July 1, 2020. Available at <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.

⁸⁷ 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.

⁸⁸ 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.

⁸⁹ *Id.* at para. 74; Human Rights Watch, “Belarus: Unprecedented Crackdown”, January 13, 2021.

⁹⁰ U.N. News, “Belarus Human Rights Situation Deteriorating Further, Warns UN Rights Chief”, February 25, 2021.

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.⁹¹

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 – October.

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 “of serious violations of international human rights law committed in Belarus in the run-up to the 2020 presidential election and its aftermath.”⁹²

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.⁹³ Similarly, the U.K, Canada, and the European Union have moved to freeze assets and impose travel bans,⁹⁴ while the U.S. has likewise imposed sanctions entailing visa restrictions and freezing of assets⁹⁵ – citing, among other things, “excessive force and brute violence.”⁹⁶ In particular, the U.S. State Department has imposed visa restrictions on “high-

⁹¹ 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>.

⁹² 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>.

⁹³ 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>.

⁹⁴ 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>.

⁹⁵ 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>.

⁹⁶ 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>.

ranking justice sector officials” complicit in human rights violations.⁹⁷ In response to the Belarusian government’s aforementioned forced diversion of an aircraft, described above, and subsequent arrest of journalist Raman Pratasevich, various governments passed another round of sanctions. European Union sanctions in particular are aimed at the country’s economic sector.⁹⁸ 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.”⁹⁹

B. CASE HISTORY

Factual Background

On November 15, 2020, journalists Ekaterina Andreyevna Andreyeva (Bakhvalova) (henceforth referred to as “Katsiaryna Andreyeva”), 27, and Daria Dimitrievna Chultsova, 23, were arrested while conducting a live video broadcast for Poland-based Belsat TV.¹⁰⁰ They were covering a demonstration in Minsk in memory of Raman Bandarenka, a protester who on November 13 died due to injuries allegedly inflicted by police.¹⁰¹ Ms. Andreyeva had been regularly covering the protests in Belarus, having worked as a correspondent for Belsat TV since the spring of 2017 and having twice been recognized as Belsat’s “Television Person of the Year.”¹⁰² Ms. Chultsova had started working as a camerawoman for Belsat a few weeks prior.¹⁰³

The following account of events comes from monitors’ notes on the trial hearings, which included witness testimony and the playing of excerpts of the broadcast at

⁹⁷ 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>.

⁹⁸ 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>.

⁹⁹ 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/.

¹⁰⁰ Voice of America, “Belarus court jails journalists for covering protest”, February 18, 2021. Available at <https://www.voanews.com/europe/belarus-court-jails-journalists-covering-protest>; Committee to Protect Journalists, “Katsiaryna Andreyeva.” Available at <https://cpj.org/data/people/katsiaryna-andreyeva/>; Committee to Protect Journalists, “Daria Chultsova.” Available at <https://cpj.org/data/people/daria-chultsova/>.

¹⁰¹ Id. See also Belarus Feed, “Roman Bondarenko, 31, dies after being beaten into coma by plainclothesmen”, November 13, 2020. Available at <https://belarusfeed.com/roman-bondarenko-beaten-plainclothesmen-die/>.

¹⁰² Belsat, “Story of Imprisoned Belsat Journalists Katsiaryna Andreyeva and Darya Chultsova”, August 2, 2021. Available at <https://belsat.eu/en/news/08-02-2021-story-of-imprisoned-belsat-journalists-katsiaryna-andreyeva-and-darya-chultsova/>.

¹⁰³ Id.

issue. On November 14, a Belsat TV producer obtained permission from a resident of a building near the planned protest for Ms. Andreyeva and Ms. Chultsova to film from the family's 14th floor apartment.¹⁰⁴ The two journalists arrived at around noon on November 15.¹⁰⁵ As confirmed by multiple witnesses, the protest had already started: it appeared to entail several hundred individuals gathering in a courtyard directly below the apartment, called the "Square of Change," where Raman Bandarenka had allegedly been beaten by police officers. The Square had become a memorial to Bandarenka.¹⁰⁶ Ms. Andreyeva and Ms. Chultsova spent most of the day filming from the window of the apartment, leaving only once for approximately 15-30 minutes at around 1:00 p.m. to conduct on-the-street interviews of participants in the demonstration.¹⁰⁷ As was their practice, Ms. Andreyeva reported on the demonstrations while Ms. Chultsova operated the camera.

During the trial, excerpts from the women's broadcast were played. Given that Ms. Andreyeva was the reporter and Ms. Chultsova was the camera operator, only Ms. Andreyeva's voice can be heard.

In the recording, Ms. Andreyeva describes what is happening on the Square and street below the window and discusses the reasons that people had gathered, including to honor Raman Bandarenka and protest the circumstances of his death.¹⁰⁸ She reports that people are chanting "Long live Belarus!" and "We believe! We can! We will win!", as well as the slogan "I'm leaving," purportedly Mr. Bandarenka's last words.¹⁰⁹ As stated by Ms. Andreyeva, protesters were concentrated in the courtyard but also spilled out into the roads.¹¹⁰ She characterizes the protest as peaceful and as comprised of people of all ages, including families with children.¹¹¹ She notes that red and white fireworks had been set off,¹¹² a symbol of the protest movement.

¹⁰⁴ Monitor's Notes, February 9, 2021. On this day, the prosecution called Nikolay Nikolaevich Skorina (a resident of a building neighboring the Square of Change), Elena Viktorovna Dyadyul (a friend of the Moroz family, the owners of the apartment from which the accused conducted their broadcast, who was in the apartment the day of the broadcast), Lilia Cheslavovna Moroz (the matriarch of the Moroz family, who was in the apartment when the accused conducted their broadcast), Dmitry Aleksandrovich Moroz (the patriarch of the Moroz family, who was in the apartment when the accused conducted their broadcast), Roman Arkadievich Pranovich (a representative of the public transport company Minkstrans, which was attached to the criminal case as a civil plaintiff), Igor Vladimirovich Ilyash (the husband of Katsiaryna Andreyeva), and Evgeny Vladimirovich Mescheryakov (the taxi driver who drove the accused to the Moroz apartment on the day of the broadcast). Ms. Andreyeva also testified and was interrogated by the court, the prosecution, and the defense. Ms. Chultsova exercised her right not to testify but the court asked that her pretrial statement be read out loud.

¹⁰⁵ Id.

¹⁰⁶ Id.

¹⁰⁷ Id.

¹⁰⁸ Monitor's Notes, February 16, 2021. On this day, the prosecution played excerpts of the broadcast and also read aloud pieces of written evidence, such as records of the interrogation of witnesses and investigation reports.

¹⁰⁹ Id.

¹¹⁰ Id.

¹¹¹ Id.

¹¹² Id.

The broadcast also features Ms. Andreyeva and Ms. Chultsova going into the street to conduct interviews.¹¹³ During these interviews, they ask people to share their opinions of the situation and why they chose to protest.¹¹⁴ While on the ground, the journalists show a close-up of the Bandarenka memorial and also show people forming a “chain of solidarity” in the road.¹¹⁵

Throughout the broadcast, Ms. Andreyeva comments on the disruption of traffic, describing what she calls a “traffic jam.”¹¹⁶ She notes that access to the surrounding streets is difficult because of the number of protesters and reports on calls appearing on the Telegram channel – frequently used by protesters – for drivers to come to the area to block security forces’ access to the demonstration.¹¹⁷

The recording also shows Ms. Andreyeva reporting on the actions of law enforcement, seemingly drawing on both her direct observations from the window and accounts on social media. Early on in the broadcast, she states that it is not clear whether security forces are present but later cites reports that they are near.¹¹⁸ When protesters begin streaming off the street, she states that it appears they are moving away from law enforcement.¹¹⁹ Once the security forces arrive, she reports that they are facing the protesters in a line of buses, that they have brought a water cannon with them, that they are pulling down red and white flags and posters, and that they are detaining protesters in courtyards adjacent to buildings abutting the streets where the protest had been taking place.¹²⁰ She says: “We urge those who are on the Square of Change to be careful.”¹²¹

At one point the broadcast is interrupted. When it comes back online, Ms. Andreyeva reports that she and Ms. Chultsova had to hide temporarily because a drone was hovering in front of the window.¹²² Near the end of the broadcast, Ms. Andreyeva notes: “[a]ll Telegram channels write that the security forces are surrounding the Square of Change from all sides, encircling people.”¹²³

With respect to protesters’ actions, Ms. Andreyeva reports that they are standing in front of security forces and not engaging in violence. She says: “Look at these brave guys. Perhaps there are girls there, too. They stand facing the gubopiks [employees of ‘GUBOPiK’ - Main Directorate for Combating Organized Crime and

¹¹³ Id.

¹¹⁴ Id.

¹¹⁵ Id.

¹¹⁶ Id.

¹¹⁷ Id.

¹¹⁸ Id.

¹¹⁹ Id.

¹²⁰ Id.

¹²¹ Id.

¹²² Id.

¹²³ Id.

Corruption]. There is no aggression on their part, only the slogans ‘Go away!’”¹²⁴ She also notes that protesters did not disperse despite the use of water cannons and stun grenades, stating: “This is very impressive. The protest has not ceased to be peaceful. Protest actions are taking place in Brest, Grodno. In Minsk, thousands of people are moving from Olshevskogo Street towards the Square of Change They have no weapons. While people on the Square of Change have been driven off, several columns are being formed that are on the way to here.”¹²⁵

At some point after the security forces arrived and began clearing the Square of protesters, the apartment’s Internet dropped, interrupting the broadcast.¹²⁶ When Ms. Andreyeva tried to inform her office and family, she found that her phone had stopped working.¹²⁷ Shortly after, the doorbell rang.¹²⁸ According to multiple witnesses, including the owners of the apartment, there was subsequently knocking on the door, which lasted for approximately 10 minutes.¹²⁹ Whoever was knocking did not identify themselves and no one in the apartment opened the door because they were scared.¹³⁰ Ms. Andreyeva stated that she assumed police were at the door since she had been watching them arrest protesters all afternoon.¹³¹ The knocking became more insistent and the door was eventually forced open.¹³² Eight officers entered. According to Ms. Andreyeva, they did not introduce themselves or show any identification documents.¹³³ They were dressed in black clothing and wearing balaclavas. The officers ordered Ms. Andreyeva and Ms. Chultsova to hand over their equipment.¹³⁴ They were arrested and taken to the police station.¹³⁵ Ms. Andreyeva stated that she was not told why she was being detained.¹³⁶ The police also seized phones and computers belonging to the Moroz family.¹³⁷

According to Ms. Andreyeva, on the way to the police station the arresting officers threatened her, saying she would be sent “to the zone to sew uniforms for the cops for ten years.”¹³⁸ She further stated that when they arrived at the police station one officer pushed her in the back while walking and another officer told her she would be sentenced to seven years for extremism.¹³⁹ Ms. Andreyeva asked the officers

¹²⁴ Id.

¹²⁵ Id.

¹²⁶ Monitor’s Notes, February 9, 2021.

¹²⁷ Id.

¹²⁸ Id.

¹²⁹ Id.

¹³⁰ Id.

¹³¹ Id.

¹³² Id.

¹³³ Id.

¹³⁴ Id.

¹³⁵ Id.

¹³⁶ Id.

¹³⁷ Id.

¹³⁸ Id.

¹³⁹ Id.

why they did not just shoot her.¹⁴⁰ They reportedly replied that it would be a waste of a bullet.¹⁴¹ According to Ms. Andreyeva, it was not until the next day that she received formal notification that she was a suspect in a criminal investigation under Article 342 of the Criminal Code for violating public order (more on this below).

Administrative Proceedings and Criminal Charges

On November 17, prior to any criminal proceedings, the Oktyabrskiy District Court found Ms. Andreyeva and Ms. Chultsova liable for the administrative offenses of participating in the “unsanctioned” November 15 protest and disobeying the police.¹⁴² The court sentenced them to seven days of administrative detention.¹⁴³ On November 20,¹⁴⁴ however, Ms. Andreyeva and Ms. Chultsova were formally charged under Article 342 of the Criminal Code, which provides:

Organization of group actions that grossly violate public order and are associated with clear disobedience to the legal requests of government officials or entail disruption of transport, enterprises, institutions or organizations, or active participation in such actions in the absence of signs of a more serious crime – are punishable by a fine or arrest, or restraint of liberty for up to three years, or imprisonment for the same period.

For this provision of the code, the prosecution needs to prove the baseline offense of organization of group actions that grossly violated public order and only *one* of three elements – “clear disobedience to the legal requests of government officials,” “disruption of transport, enterprises, institutions or organizations,” or “active participation in” group actions. Nonetheless, the indictment against the two journalists alleges that all three elements were fulfilled (the Center had access only to Ms. Andreyeva’s indictment but Ms. Chultsova was charged with the exact same acts).

Specifically, the indictment states that Ms. Andreyeva acted from “mercenary motives” in a “preliminary conspiracy” with Ms. Chultsova and “other unidentified persons” to implement “the intention to organize group actions that grossly violate public order, are associated with clear disobedience to the legal requests of the authorities and entail disruption in the public transportation, as well as

¹⁴⁰ Id.

¹⁴¹ Id.

¹⁴² Id; Monitor’s Notes February 16, 2021; Committee to Protect Journalists, “Katsiaryna Andreyeva.”; Committee to Protect Journalists, “Daria Chultsova.”

¹⁴³ Id.

