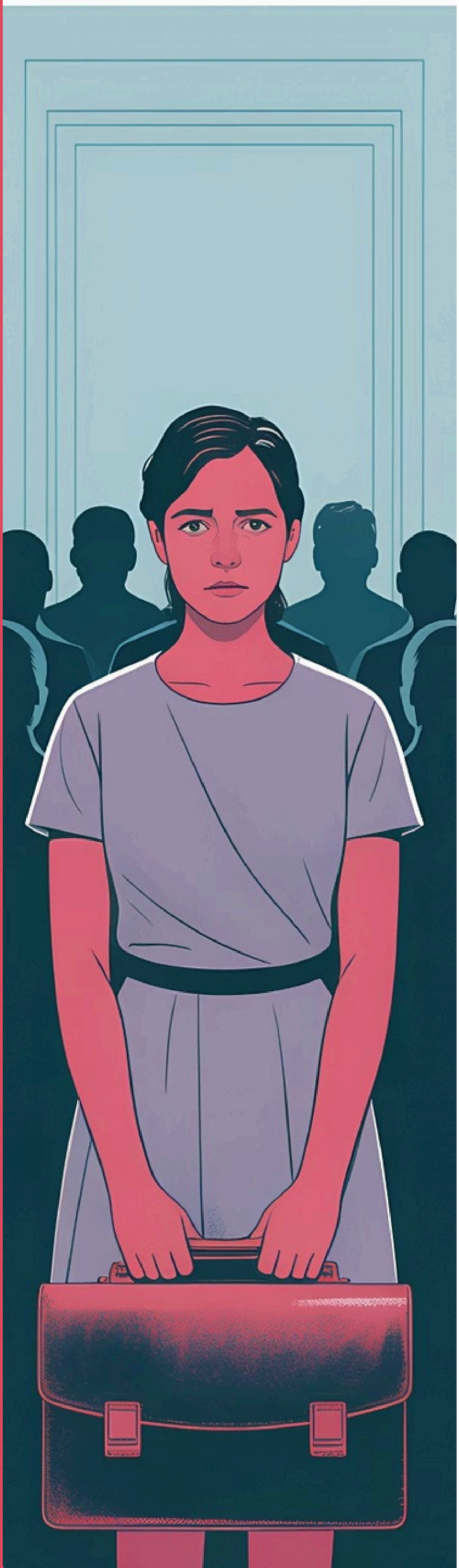
THE INTERNATIONAL COMMITTEE FOR INVESTIGATION OF TORTURE IN BELARUS

NO CRIME, YET A SENTENCE: TRIALS IN ABSENTIA (SPECIAL PROCEEDINGS) AS A TOOL OF PERSECUTION IN BELARUS



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INTRODUCTION

For more than two decades, the authoritarian regime in Belarus have been using the mechanism of criminal prosecution as the most effective means of repression, thereby isolating both direct opponents of the regime and any individuals deemed undesirable.

The relevance of this topic is determined by the ongoing level of repression against Belarusians, both inside the country and abroad. The consistent practice of special proceedings without guarantees of a fair trial clearly demonstrates a gross violation of the international obligations of the Republic of Belarus in the field of human rights.

On July 27, 2022, amendments to the Criminal Procedure Code of the Republic of Belarus (hereinafter – CPC) entered into force. They introduced a de facto new, special procedure of bringing individuals to criminal liability – the so-called “special proceedings.” The CPC defines special proceedings as proceedings in a criminal case against an accused person who is outside the territory of the Republic of Belarus and evades appearing before the body conducting the criminal process[1].

The procedure of special proceedings is used to persecute citizens for their political views and active civic engagement directed against the dictatorial regime in Belarus.

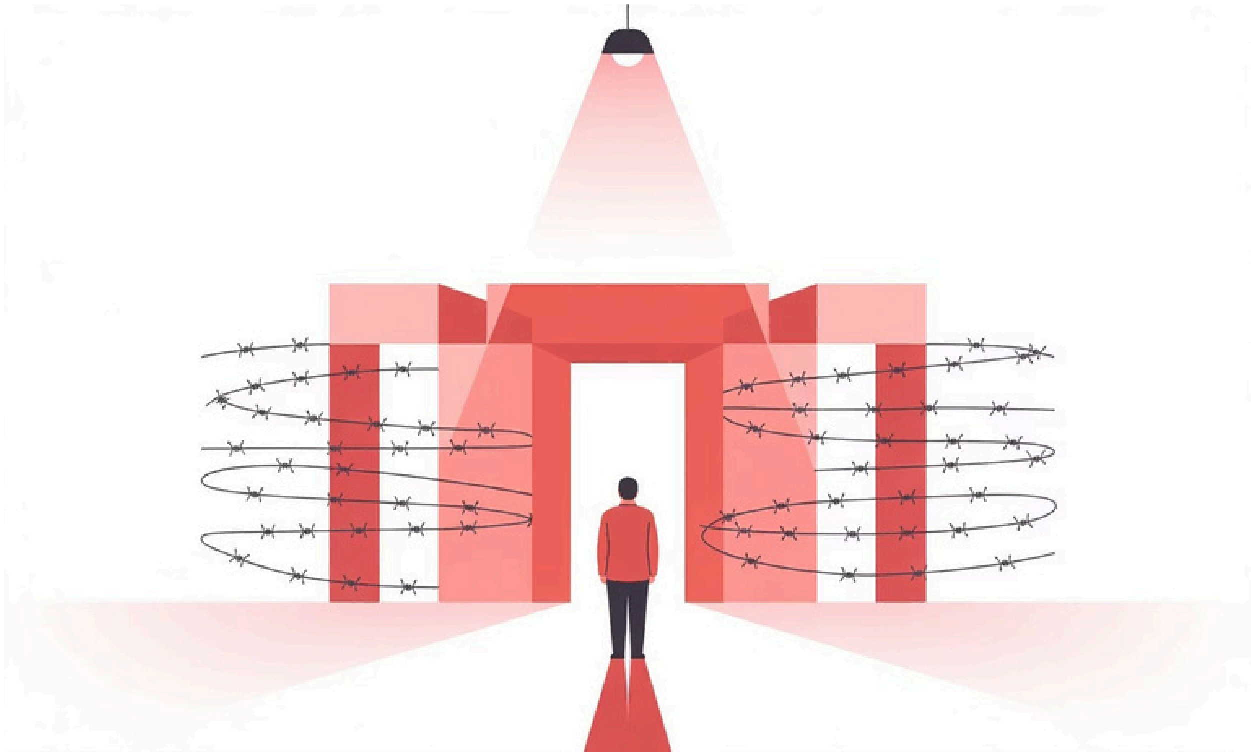
The possibility of criminal trials without the accused is known to the legal systems of various states; moreover, there are international standards regarding such in absentia proceedings[2].

1. See para. **38-1** of Article 6 of the CPC.
2. The legal term in absentia is literally translated as “in absence.” It implies the possibility of trial and conviction without the accused.

Particular attention in the study is devoted to the legal analysis of the grounds, procedures and consequences of special proceedings, as well as to the assessment of their compliance with international standards of fair trial. The research highlights the departure from fundamental principles of criminal procedure, including the presumption of innocence, the right to defense, and the equality of arms.

Based on the conducted analysis, the conclusion is drawn that the institution of special proceedings in the criminal process of Belarus should be qualified as a form of institutionalized persecution, bearing features of crimes against humanity within the meaning of the Rome Statute of the International Criminal Court.

The research methodology consisted of analyzing national legislation, international standards, open sources, and conducting interviews with witnesses. Cases of all persons in respect of whom a decision to conduct special proceedings was made at the stage of preliminary investigation by the Investigative Committee of Belarus were analyzed.



1.1. ANALYSIS OF BELARUSIAN LEGISLATION ON SPECIAL PROCEEDINGS AS A TYPE OF CRIMINAL PROCEDURE

For decades, the dictatorial regime in Belarus has been using criminal prosecution as the most effective tool of repression, thereby isolating both direct opponents of the authorities and any individuals deemed undesirable.

By the Law of the Republic of Belarus "On Amendments to the Criminal Procedure Code of the Republic of Belarus" of July 20, 2022, No. 199-3, a new Chapter 49-3 "Special Proceedings" was introduced into Section XIV "Special Features of Proceedings in Certain Categories of Criminal Cases" of the CPC. In addition, corresponding amendments regarding special proceedings were made to many articles of the CPC[3].

Before the introduction of this institution, the CPC provided for certain cases where criminal proceedings could take place without the participation of the accused (Part 2, Article 294 CPC).

- Firstly, a trial was possible in cases under expedited proceedings when the accused pleaded guilty (in cases not involving serious or especially serious crimes) and petitioned for the case to be heard in his absence.