¹⁴⁴ Belsat, “Story of Imprisoned Belsat Journalists Katsiaryna Andreyeva and Darya Chultsova”, August 2, 2021. There are varying reports about the exact day the two journalists were charged.

implementing the intention to actively participate in such group actions.”¹⁴⁵ In support of this claim, the indictment states, among other things, that Ms. Andreyeva:

- Broadcast “information provided by destructive social media accounts” live on YouTube and other networks so as to collect “active participants in gross violation of public order.”¹⁴⁶
- Persuaded those who gathered “to take specific actions” “that grossly violate public order,” including requesting drivers to use their vehicles to block law enforcement access to the protests and requesting more protesters to arrive at the scene so as to resist law enforcement efforts.¹⁴⁷
- Informed protesters about law enforcement “measures aimed at suppressing illegal actions, [including] the places of their deployment, including the detentions in the courtyards of houses.”¹⁴⁸
- Positively assessed protesters’ actions, “thus calling for more people to participate in these group actions.”¹⁴⁹
- Failed to comply with uniformed police officers’ demands for them to “stop group actions that rudely violated public order, knowing with certainty that in other places of the city of Minsk at that time detentions of participants in [protests] were already taking place” and thus violating “the procedure for holding mass events” “without the appropriate permission of the Minsk City Executive Committee.”¹⁵⁰
- Violated public order by “publicly shouting slogans” and “clapping hands loudly.”¹⁵¹
- Blocked traffic in the roadway, “creating obstacles for the passage of public transport and other vehicles, as well as broadcasting these actions live ... which entailed disruption of transport, including stopping the movement of urban passenger transport” on local bus and tram routes, causing financial loss.”¹⁵² (It is unclear here whether the indictment is alleging that Ms. Andreyeva and Ms. Chultsova blocked traffic by conducting interviews in the roadway or that their live broadcast somehow caused the disruption of traffic, or both).

The indictment also states, without explaining its relevance, that Ms. Andreyeva lacked media accreditation. Notably, as Belsat TV is based in Poland, Ms.

¹⁴⁵ Senior Investigator of the Frunzensky District (Minsk) Department of the Investigative Committee of the Republic of Belarus, Andreyeva Indictment, December 23, 2020.

¹⁴⁶ Id.

¹⁴⁷ Id.

¹⁴⁸ Id.

¹⁴⁹ Id.

¹⁵⁰ Id.

¹⁵¹ Id.

¹⁵² Id.

Andreyeva had sought accreditation from the Belarusian Ministry of Foreign Affairs to work in Belarus, but her request was denied.¹⁵³

Pretrial Detention

On November 20, the same day that Ms. Andreyeva and Ms. Chultsova were charged, the authorities ordered that they be placed in pretrial detention.¹⁵⁴ According to defense counsel, this order did not “set out the reasons which required the need for custody” and did not provide any supporting evidence.¹⁵⁵ On December 24, 2020, the Frunzensky District Department of the Investigative Committee rejected the accused’s request for release on bail, stating that during the preliminary investigation, sufficient evidence was collected indicating that crimes were committed under Article 342 of the Criminal Code and that “a preventive measure in the form of detention was lawfully and reasonably applied, and there are no grounds for canceling it.”¹⁵⁶

The women subsequently remained in detention until trial as well as throughout the trial itself. Notably, at the first trial hearing on February 9, 2021, the defense again asked that pretrial detention be lifted, arguing, among other things, that neither accused had a criminal record, that neither accused posed a flight risk, and that since the preliminary investigation was completed and all evidence had been collected, there was no risk of interference with the proceedings.¹⁵⁷ The court rejected the defense’s request, noting only that Article 342 carried a potential sentence of “imprisonment for up to three years.”¹⁵⁸



First Trial Hearing: February 9, 2021

The trial was held before Minsk’s Frunzensky District Court. Judge Natalya Mikhailovna Buguk presided.¹⁵⁹ The accused were confined to cages at the side of the courtroom throughout the duration of the trial. At the first hearing on February 9, 2021, Ms. Andreyeva

¹⁵³ See Monitor’s Notes, February 9, 2021.

¹⁵⁴ Id; Committee to Protect Journalists, “Katsiaryna Andreyeva, Imprisoned”, November 15, 2020. Available at <https://cpj.org/data/people/katsiaryna-andreyeva/>.

¹⁵⁵ Monitor’s Notes, February 9, 2021.

¹⁵⁶ Frunzensky District (Minsk) Department of the Investigative Committee of the Republic of Belarus, Resolution on Refusal to Satisfy the Declared Application, December 24, 2020.

¹⁵⁷ Monitor’s Notes, February 9, 2021.

¹⁵⁸ Id.

¹⁵⁹ Id.

and Ms. Chultsova both pled not guilty.¹⁶⁰ State prosecutor Alina Sergeevna Kasyanchik then called several witnesses.¹⁶¹

The first to testify was Nikolay Nikolaevich Skorina, a resident of an apartment building overlooking the November 15 protest site.¹⁶² Mr. Skorina testified that on the day of the protests, he saw a large number of people gathering at around 11 a.m.-12 p.m. and that they blocked the roadway.¹⁶³ He noted that he did not see anyone with cameras in the roadway and that around 11:30 a.m. he attempted to leave his house in his car but could not due to the protest.¹⁶⁴ He further stated that public transport stopped around 12:30 p.m. but that he was not sure precisely where the breakdown began.¹⁶⁵ According to Mr. Skorina, he called the police that day because: “there was a car near my windows, in which there were people with a walkie-talkie, and they coordinated the movement of the protesters, I reported the license plate number of the car to the police. Among them were people with cameras.”¹⁶⁶ In response to the court’s question about whether Ms. Andreyeva and Ms. Chultsova were “among those people who, in your opinion, coordinated the actions of the protesters,” Mr. Skorina stated: “No, there were only four men there.”¹⁶⁷

The prosecution next called as witnesses individuals who had been in the apartment with Ms. Andreyeva and Ms. Chultsova on the day of the protest, including Dmitry Moroz, who allowed the journalists to film the protest from his apartment window.¹⁶⁸ According to Mr. Moroz’s testimony, he had not met the women prior to that day.¹⁶⁹ He indicated that on November 14, someone from Belsat TV called him and asked if Belsat journalists could film from the window. According to Mr. Moroz, the women arrived at around noon and left at approximately 1:00 p.m. for a period of 20-30 minutes to interview protesters.¹⁷⁰ In response to questioning from the prosecution, Mr. Moroz stated that he did not check the women’s passports and “clarify[] whether they were really journalists.”¹⁷¹ He further stated that he did not observe Ms. Andreyeva or Ms. Chultsova undertaking illegal action or disobeying police orders.¹⁷² According to Mr. Moroz, at approximately 5:00 p.m. someone pulled on the handle of the apartment’s front

¹⁶⁰ Id.

¹⁶¹ Id.

¹⁶² Id.

¹⁶³ Id.

¹⁶⁴ Id.

¹⁶⁵ Id.

¹⁶⁶ Id.

¹⁶⁷ Id.

¹⁶⁸ Id.

¹⁶⁹ Id.

¹⁷⁰ Id.

¹⁷¹ Id.

¹⁷² Id.

door, then knocked.¹⁷³ He did not open the door because he did not know who was knocking and was not expecting anyone.¹⁷⁴ Eventually, police forced their way in.¹⁷⁵ One had a pistol, and one was wearing a helmet.¹⁷⁶

Mr. Moroz's wife, Lilia Moroz, also testified, confirming that Ms. Andreyeva and Ms. Chultsova arrived at approximately 12:00 p.m. and that she had not seen the accused undertake any illegal action or disobey police orders.¹⁷⁷ She stated that there was no traffic running at the time that protesters entered the roadway: "The cars were not driving even before people got out [on the roadway]. I think that's why they went to the roadway."¹⁷⁸ Like her husband, Ms. Moroz stated that around 5:00 pm she heard people running up the stairs and then a loud knock at her door, which "scar[ed]" her.¹⁷⁹ She did not know who was knocking.¹⁸⁰ When she finally approached the door to open it after about 10 minutes of knocking, it was forced open.¹⁸¹ Law enforcement officers entered and introduced themselves to her. They were wearing black outfits and balaclavas.¹⁸²

The prosecution also called Ms. Andreyeva's husband, Igor Ilyash, as a witness. He testified that his wife had called him from the apartment and told him that police were there and she would probably be arrested.¹⁸³ While Mr. Ilyash was testifying, the judge asked him if he knew whether it was possible for a journalist to work in Belarus "on the instructions of foreign media without accreditation."¹⁸⁴ He replied that it was a controversial legal issue.¹⁸⁵

Roman Pranovich, the head of the transport organization department of Minsktrans – a local municipal transport company – also testified. In addition to serving as a prosecution fact witness, he testified in his capacity as the representative of Minsktrans, which had been attached to the proceedings as a civil plaintiff by the prosecution: namely, Minsktrans had claimed approximately 11,000 rubles in damages as a result of the demonstration's alleged disruption of tram and trolley routes.¹⁸⁶ On cross-examination, Mr. Pranovich could not answer defense

¹⁷³ Id.

¹⁷⁴ Id.

¹⁷⁵ Id.

¹⁷⁶ Id.

¹⁷⁷ Id.

¹⁷⁸ Id.

¹⁷⁹ Id.

¹⁸⁰ Id.

¹⁸¹ Id.

¹⁸² Id.

¹⁸³ Id.

¹⁸⁴ Id.

¹⁸⁵ Id.

¹⁸⁶ Id. Later in Mr. Pranovich's testimony, it emerged that he had not even seen the claim, which had been filed by the prosecution in line with Article 149 of the Belarusian Code of Criminal Procedure, which stipulates that "[i]n cases where this is required by the protection of the rights of citizens, legal entities, state or public interests, the prosecutor has the right to bring a civil claim in criminal proceedings."

questions as to how and why the streets were blocked.¹⁸⁷ The defense, for example, asked Mr. Pranovich “who blocked traffic,” to which Mr. Pranovich responded: “I can’t say, I was not present,” citing only a traffic control report that referred to “unauthorized mass events” and subsequently struggling to recall details about this dispatch.¹⁸⁸ He was also unable to provide information on specific routes blocked and the times at which they were blocked.¹⁸⁹ Notably, Mr. Pranovich did not provide any information about the alleged responsibility of either Ms. Chultsova or Ms. Andreyeva for the blockage of traffic.¹⁹⁰ On the defense’s request, the witness stated he could identify someone else from Minsktrans who could explain the reasons for the blocked traffic.¹⁹¹ When defense counsel asked for further details on how to properly identify the additional Minsktrans witness for the purpose of summoning the witness to testify, the court struck the question, stating that it was “overruled as being unrelated to this case” and providing no further explanation.¹⁹²

The defense also asked Mr. Pranovich about the evidence Minsktrans used to establish the amount of damages.¹⁹³ Mr. Pranovich struggled to explain the precise formula and method of calculation, stating that the “economic department” would be a better source.¹⁹⁴ The court subsequently removed further questions about the basis of the claim, stating that damages had not been filed by Minsktrans directly but by the deputy prosecutor (in line with Belarusian procedure).¹⁹⁵ The court also dismissed defense questions about why the civil claim was only brought against the two journalists and not against all the people who had participated in the “unauthorized action.”¹⁹⁶

Ms. Chultsova exercised her right not to testify at trial. In response, the court ordered that her pretrial written statement be read out to the court. In that statement, Ms. Chultsova denied her guilt, stating, among other things, that a lack of journalistic accreditation is not a crime; that there was no evidence of her using the Internet to call people to protest or to use their vehicles to interfere with law enforcement; that she did not understand the term “destructive social media accounts” in the indictment; and that she did not participate in any protest.¹⁹⁷ According to Ms. Chultsova, she arrived at the Moroz apartment together with Ms.

¹⁸⁷ Id.

¹⁸⁸ Id.

¹⁸⁹ Id.

¹⁹⁰ Id.

¹⁹¹ Id.

¹⁹² Id.

¹⁹³ Id.

¹⁹⁴ Id.

¹⁹⁵ Id.

¹⁹⁶ Id.

¹⁹⁷ Id.

Andreyeva at around 12:00 p.m., where they remained until their arrest apart from briefly going out to interview protesters.¹⁹⁸

Ms. Andreyeva subsequently testified, first reading out a prepared statement in which she described the prosecution as politically motivated and as a “primitive act of revenge by the special services for my professional activities, for the conscientious fulfillment of the duties of a journalist.”¹⁹⁹ With reference to the indictment’s allegation that she and Ms. Chultsova were acting out of “mercenary motives,” Ms. Andreyeva asked: “Is it possible to understand the fulfillment of the terms of a work contract as selfish?”²⁰⁰ indicating that the prosecution had used the term “mercenary motives” in reference to her performance of job duties in line with her Belsat contract. Regarding the allegation that she committed unlawful actions on the basis of a “preliminary conspiracy,” Ms. Andreyeva stated: “[i]n this case, we can consider any collective labor activity the result of a preliminary conspiracy of a group of persons,” implying that the prosecution’s allegation of a “preliminary conspiracy” was based on the fact that the accused had agreed to undertake the broadcast as part of the Belsat team.²⁰¹

Like Ms. Chultsova, Ms. Andreyeva questioned the prosecution’s use of the term “destructive media accounts,” denied organizing the protest, stating that the demonstration had already started by the time that she had arrived, and further denied persuading people to participate in the protest.²⁰² Her account of events corroborated that of Ms. Chultsova, Mr. Moroz, and Ms. Moroz: that she arrived at 12:00 p.m. and stayed in the apartment for the duration of the broadcast except during a brief interlude in which she went outside to interview protesters.²⁰³ According to Ms. Andreyeva, her description of protesters as “brave” and other such assessments of the events that day were part of her duty as a journalist to “convey the atmosphere of what is happening.”²⁰⁴

Of the allegations that she disobeyed police orders, Ms. Andreyeva stated that no demands were made of her prior to the police forcing open the door and that from the moment of her arrest, she “unquestioningly” followed all the instructions of the police officers.²⁰⁵

Subsequent to Ms. Andreyeva’s testimony, the prosecution questioned her about, among other things, her contract with Belsat, what equipment she used, how she learned of the assignment to cover the protests on November 15, why she went

¹⁹⁸ Id.

¹⁹⁹ Id.

²⁰⁰ Id.

²⁰¹ Id.

²⁰² Id.

²⁰³ Id.

²⁰⁴ Id.

²⁰⁵ Id.

out into the street to interview protesters, and whether she asked others in the apartment not to open the door when the police started knocking.²⁰⁶ Ms. Andreyeva refused to answer the majority of the questions.²⁰⁷ The last witness to testify was Evgeny Vladimirovich Mescheryakov, the taxi driver who drove the accused to the apartment on the day of the protests.²⁰⁸ He confirmed that he dropped the women off at approximately 12:00 p.m. and that protesters had already gathered by the time they arrived.²⁰⁹

Second Trial Hearing: February 16, 2021

Independent media as well as the monitor were excluded from the second hearing. The following is based on audio transcripts of the hearing. At the top of the hearing, defense counsel attached to the case file a prior request to Minkstrans to provide information on the traffic control dispatch reports that day as well as on how it calculated damages.²¹⁰ Minkstrans had yet to respond to the request and counsel petitioned to court to subpoena Minkstrans to obtain the information.²¹¹ The court refused the petition, stating: “since the materials of the criminal case contain evidence confirming the damage, there are calculations of the costs, in the last meeting the representative of the civil plaintiff gave detailed explanations on this issue.”²¹² Counsel then attached to the case file a prior request to the Department of State Automobile Inspection (UGAI) and the Department of Internal Affairs of the Minsk City Executive Committee for information on whether law enforcement officers blocked traffic on the day of the protests.²¹³ Only UGAI had replied, refusing counsel’s request because it entailed “official information of limited distribution.”²¹⁴ The court denied defense counsel’s petition to compel production of the information, stating: “since the conclusions about what caused the stopping of the vehicles are within the competence of the court, the court will draw appropriate conclusions in the deliberation room.”²¹⁵

Excerpts from the accused’s broadcast as selected by the prosecution – many of which have been referenced above – were played at the hearing. The defense asked for the entire broadcast be played so the court could better understand the full context, but the court chose to view only the excerpts (it appears that the full recording was introduced into evidence).²¹⁶ Notably, the prosecution had provided written quotations to the court from the broadcast; in response, the defense

²⁰⁶ Id.

²⁰⁷ Id.

²⁰⁸ Id.

²⁰⁹ Id.

²¹⁰ Monitor’s Notes, February 16, 2021.

²¹¹ Id.

²¹² Id.

²¹³ Id.

²¹⁴ Id.

²¹⁵ Id.

²¹⁶ Id.

attached to the case file a document detailing alleged inconsistencies between the quotations provided by the prosecution and the content of the broadcast.²¹⁷ After the broadcast excerpts were played, the prosecution asked Ms. Andreyeva several questions, including why she stated: “It is also reported that the drivers who are non-occupied at the moment, can drive up to the area of the Square of Change to help protect people from the possible arrival of special-purpose vehicles here.” Ms. Andreyeva replied that she was merely reporting what she had heard on the Telegram channels being used by protesters (in the direct quote from the broadcast, she indeed cites Telegram reports).²¹⁸ The prosecutor also asked Ms. Andreyeva why she twice hid during the broadcast (once when a drone flew next to the window and once when a flashlight shone in the window), suggesting that Ms. Andreyeva hid because she was aware that she was committing illegal activities.²¹⁹ Ms. Andreyeva responded: “[p]robably it was because before that, my colleagues had been beaten up in the stomach with a knee during arrests, their bones were broken, and they were shot in the knee – this is probably why.”²²⁰

Subsequently, the prosecution started reading out a list of evidence, including equipment seized at the Moroz apartment, records of the interrogations of the accused, the administrative judgment against the accused, the transcript of Mr. Skorina’s call to the police, a document from the Ministry of Foreign Affairs stating that Ms. Andreyeva and Ms. Chultsova had not received accreditation as journalists, and documents regarding the Minskstrans civil claim.²²¹

At the end of the hearing, Minskstrans withdrew its civil claim, citing the fact that the damages had been paid in full:²²² the families of Ms. Andreyeva and Ms. Chultsova had paid the claim on the accused’s behalf.²²³ The prosecution agreed to support the termination of the claim.²²⁴ Ms. Andreyeva noted that the compensation did not constitute an admission of guilt.²²⁵

Third Trial Hearing: February 17, 2021

At the top of the hearing, the court accepted the waiver of the Minskstrans civil claim by Minskstrans and the prosecution.²²⁶ Subsequently, defense counsel petitioned the court to attach various materials to the case file, including an expert philologist opinion concluding that Ms. Andreyeva’s reporting during the broadcast “[did] not

²¹⁷Id.

²¹⁸ Id.

²¹⁹ Id.

²²⁰ Id.

²²¹ Id.

²²² Id.

²²³ Id.

²²⁴ Id.

²²⁵ Monitor’s Notes, February 9, 2021.

²²⁶ Monitor’s Notes, February 17, 2021.

use linguistic means that may contain linguistic signs of organization of any group actions”;²²⁷ a submission from the Ethics Commission of the Belarusian Association of Journalists concluding that the broadcast constituted routine, professional coverage of a news event, that it complied with journalistic ethics, and that the accused never called on viewers to participate in the protest; a submission from the NGO Article 19 stating that there was “no evidence that anything in the actions of the two journalists – Ekaterina Bakhvalova and Daria Chultsova – could be regarded as ‘organizing a violation of public order’” and that the prosecution’s “sole purpose [was] to suppress the legitimate protest movement and the dissemination of information about this movement and maintain the political status quo”;²²⁸ and the conclusions of two psychological-linguistic experts finding that the broadcast did not contain any “linguistic [or] psychological signs of a speech act of appeal aimed at uniting anybody.”²²⁹

The defense asked to examine the aforementioned philological expert, a professor at the Belarusian National Academy of Sciences, given that the potential witness could not leave work to testify unless the court itself provided him with an official summons.²³⁰ The court refused the request because the defense had not secured the expert’s appearance and because the expert had already provided written conclusions to the defense’s questions.²³¹

Prosecution Closing Arguments

In closing arguments, the prosecutor asserted that the testimony of prosecution witnesses at trial, the recording of the broadcast, and supporting evidence proved that the accused were responsible for organizing group actions that grossly violated public order.²³² According to the prosecution: “[t]he very fact that the accused carried out a live broadcast already confirms the fact that they organized illegal actions.”²³³ Notably, the prosecution’s closing argument contained assertions that were inconsistent with previous witness testimony: that when the accused interviewed protesters outside the apartment, they contributed to the blocked traffic in the roadway – contravening testimony that the road had been blocked before the accused went outside to conduct in-person interviews and that the accused were only outside for 15-30 minutes;²³⁴ that the testimony of the Minsktrans representative, Mr. Pranovich, showed that the accused had caused

²²⁷ Id.; Expert conclusion of Alexander Lukashanets, January 20, 2021.

²²⁸ Monitor’s Notes, February 17, 2021; Article 19, “Belarus: Prosecution of Journalists for ‘Organizing Public Order Violations’ Violates International Human Rights Standards and Is Against Common Sense”, February 4, 2021.

²²⁹ Monitor’s Notes, February 17, 2021.

²³⁰ Id.

²³¹ Id.

²³² Id.

²³³ Id.

²³⁴ Id.

the traffic blockage – despite the fact that Mr. Pranovich himself never referenced the accused and even stated that he did not know why traffic had been stopped;²³⁵ and that the fact that the accused hid from law enforcement showed that they knew they were acting illegally, despite testimony that everyone in the apartment was scared, that police officers never identified themselves as such when knocking on the door, and that the accused obeyed all police orders after the officers entered the apartment.²³⁶ The prosecution also cited the accused’s lack of media accreditation without explaining its relevance to the case.²³⁷

With respect to the penalty, the prosecution requested that each accused receive a sentence of two years’ imprisonment, asking the court to take into account the purported “social danger” of the accused’s actions; that the accused’s actions were part of a “prior conspiracy” (the facts of which remained unclear); and that the accused had prior administrative convictions.²³⁸ The prosecutor stated that the compensation provided to Minsktrans was a mitigating circumstance.²³⁹

Ms. Chultsova’s Lawyer Closing Argument

Ms. Chultsova’s counsel asserted that his client should be acquitted, stating that the prosecution had failed to prove or even present evidence that Ms. Chultsova committed any violation of public order that would qualify as “gross.” Counsel further disputed several of the prosecution’s claims for lack of evidence: among other things, that the authorities had given any order that Ms. Chultsova disobeyed; that Ms. Chultsova shouted slogans, clapped loudly, or otherwise participated in the protest; that Ms. Chultsova had called upon others to participate in the protest; that Ms. Chultsova obstructed the passage of vehicles while interviewing protesters; and that the broadcast somehow resulted in traffic blockage.²⁴⁰ He also stated that the internet had been shut down in the city of Minsk that day, meaning that even if the accused had attempted to galvanize a public protest, no one in the city limits would have been able to receive the message.²⁴¹ Counsel questioned the relevance of the prosecution’s references to the journalists’ media accreditation.²⁴²

Ms. Andreyeva’s Lawyer Closing Argument

In closing arguments, Ms. Andreyeva’s counsel framed the case as striking at the core of the right to peaceful assembly: that rather than attempting to prevent and

²³⁵ Id.

²³⁶ Id.

²³⁷ Id.

²³⁸ Id.

²³⁹ Id.

²⁴⁰ Id.

²⁴¹ Id.

²⁴² Id.

disperse the protest, the state had a duty to enable the demonstration and protect those assembled so they could peaceably exercise their right to protest.²⁴³ Counsel emphasized that the protest was peaceful and that according to the investigation, there were no reports of violence and few signs of destruction – just one overturned pedestrian crossing and one overturned road sign.²⁴⁴ Counsel further noted that the accused were exercising their right to freedom of expression by reporting on the protest.²⁴⁵

Setting aside the right to peaceful assembly and right to freedom of expression, counsel argued that the prosecution had not proven that there was any “gross” violation of public order that day, as evidenced by the peaceful nature of the protests.²⁴⁶ Highlighting Mr. Skorina’s testimony that he saw four men coordinating the protests with walkie-talkies, counsel noted that investigators never followed up on Mr. Skorina’s account of events and likewise did not undertake other routine investigative steps, such as interviewing witnesses about the accused’s alleged role in influencing them to join the protests or interviewing anyone else about their potential organization of the protests.²⁴⁷

Like Ms. Chultsova’s counsel, Ms. Andreyeva’s counsel stated that the protest had already started by the time the accused began their broadcast and that none of the excerpts from the broadcast indicated that the accused had called protesters to action. According to counsel, the prosecution’s references to Ms. Andreyeva’s purportedly positive assessment of the protesters, her lack of media accreditation, her reporting on the actions of law enforcement, and her supposedly “selfish motives” for undertaking the broadcast (i.e., her contract with Belsat) bore no relevance to the charged offense of organizing group actions that constituted a gross violation of public order.²⁴⁸

Counsel further disputed the prosecution’s allegations that the accused blocked traffic, noting that none of the witnesses were able to answer the question of why traffic was blocked and that the defense’s attempts to obtain more information on this question were rebuffed by the court.²⁴⁹

Finally, counsel stated that the prosecution never clarified the meaning of, or provided any evidence to support, the allegation that the accused had committed the offense by means of “destructive social media accounts” or that the accused had engaged in a “prior conspiracy.”²⁵⁰

²⁴³ Id.

²⁴⁴ Id.

²⁴⁵ Id.

²⁴⁶ Id.

²⁴⁷ Id.

²⁴⁸ Id.

²⁴⁹ Id.

²⁵⁰ Id.

Accused Final Statements

After counsel concluded closing arguments, Ms. Chultsova spoke, asking the court to “take a close look at the case materials and give an unbiased assessment of them.”²⁵¹ She stated: “All materials indicate my innocence. I hope for an honest, fair and lawful acquittal.”²⁵² Ms. Andreyeva followed, stating: “For [my reporting] I was thrown into jail on an absolutely trumped-up, invented charge. The evidence presented at the trial fully proves my innocence: I did not organize any actions that grossly violate public order, I did not urge anyone to violate the law, I did not commit crimes myself.”²⁵³

Ms. Andreyeva further proclaimed that she would thereafter “direct [her] energy exclusively to the creation in Belarus, to serving her – Belarus, where there will be no place for political repression, where people will not be persecuted for honest journalism, for truth.”²⁵⁴ She concluded by stating that she was “demanding, not asking, for an acquittal” as well as the release of scores of political prisoners.²⁵⁵

Fourth Trial Hearing and Verdict: February 18, 2021

At the final court session on February 18, 2021, the court found Ms. Andreyeva and Ms. Chultsova guilty of “commit[ting] the organization of group actions, grossly violating public order and associated with clear disobedience to the legal requirements of the authorities, which entailed disruption of transport, active participation in such actions in the absence of signs of a more serious crime.”²⁵⁶ The accused were sentenced to two years’ imprisonment.²⁵⁷

Notably, while Article 342 required the prosecution to prove that the accused organized group actions that grossly violated public order as well as *one* of the elements of disobeying the orders of the authorities, disruption of transport, or active participation in the group action, the court concluded that the prosecution had proved *all* three elements.