  If the period of preliminary investigation was shortened, the accused and the victim could agree to the issuance of a sentence without trial (in absentia proceedings).

  In such cases, the accused was guaranteed the right, within ten days from receiving a copy of the judgment, to file objections with the court against the verdict, which would "automatically" annul the judgment and require the criminal case to be reconsidered (Article 459-2 CPC).

- Secondly, proceedings could take place if the accused was outside the territory of Belarus and evaded appearing in court (Part 2, Article 294 CPC).

  Thus, there was no possibility to conduct a preliminary investigation without the accused. However, if the accused absconded, the court hearing could be held, including the delivery of a judgment.

3. Amendments were introduced to: para. 9, **Part 1, Art. 45** CPC; **Part 2, Art. 45** CPC; **Part 3, Art. 47** CPC; **Part 5, Art. 165** CPC; **Part 1, Art. 238** CPC; **Part 1, Art. 280-1** CPC; **Part 2, Art. 294** CPC; **Art. 303-1** CPC.

Special proceedings are, in fact, a special procedure of bringing to criminal liability a specific category of persons who are outside the territory of Belarus. It is important to note that the general procedure for bringing individuals to criminal liability under the CPC is applied, taking into account the specifics set out in Chapter 49-3 of the CPC. Accordingly, in the absence of such provisions, the general norms of the CPC must be applied. Being in effect a new institution of criminal procedure, special proceedings nevertheless did not receive sufficient legal regulation: only four new articles were added to the CPC.

> ***"Special proceedings"*** are a specific innovation of Belarusian legislation, within which it was decided to establish special investigative and subsequently judicial procedures for those who are outside the reach of the so-called Belarusian law enforcement system, with the aim of politically motivated persecution and the issuance of legal decisions.

"It was also necessary to demonstratively show that those who are abroad have not been forgotten, and that something can still be done against them. As far as I understand, this is a special procedure, it applies to serious and especially serious crimes against persons who are currently outside Belarus, and who are tried by Belarusian courts. In fact, this is an in absentia procedure with an in absentia court, which, as I understand it, is applied so far mainly to dissidents."

"As I understand it, special proceedings are when a suspect is abroad, and this is done to emphasize the significance of the case and to still convict those people. This is a way of exerting pressure on those outside the country. I do not want to go into details. Of course, I could find a legal formulation of how it is done, but the political purpose here is obvious — to continue silencing and persecuting people who, to one degree or another, disagree with the regime."

CONDITIONS FOR INITIATION AND SPECIFIC FEATURES OF SPECIAL PROCEEDINGS

Special proceedings apply to a special category of persons who meet the following criteria:

HAVE REACHED THE AGE OF 18 AT THE TIME OF CHARGES BEING BROUGHT

It should be noted that this mandatory criterion for a potential accused does not correspond with the general provisions of Article 27 of the Criminal Code of the Republic of Belarus (hereinafter – CC), under which the age of criminal liability for crimes subject to special proceedings is, in most cases, 16 years.

ARE CITIZENS OF THE REPUBLIC OF BELARUS

The practice of applying special proceedings and the interviews we conducted confirm the existence of convictions rendered in the form of special proceedings against citizens of a foreign state, which was reliably known to the criminal prosecution authorities.

ARE CHARGED WITH COMMITTING A CRIME UNDER THE FOLLOWING ARTICLES:

- Preparation for or waging an aggressive war (Art. 122 CC);
- War propaganda (Art. 123 CC);
- Act of terrorism against a representative of a foreign state or international organization (Art. 124 CC);
- Attack on institutions enjoying international protection (Art. 125 CC);
- Act of international terrorism (Art. 126 CC);
- Genocide (Art. 127 CC);
- Crimes against the security of humanity (Art. 128 CC);
- Production, accumulation or dissemination of prohibited means of warfare (Art. 129 CC);
- Incitement of racial, national, religious or other social hatred or enmity (Art. 130 CC);
- Rehabilitation of Nazism (Art. 130-1 CC);
- Denial of the genocide of the Belarusian people (Art. 130-2 CC);
- Ecocide (Art. 131 CC);

- Recruitment, training, financing and use of mercenaries (Art. 132 CC);
- Mercenarism (Art. 133 CC);
- Use of weapons of mass destruction (Art. 134 CC);
- Violation of the laws and customs of war (Art. 135 CC);
- Criminal violations of international humanitarian law during armed conflicts (Art. 136 CC);
- Failure to act or issuance of a criminal order during an armed conflict (Art. 137 CC);
- Act of terrorism (Art. 289 CC);
- Threat to commit an act of terrorism (Part 2, Art. 290 CC);
- Financing of terrorist activities (Art. 290-1 CC);
- Assisting terrorist activities (Art. 290-2 CC);
- Undergoing training or preparation for participation in terrorist activities (Art. 290-3 CC);
- Creation of an organization for carrying out terrorist activities or participation in it (Art. 290-4 CC);
- Organization of the activities of a terrorist organization and participation in its activities (Art. 290-5 CC);
- Hostage-taking (Art. 291 CC);
- Seizure of buildings and structures (Art. 292 CC);
- Mass riots (Art. 293 CC);
- o Theft of firearms, ammunition or explosives (Part 4, Art. 294 CC);
- Intentional disabling of a vehicle or communication routes (Part 4, Art. 309 CC);
- Hijacking or seizure for the purpose of hijacking of railway rolling stock, aircraft or watercraft (Part 3, Art. 311 CC);
- Illegal acquisition, storage, use, sale or destruction of radioactive materials (Part 3, Art. 322 CC);
- Theft of radioactive materials (Part 3, Art. 323 CC);
- Threat of dangerous use of radioactive materials (Part 3, Art. 324 CC);
- Illegal trafficking of potent or poisonous substances (Part 2, Art. 333 CC);
- High treason (Art. 356 CC);

- Conspiracy or other acts committed for the purpose of seizing state power (Art. 357 CC);
- Espionage (Art. 358 CC);
- Agent activity (Art. 358-1 CC);
- Act of terrorism against a state or public figure (Art. 359 CC);
- Sabotage (Art. 360 CC);
- Calls for restrictive measures (sanctions), or other actions aimed at harming the national security of the Republic of Belarus (Art. 361 CC);
- as well as any other crime that constitutes a combination with the above.

At the same time, the CPC grants prosecuting authorities the right to initiate special proceedings in other cases as well. However, it does not clarify what is meant by “other cases”: whether this refers to charges under articles of the CC not explicitly listed, to the nationality of the accused, or to other conditions (for example, the absence of an extradition request to a foreign state). Such broad powers effectively allow law enforcement authorities to initiate special proceedings on arbitrary grounds. The CPC establishes a ten-day period during which the prosecutor must decide whether to authorize the initiation of special proceedings. This decision must be submitted no later than fifteen days before the expiration of the preliminary investigation period[4].

To initiate special proceedings, the following cumulative conditions must be met:

- the accused meets the criteria outlined above;
- there is a ruling by an investigator (with the consent of the prosecutor) or by a prosecutor (in cases under their jurisdiction) to initiate special proceedings;
- a foreign state has either refused to extradite the accused or has failed to respond to Belarus’s extradition request within six months. This condition implies that special proceedings may not be applied immediately upon initiation of a criminal case or upon the formal charging of an individual.

4. See Part 4 of Article **468-25** CPC

A distinctive feature of special proceedings is that the prosecuting authorities are not obliged to initiate such proceedings in every case that meets the aforementioned conditions; rather, the decision to do so is left to their discretion. In practice, the initiation of special proceedings demonstrates the explicitly political nature of the persecution of opponents of the dictatorial political regime in Belarus.

THE DECISION TO INITIATE SPECIAL PROCEEDINGS MUST INDICATE:

- The time and place it was drawn up, and by whom
- The surname, given name and patronymic of the accused
- The circumstances of the socially dangerous act committed by the accused
- The criminal law (paragraph, part, article) providing liability for the socially dangerous act
- Information on the location of the accused outside the Republic of Belarus
- Circumstances indicating that the accused is evading appearance before the criminal prosecution authority
- Information on the refusal of a foreign state to extradite the accused for criminal prosecution, or the fact that within six months from the moment the Prosecutor General's Office of Belarus sent a request to the competent authority of a foreign state for extradition of the person for criminal prosecution, no consent of the foreign state to extradite the accused (if any) has been received[5]

> *"There was a notice, then there was also a message in Telegram channels that the proceedings in the case were terminated. And then there was a message that a trial had been scheduled — and that was it. In principle, you receive no information at all."*

> *"We cannot gain access to the documents that contain the substance of the charges."*

5. See Part 4 of Article **468-25** of the CPC.

"I still do not know what exactly I have been charged with. I saw those four articles of the Criminal Code, but to this day I remain unaware of which specific facts are being imputed to me. There was a statement from the Investigative Committee... it was, firstly, rather fantastical, and secondly, extremely broad. It contained some generalities. But what exactly I am accused of, what concrete facts exist and on what basis I am being charged — I still do not know."