With respect to the organization of actions grossly violating public order, the court found that Ms. Andreyeva’s reporting called on individuals to participate in the protest and called on drivers to use their vehicles to block law enforcement.²⁵⁸ In support of this conclusion, the judgment cites the following quotes from Ms. Andreyeva:

²⁵¹ Id.

²⁵² Id.

²⁵³ Id.

²⁵⁴ Id.

²⁵⁵ Id.

²⁵⁶ Monitor's Notes, February 18, 2021; Frunzensky District Court, Judgment, February 18, 2021.

²⁵⁷ Id.

²⁵⁸ Frunzensky District Court, Judgment, February 18, 2021, pg. 2.

- “The cars slowed down, a traffic jam has formed, but it is also in order to prevent security officers from getting here, such calls and initiatives have been made before: just slow down and stop, so as not to allow special equipment and other transport of security officers to the protest point.”²⁵⁹
- “Some cars at the call of Telegram channels began to stop nearby, in order to slow down and limit the advancement, the possible advance of security forces in the area.”²⁶⁰
- “[P]eople occupy the nearest yards, main news Telegram channels now report. It is also reported that cars, drivers who are now free, can drive to the area of the Square of Change to help protect people from the possible arrival of special equipment here.”²⁶¹
- “About a thousand people are now moving from Alsheuski Street, past the Korona shopping center, to the Square of Change at the call of Telegram channels, through which the protesters organize and discuss their plans and with the help of these channels spread the call to go to the Square of Change. Here, it is written in Telegram channels, help is necessary. Although there are many of them, of course, they have no weapons, unlike the security forces, and they have nothing to defend themselves.”²⁶²

The verdict further states that Ms. Andreyeva had informed protesters about law enforcement efforts aimed at “suppressing illegal actions,” including their location and different measures taken.²⁶³ In support of this conclusion, the verdict cites the following quotes:

- “It is difficult to get to Pushkinskaya now, because there are just security forces on all sides, and riot police are hunting for protesters, so it is logical that people are concentrated here, where so far it looks safer, the action itself looks safer.”²⁶⁴
- “It is also reported that the intersection Timiryazeva-Pushkin is now blocked by people with shields, barbed wire has been stretched there, traffic has been blocked for a long time, but we are telling our viewers that there is barbed wire at the Timiryazev-Pushkin intersection.”²⁶⁵
- “The security forces have not appeared here yet, at least once they are not visible, they are not in sight, although, most likely they are watching the situation, but they are not taking any violent actions.”²⁶⁶

²⁵⁹ Id. at pg. 11.

²⁶⁰ Id.

²⁶¹ Id.

²⁶² Id.

²⁶³ Id. at pgs. 2, 11.

²⁶⁴ Id. at pg. 12.

²⁶⁵ Id.

²⁶⁶ Id.

- "I am informed that detentions have started in the yards, that periodically they, security officers, detain people who fled to the yard, so we urge to be careful those who try to hide somewhere in the area of the Square of Change."²⁶⁷

The court likewise finds that Ms. Andreyeva's "positive assessment" of the protest "thus call[ed] for more people to participate in these group actions."²⁶⁸ In support of this conclusion, the verdict cites the following quotes:

- "[L]et me remind you that people gathered here for a protest march – a march of the brave, several thousand people, that's about the number of people now, they have already come out on the road. Look at these brave guys who are standing on the road to Chervyakova, at first everyone ran off the road, and now again gradually people start going out there, and look at these guys, maybe there are not only guys and girls, but it's young people."²⁶⁹
- "So far the main news of this hour, and maybe this day – that after the shelling people did not disperse, just ask everyone to pay attention to it, it's very impressive, I do not know how you are on the other side of the screen, but watching me now behind it, just incredibly impressive people's courage, the courage and their peaceful mood, the protest, even after all this violence, has not ceased to be peaceful."²⁷⁰

The verdict does not explain how the peaceful protest constituted a gross violation of public order, does not address defense arguments that the protest had already commenced prior to the broadcast, and does not engage the experts' testimony that the language used was not likely to move people to action.

As noted above, the verdict also finds that in organizing actions that grossly disrupted public order, Ms. Andreyeva and Ms. Chultsova caused the disruption of traffic.²⁷¹ In this regard, the verdict states that "[f]rom the reviewed reports compiled by the dispatchers, it was seen that unauthorized mass events were the cause of traffic blockage."²⁷² However, it does not appear that reports identifying the cause of the blockage were ever included in the case file (the defense had petitioned the court to obtain this information).²⁷³ Further, although Mr. Pranovich, the Minsktrans representative, testified that he did not know why traffic was blocked and struggled to recall the details of the dispatch reports, the verdict

²⁶⁷ Id.

²⁶⁸ Id. at pgs. 2, 12.

²⁶⁹ Id. at pg. 12.

²⁷⁰ Id.

²⁷¹ Id. at pg. 2.

²⁷² Id. at pg. 7.

²⁷³ The information on file from the traffic control center stated that the streets were blocked – not why they were blocked.

characterizes his testimony as conclusively determining that the protest had stopped traffic (not the accused's actions).²⁷⁴

As noted above, the verdict further finds that the accused disobeyed the orders of the authorities.²⁷⁵ According to the court, because the two women organized the protest, they by extension disobeyed the police: "organizers of group actions that violate public order are prosecuted as perpetrators of this crime, regardless of whether they personally disobeyed legal requirements."²⁷⁶ The verdict also characterizes the fact that the accused hid during the broadcast as demonstrating knowledge that their activities were unlawful.²⁷⁷

In addition to organizing the protest, the accused were found to have directly participated in the protest.²⁷⁸ According to the court, such participation was evidenced by the accused's interviews with protesters in the street²⁷⁹ as well as that the accused "publicly shout[ed] slogans, committing loud claps of hands."²⁸⁰ This finding belied the fact that there was no evidence in the record that the two journalists had reacted in this way to the protests.

The verdict dismisses all defense evidence and arguments. The verdict, for example, deems the accused's testimony and statements unreliable: "a means to avoid responsibility for the deed."²⁸¹ According to the court, the broadcast itself rebutted the accused's accounts. Furthermore, the court did not give credence to any of the expert opinions finding that the accused's reporting did not evince any call to group action, stating that the broadcast "refute[d] the conclusions contained in the conclusions of specialists."²⁸² The verdict similarly rejects the submissions from Article 19 and the Belarusian Association of Journalists, finding them "unsubstantiated" and stating that it was within the "exclusive competence" of the court to draw conclusions regarding guilt.²⁸³

Like the prosecution, the court appeared to have placed inordinate weight on the accused's lack of media accreditation. According to the court, claims that the accused had engaged in "exclusively journalistic activity" were undermined by the fact that they were "not accredited as any correspondents of foreign media" and that "the professional activities of journalists of foreign mass media on the territory of the Republic of Belarus without accreditation is prohibited."²⁸⁴ Echoing the

²⁷⁴ Id. at pgs. 7, 16, 18

²⁷⁵ Id. at pg. 2.

²⁷⁶ Id. at pgs. 15-16.

²⁷⁷ See id. at pg. 16.

²⁷⁸ Id. at pgs. 2-3.

²⁷⁹ See id. at pg. 13.

²⁸⁰ Id. at pg. 3.

²⁸¹ Id. at pg. 11.

²⁸² Id at pg. 12

²⁸³ Id. at pgs. 12-13.

²⁸⁴ Id. at pg. 13.

prosecution, the verdict also highlights the fact that the accused broadcast information “provided by destructive accounts of social networks,” though it does not identify specific the networks employed or why the accounts were destructive.²⁸⁵

In imposing a two-year sentence on both accused, the court considered the fact that the women’s families voluntarily compensated Minsktrans as a mitigating factor.²⁸⁶ Though the court deemed the commission of a crime by “prior conspiracy” to be an aggravating factor, it did not explain this term or the facts supporting this conclusion.²⁸⁷

On April 23, the Minsk Court of Appeals upheld the lower court’s verdict in full.²⁸⁸

²⁸⁵ Id. at pg. 15.

²⁸⁶ Id. at pg. 18.

²⁸⁷ Id.

²⁸⁸ Belsat, “‘No Miracle Happened’: Court upholds sentencing Belsat journos Katsyaryna Andreyeva, Daria Chultsova”, April 23, 2021. Available at <https://belsat.eu/en/news/23-04-2021-no-miracle-happened-sourt-upholds-sentencing-belsat-journos-katsyaryna-andreyeva-darya-chultsova/>.

METHODOLOGY



A. THE MONITORING PHASE

As part of the Clooney Foundation for Justice’s TrialWatch initiative, the American Bar Association Center for Human Rights and Human Rights Embassy deployed monitors to the trial of Katsiaryna Andreyeva and Daria Chultsova before the Frunzensky District Court in Minsk. The trial was in Russian and the monitors were able to follow the proceedings. Of the four trial hearings, the monitors were able to attend three and obtained a transcript of the fourth hearing. The monitors used the CFJ TrialWatch App to record and track what transpired in court and the degree to which the defendant’s fair trial rights were respected.

B. THE ASSESSMENT PHASE



To evaluate the trial’s fairness and arrive at a grade, TrialWatch Expert Beth Van Schaack reviewed notes taken during the proceedings, court documents, and other reporting on the longstanding political crisis in Belarus. This includes civil society documentation of the deterioration of the rights to free expression, peaceful assembly, and a fair trial in the country and the surge in State censorship of voices that are critical of the present regime. In reaching the grade of D, Dr. Van Schaack relied upon the following observations and conclusions:

- Starting with the charges: although the accused – Ms. Andreyeva and Ms. Chultsova – did not possess national accreditation (because it was denied to them without justification), the prosecutor had no grounds to criminally charge the two journalists with the commission of “gross” violations of public order, an inherently vague provision within the Belarusian penal code. The charges levied against the two journalists were not borne out by the facts and were motivated by their coverage of anti-government protests rather than their conduct.
- Furthermore, the accused were not made aware of their supposed criminal conduct at the time they were detained, thus violating their right to be informed of the charges against them.
- Although defense counsel made a timely motion to suspend pretrial detention given the lack of any risk factors ordinarily justifying such a measure, the Frunzensky District Department of the Investigative Committee inexplicably rejected this submission. In the ruling, the Committee did not identify any

- compelling justification to withhold pretrial release, suggesting that the decision was based solely on the “political” nature of the charges. As a result, keeping the journalists detained prior to their trial served only to harass them, deny them the presumption of innocence, and hinder their ability to mount an effective defense. This outcome was particularly problematic given the risks associated with incarceration posed by the pandemic.
- Inexplicably, the accused were confined to a cage during the trial proceedings, even though the charges against them did not suggest that they posed any threat to the court or those present at trial.
 - Although ably represented by defense counsel, the court denied the defendants their right to mount a complete defense. On multiple occasions, the court barred the defendants from procuring or presenting exonerating evidence.
 - For example, Judge Buguk prevented the accused from calling witnesses who could explain why there were traffic blockages and who caused them (potentially law enforcement). Instead, a prosecution witness, who was ill-informed about the events in question, was allowed to provide only vague testimony on this point.
 - Nor did Judge Buguk allow a defense linguistics expert to testify in court as to his conclusions that the broadcast conveyed neutral information on the course of events as they were unfolding and contained no incendiary rhetoric or comments from the journalists that could be construed as a call to action. The verdict suggests that the court ultimately disregarded all defense experts’ reports rather than allowing the witnesses to be heard so that any doubts about their methodology or conclusions could be explored in court under direct and cross-examination.
 - Any defense efforts to expose gaps in the prosecutor’s case were cut short; indeed, Judge Buguk seemed uninterested in pursuing any lines of evidence that might exonerate the defendants.
 - At the same time, the prosecution’s proffered evidence was inconsistent, contradictory, and wholly insufficient to meet the essential elements of the charged offenses or sustain the conviction for the crimes charged. In particular, there was no evidence that the accused:
 - Clearly disobeyed any legal requests by government officials – rather, the evidence at trial, including eyewitness testimony, revealed that the police made no requests or orders to the accused during the broadcast and that the accused cooperated fully once the police forcibly entered the apartment where the journalists were broadcasting. That the accused hid to evade surveillance by an unmarked drone could hardly constitute resisting law enforcement.
 - Disrupted transport or other enterprises – rather, there was evidence in the record that the demonstrators and/or police vehicles were the cause of any transportation disruption. Indeed, the one witness called to substantiate this charged element was evasive and uninformed and yet

the defense was not allowed to identify or call a witness with more relevant knowledge.

- Actively participated in, or catalyzed, the demonstrations – rather, none of the witnesses recounted seeing the accused do anything other than objectively and faithfully report on events in the Square –which were by all accounts peaceful – in keeping with their roles as journalists. No one testified that the accused issued calls to action, shouted slogans, or were otherwise participating in the events they were covering.
- The court’s verdict mischaracterized facts in evidence and ignored exonerating evidence that should have led to an acquittal of the accused.
- Taken collectively, the entire prosecution process – from the charges levied against the two journalists to the pretrial and trial procedures to the content of the verdict – violated the speech, assembly, and fair trial rights of Ms. Andreyeva and Ms. Chultsova.
- For her willingness to preside over such politically-motivated proceedings and to issue unjust rulings against journalists and protesters who are raising awareness about rights violations in Belarus like the case at bar, Judge Buguk earned a designation on the European Union’s sanctions list.²⁸⁹

²⁸⁹ Official Regulation of the European Union, COUNCIL IMPLEMENTING REGULATION (EU) 2021/997 of 21 June 2021 implementing Article 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus, Annex, June 21, 2021,

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.

B. INVESTIGATION AND PRETRIAL VIOLATIONS

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.”²⁹⁰

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.²⁹¹ 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.”²⁹²

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.”²⁹³

²⁹⁰ 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.