"I demanded that my rights be respected, rights which were not guaranteed to me. From my point of view, I do not consider myself guilty, and I do not even know what I am accused of. I have not engaged in any extremist activity, and under all the articles I have been charged with, I do not consider myself guilty, since I have done nothing of the kind."

Despite the overall controversial nature of special proceedings, the legislator has attempted to ensure the right to defense for the accused in this category of criminal cases. The participation of defense counsel during the preliminary investigation and trial in cases of special proceedings is recognized as mandatory from the moment a decision is issued to initiate special proceedings (its approval[6]). At the same time, the accused may not refuse the assistance of defense counsel[7].

6. See para. 9, part 1, article **45** of the CPC.
7. See part 3, article **47** of the CPC.

In the course of special proceedings, defense counsel is granted a number of additional powers:

- to receive a copy of the decision to initiate special proceedings;
- in practice, it is the defense counsel who exercises the accused's core personal rights: receiving copies of all procedural documents subject to service on the accused, as well as all notifications affecting his rights and interests[8].

The role of defense counsel in this context represents a merging of the procedural statuses of the accused and his lawyer, constituting a gross violation of the fundamental principles of criminal procedure.

It must be taken into account that there is in fact no provision of legal assistance to accused persons in this category of cases. The formal participation of defense counsel in special proceedings is aimed solely at conferring greater "legitimacy" on convictions in these cases (practice shows a 100% rate of guilty verdicts). Representatives of the dictatorial regime justify this by claiming that all rights of the accused are observed through the delegation of those rights to defense counsel.

However, practice demonstrates that court-appointed lawyers for criminal prosecution bodies often do not even contact their clients. These circumstances are confirmed by our documentation and interviews, in which respondents indicated that they had no opportunity to communicate confidentially with their lawyers, who in fact knew nothing about the circumstances of the criminal case.

> *"I requested documents from the court about what exactly I had allegedly done. But the court replied that they had provided all the documents to a lawyer in Belarus, the one appointed by the court, by the regime, by the system. I found her email and phone number, but she never responded to anything. I also sent official letters, but she did not reply either, and no one reacted."*

> *"All of this looks like sheer cynical repression. It is just a façade, a kind of appearance that there is a rule-of-law state, and that there is even a lawyer. But this lawyer never communicated with me in any way. That is, I received no information from her."*

8. See Part 2 of Article **468-26** of the CPC, Part 4 of Article **468-27** of the CPC.

"The lawyer did not know my position in any way; I don't even know on what grounds she was supposedly supposed to defend me. There was no communication whatsoever. And it's unclear to me what she was doing there, or if she said anything at all."

"I believe that she [the defense lawyer] did not respect my rights, because she did not share any information with me. I have absolutely no idea what she said in court; I don't know whether she admitted guilt on my behalf. I believe that the very fact that I don't know what she said in court completely nullifies the possibility that she respected my rights."

"I was assigned a lawyer. I tried to get in touch with her, but she never communicated with me. I sent her a request by email, asking her to respond in some way, to share the materials with me... I even offered to communicate via absolutely any messenger convenient for her. Moreover, there was a moment when I also sent her physical letters, but the letter was returned as 'unclaimed.' At the same time, I believe it was clearly opened, as if read, but sent back."

Thus, the defendant in special proceedings is deprived of the opportunity to participate in the criminal process in any form, even through their defense counsel. These circumstances indicate a gross violation of the principles of adversarial proceedings and the guarantee of the right to defense.

"I believe that the court did not respect my rights as a defendant, since it did not provide me with the opportunity to familiarize myself with the documents, to get acquainted with the charges, to understand the essence of the accusation, or to participate in this process in order to, perhaps, defend my rights. It seems to me that all my rights, which could have been violated by the court in this case, were violated. Perhaps only the formal presence of a defense lawyer appointed by the court remained. I cannot be sure that this lawyer actually defended me. Perhaps he stood on the side of the court. I don't know, maybe he even said, 'Indeed, the defendant does not want to cooperate, he's such a scoundrel.' I don't see a single right that the court did not violate here."

Unlike the general procedure of notifying the accused under signature at all important stages of investigation and trial, in special proceedings it is stipulated that all such information is posted on the official website of the body conducting the criminal prosecution or the court, no later than one working day from the date of the decision. In this case, the accused is considered to have been notified of the above-mentioned information on the day following its publication on the Internet[9].

> *"But I did not receive any further responses until the very end of this whole process: neither from the court, nor from the lawyer."*

At the same time, the section of the website of the Supreme Court of the Republic of Belarus entitled "Special Proceedings"[10] is not accessible from outside Belarus, although the logic of constructing the entire procedure of special proceedings implies that potential defendants are always located outside Belarus. Of course, this restriction can be bypassed by using VPN, but such an option does not provide access even to basic information about the trial.

> *"I was sent to the Internet to look there for all possible data about the time and place of these proceedings. I was not satisfied with the answer, because I believe that from the point of view of any procedure and any standards, the minimum right of the accused is to know what they are accused of. It seems to me that this is simply some kind of legal basics."*

> *"All information about the court — exclusively from public sources."*

> *"I found out from the media. They published it on the special proceedings channel."*

> *"I learned about this procedure from the mass media. Before that, I had not really heard about it, since it is quite a new procedure, which was introduced after the events of 2020, when many people who supported democratic changes in Belarus left the country."*

9. See Part 3, Article **468-27** of the CPC.
10. https://court.gov.by/ru/1/specialjnoe/proizvodstvo/po/ugolovnim/delam/

The Criminal Procedure Code contains grounds for the actual cancellation of the special proceedings procedure at the pre-trial stage in the event of the accused's detention, extradition by a foreign state, or voluntary surrender to the body of criminal prosecution[11]. In this situation, prosecution takes place in the ordinary manner.

The procedure of judicial examination in special proceedings is the same as in general proceedings, with the exception of the mandatory participation of the prosecutor and defense counsel.

> *"We did not receive any documents, any details; the essence of the case is still unknown to me to this day. I only know the charges – [...] articles of the Criminal Code. And I don't know any other details."*

> *"When the trial began, there was no communication, no possibility to attend by videoconference or via video link."*

> *"We filed a motion to recuse [the judge], but of course there was no reaction from the court. Together with my lawyer, who is abroad, we immediately prepared an appeal."*

> *"[The court] – in response to your application dated [...] informs you that the current criminal procedure legislation does not provide for the consideration of a criminal case under special proceedings with the participation of the accused via videoconference." Which is, in principle, rather strange, since videoconferencing is provided for ordinary cases, but for cases under special proceedings – for people who are clearly abroad and are unlikely to return to Belarus – it is not provided."*

At the same time, the CPC provides for the possibility of questioning participants in the proceedings, identification of persons and/or objects during the trial using videoconferencing systems[12].

11. See Parts 6 and 7 of Article **468-25** of the CPC.
12. See Part 3 of Article **286** of the CPC, paragraph 1 of Part 1 of Article **343-1** of the CPC.

SPECIAL PROCEEDINGS ARE TERMINATED AND THE CRIMINAL CASE IS CONSIDERED UNDER THE GENERAL PROCEDURE IF THE ACCUSED:

DETENTION

Was detained in the Republic of Belarus.

EXTRADITION

Was extradited by a foreign state to Belarus for criminal prosecution.

VOLUNTARY SURRENDER

Voluntarily appeared before the criminal prosecution authority.

Such a situation is possible until the court retires to the deliberation room to render a verdict[13].

Moreover, the accused, against whom a verdict has been rendered under special proceedings, is left with no possibility to appeal the verdict not only on the merits (since they are not acquainted with the materials of the criminal case and have no opportunity to familiarize themselves with the text of the verdict), but also on formal grounds. Thus, when appealing a verdict that has entered into force, in cassation or supervisory proceedings, it is necessary to attach the original of the verdict[14].

We analyzed the legal regulation of the institution of special proceedings in the criminal process of Belarus and came to the conclusion: this regulation contradicts the fundamental principles of criminal procedure, both as considered in doctrine and as enshrined in the Criminal Procedure Code of Belarus.

13. See Part 2 of Article **468-28** of the CPC.
14. See Part 2 of Article **409** of the CPC, Part 2 of Article **417-16** of the CPC.