²⁹¹ Human Rights Committee, General Comment No. 35, U.N. Doc. CCPR/C/GC/35, December 16, 2014, para. 27.

²⁹² 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.

²⁹³ Human Rights Committee, General Comment No. 35, U.N. Doc. CCPR/C/GC/35, December 16, 2014, paras. 25-26.

According to Ms. Andreyeva, the authorities failed to inform her of the reasons for her arrest at the time she was taken into custody. It was not until the next day that an investigator informed her that she was a suspect under Article 342(1) of the Criminal Code. This alleged course of conduct violated Article 9(2) of the ICCPR.

Right to be Free from Arbitrary Detention

The pretrial detention of Ms. Andreyeva and Ms. Chultsova failed to meet the requirements of the ICCPR. The accused were detained for approximately three months, starting from their arrests through the end of trial.

Article 9(1) of the ICCPR stipulates that “[e]veryone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.” The United Nations Human Rights Committee has noted that with respect to detention, the concept of “arbitrariness” must be “interpreted broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality.”²⁹⁴ Not only should pretrial detention be the exception and as short as possible, but also detention must be “lawful” (in accordance with domestic law) and “reasonable and necessary in all circumstances.”²⁹⁵ This means that pretrial detention is appropriate for only a limited number of purposes: namely, to prevent flight, interference with evidence, and the recurrence of crime.²⁹⁶

In evaluating the reasonableness and necessity of pretrial detention, courts must undertake an “individualized determination” of the accused’s particular circumstances.²⁹⁷ “Vague and expansive [justifications] such as ‘public security’” fail to meet this standard.²⁹⁸ Reference to the severity of the charges is likewise insufficient. As stated by the Committee, “[p]retrial detention should not be mandatory for all defendants charged with a particular crime, without regard to individual circumstances.”²⁹⁹ Courts must additionally examine whether non-

²⁹⁴ Human Rights Committee, *İsmet Özçelik et al v. Turkey*, U.N. Doc. CCPR/C/125/D/2980/2017, September 23, 2019, para. 9.3.

²⁹⁵ Human Rights Committee, *Cedeño v. Bolivarian Republic of Venezuela*, U.N. Doc. CCPR/C/106/D/1940/2010, December 4, 2012, para. 7.10.

²⁹⁶ Human Rights Committee, *Mikhail Marinich v. Belarus*, U.N. Doc. CCPR/C/99/D/1502/2006, August 19, 2010, para. 10.4.

²⁹⁷ See Human Rights Committee, General Comment No. 35, U.N. Doc. CCPR/C/GC/35, December 16, 2014, para. 38. See also Human Rights Committee, *Cedeño v. Bolivarian Republic of Venezuela*, U.N. Doc. CCPR/C/106/D/1940/2010, December 4, 2012, para. 7.10; Human Rights Committee, *Van Alphen v. the Netherlands*, U.N. Doc. CCPR/C/39/D/305/1988, July 23, 1990, para. 5.8; Human Rights Committee, *Mikhail Marinich v. Belarus*, U.N. Doc. CCPR/C/99/D/1502/2006, July 16, 2010, para. 10.4; Human Rights Committee, *Mukong v. Cameroon*, U.N. Doc. CCPR/C/51/D/458/1991, August 10, 1994, para. 9.8.

²⁹⁸ Human Rights Committee, General Comment No. 35, U.N. Doc. CCPR/C/GC/35, December 16, 2014, para. 38.

²⁹⁹ *Id.*

custodial alternatives, such as bail and monitoring devices, “would render detention unnecessary in the particular case.”³⁰⁰

Notably, if exceptional circumstances exist that permit the imposition of pretrial detention, the accused is entitled to periodic review of whether detention is still necessary.³⁰¹ A judge “must order release” of an accused “[i]f there is no lawful basis for continuing the detention.”³⁰²

With respect to the present case, on November 20, the same day that Ms. Andreyeva and Ms. Chultsova were charged, the authorities ordered that they be placed in pretrial detention.³⁰³ According to defense counsel, the detention order did not “set out the reasons which required the need for custody” and did not provide any supporting evidence.³⁰⁴ While the Center does not have access to the underlying detention order, the reasoning as described would violate the ICCPR requirement that courts undertake an individualized determination of the accused’s particular circumstances and that any detention ordered be necessary to prevent flight, prevent the recurrence of crime, or prevent interference with the proceedings.

On December 24, 2020, the Frunzensky District Department of the Investigative Committee rejected the accused’s request for release on bail, stating that during the preliminary investigation, sufficient evidence was collected indicating that crimes were committed under Article 342 of the Criminal Code and that “a preventive measure in the form of detention was lawfully and reasonably applied, and there are no grounds for canceling it.”³⁰⁵ This justification falls far short of the standards mandated by the ICCPR. The court does not reference any of the permissible bases for extending detention – risk of flight, risk of interference with the evidence, or risk of recurrence of crime – and likewise fails to even mention the specific circumstances of the accused. Moreover, the pronouncement that the original preventative measure “was lawfully and reasonably applied, and there are no grounds for canceling it” is inconsistent with the UN Human Rights Committee’s instruction as to the imperative of periodic re-evaluation.

The accused subsequently remained in detention for the duration of the period pending trial as well as throughout the trial itself. Notably, at the first trial hearing on February 9, 2021, the defense again asked that pretrial detention be lifted, arguing, among other things, that neither accused had a criminal record, that

³⁰⁰ Id.

³⁰¹ Id.

³⁰² Id. at para. 36.

³⁰³ Id; Committee to Protect Journalists, “Katsiaryna Andreyeva, Imprisoned”, November 15, 2020. Available at <https://cpj.org/data/people/katsiaryna-andreyeva/>.

³⁰⁴ Monitor’s Notes, February 9, 2021.

³⁰⁵ Frunzensky District (Minsk) Department of the Investigative Committee of the Republic of Belarus, Resolution on Refusal to Satisfy the Declared Application, December 24, 2020.

neither accused posed a flight risk, and that since the preliminary investigation was completed and all evidence had been collected, there was no risk of interference with the proceedings.³⁰⁶ The court rejected the defense's request, noting only that Article 342 carried a potential sentence of "imprisonment for up to three years."³⁰⁷ This type of categorical and terse reasoning, based solely on the severity of the charges, belies the individualized assessment required by Article 9(1).

In light of the above, Ms. Andreyeva and Ms. Chultsova were subjected to arbitrary detention.

C. VIOLATIONS AT TRIAL

Right to a Public Trial

By excluding independent media from the second hearing of the trial, the court violated the accused's right to a public trial.

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."³⁰⁸ The right to a public trial is a qualified right. The ICCPR allows for exceptions based on "reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice." According to the UN Human Rights Committee, "[a]part from such exceptional circumstances, a hearing must be open to the general public, including members of the media, and must not, for instance, be limited to a particular category of persons."³⁰⁹

In *Khoroshenko v. Russia*, the Committee considered a case in which the public and relatives of the accused had been excluded from the main trial proceedings.³¹⁰ As "recall[ed]" by the Committee, "all trials in criminal matters must in principle be conducted orally and publicly ... [as] 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."³¹¹ Because the State had put

³⁰⁶ Monitor's Notes, February 9, 2021.

³⁰⁷ *Id.*

³⁰⁸ Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, August 23, 2007, para. 28.

³⁰⁹ *Id.* at para. 29.

³¹⁰ Human Rights Committee, *Khoroshenko v. Russian Federation*, U.N. Doc. CCPR/C/101/D/1304/2004, April 29, 2011, para. 9.11.

³¹¹ *Id.*

forward no justification for closing the trial to the public, the Committee found a violation of Article 14(1).³¹²

Similarly, in *Ashirov v. Kyrgyzstan*, the Committee found a violation where the defendant's relatives were denied admission to his criminal trial.³¹³ The Committee acknowledged the State's power to exclude "all or part of the public" for the reasons enumerated in Article 14(1) but found the State's explanation that it held the trial at an inaccessible military base in order "to provide security to the defendants and their relatives" insufficient: namely,

[t]he State party failed to explain why it was necessary to exclude relatives of the author from being present during the hearings under one of the justifications contained in Article 14(1). In the absence of pertinent explanations from the State party, the Committee must conclude that the State party applied a disproportionate restriction on the author's rights to a fair and public hearing, and therefore the author's rights under article 14(1) have been violated.³¹⁴

In the present case, the authorities excluded independent media from the hearing on February 16.³¹⁵ That a "particular category" of the public was excluded from the hearing indicates that the motivation was political and did not qualify as one of the exceptions listed in Article 14(1) of the ICCPR: "morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice." Notably, representatives from State media channels were allowed to attend the hearing.³¹⁶ In light of the above, the accused's right to a public trial under Article 14(1) was violated.

Right to Call and Examine Witnesses

By refusing to let the defense fully cross-examine prosecution witnesses and denying defense requests to call witnesses, the court violated the accused's rights under Article 14(3)(e) of the ICCPR.

³¹² Id.

³¹³ Human Rights Committee, *Ashirov v. Kyrgyzstan*, Communication No. 2435/2014, U.N. Doc. CCPR/C/120/D/2435/2014, September 19, 2017, para. 7.4.

³¹⁴ Id.

³¹⁵ Monitor's Notes, February 16, 2021.

³¹⁶ Id.

International Standards

Under Article 14(3)(e) of the ICCPR, all persons accused of a crime are entitled “to obtain the attendance and examination of witnesses on [their] behalf under the same conditions as witnesses against [them].” In the words of the UN Human Rights Committee, this provision “is important for ensuring an effective defence 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.”³¹⁷ Article 14(3)(e) does not establish an absolute right to call and examine witnesses but a right to call witnesses who are relevant,³¹⁸ if proposed in a timely manner in compliance with procedural requirements.³¹⁹

In *Allaberdiev v. Uzbekistan*, the Committee considered a case in which the accused was charged with and convicted of drug-related offenses.³²⁰ Defense counsel requested to call, among others, individuals involved with the investigation and individuals whom the accused alleged had planted the drugs.³²¹ Although these witnesses were central to the defense theory that the case was fabricated, the court rejected the request, deeming the proposed testimony irrelevant.³²² The Committee found a breach of Article 14(3)(e).³²³ Similarly, in *Saidov v. Tajikistan*, the Committee found a violation of Article 14(3)(e) where the court, “stating that the witnesses requested were too close to the accused and were interested in the outcome,” prevented the accused from calling 11 witnesses.³²⁴ Notably, the right to call and examine witnesses encompasses experts.³²⁵

Violations of Article 14(3)(e) can also occur where the court excessively curtails defense questioning. In *Larrañaga v. The Philippines*, for example, the Committee ruled that the court violated Article 14(3)(e) not only by refusing to call proposed defense witnesses without adequate justification, but also by cutting short the defense’s cross-examination of a key prosecution witness.³²⁶

³¹⁷ Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, August 23, 2007, para. 39.

³¹⁸ Human Rights Committee, *Saidov v. Tajikistan*, U.N. Doc. CCPR/C/122/D/2680/2015, September 20, 2018, para. 9.6.

³¹⁹ Human Rights Committee, *Johnson v. Spain*, U.N. Doc. CCPR/C/86/D/1102/2002, March 27, 2006, para. 6.5; Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, August 23, 2007, para. 39.

³²⁰ Human Rights Committee, *Sirozhiddin Allaberdiev v. Uzbekistan*, U.N. Doc. CCPR/C/119/D/2555/2015, May 18, 2017, paras. 2.1–2.21.

³²¹ *Id.* at para. 3.5.

³²² *Id.* at paras. 8.7–8.9.

³²³ *Id.* at paras. 8.8–8.9.

³²⁴ Human Rights Committee, *Saidov v. Tajikistan*, U.N. Doc. CCPR/C/122/D/2680/2015, September 20, 2018, para. 9.6.

³²⁵ See Human Rights Committee, *Pustovalov v. Russian Federation*, U.N. Doc. CCPR/C/98/D/1232/2003, May 10, 2010, para. 8.4.

³²⁶ Human Rights Committee, *Larrañaga v. The Philippines*, U.N. Doc. CCPR/C/87/D/1421/2005, July 24, 2006, para. 7.7.

Cross-examination of Prosecution Witnesses

In the present case, the court excessively interfered with the questioning of one of the prosecution's main witnesses: Roman Pranovich, the head of the transport organization department of Minsktrans. As noted above, Mr. Pranovich served not only as a fact witness with respect to the allegation that tram and trolley routes had been blocked due to the protests but also as a representative of the company as a civil plaintiff attached to the criminal proceedings by the prosecution.³²⁷ On cross-examination, Mr. Pranovich struggled to answer how and why the streets were blocked, stating that he could identify someone else at Minsktrans to explain the reasons for the blocked traffic.³²⁸ When defense counsel asked for further details on how to properly identify the additional Minsktrans witness for the purpose of summoning the witness to testify, the court struck the question, stating that it was "overruled as being unrelated to this case" and providing no further explanation.³²⁹

The defense also asked Mr. Pranovich about the evidence Minsktrans used to establish the amount of damages.³³⁰ When Mr. Pranovich struggled to explain the precise formula and method of calculation, stating that the "economic department" would be a better source, the court barred further questions about the basis of the claim, stating that damages had not been filed by Minsktrans directly but by the deputy prosecutor (in line with Belarusian procedure).³³¹ The court also dismissed defense questions about why the civil claim was only brought against the two journalists and not against all the people who had participated in the "unauthorized action."³³²

The questions from the defense were aimed at undercutting a key part of the prosecution's case – that the mass protest and, by extension, the accused, had caused the disruption of traffic. As in *Larrañaga v. The Philippines*, the court's interference with cross-examination questions that might have elicited information helpful to the defense amounted to a violation of Article 14(3)(e).³³³

Defense Witnesses and Experts

As noted above, when Mr. Pranovich offered to identify someone at Minsktrans who could answer questions about the alleged traffic disruption, the court interrupted and stated that the defense could not continue its line of questioning.³³⁴

³²⁷ Monitor's Notes, February 9, 2021.

³²⁸ Id.

³²⁹ Id.

³³⁰ Id.

³³¹ Id.

³³² Id.

³³³ Human Rights Committee, *Larrañaga v. the Philippines*, U.N. Doc. CCPR/C/87/D/1421/2005, July 24, 2006, para. 7.7.

³³⁴ Id.

This functionally blocked the defense from calling a witness who was relevant to the defense case: namely, to support the defense assertion that the accused were not responsible for disrupting traffic.³³⁵

The defense also requested to call a professor from the Belarusian National Academy of Sciences with expertise in linguistics.³³⁶ His testimony would have addressed whether the broadcast evinced any linguistic markers of a call to action or the organization of action. Although the defense stated that the expert could appear at trial that day if the court issued a summons, the court refused to do so, stating that the defense had not secured the expert's appearance and that the expert had already submitted written conclusions to defense questions.³³⁷ Notably, the expert was unable to take time off of work without an official court summons, hence the defense request; the defense asked about the summons at only the third hearing of the trial, which at that point had lasted a week, meaning that the request was made in a timely fashion; and it is standard practice to call as witnesses individuals whose statements have already been submitted to the court as evidence.³³⁸ Indeed, in the present case, the prosecution was permitted to call as witnesses various individuals who had previously made statements to the police, which were taken down and submitted to the court in written form, such as Mr. Skorina and Ms. Moroz.

Thus, the court's refusal to permit the defense to call witnesses and experts who could testify on matters central to the defense case violated Article 14(3)(e).

Right to Adequate Time and Facilities to Prepare a Defense

The court's obstruction of defense attempts to acquire relevant evidence violated the accused's right to adequate time and facilities for the preparation of their defense, guaranteed by Article 14(3)(b) of the ICCPR.

Under Article 14(3)(b) of the ICCPR, accused persons must have adequate time and facilities for the preparation of their defense. The UN Human Rights Committee has explained that "adequate facilities" entails access to documents and other evidence, including "all materials that the prosecution plans to offer in court against the accused or that are exculpatory."³³⁹ The Committee has defined "exculpatory materials" not only as evidence demonstrating an accused's innocence but also as evidence that "could assist the defence."³⁴⁰ Restricted

³³⁵ Id.

³³⁶ Monitor's Notes, February 17, 2021.

³³⁷ Id.

³³⁸ Id.

³³⁹ Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/35, August 23, 2007, para. 33 (internal citations omitted).

³⁴⁰ Id.

disclosure is justified in limited circumstances, such as where necessary for national security or public safety.

In the case of *Khoroshenko v. Russia*, for example, the Committee found that the complainant “did not receive [a] copy of the trial’s records immediately after the first instance verdict was issued [and] that despite numerous requests, he was not given some documents he considered relevant for his defence.”³⁴¹ The Committee concluded that this conduct violated Article 14(3)(b).

In the present case, the defense requested information from the Department of State Automobile Inspection and the Department of Internal Affairs of the Minsk City Executive Committee on whether law enforcement officers blocked traffic on the day of the protests, aiming to prove that it was the authorities – not the accused – who were responsible for the traffic disruption.³⁴² The Department of Internal Affairs did not respond and the Department of State Automobile Inspection refused to provide the information, asserting that it was “official information of limited distribution.”³⁴³

When the defense asked the court to compel production of the information, the court denied the request, stating that “the conclusions about what caused the stopping of the vehicles are within the competence of the court, the court will draw appropriate conclusions in the deliberation room.”³⁴⁴ Similarly, the defense requested Minkstrans to provide the traffic control dispatch reports from that day on what caused the traffic disruption as well as information on how it calculated damages.³⁴⁵ Minkstrans had yet to respond to the request and counsel petitioned to court to subpoena Minkstrans to obtain the information.³⁴⁶ The court refused the petition, stating: “since the materials of the criminal case contain evidence confirming the damage, there are calculations of the costs, in the last meeting the representative of the civil plaintiff gave detailed explanations on this issue.”³⁴⁷ As discussed above, Mr. Pranovich had in fact not been able to provide detailed information on what stopped traffic and how costs were calculated, instead referring the defense to other staff at Minkstrans who were more equipped to answer these questions.

With respect to both the request to Minkstrans and the request to the Department of State Automobile Inspection and the Department of Internal Affairs, the materials at issue constituted evidence that “could assist the defence.” As such,

³⁴¹ Human Rights Committee, *Khoroshenko v. Russian Federation*, U.N. Doc. CCPR/C/101/D/1304/2004, April 29, 2011, para. 9.7.

³⁴² Monitor’s Notes, February 16, 2021.

³⁴³ Id.

³⁴⁴ Id.

³⁴⁵ Id.

³⁴⁶ Id.

³⁴⁷ Id.

the court was duty bound to facilitate defense access to such information – not to obstruct defense efforts. Consequently, the court’s conduct violated Article 14(3)(b) of the ICCPR.

Presumption of Innocence

Confinement to a Cage During Trial

Under the ICCPR, the presumption of innocence can be breached through conduct suggesting that the accused is guilty. The UN Human Rights Committee, for example, has stated that “defendants should normally not be shackled or kept in cages during trials or otherwise presented to the court in a manner indicating that they may be dangerous criminals.”³⁴⁸ If a defendant is caged, the State must offer some justification for this restriction.³⁴⁹ In *Pustovoit v. Ukraine*, the Committee found a violation of Article 14(2) where the State

failed to demonstrate that placing the author in a metal cage during the public trial at the Supreme Court, with his hands handcuffed behind his back, was necessary for the purpose of security or the administration of justice, and that no alternative arrangements could have been made consistent with the human dignity of the author and with the need to avoid presenting him to the court in a manner indicating that he was a dangerous criminal.³⁵⁰

In the present case, no explanation was given for the necessity of keeping the accused in a cage during the trial. Indeed, given that the women had no criminal record, were not accused of a violent crime, and were not demonstrated flight risks (see above), it is difficult to conceive of any reasonable justification for the measure. As such, the confinement of the accused to a cage for the duration of trial violated their right to be presumed innocent.

Convicting Judgment

Even taking into account the court’s prerogative to assess and weigh evidence, it was impossible for the court to conclude, as it did, that the prosecution met its burden of proving guilt beyond a reasonable doubt, largely because little or no evidence was presented supporting the elements of the offence.

³⁴⁸ Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, August 23, 2007, para. 30.

³⁴⁹ See Human Rights Committee, *Selyun v. Belarus*, U.N. Doc. CCPR/C/115/D/2289/2013, December 9, 2015, para. 7.5; Human Rights Committee, *Mikhail Pustovoit v. Ukraine*, U.N. Doc. CCPR/C/110/D/1405/2005, May 12, 2014, para. 9.3.

³⁵⁰ Human Rights Committee, *Mikhail Pustovoit v. Ukraine*, U.N. Doc. CCPR/C/110/D/1405/2005, May 12, 2014, para. 9.3.

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.³⁵¹ 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.³⁵²

While the Committee has noted that “it is generally not for itself, but for the courts of States parties, to review or to evaluate facts and evidence, or to examine the interpretation of domestic legislation by national courts and tribunals,” it may choose to comment where “it can be ascertained that the conduct of the trial or the evaluation of facts and evidence or interpretation of legislation was manifestly arbitrary or amounted to a denial of justice.”³⁵³

In *Larrañaga v. The Philippines*, for example, the UN Human Rights Committee found a violation of the presumption of innocence partially because the court had failed to address serious evidentiary issues in its convicting judgment.³⁵⁴ Similarly, in *Ashurov v. Tajikistan*, the Committee found that the Tajik court system had failed to consider major gaps in the case, meaning that the accused was “not afforded the benefit of this doubt” in violation of Article 14(2).³⁵⁵

With respect to the present case, in convicting Ms. Andreyeva and Ms. Chultsova, the court failed to address major gaps in the prosecution’s case, violating the accused’s right to be presumed innocent. All told, the prosecution failed to prove the accused’s guilt beyond a reasonable doubt.

The accused were charged under Article 342(1) of the Criminal Code, which proscribes:

³⁵¹ 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.

³⁵² 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.

³⁵³ See Human Rights Committee, *Ashurov v. Tajikistan*, U.N. Doc. CCPR/C/89/D/1348/2005, March 20, 2007, para. 6.7.

³⁵⁴ Human Rights Committee, *Larrañaga v. The Philippines*, U.N. Doc. CCPR/C/87/D/1421/2005, July 24, 2006, para 7.4.

³⁵⁵ Human Rights Committee, *Ashurov v. Tajikistan*, U.N. Doc. CCPR/C/89/D/1348/2005, March 20, 2007, para. 6.7.

Organization of group actions that grossly violate public order and are associated with clear disobedience to the legal requests of government officials or entail disruption of transport, enterprises, institutions or organizations, or active participation in such actions in the absence of signs of a more serious crime – are punishable by a fine or arrest, or restraint of liberty for up to three years, or imprisonment for the same period.

Breaking down the statute, the relevant elements of the offense are:

- There was a group action;
- The group action grossly violated public order;
- The accused organized the group action;
- *and*
- The group action was associated with clear disobedience to the legal requests of government officials;
- The group action disrupted transport; or
- The accused actively participated in the group action.

There Was a Group Action that Grossly Violated Public Order

The prosecution never defined the term “gross” violation of public order, never explained how the defendants’ actions constituted a gross violation of public order, and never offered any evidence in this regard. Indeed, as discussed above, evidence as well as testimony at trial indicated that the protest was almost entirely peaceful. In convicting the accused, the court likewise did not conduct any assessment of whether there was a “gross” violation of public order. As such, this element of the offense was left unproven.

The Defendants Organized a Group Action

At the close of the trial, there was serious doubt as to whether the accused had indeed organized a group action. As discussed above, in line with the prosecution’s arguments, the court parsed Ms. Andreyeva’s language during the Belsat broadcast to interpret it as establishing that the accused organized the protests about Mr. Bandarenka’s death.

Notably, the court cited excerpts from the broadcast in which Ms. Andreyeva reported that

- Telegram channels were calling for drivers to come to the site to prevent security forces from arriving (i.e., “Some cars at the call of Telegram channels

began to stop nearby, in order to slow down and limit the advancement, the possible advance of security forces in the area”);³⁵⁶

- That Telegram channels were calling for more people to come to the Square of Change (i.e., “About a thousand people are now moving from Alsheuski Street, past the Korona shopping center, to the Square of Change at the call of Telegram channels, through which the protesters organize and discuss their plans and with the help of these channels spread the call to go to the Square of Change. Here, it is written in Telegram channels, help is necessary.”);³⁵⁷ and
- That law enforcement was undertaking a range of measures (i.e., “It is also reported that the intersection Timiryazeva-Pushkin is now blocked by people with shields, barbed wire has been stretched there, traffic has been blocked for a long time, but we are telling our viewers that there is barbed wire at the Timiryazev-Pushkin intersection”; “I am informed that detentions have started in the yards, that periodically they, security officers, detain people who fled to the yard, so we urge to be careful those who try to hide somewhere in the area of the Square of Change.”).³⁵⁸

The court also cited excerpts from the broadcast in which Ms. Andreyeva supposedly gave a “positive assessment” of the protest, “thus calling for more people to participate in these group actions”³⁵⁹ (i.e., “So far, the main news of this hour, and maybe this day – that after the shelling people did not disperse. Just ask everyone to pay attention to it, it's very impressive. I do not know how you are on the other side of the screen, but watching me now behind it, just incredibly impressive people's courage. The courage and their peaceful mood. The protest, even after all this violence, has not ceased to be peaceful.”).³⁶⁰

Reporting on information disseminated via popular social media channels, such as requests by others that drivers arrive at the scene, does not constitute a call to action. This is routine journalistic coverage of a newsworthy event – the protest – and related happenings. It is likewise unclear how stating, for example, that law enforcement officers had started detaining people or that barbed wire had been put up qualifies as organization of the protest itself. Even where Ms. Andreyeva uses phrases such as “we urge [people] to be careful,” which deviates from purely objective reporting of events, such language is in no way a call to participate in the protests.

Likewise, although the court deems Ms. Andreyeva's positive characterization of the protesters as brave and peaceful to have galvanized action, this is not borne out by the excerpts. Statements that protesters “did not disperse” after the

³⁵⁶ Frunzensky District Court, Judgment, February 18, 2021, pg. 11.

³⁵⁷ Id.

³⁵⁸ Id. at pg. 12.

³⁵⁹ Id. at pgs. 2, 12.

³⁶⁰ Id. at pg. 12.

“shelling” and that the protesters had displayed “courage” in remaining peaceful contain no indication that Ms. Andreyeva took an active role in assembling protesters. Notably, the court merely cites the quotes from the broadcast and does not undertake any analysis of how the quotes translate into organization of group action.

In further support of its finding that the accused organized group actions, the court cites the testimony of witnesses such as Mr. Skorina, Mr. Moroz, and Mr. Meshcheryakov.³⁶¹ The testimony of these witnesses, however, was rife with evidence that the accused did not, in fact, organize group actions. Mr. Skorina, for example, testified that the protests started between 11:00 am and 12:00 p.m., before the accused even arrived, that he never saw the accused within the crowds, and that he saw four men with walkie-talkies outside his apartment who appeared to be organizing the protest.³⁶² Mr. Moroz, meanwhile, testified that he never saw the accused engaging in unlawful action or disobeying police orders.³⁶³ Meanwhile, Mr. Mescheryakov, the taxi driver, stated that by the time he dropped off the accused, the protest had already started.³⁶⁴ The court’s characterization of these witnesses’ testimony as proof of the accused’s guilt of organizing group actions suggests that the court engaged in outcome-determinative reasoning in favor of the prosecution.