WE BELIEVE THAT THE CURRENT PROCEDURE OF SPECIAL PROCEEDINGS CONTRADICTS THE FOLLOWING PRINCIPLES OF CRIMINAL PROCEDURE:

1. ADMINISTRATION OF JUSTICE BASED ON ADVERSARIAL PROCEEDINGS AND EQUALITY OF PARTIES (ART. 24 OF THE CPC)

The law establishes that justice is carried out on the basis of adversarial proceedings and equality between the prosecution and the defense. Furthermore, both parties in a trial have equal rights to present and examine evidence, file motions, express opinions on any matter relevant to the criminal case, and participate in judicial debates. The court must create the necessary conditions for the parties to exercise their rights and fulfill their procedural duties. However, the practice of prosecuting Belarusians through the special proceedings procedure shows that the accused is completely excluded from participation in the criminal process, even though they are formally considered a party to the defense in court. As a result, they cannot fully exercise their procedural rights.

2. ENSURING THE RIGHT OF THE SUSPECT/ACCUSED TO DEFENSE (ART. 17 OF THE CPC)

According to this principle, the suspect or accused has the right to defense. This right can be exercised either personally or through a defense lawyer. The criminal prosecution body and the court are obliged to explain to the suspect or accused their rights and to provide the opportunity to defend themselves by means established by law, as well as to ensure the protection of their personal and property rights. In practice, however, the accused cannot defend themselves either independently or through a defense lawyer appointed by the criminal prosecution body or the court. State-appointed defense lawyers do not communicate with their clients, do not coordinate their position in the case with them, and their participation is reduced to mere formal presence at the hearing.

3. EQUALITY OF CITIZENS BEFORE THE LAW AND EQUALITY OF PROTECTION OF THEIR RIGHTS AND LEGITIMATE INTERESTS (ART. 20 OF THE CPC)

This principle is quite broadly declared in the criminal procedure of Belarus. Firstly, all persons participating in criminal proceedings are equal before the law and, by regulation, have the right to equal protection of their rights and legitimate interests without any discrimination. Secondly, criminal proceedings are carried out on the basis of equality of citizens before the law, regardless of their origin, social status, official position, property status, race and nationality, political or other beliefs, attitude to religion, sex, education, language, place of residence, kind and nature of occupation, and other circumstances. It is obvious, however, that the accused in special proceedings is restricted in exercising their rights due to the repressive nature of this institution and the impossibility of actually realizing their rights. The practice of applying special proceedings clearly demonstrates its discriminatory nature, both in the choice of individuals being prosecuted and in the charges imputed to them, which carry a politically motivated context.

4. ENSURING THE PROTECTION OF RIGHTS AND FREEDOMS OF CITIZENS (ART. 10 OF THE CPC)

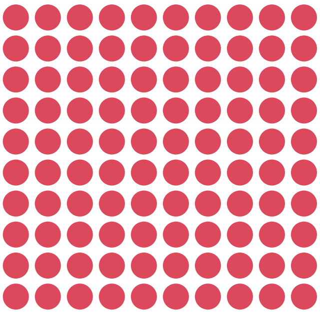
According to this principle, the court and the body of criminal prosecution are obliged to ensure the protection of the rights and freedoms of individuals involved in criminal proceedings, to create conditions established by the CPC for their exercise, and to take timely measures to satisfy the lawful demands of participants in the criminal process. At the same time, no one can be forced to renounce their rights. In turn, the established procedure for bringing to criminal responsibility through the institution of special proceedings violates the basic rights of the accused — the right to defense, the right to know what one is accused of, the right to adversarial proceedings, and the right to participate in the criminal process.

5. COMPREHENSIVE, COMPLETE, AND OBJECTIVE EXAMINATION OF THE CIRCUMSTANCES OF A CRIMINAL CASE (ART. 18 OF THE CPC)

This principle establishes that the court, while maintaining objectivity and impartiality, must provide the prosecution and the defense with the necessary conditions to exercise their rights. However, this duty of the court, against the backdrop of ongoing political persecution in Belarus of all persons who disagree with the current regime, is not fulfilled even at the level of the normative regulation of the institution of special proceedings.

1.2. PRACTICE OF APPLYING SPECIAL PROCEEDINGS IN BELARUS

As of May 1, 2025, special proceedings as a special procedure for bringing to criminal liability were applied to 147 individuals. At the same time, in relation to three persons (**V. Prokopiev, A. Dobrovolsky, A. Chakhovsky**), criminal cases were transferred to special proceedings twice. Thus, at present, special proceedings have been applied to 144 individuals. The period of application of this special procedure: from September 26, 2022, to June 3, 2025.



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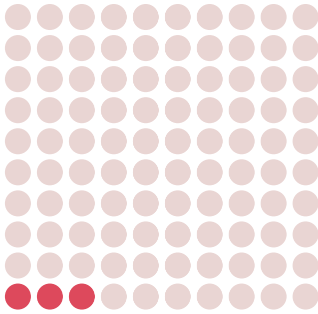
BELARUSIANS HAVE ALREADY BEEN CONVICTED IN ABSENTIA



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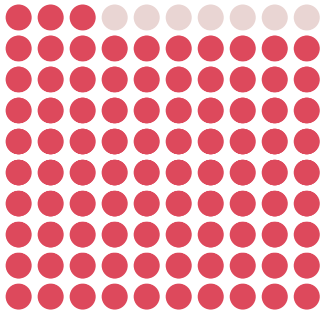
PERSONS WERE CONVICTED TWICE UNDER SPECIAL PROCEEDINGS



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BELARUSIANS WERE CHARGED UNDER ART. 468-25 CPC

It should be noted that out of **147 persons** in respect of whom special proceedings were initiated, only 93 were charged with crimes under paragraph 1, part 2, article 468-25 of the CPC (including in combination with other crimes).

The remaining 55 persons were charged with crimes under various articles (the figures indicate the number of persons charged under the respective article):

Art. 188 of the Criminal Code

Dissemination of knowingly false information discrediting another person (defamation) in information placed on the global computer network Internet — 3 cases.

Part 2, Art. 191 of the Criminal Code

Obstruction of the work of the Central Election Commission of the Republic of Belarus in conducting national referendums, referendum commissions, committed with threats or by other means by a group of persons by prior conspiracy — 4 cases.

Part 3, Art. 203-1 of the Criminal Code

Intentional unlawful dissemination of personal data of another person without their consent, causing significant harm to the rights, freedoms, and legitimate interests of citizens, committed in relation to a person in connection with their official duties — 2 cases.

Part 3, Art. 209 of the Criminal Code

Fraud committed on a large scale, repeated — 1 case.

Part 1, Art. 14; Part 4, Art. 209 of the Criminal Code

Attempted fraud committed on an especially large scale, repeated — 1 case.

Part 3, Art. 210 of the Criminal Code

Misappropriation of property on a large scale by an official using their official powers — 1 case.

Part 4, Art. 228 of the Criminal Code

Illegal transfer of cash in large amounts across the EAEU customs border by an organized group — 1 case.

Part 2, Art. 240 of the Criminal Code

Deliberate increase of the insolvency of a legal entity committed by an official, founder (participant) of this legal entity in their personal interests or in the interests of other persons, causing damage on an especially large scale (as amended by the Laws of the Republic of Belarus of 20.07.2007 No. 274-3 and 09.01.2019 No. 171-3) — 1 case.

Part 2, Art. 243 of the Criminal Code

Tax evasion on profit tax by deliberately underreporting the tax base, including by submitting knowingly false information in the tax declaration (calculation) on profit tax, causing damage on an especially large scale (as amended by the Law of the Republic of Belarus of 09.01.2019 No. 171-3) — 3 cases.

Part 2, Art. 243 of the Criminal Code

Tax evasion on property tax and value-added tax (VAT) by concealing the tax base, including through failure to file a tax declaration (calculation) for property tax and VAT, as well as evasion of property tax, VAT, and profit tax by deliberately underreporting the tax base, including by submitting knowingly false information in the tax declaration (calculation) for property tax, VAT, and profit tax, causing damage on an especially large scale (as amended by the Law of the Republic of Belarus of 09.01.2019 No. 171-3) — 1 case.

Part 2, Art. 243 of the Criminal Code

Tax evasion — 1 case.

Part 3, Art. 243 of the Criminal Code

Tax evasion — 1 case.

Part 2, Art. 243-1 of the Criminal Code

Evasion of obligations of a tax agent to transfer taxes and fees — 1 case.

Part 1, Art. 243-3 of the Criminal Code

Evasion of payment of insurance contributions — 1 case.

Part 1, Art. 340 of the Criminal Code

Knowingly false report of a planned explosion — 1 case.

Part 2, Art. 340 of the Criminal Code

Knowingly false report of a planned explosion, committed repeatedly — 1 case.