At the same time, the court dismisses all defense evidence that the broadcast did not constitute organization of protests. With respect to expert opinions regarding the lack of linguistic markers associated with the organization of group action in the broadcast, the court finds that the broadcast itself is sufficient to rebut such findings, providing no further explanation.³⁶⁵ The verdict similarly rejects the submissions from Article 19 and the Belarusian Association of Journalists, finding them “unsubstantiated” and stating that it is within the “exclusive competence” of the court to draw conclusions regarding guilt.³⁶⁶ Again, no explanation is provided as to why the submissions were unsubstantiated or why the court accepted prosecution submissions that likewise appeared to infringe on the court’s supposed “exclusive competence.” If the court had doubts about these expert opinions, it should have allowed witnesses to be called in order to explore the experts’ methodology and conclusions rather than summarily disregarding their views.

In light of the above, the prosecution did not prove beyond a reasonable doubt that the accused had organized group actions, meaning that the court’s conviction of the accused despite this failure contravened the presumption of innocence.

³⁶¹ See *id.* at pgs. 10-11, 15, 17.

³⁶² Monitor’s Notes, February 9, 2021.

³⁶³ *Id.*

³⁶⁴ *Id.*

³⁶⁵ Frunzensky District Court, Judgment, February 18, 2021, pgs. 12-13.

³⁶⁶ *Id.*

The Group Action Was Associated with Clear Disobedience of the Orders of Government Officials

Although the prosecution never presented any evidence of a demand being made by the authorities to the accused or, correspondingly, of the accused disobeying such a demand, the court nonetheless found that Ms. Andreyeva and Ms. Chultsova disobeyed the orders of the authorities.³⁶⁷ According to the court, because the two women organized the protest, they by extension disobeyed the police: “organizers of group actions that violate public order are prosecuted as perpetrators of this crime, regardless of whether they personally disobeyed legal requirements.”³⁶⁸ With this statement, the court functionally acknowledges that the prosecution failed to prove that the accused personally disobeyed the authorities while also relieving the prosecution of the burden of proving this element of Article 342 – all in contravention of the presumption of innocence.

The court supplements its conclusion that the accused disobeyed the authorities by referring to excerpts from the broadcast indicating that Ms. Andreyeva knew that law enforcement officers had arrived to stop the protests and by characterizing the fact that the accused hid from an unmarked hovering drone as demonstrating knowledge that their activities were unlawful.³⁶⁹ As discussed above, several occupants of the apartment had indicated that they were frightened at some point during the day.

The court’s inference that Ms. Andreyeva’s reporting on the police officers’ arrival at the protest and that the accused’s attempts to hide from the drone constituted direct flouting of police orders is a leap in favor of the State – when in fact the court should have resolved all doubts in favor of the accused. Also telling is that the prosecution never called any government officials to testify that they made requests of the accused that were then contravened. The court does not comment on this stark lack of evidence in its verdict.

The Group Action Disrupted Transport

Although the prosecution did not present any evidence directly connecting the accused to the disruption of transport, the court found that the accused had indeed caused the blockage of various tram and trolley routes.³⁷⁰ In support of this conclusion, the verdict states: “[f]rom the reviewed reports compiled by the dispatchers, it was seen that unauthorized mass events were the cause of traffic blockage.”³⁷¹ However, it does not appear that reports identifying the cause of the

³⁶⁷ Id. at pg. 2.

³⁶⁸ Id. at pgs. 15-16.

³⁶⁹ See id. at pg. 16.

³⁷⁰ Id. at pg. 2.

³⁷¹ Id. at pg. 7.

blockage were ever included in the case file (the defense had petitioned the court to obtain this information),³⁷² and, in any event, they certainly did not cite the accused's role in any such blockage. Further, although Mr. Pranovich, the Minsktrans representative, testified that he did not know why traffic was blocked and struggled to recall the details of the dispatch reports, the verdict characterizes his testimony as conclusively determining that the protest had stopped traffic.³⁷³

The court also bases its conclusion that the accused disrupted traffic on the fact that they interviewed some of the protesters in the street, inexplicably citing their lack of journalist accreditation in support of the claim: "The arguments of the accused Bakhvalova E. A. that in making these actions [interviewing protesters in the roadway] they carried out exclusively journalistic activity, the court finds untenable because" the accused were "not accredited as correspondents of any foreign media" and "the professional activities of journalists of foreign mass media on the territory of the Republic of Belarus without accreditation is prohibited."³⁷⁴ Media accreditation is not determinative of the blockage of traffic. The court further does not address the fact that witnesses consistently testified that the accused left the apartment for only 15-30 minutes at most and that testimony and evidence showed that the road was blocked prior to the accused's interviews with protesters.

The mischaracterization of witness testimony and lack of reasoning is indicative of a predetermined outcome as to the assessment of whether the accused blocked traffic.

The Accused Actively Participated in the Group Action

In addition to organizing the protest, the accused were found to have directly participated in the protest.³⁷⁵ According to the court, such participation was proven by the accused's interviews with protesters in the street³⁷⁶ as well as by the accused "publicly shouting slogans, committing loud claps of hands."³⁷⁷ As to the latter contention, the prosecution never presented any evidence that the accused were shouting or clapping their hands as part of the protest. As to the former contention, the court characterized the fact that the accused were not accredited as foreign correspondents as probative of the accused's participation in the protest³⁷⁸ To reiterate the point, carrying out interviews – with or without accreditation – does not constitute active participation in a protest.

³⁷² The information on file from the traffic control center stated that the streets were blocked – not why they were blocked.

³⁷³ Id. at pgs. 7, 16, 18

³⁷⁴ Id. at pg. 13.

³⁷⁵ Id. at pgs. 2-3.

³⁷⁶ See id. at pg. 13.

³⁷⁷ Id. at pg. 3.

³⁷⁸ Id. at pg. 13.

Other Issues Indicating a Predetermined Conviction

As discussed above, throughout the proceedings, the court and prosecution highlighted the accused's lack of media accreditation. In examining Mr. Moroz, for example, the prosecution asked him if he had "clarified whether [the accused] were really journalists."³⁷⁹ During the prosecution's examination of Mr. Ilyash, the judge asked the witness if he knew whether it was possible for a journalist to work in Belarus "on the instructions of foreign media without accreditation."³⁸⁰

The court's verdict likewise foregrounds the accused's lack of media accreditation, stating that the accused's claims that they were engaged in "exclusively journalistic activity" were undermined by the fact that they were "not accredited as any correspondents of foreign media" and that "the professional activities of journalists of foreign mass media on the territory of the Republic of Belarus without accreditation is prohibited."³⁸¹ As discussed above, the accused's media accreditation status was not probative of whether they were guilty of organizing group actions that grossly violated public order. The court's unjustified focus on this point thus suggests that the accused were targeted for being journalists critical of the government (being critical of the government being synonymous with being unaccredited, given the authorities' obstruction of the accreditation of independent journalists) and that their conviction was predetermined.

Like the prosecution's indictment, the verdict also highlights the fact that the accused broadcast information "provided by destructive accounts of social networks."³⁸² Again, this phrasing suggests a predisposition against channels like Telegram – to which the verdict was presumably referring – that are critical of the government and, according to the court, therefore "destructive."

Finally, the court's rejection of the accused's testimony and statements further demonstrates its failure to uphold the presumption of innocence. Rather than give the accused the benefit of the doubt, as mandated by Article 14(2), the court deems their respective accounts of events unreliable: "a means to avoid responsibility for the deed."³⁸³ Ms. Andreyeva and Ms. Chultsova were entitled to defend themselves against prosecution: the court's suggestion that in so doing they had somehow proved themselves unreliable contravenes the principle of a fair trial.

In sum, the judgment resolves all questions in favor of the prosecution, falling far short of the requirement that the prosecution bear the burden of proof, that the

³⁷⁹ Monitor's Notes, February 9, 2021.

³⁸⁰ *Id.*

³⁸¹ Frunzensky District Court, Judgment, February 18, 2021, pg. 13.

³⁸² *Id.* at pg. 15.

³⁸³ *Id.* at pg. 11.

prosecution prove an accused's guilt beyond a reasonable doubt, and that the accused be afforded the benefit of the doubt. This violated Article 14(2)'s guarantee of the presumption of innocence.

Judicial Impartiality

Taken as a whole, the conduct of the proceedings raised serious concerns about the impartiality of the tribunal. 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 another³⁸⁴ – and an objective dimension, requiring that even in the absence of actual bias, a tribunal must appear to be impartial to a reasonable observer.³⁸⁵

The UN Human Rights Committee has held that unreasonable decision-making can violate Article 14(1). In *Khostikoev v. Tajikistan*, the Committee found an Article 14(1) violation due to rulings that hindered the preparation of an effective defense, such as “ignor[ing] [counsel’s] objections” and “refus[ing] to allow the possibility for the author to adduce relevant evidence.”³⁸⁶ Similarly, in *Toshev v. Tajikistan*, the Committee concluded that the court lacked impartiality where “several of the lawyers’ requests were not given due consideration.”³⁸⁷

Among other things, the court’s failure to respect the presumption of innocence (discussed above), summary disregard of all of defense evidence and arguments, interference with defense cross-examination, and obstruction of defense requests to call additional relevant witnesses and to compel the production of key documents constituted unreasonable decision making in favor of the prosecution. This all violated Article 14(1).

D. OTHER FAIRNESS CONCERNS

Right to Freedom of Expression

³⁸⁴ Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, August 23, 2007, 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.

³⁸⁵ Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, August 23, 2007, para. 21.

³⁸⁶ Human Rights Committee, *Khostikoev v. Tajikistan*, U.N. Doc. CCPR/C/97/D/1519/2006, December 3, 2009, paras. 7.2–7.3.

³⁸⁷ Human Rights Committee, *Toshev v. Tajikistan*, U.N. Doc. CCPR/C/101/D/1499/2006, April 28, 2011, para. 6.6.

The arrest, investigation, trial, and conviction of Ms. Andreyeva and Ms. Chultsova violated their right to freedom of expression.

International Standards

Under Article 19 of the ICCPR, “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.” According to the UN Human Rights Committee, Article 19 protects “political discourse, commentary on one’s own and on public affairs, ... discussion of human rights, [and] journalism.”³⁸⁸

Freedom of expression is “one of the essential foundations of a democratic society” and “a free media helps to build inclusive knowledge societies and democracies and foster intercultural dialogue, peace and good governance.”³⁸⁹ In this regard, there is a “high value [placed] ... on expression directed towards matters of politics, governance, and public life,”³⁹⁰ and the expression or dissemination of opinions that are critical of official government policy is protected.³⁹¹ As stated by the Committee, “the penalization of a media outlet, publishers or journalist solely for being critical of the government or the political social system espoused by the government can never be considered to be a necessary restriction of freedom of expression.”³⁹²

According to the Committee, any restrictions on protected speech must (i) be provided by law (the legality principle), (ii) serve a legitimate objective, and (iii) be necessary to achieve and be proportionate to that objective.³⁹³

In order to comply with the principle of legality, legislation restricting freedom of expression must be “formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly ... [and] may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution.”³⁹⁴ The UN Special Rapporteur on the promotion and protection of the right to freedom of expression and opinion (Special Rapporteur on Freedom of Expression) has noted: “[the] restriction must be provided by laws that are precise,

³⁸⁸ Human Rights Committee, General Comment No. 34, U.N. Doc. CCPR/C/GC/34, September 12, 2011, para. 11.

³⁸⁹ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/71/373, September 6, 2016, para. 5.

³⁹⁰ *Id.* at para. 33.

³⁹¹ Human Rights Committee, General Comment No. 34, U.N. Doc. CCPR/C/GC/34, September 12, 2011, paras. 38, 42.

³⁹² *Id.* at para. 42.

³⁹³ See Human Rights Committee, *Kim v. Republic of Korea*, U.N. Doc. CCPR/C/64/D/574/1994, 1999, para. 12.2. See also Human Rights Committee, General Comment No. 34, U.N. Doc. CCPR/C/GC/34, September 12, 2011, para. 34.

³⁹⁴ Human Rights Committee, General Comment No. 34, U.N. Doc. CCPR/C/GC/34, September 12, 2011, para. 25.

public and transparent; it must avoid providing authorities with unbounded discretion.”³⁹⁵

With respect to the second prong, objectives deemed legitimate under Article 19(3) of the ICCPR include the protection of public morals, public health, public order, national security, and the rights and reputation of individuals.³⁹⁶ As stated by the Committee, “[w]hen a State party invokes a legitimate ground for restriction of freedom of expression, it must demonstrate in specific and individualized fashion the precise nature of the threat ... in particular by establishing a direct and immediate connection between the expression and the threat.”³⁹⁷

Where a restriction pursues a legitimate objective, it can still “violat[e] the test of necessity if the protection could be achieved in other ways that do not restrict freedom of expression.”³⁹⁸ Reliance on public order as the basis for a restriction “must be limited to specific situations in which a limitation would be demonstrably warranted.”³⁹⁹ The necessity requirement overlaps with the proportionality requirement, as the latter means that a restriction must be the “least intrusive instrument amongst those which might achieve their protective function.”⁴⁰⁰ States must thereby meet a high threshold to institute criminal prosecutions. As stated by the Committee, “the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties.”⁴⁰¹ Notably, the UN Special Rapporteur on Freedom of Expression has specified that under Article 19 only the gravest of speech offenses should ever be criminalized: child pornography, incitement to terrorism, direct and public incitement to commit genocide, and advocacy for national, racial, or religious hatred.⁴⁰²

The Case Against Ms. Andreyeva and Ms. Chultsova

The speech at issue in the present case was clearly protected by Article 19, which, as mentioned above, encompasses political commentary and journalism. The accused were reporting on mass protests that had spread across the country in the

³⁹⁵ 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(a).