Part 1, Art. 342 of the Criminal Code

Active participation in group actions grossly violating public order, combined with clear disobedience to the lawful demands of representatives of the authorities, resulting in disruption of transport, enterprises, or institutions, in the absence of signs of a more serious crime — 9 cases.

Part 2, Art. 342 of the Criminal Code

Other preparation of persons for participation in group actions grossly violating public order, financing and other material support of such activities in the absence of signs of a more serious crime — 1 case.

Part 1, Art. 361-1 of the Criminal Code

Leadership of an extremist formation — 4 cases.

Part 2, Art. 361-1 of the Criminal Code

Creation of an extremist formation and leadership of it, committed repeatedly — 1 case.

Part 3, Art. 361-1 of the Criminal Code

Joining an extremist formation in order to commit crimes of an extremist nature (participation in an extremist formation) — 6 cases.

Part 1, Art. 361-2 of the Criminal Code

Provision of funds to support extremist activities — 1 case.

Part 1, Art. 13 and Part 1, Art. 361-3 of the Criminal Code

Preparation of a citizen of the Republic of Belarus to participate on the territory of a foreign state in an armed formation of one of the opposing sides, or to participate in an armed conflict and military actions without authorization of the state, in the absence of elements of a crime provided for by Art. 133 of the Criminal Code of the Republic of Belarus — 1 case.

Part 1, Art. 361-3 of the Criminal Code

Participation of a citizen of the Republic of Belarus on the territory of a foreign state in an armed formation of one of the opposing sides, or participation in an armed conflict, military actions without authorization of the state, in the absence of elements of a crime provided for by Art. 133 of the Criminal Code of the Republic of Belarus — 3 cases.

Part 2, Art. 361-3 of the Criminal Code

Recruitment of citizens of the Republic of Belarus for participation on the territory of a foreign state in an armed formation of one of the opposing sides, or in an armed conflict, military actions, in the absence of elements of a crime provided for by Art. 132 of the Criminal Code of the Republic of Belarus — 1 case.

Parts 1 and 2, Art. 361-4 of the Criminal Code

Other assistance to extremist activities — 18 and 3 cases, respectively.

Part 2, Art. 361-4 of the Criminal Code

Other assistance to extremist activities, committed repeatedly — 14 cases.

Art. 361-5 of the Criminal Code

Completion of training and other preparation by a person, knowingly intended for subsequent participation in extremist activities — 4 cases.

Part 2, Art. 363 of the Criminal Code

Resistance to an officer of the internal affairs bodies or another person maintaining public order, combined with the use of violence — 1 case.

Art. 364 of the Criminal Code

Violence or threat of violence against an officer of the internal affairs bodies — 2 cases.

Art. 364 of the Criminal Code

Threat of violence against an officer of the internal affairs bodies with the aim of obstructing their lawful activities, coercing them to change the nature of their activities, or in retaliation for performing official duties — 2 cases.

Part 1, Art. 366 of the Criminal Code

Threat of violence against an official in retaliation for performing official duties — 1 case.

Part 1, Art. 368 of the Criminal Code

Public insult of the President of the Republic of Belarus — 3 cases.

Art. 369 of the Criminal Code

Public insult of a government official in connection with the performance of their official duties — 6 cases.

Art. 369 of the Criminal Code

Public insult of a government official in connection with the performance of their official duties (as amended by the Law of the Republic of Belarus of 05.01.2015 No. 241-3) — 2 cases.

Art. 369-1 of the Criminal Code

Discrediting the Republic of Belarus — 1 case.

Art. 370 of the Criminal Code

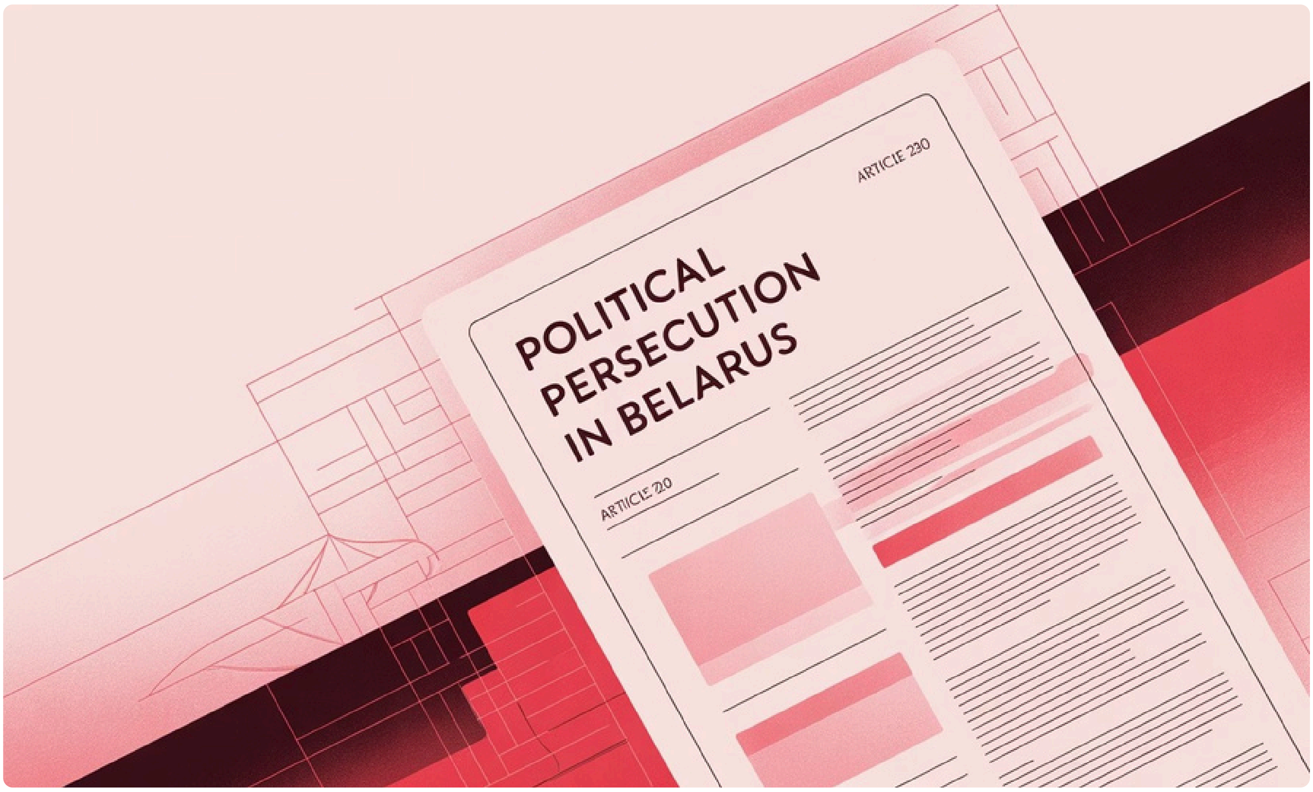
Desecration of the State Emblem, Flag, or Anthem of the Republic of Belarus — 4 cases.

Art. 391 of the Criminal Code

Insult of a judge in connection with the administration of justice — 2 cases.

Part 3, Art. 424 of the Criminal Code

Deliberate actions by an official, contrary to the interests of service, out of mercenary or other personal interest, using their official powers, which caused significant harm to the rights and legitimate interests of citizens, as well as to state and public interests, with serious consequences — abuse of power or official authority — 1 case.



The analysis of open sources, including mass media, leads to an unequivocal conclusion that in relation to 53 persons, special proceedings were applied exclusively as a form of persecution for political reasons. At the same time, the Belarusian regime uses exclusively "political" criminal charges (most often "anti-extremist" — Arts. 361-1 to 361-5 of the Criminal Code), as well as charges of crimes against the order of conducting economic activities (for example, Art. 228 of the Criminal Code — smuggling, Art. 243 of the Criminal Code — tax evasion), or against property (embezzlement through abuse of office — Art. 210 of the Criminal Code); against public security (e.g., Arts. 340 and 342 of the Criminal Code); against the order of governance (e.g., Arts. 364, 368, 369 of the Criminal Code).

Only two cases of applying the special proceedings procedure relate to common criminal offenses committed before the events of August 2020, namely:

- **V.E. Berditsky**[15] – under Part 3 and Part 4 of Art. 209 of the Criminal Code (2016–2018)[16].
- **I.P. Volokh** – under Part 2 of Art. 240 of the Criminal Code and Part 3 of Art. 424 of the Criminal Code (2016–2020)[17].

In total, from January 3, 2023, to April 30, 2025, verdicts were issued against 114 persons. In relation to two individuals (**A. Dobrovolsky, A. Chakhovsky**), verdicts were issued twice. Accordingly, during the specified period, in absolute terms, within the framework of special proceedings, verdicts were issued against 116 persons.

1125,25

YEARS OF IMPRISONMENT

As the main punishment

7 188 200

BELARUSIAN RUBLES

As fines imposed as an additional punishment

13

PERSONS

Were subjected to other additional punishments.

Additional punishments applied to 13 persons included:

Deprivation of the right to hold positions related to organizational, managerial, or administrative duties, involving the exercise of functions of a representative of authority, for a period of 5 years — 10 times;

Deprivation of military rank — 3 times (+3 times following appellate review of the verdict).

15. https://news.zerkalo.io/life/50587.html?c
16. https://reform.news/sk-zavershil-zaochnoe-rassledovanie-dela-o-moshennichestve
17. https://news.zerkalo.io/economics/57849.html, https://euroradio.fm/ru/sk-zavershil-zaochnoe-sledstvie-protiv-zastroyschika-grushevskogo-posada

In addition, convicts were ordered to pay monetary amounts to cover court costs, compensate damages from crimes, and provide compensation for moral harm to victims.

A total of 38 verdicts were appealed:

81.6%

UPHELD WITHOUT CHANGES

31 verdicts were upheld without changes, and appellate complaints were dismissed.

10.5%

WORSENED OUTCOME

4 verdicts were changed to worsen the position of the accused (additional punishments added – 3 cases; court costs added).

7.9%

OTHER CHANGES

3 verdicts were changed in other ways (the prison sentence regime was annulled and the case sent for retrial; a convict was released from serving the sentence due to an amnesty act).

At the same time, it is unclear by what criteria the appellate courts reviewed verdicts of first-instance courts and what exactly served as grounds for appellate review.
Based on the analysis of open sources, 44 judges are known to have issued verdicts within the framework of special proceedings. Considering the number of convicted persons, the following judges can be identified:

20

ORESHKO VLADIMIR

Minsk Regional Court

9

KUCHUK DINA

Minsk City Court

8

MAKAREVICH MIKHAIL

Minsk City Court

7

KREMENEVSKAYA SVETLANA

Brest Regional Court

5

BUGUK NATALYA

Minsk City Court

5

LESHCHENKO ANDREI

Brest Regional Court

5

ORLOV PETR

Minsk City Court

4

LUKASHEVICH DMITRY

Zavodsky District Court of Minsk

3

ZENKEVICH VALENTINA

Minsk City Court

3

KAZAKEVICH YURIY

Grodno Regional Court

2

ANANICH ELENA

Minsk City Court

2

BAGINSKIY SERGEY

Gomel Regional Court

2

BONDARENKO SVETLANA

Minsk City Court

2

POPKO ANASTASIYA

Minsk City Court

2

SIMAKHINA LYUBOV

Minsk City Court

2

TULEYKO VYACHESLAV

Minsk Regional Court

2

TSARIK OLGA

Partizansky District Court of Minsk

1

BACHISHCHE ELENA

Minsk Regional Court

1

BEREZYUK SERGEY

Brest Regional Court

1

BONDAL GALINA

Vitebsk Regional Court

1

BUBENCHIK DMITRIY

Brest Regional Court

1

VASILEVSKIY SERGEY

Minsk Regional Court

1

GOLOVKOVA VERA

Minsk City Court

1

GRUDA EKATERINA

Brest Regional Court

1

EPIKHOV SERGEY

Minsk Regional Court

1

ZAPASNIK MARINA

Leninsky District Court of Minsk

1

ZEMTSOV IGOR

Mogilev Regional Court

1

KOZEL ALEKSANDR

Grodno Regional Court

1

KOSTYUKEVICH ANZHELA

Minsk City Court

1

KRAVCHENKO OLGA

Oktyabrsky District Court of Mogilev

1

MAZUROV SERGEY

Mogilev Regional Court

1

MAYKO IRINA

Minsk Regional Court

1

MALASHENKO OLGA

Moscow District Court of Minsk

1

POZNYAK VLADIMIR

Oktyabrsky District Court of Grodno

1

POLYAKOVA VIKTORIYA

Leninsky District Court of Mogilev

1

SKOK VITALIY

Grodno Regional Court

1

SOBOLEV IGOR

Grodno Regional Court

1

SOTNIKOV ANATOLIY

Central District Court of Gomel

1

TARASEVICH ANDREY

Glubokoye District Court of Vitebsk Region

1

TSALKOV IVAN

Loev District Court of Gomel Region

It should be noted that, in addition to the official recognition of a person as guilty of committing a crime, a verdict under the procedure of special proceedings entails other consequences for the persons concerned.

> *“As a result of this special proceeding, the criminal case, and the court’s decision, a fine was imposed on me, which is essentially equal to the market value of the property I owned in Belarus. This property is now under arrest.”*

> *“The verdict entered into legal force. As part of the punishment applied to me, a fine was imposed. And since a fine is imposed on me, the property belonging to me was seized.”*

“A punishment in the form of a fine was applied to me. This fine is not compensation for damage caused by my so-called ‘criminal’ actions. Interestingly, firstly, the amount of the fine exactly matches the market value of my property. And secondly, what is even more interesting is that this fine was imposed on me based on amendments introduced into the Criminal Code in March 2023. But the crime for which this fine was imposed as punishment was committed before January 2023.”

“Then came the status of terrorist and extremist. Therefore, there are also additional consequences that appeared after the court ruling.”

“The most painful thing in all these special proceedings is that they put pressure on your relatives. It turns out that because of you, your family members are being persecuted, even though they cannot be held accountable for you at all. That’s why everything else just causes such bitter anger, because this is a situation you can hardly do anything about.”

“When I undergo legalization procedures or fill out any documents, or apply for a job, I need to write that I have a criminal case. This restricts me, because even though it is a political case, it is still a criminal one.”

“I have a house in […], which is registered in my name. It’s not my house, but according to documents, it is listed as mine. That’s why they arrested it. After the verdict, the arrest was lifted, but now, since I have the status of a terrorist, they imposed it again. I don’t know what it’s called legally, but it’s something like the impossibility of using this house.”

“Because I have to cover court expenses. They are not very high, but the problem is that at the moment when we were told we had to cover these expenses, we had already been recognized as terrorists. And accordingly, I cannot pay them, for example, because being abroad I simply cannot transfer these court expenses.”

“This is an unfair court. And in addition, there is a sense of insecurity. Again, the status of a terrorist is also not a normal situation.”

“Then two more events occurred that fit into this entire trend. The KGB included me in the list of persons involved in terrorist activities. And the Ministry of Internal Affairs also included us in the list of persons involved in extremist activities.”

“And then there are the third countries I cannot go to. Countries that I consider extremely dangerous for myself. This includes quite a large number of countries: all of Central Asia, most of the Caucasus countries, which I consider unsafe for myself. Turkey. Most African countries, whether North Africa or Algeria — they have very close ties with Russia. Be it Africa, towards the Sahara, and so on. A large number of Asian countries.”

“You cannot transfer money to anyone in Belarus, and no one can transfer money to you. Your risks of secure travel increase greatly, because Interpol does not file or submit, but you still cannot travel to any countries except EU countries, the United States, or conditionally democratic countries. Your geography of movement shrinks dramatically, and there appear countries you simply cannot enter under any circumstances.”

“In the mass media there appeared information that the police are searching for me. On a board (with the name of the organization and the city) my photo was displayed along with photos of several other people.”

“Money transfers, risk of traveling, the risk that people in Belarus will not be able to communicate normally with you. A number of close friends stopped talking to me because they are afraid.”

2. ANALYSIS OF INTERNATIONAL STANDARDS OF TRIALS IN ABSENTIA (WITHOUT THE PARTICIPATION OF THE ACCUSED)

The Universal Declaration of Human Rights establishes that everyone, for the determination of his rights and obligations and of any criminal charge against him, is entitled to a fair and public hearing by an independent and impartial tribunal, based on full equality (Article 10).

Subsequently, this norm was further developed in the International Covenant on Civil and Political Rights (hereinafter – the Covenant), ratified for Belarus by the Decree of the Presidium of the Supreme Soviet of the Belarusian SSR on October 5, 1973, which entered into force on March 23, 1976. It is also reflected in the European Convention on Human Rights, of which Belarus is not a party. However, the requirements of equality of arms of the parties, publicity, and adversarial proceedings contained in both international acts are identical.

RIGHT TO A FAIR TRIAL

Thus, according to Article 14 of the Covenant, everyone has the right, in the determination of any criminal charge against him, or of his rights and obligations in a suit at law, to a fair and public hearing by a competent, independent, and impartial tribunal established by law.

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ARTICLE 14)

- To be informed promptly and in detail in a language he understands of the nature and cause of the criminal charge against him;
- To have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing;
- To be tried in his presence and to defend himself in person or through legal assistance of his own choosing;
- To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.