³⁹⁶ *Id.*

³⁹⁷ Human Rights Committee, General Comment No. 34, U.N. Doc. CCPR/C/GC/34, September 12, 2011, para. 35.

³⁹⁸ *Id.* at para. 33.

³⁹⁹ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/71/373, September 6, 2016, para. 18.

⁴⁰⁰ *Id.* at para. 34.

⁴⁰¹ *Id.* at para. 38.

⁴⁰² U.N. General Assembly, Promotion and Protection of the Right to Freedom of Opinion and Expression, Sixty Sixth Session, U.N. Doc. A/66/290, August 10, 2011, para. 40. See also Human Rights Council, Report of the Special Rapporteur on the promotion and protection of fundamental freedoms and human rights while countering terrorism, A/HRC/31/65, April 29, 2016, para. 38; Johannesburg Principles on National Security, Freedom of Expression and Access to Information, Freedom of Expression and Access to Information, U.N. Doc. E/CN.4/1996/39, October 1, 1995, Principle 7.

wake of disputed presidential elections and allegations of police brutality. In that the speech concerned matters of public interest and governance, it warranted heightened protection.

Given that the accused's speech was protected by Article 19, the limitation imposed on the accused – that is, their criminal prosecution – will be deemed to have violated their right to freedom of expression unless it passed the three-part test delineated by the UN Human Rights Committee. The proceedings against the accused fell woefully short of these requirements.

First, the law under which Ms. Andreyeva and Ms. Chultsova were prosecuted is insufficiently precise, contravening the legality requirement. As noted above, Article 342 criminalizes “gross” violations of public order. It is entirely unclear what sort of disruptions would meet the threshold of “gross[ness].” This uncertainty was demonstrated during the proceedings against Ms. Andreyeva and Ms. Chultsova, wherein the prosecution and court never defined the term “gross,” placing without explanation journalistic coverage of a peaceful protest under its wide ambit. Article 342 is thereby not “formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly,” “confer[ring] unfettered discretion for the restriction of freedom of expression on those charged with its execution.”⁴⁰³

Second, the State did not appear to possess a legitimate objective in prosecuting Ms. Andreyeva and Ms. Chultsova. While the ostensible motivation for the proceedings was the protection of public order, per Article 342, there were significant indicia that the prosecution was instead geared towards retaliating against the accused for their critical journalism: among other things, the repetitive focus of the prosecution and court on the accused's accreditation as journalists, the lack of evidence that the accused had indeed organized or participated in any protests, and the wider crackdown on independent media across the country (more on this below in the Abuse of Process section). Statements from the prosecution such as “[t]he very fact that the accused carried out a live broadcast already confirms the fact that they organized illegal actions”⁴⁰⁴ provided further evidence that State agents were pursuing an improper objective in launching these charges.

Even assuming that the objective of the proceedings was legitimate, “[w]hen a State party invokes a legitimate ground for restriction of freedom of expression, it must demonstrate in specific and individualized fashion the precise nature of the threat ... in particular by establishing a direct and immediate connection between the expression and the threat.”⁴⁰⁵ Nowhere in either the prosecution's arguments or the court's verdict is the “precise nature” of the threat articulated; indeed, the

⁴⁰³ Human Rights Committee, General Comment No. 34, U.N. Doc. CCPR/C/GC/34, September 12, 2011, para. 25.

⁴⁰⁴ *Id.*

⁴⁰⁵ *Id.* at para. 35.

supposed violation of public order was a largely peaceful protest, which the State was unable to prove even blocked traffic let alone engendered violence or any other sort of significant disruption. Correspondingly, as detailed in the section on Presumption of Innocence, the State failed to “establish[] a direct and immediate connection between” the accused’s reporting and the supposed threat of a gross violation of public order. None of the excerpts from the accused’s broadcast indicated that they had organized the protests; rather, as confirmed by a plain language review of the excerpts presented at trial as well as expert linguistic testimony, their coverage of the protests qualified as routine reporting on matters of public interest, not a call to action.

Third, with respect to the necessity and proportionality requirements, the institution of criminal proceedings and the imposition of a two-year sentence was clearly not the “least intrusive instrument amongst those which might achieve their protective function,”⁴⁰⁶ particularly given that the accused’s speech warranted heightened protection. Moreover, under international standards, the criminalization of speech is only appropriate where grave crimes have been committed, such as incitement to terrorism or advocacy for national, racial, or religious hatred. The prosecution did not allege that the speech at issue in the present case met this threshold. As such, the accused’s prosecution violated necessity and proportionality requirements.

As demonstrated by developments in the wake of the accused’s conviction, such as the further criminalization of reporting on unauthorized mass protests, the designation of Belsat as “extremist,” and the forced landing of blogger Roman Pratasevich’s flight, the violations of freedom of expression evident in the accused’s prosecution are consistent with a broader and escalating crackdown on legitimate dissent.

Freedom of Assembly

In addition to violating the accused’s right to freedom of expression, the proceedings violated their right to freedom of peaceful assembly.

The right to freedom of peaceful assembly is guaranteed under Article 21 of the ICCPR. The UN Human Rights Committee has explained that Article 21 “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.”⁴⁰⁷ Article 21 protection extends to organized and spontaneous assemblies alike, as well as to participants, organizers, and

⁴⁰⁶ Id. at para. 34.

⁴⁰⁷ Human Rights Committee, General Comment No. 37, U.N. Doc. CCPR/C/GC/37, July 23, 2020, para. 4.

anyone disseminating information about or otherwise facilitating assemblies.⁴⁰⁸ “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.”⁴⁰⁹ Indeed, authorities are required to enable peaceful protests, including by taking “specific measures” such as “block[ing] off streets [and] redirect[ing] traffic.”⁴¹⁰

As is the case with respect to restrictions on the right to free expression, permissible restrictions on the right to freedom of 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 be proportionate to that objective.⁴¹¹ With respect to the legitimacy of the objective, restrictions on the right to freedom of peaceful 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.⁴¹² “This is an exhaustive list.”⁴¹³ The UN Human Rights Committee has made clear that measures undertaken to protect public order should be employed narrowly:

States parties should not rely on a vague definition of ‘public order’ to justify overbroad restrictions on the right of peaceful assembly. Peaceful assemblies can in some cases be inherently or deliberately disruptive and require a significant degree of toleration. ‘Public order’ and ‘law and order’ are not synonyms, and the prohibition of ‘public disorder’ in domestic law should not be used unduly to restrict peaceful assemblies.⁴¹⁴

Notably, “[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.”⁴¹⁵

Turning to the present case, the accused denied that they had organized the protests at issue, as alleged by the prosecution. As discussed above, there was no evidence supporting the prosecution’s claims in this regard. Regardless of whether

⁴⁰⁸ Id. at paras. 13-14, 33-34.

⁴⁰⁹ Id. at para. 32.

⁴¹⁰ Id. at para. 24.

⁴¹¹ ICCPR, Article 21. See also Human Rights Committee, General Comment No. 37, U.N. Doc. CCPR/C/GC/37, July 23, 2020, para. 36.

⁴¹² ICCPR, Article 21.

⁴¹³ Human Rights Committee, General Comment No. 37, U.N. Doc. CCPR/C/GC/37, July 23, 2020, para. 41.

⁴¹⁴ Id. at para. 44.

⁴¹⁵ Id. at para. 16.

or not the accused organized the protests, however, their prosecution for the perceived exercise of their right to freedom of peaceful assembly violated Article 21 of the ICCPR.

As a baseline matter, the protest at issue was almost entirely peaceful (one overturned pedestrian crossing and one overturned road sign being the only evidence of disorder) and had a political message, meaning that it “enjoy[ed] a heightened level of accommodation and protection.”⁴¹⁶ Further, that traffic was blocked – although there was evidence that this was not in fact the result of the protest but rather the arrival of security vehicles – did not obviate the protections of Article 21. As noted above, “[p]eaceful assemblies can in some cases be inherently or deliberately disruptive and require a significant degree of toleration.”

Consequently, the prosecution’s claim that it was necessary for public order to disperse the protest and prosecute Ms. Andreyeva and Ms. Chultsova for organizing the protest was not consistent with Article 21 and the standards set by the UN Human Rights Committee. Instead of using a water cannon and stun grenades, cordoning off protesters, and detaining protesters, the authorities had a positive duty to enable the protests, including by blocking off traffic and facilitating efforts at planning or organization. As such, the accused’s prosecution for their perceived role in organizing the protests violated the right to peaceful assembly under Article 21 of the ICCPR.

Abuse of Process

It appears that the prosecution of Ms. Andreyeva and Ms. Chultsova was driven by an improper motive: namely, to suppress independent and critical journalism. 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 by Article 9(1)⁴¹⁷ – 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,⁴¹⁸ whether there were reasonable grounds to bring the

⁴¹⁶ Id. at para. 32.

⁴¹⁷ 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.

⁴¹⁸ 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.

charges,⁴¹⁹ how the proceedings were conducted,⁴²⁰ and whether the ultimate decision was well-reasoned and based on law⁴²¹ – may be probative. The seemingly selective targeting of a specific individual may also be relied upon as a circumstantial indicator.⁴²²

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.⁴²³

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

First, with respect to the timing and broader political context, the prosecution was initiated amidst months of protests over the disputed August 2020 election, which were marked by administrative and criminal prosecutions of independent journalists reporting on these developments. Correspondingly, the government had taken and continues to take action to suppress independent media, shutting down independent news websites, declaring independent outlets to be “extremist,” and passing laws restricting the coverage of protests.

Second, the facts of the case indicate there were not reasonable grounds for the prosecution of Ms. Chultsova and Ms. Andreyeva. As discussed at length above, the broadcast at issue did not contain a call to action or any other language that evinced that the journalists were contributing in any way to the organization of the protests. There was likewise no evidence connecting the accused to the disruption of traffic or suggesting that the police had given demands that the accused disobeyed. In light of the lack of grounds for bringing the charges, it appears that the prosecution was rooted in other, improper motives.

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

⁴¹⁹ 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.

⁴²⁰ European Court of Human Rights (Grand Chamber), *Navalnyy v. Russia*, App. No. 29580/12, November 15, 2018, para. 171.

⁴²¹ European Court of Human Rights, *Nastase v. Romania*, App. No. 80563/12, December 11, 2014, para. 108.

⁴²² European Court of Human Rights (Grand Chamber), *Navalnyy v. Russia*, App. No. 29580/12, November 15, 2018, paras. 168-170.

⁴²³ See *id.* at paras. 173-175.

Fourth, the motive behind the proceedings was further evidenced by various statements made by the prosecution and court. The prosecution, for example, stated in its closing arguments that “[t]he very fact that the accused carried out a live broadcast already confirms the fact that they organized illegal actions”; this admission equates routine reporting with the commission of a crime. Additionally, throughout the proceedings the court and prosecution arbitrarily highlighted the accused’s lack of media accreditation.

The court’s verdict, for example, foregrounds this issue, stating that the accused’s claims that they were engaged in “exclusively journalistic activity” were undermined by the fact that they were “not accredited as any correspondents of foreign media” and that “the professional activities of journalists of foreign mass media on the territory of the Republic of Belarus without accreditation is prohibited.”⁴²⁴ The question of accreditation status, however, was not probative of whether the accused were guilty of organizing group actions that grossly violated public order. The court’s unjustified focus on this point thus suggests that the accused were targeted for being journalists critical of the government (with being critical of the government being synonymous with being unaccredited). Meanwhile, the verdict, echoing allegations made by the prosecution, highlights the fact that the accused broadcast information “provided by destructive accounts of social networks.”⁴²⁵ Again, this phrasing suggests a predisposition against channels like Telegram – to which the verdict was presumably referring – that are critical of the government and, according to the court, therefore “destructive.”

Against this backdrop, it appears that the proceedings against Ms. Chultsova and Ms. Andreyeva were a means of intimidating and punishing them for their work as independent journalists.

⁴²⁴ Frunzensky District Court, Judgment, February 18, 2021, pg. 13.

⁴²⁵ *Id.* at pg. 15.

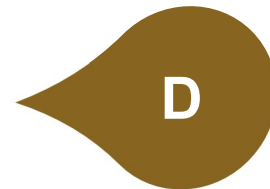
CONCLUSION AND GRADE



The trial of Ms. Chultsova and Ms. Andreyeva is emblematic of the deplorable state of speech, assembly, and fair trial rights within Belarus and the willingness of State authorities – prosecutors, judges, and security forces – to collude to crack down on anyone who might be perceived as critical of the present government. This case – and others like it, such as unfair administrative proceedings against protesters and unfair trial of opposition candidate Victor Babariko, which have also been documented by the TrialWatch initiative – confirm that the judiciary is under the control of the executive branch, which effectively prevents the judicial actors from operating independently and fulfilling their crucial role of protecting the human rights of all Belarusian citizens. Instead, the courts are being deployed to crush dissent.

Belarus must reverse course when it comes to the erosion of democratic principles if it is to end its global isolation and get out from under the sanctions imposed by the United States, EU members, and concerned States.

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,”⁴²⁶ 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.

⁴²⁶ ICCPR, Article 26.