EUROPEAN CONVENTION ON HUMAN RIGHTS (ARTICLE 6)

- To be informed promptly and in detail, in a language which he understands, of the nature and cause of the accusation against him;
- To have adequate time and facilities for the preparation of his defense;
- To defend himself in person or through legal assistance of his own choosing, or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
- To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- To have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Thus, the following obligations of the state can be identified, which it must fulfill when conducting proceedings provided for by its domestic legislation:

1. To inform the person of the charges against him. This implies not just a formal notice of the articles of the criminal law being applied, but a detailed explanation of the factual and legal grounds for the charges.
2. To provide a real opportunity to prepare a defense.
3. To defend oneself personally or through chosen legal counsel.
4. To provide a real opportunity to present and examine witness testimony, including the opportunity to question witnesses.

All the above guarantees are components of the right to a fair trial, which includes the right of access to a court; a lawful, independent, and impartial court while respecting a number of procedural guarantees, such as:

1 FAIRNESS

Equality of arms and adversarial proceedings, reasonableness of decisions, the right to remain silent and not to testify against oneself, use of only lawful evidence, verification of the awareness of the waiver of provided guarantees.

2 PUBLICITY

Openness, presence, consideration on appeal with the preservation of guarantees, public announcement of decisions.

3 REASONABLE TIME FOR CONSIDERATION

The case must be considered without undue delay.

4 SPECIFIC GUARANTEES FOR CRIMINAL PROCEEDINGS

Including the presumption of innocence, the right to defense, and the right to summon and question witnesses.

Failure to comply with any of these guarantees calls into question compliance with the very right to a fair and impartial trial.
An important characteristic of the right to a fair trial is that, although derogation from it is technically possible under Article 4 of the Covenant, in practice it is considered that it does not allow derogation if it results in a weakening of the protection of rights, and this is unacceptable. In cases where derogation is permitted under Article 4 of the Covenant, it must nevertheless be carried out in compliance with the fundamental requirements of fair trial, namely the principles of legality and the rule of law.

The Human Rights Committee in General Comment No. 32 on Article 14 of the Covenant noted that although Article 14 is not included in the list of provisions that do not allow derogation, all states using the right of derogation from normal procedures in conditions of a state of emergency must ensure that derogations do not exceed the limits strictly dictated by the exigencies of the situation. The guarantees of fair trial under no circumstances may be subject to measures applied in circumvention of the Covenant.

Trials "in absentia" – special or simplified proceedings, have always existed in one form or another. In general, a trial without the direct participation of a party to the case is not an unequivocal violation of the right to a fair trial, as it may constitute a justified restriction of the right in favor of ensuring justice. However, it significantly increases the risk of violating other guarantees, which jeopardizes adversarial proceedings, equality of arms, and publicity as the fundamental requirements of a fair trial.

> The Committee has emphasized, however, that any trial leading to the imposition of the death penalty during a state of emergency must comply with the provisions of the Covenant, including all guarantees provided by Article 14 of the Covenant[18].

Let us consider the approaches of the Human Rights Committee and the European Court of Human Rights to trials "in absentia."

Trials in the absence of the accused may, under certain circumstances, be permissible in the interests of the proper administration of justice, for example, in cases where the accused, although duly informed of the trial sufficiently in advance, deliberately refuse to exercise their right to be tried in their presence[19].

In the case of a trial in absentia, subparagraph 3 (a) of Article 14 of the Covenant requires that, regardless of the absence of the accused, all necessary measures be taken to inform the accused of the charges against them and to notify them of the proceedings being conducted.

Thus, such trials are consistent with the provisions of the Covenant only if the necessary steps are taken to duly summon the accused to court and to inform them in advance of the date and place of the trial in compliance with the requirement of presence.

For example, in the case of *Mbenge v. Zaire*, a violation of the applicant's right to a fair trial was established, since the state had not taken the necessary measures to duly notify him of the hearing:

18. **CCPR/C/GC/32**, General Comment No. 32, para. 6.
19. **CCPR/C/GC/32**, General Comment No. 32, para. 36.

> *„The Committee acknowledges that there are certain limits to the efforts that can reasonably be expected from the competent authorities in order to establish contact with an accused person. However, in this communication, those limits do not require clarification. The State party did not contest the author's claim that he only learned about the judicial proceedings from press reports after they had already taken place. Indeed, both court decisions explicitly state that summonses were issued by the court clerk. However, there is no information about any actual actions taken by the State party to deliver the summonses to the author, whose address in Belgium was correctly indicated in the decision of 17 August 1977 and therefore known to the judicial authorities.*
>
> *The fact that, according to the decision in the second case from March 1978, the summons was issued only three days before the hearing further confirms the Committee's conclusion that the State party did not make sufficient efforts to notify the author of the upcoming judicial proceedings, thereby depriving him of the opportunity to prepare a defense."*

The Committee notes that the rights to be present in court and to defense cannot be interpreted as prohibiting trials in absentia, regardless of the reason for the absence of the accused. Conducting proceedings in the absence of the accused is, in some cases, permissible (for example, when the accused, having been duly informed in advance, refuses to exercise the right to be present at the trial) — in the interests of the proper administration of justice.

Nevertheless, effective implementation of the rights provided for in Article 14 requires that necessary measures must be taken to duly inform the accused of the proceedings against him.

Issuing a conviction in absentia requires that, despite the absence of the accused, he must be properly informed of the date and place of the hearing, and also offered the opportunity to appear. Otherwise, the accused is deprived of sufficient time and facilities to prepare his defense (para. 3 (b) of Art. 14), cannot defend himself through counsel of his own choosing (para. 3 (d) of Art. 14), and also cannot examine the witnesses against him or secure the attendance and examination of witnesses on his behalf (para. 3 (e) of Art. 14).[20]

20. Daniel Monguya Mbenge v. Zaire, Communication No. 16/1977, U.N. Doc. **CCPR/C/OP/2**, paras. 14.1 and 14.2.

In the case of Salikh v. Uzbekistan, the Committee also drew attention to the fact that the participation of a lawyer not chosen by the accused, as well as the failure to provide him with copies of court decisions and records, constitutes confirmation of a violation of the right to a fair trial:

> *„The State party has not challenged the author's contention that neither he nor his family were notified of the criminal proceedings against the author; and that an attorney, one Kuchkarov, who, as argued by the State party, defended his rights in court, was not, in fact, the attorney of his own choosing. In addition, no indication has been given by the State party about any steps taken by its authorities to transmit to the author the summonses for his appearance in court. In this regard, the Committee regrets that the State party has not complied with its request to make available to it a copy of the judgment in the author's case, as well as a copy of the trial transcript – both are documents that could have shed light upon the issue at stake. These factors, taken together, lead the Committee to conclude that the State party failed to make sufficient efforts with a view to informing the author about the impending court proceedings, thus preventing him from preparing his defence or otherwise participating in the proceedings."*[21]

A similar approach to trials in absentia was developed by the European Court of Human Rights (ECHR). In its Guide on Article 6 of the Convention (Criminal aspect), the ECHR states that trial in absentia is not in itself incompatible with Article 6 of the Convention. However, a violation of the right to a fair trial occurs if it has not been established that the person tried in absentia waived their right to be personally present at the hearing and to defend themselves, or deliberately sought to evade trial[22].

At the same time, the ECHR notes that Article 6 of the Convention guarantees to "everyone charged with a criminal offence" the right "to defend himself in person," "to examine or have examined witnesses," and "to have the free assistance of an interpreter if he cannot understand or speak the language used in court." However, it is difficult to imagine how these rights can be effectively exercised without the personal presence of the accused[23].

21. Salikh v. Uzbekistan **(CCPR/C/95/D/1382/2005)**, para. 9.5.
22. Guide on Article 6 of the Convention **(Criminal aspect)**, para. 135.
23. Colozza v. Italy, Application no. **9024/80**, para. 27.

The ECHR attaches particular importance to the possibility of subsequently obtaining a new trial of one's case, both on questions of law and of fact.

> *"Although proceedings that take place in the accused's absence are not of themselves incompatible with Article 6 of the Convention, a denial of justice nevertheless undoubtedly occurs where a person convicted in absentia is unable subsequently to obtain from a court which has heard him a fresh determination of the merits of the charge, in respect of both law and fact, where it has not been established that he has waived his right to appear and to defend himself."*[24]

— ECHR judgment **in Sejdovic v. Italy**

Thus, it can be concluded that international standards do not exclude the very possibility of a trial in the absence of the accused. However, both the ECHR and the Human Rights Committee stress that the state must take all possible measures to ensure compliance with the guarantees of a fair criminal process, which is indeed difficult in the absence of the accused.

For the process in absentia not to constitute an unequivocal violation of the right to a fair trial, it must, at a minimum, meet the following requirements:

- The person must be duly (in detail and in advance) informed of the charges brought against them;
- The person must knowingly and voluntarily waive participation in the process, if they so decide;
- The person must be provided with the right to a retrial if the above conditions are not met.

Conducting criminal proceedings without the participation of the accused (in absentia) is a sensitive issue requiring a balance between the effectiveness of criminal prosecution and respect for fundamental human rights. International human rights mechanisms set the limits of admissibility of in absentia trials, ensuring protection against arbitrariness and violations of the accused's rights.

24. Sejdovic v. Italy, Application no. 56581/00, para. 82.

3. ANALYSIS OF THE PRACTICE OF SPECIAL PROCEEDINGS FROM THE PERSPECTIVE OF INTERNATIONAL CRIMINAL LAW

Crimes against humanity were first codified in the Charter of the Nuremberg Tribunal (1945), and later further developed in the statutes of international tribunals and in the Rome Statute of the International Criminal Court (ICC).

Crimes against humanity represent particularly serious violations of international criminal law. One form of such crimes is **persecution** — the systematic and targeted violation of fundamental human rights against a specific group of people.

> According to Article 7 of the Rome Statute, persecution means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of a group or collectivity. At the same time, persecution constitutes a crime against humanity if committed as part of a **widespread or systematic attack against a civilian population.**

The Assembly of States Parties to the ICC, clarifying the content of the Rome Statute, identified the following elements of the crime of persecution:

- The perpetrator severely deprived, contrary to international law, one or more persons of fundamental rights by reason of their identity.

- The perpetrator selected as the object of persecution such a person or persons because of their membership in a particular group or collectivity, or targeted the group or collectivity as such.

- Such selection was based on political, racial, national, ethnic, cultural, religious, gender, or other grounds universally recognized as impermissible under international law.

- The conduct was committed in connection with any act recognized as a crime against humanity (murder, torture, rape, imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law, enforced disappearance, forcible deportation and displacement, etc.).

- The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

- The perpetrator knew that the conduct was part of, or intended it to be part of, a widespread or systematic attack directed against a civilian population[25].

The UN Independent Expert Group on the human rights situation in Belarus, in its report of 4 February 2025, concluded that the commission of crimes in the context of depriving victims of fundamental rights, aggravated by discriminatory intent, led the Group to affirm that the crime against humanity of persecution on political grounds had been committed against Belarusians perceived as critically minded or opposing the government[26].

25. Elements of Crimes, adopted by the Assembly of States Parties to the ICC.
26. A/HRC/58/68, para. 81.

Fleeing persecution, Belarusians were forced to leave the country. However, the persecution did not stop there. Many Belarusians who went abroad face being declared wanted, pressure through the detention of relatives, arrests, and confiscation of property. Taken together, all this can be classified as extraterritorial persecution.

Extraterritorial persecution means targeted actions by a state or non-state actor, acting with the knowledge or approval of the state, directed against persons located outside the jurisdiction of the persecuting state, based on discriminatory motives. Examples of extraterritorial persecution include abductions and killings abroad, the use of Interpol for political pressure, harassment, surveillance and threats against opposition figures in exile, and cyber-harassment of activists.

Special proceedings in Belarus undoubtedly violate all international standards established for the conduct of in absentia trials.

The accused is **not properly informed** about the proceedings against them.

The person is **deprived of the opportunity** to personally participate in the trial or to ensure the participation of counsel of their choice.

The accused has **no real possibility** to defend themselves or to overturn or appeal the decision rendered.

Moreover, it must be stressed that if the accused returns to the country to participate personally in the trial, they are highly likely to be deprived of the right to a fair trial. Since 2020, Belarusian courts have repeatedly demonstrated their lack of independence, issuing thousands of politically motivated verdicts, violating not only substantive but also procedural norms.

The ECHR introduces the concept of a **"flagrant denial of justice."** This term is used as a synonym for judicial proceedings that clearly contradict Article 6 of the Convention or the principles enshrined in it. Although the Court did not require a precise definition of this term, it nevertheless indicated that certain forms of violations could be considered as breaches of the principles of justice.

THEY INCLUDE:

CONVICTION IN ABSENTIA WITHOUT REVIEW

Recognition of guilt in absentia without the subsequent possibility of a new substantive review of the charges.

SIMPLIFIED PROCEEDINGS

Trials conducted in a simplified manner with complete disregard for the right to defense.

DETENTION WITHOUT TRIAL

Detention without access to an independent and impartial court for the purpose of reviewing the legality of detention.

DENIAL OF ACCESS TO A LAWYER

Arbitrary and systematic denial of access to a lawyer, especially with regard to a person detained abroad.

USE OF COERCED TESTIMONY

Use in criminal proceedings of statements obtained as a result of torture or other cruel treatment of the accused or other persons.

Unfortunately, it must be stated that all the hallmarks of a flagrant denial of justice are present in Belarus, both in ordinary proceedings and in special proceedings. Moreover, the exemplary list of articles under which a person may be convicted in the framework of special proceedings includes such punishments as the death penalty (acts of international terrorism, acts of terrorism, treason, conspiracy, or other actions committed with the aim of seizing state power, etc.).

There is no doubt that the application of special proceedings against Belarusians forced into exile also bears a discriminatory character.

Thus, most of the articles included in the list for special proceedings are applied by the regime to persecute political opponents and ordinary citizens who do not agree with Lukashenko's policies. Moreover, an analysis of the cases initiated and considered under special proceedings[27] clearly confirms that this instrument is directed against persons who disagree with the policies pursued in Belarus and openly express their opinions.

Therefore, special proceedings constitute a serious violation of citizens' rights to a fair trial and, in practice, represent a flagrant denial of justice. They aim at the real threat of imprisonment or other deprivation of liberty in violation of international law and are directed against a group of persons forced to leave the country as a result of political persecution.

The legislative entrenchment of this procedure and its broad use against citizens who have left the country by courts across Belarus confirms the existence of contextual elements, such as commission as part of a widespread or systematic attack against a civilian population. Consequently, this constitutes extraterritorial persecution.

Pre-Trial Chamber I of the International Criminal Court, in its ruling on the situation in Bangladesh/Myanmar, concluded that *"one of the elements of the crime of deportation is the forced displacement across international borders, which means that acts related to this crime inevitably occur on the territory of at least two states.[28]"* The Court further concluded that it potentially has jurisdiction *"if at least one element of a crime falling under the jurisdiction of the Court, or part of such a crime, is committed on the territory of a State Party to the Statute.[29]"*

Belarusians forced to leave the country as a result of persecution by the regime become victims of extraterritorial persecution in the territory of States that are parties to the Rome Statute of the International Criminal Court — Lithuania, Poland, Germany, Latvia, and others. Thus, based on the conclusions drawn in the case of Bangladesh/Myanmar, it follows that the ICC has jurisdiction over international crimes of extraterritorial persecution of political opponents (real or perceived) by the Lukashenko regime.

27. https://court.gov.by/ru/93/informaciya/o/date/meste/vremeni/sudebnogo/razbirateljstva/vizove/obvinyaemogo/v/sud/
28. Pre-Trial Chamber I, September 6, 2018, No. ICC-RoC46(3)-01/18, para. 71.
29. Pre-Trial Chamber I, September 6, 2018, No. ICC-RoC46(3)-01/18, para. 72.

CONCLUSIONS

The study has shown that the regulatory framework of special proceedings in the national criminal procedure legislation of Belarus contains partial provisions formally justifying the possibility of convicting a person in their absence. However, such provisions are enshrined without the necessary legal mechanisms to guarantee the accused the right to defense, presence during the consideration of the case, participation in the collection of evidence, and subsequent appeal of the verdict.

In practice, even these normative guarantees are not implemented by Belarusian courts.
The application of special proceedings demonstrates a persistent tendency or orientation against a specific social group — individuals opposing the current dictatorial regime in Belarus, participating in protest activities, carrying out journalistic and human rights work, and providing assistance to repressed Belarusians.

Court decisions rendered under special proceedings are arbitrary in nature and do not ensure the standard of fair trial, which contradicts the requirements of the International Covenant on Civil and Political Rights and the practice of the UN Human Rights Committee.

The institution under consideration, in the context of Belarusian law enforcement practice, demonstrates features of organized and systematic persecution of the civilian population, which allows it to be assessed in the context of international criminal law. In accordance with Article 7 of the Rome Statute of the International Criminal Court, such actions fall under the category of crimes against humanity, since persecution represents an element of state policy aimed at suppressing dissent and imposing pseudo-legal procedures.

According to subparagraph (h) of paragraph 1 of Article 7 of the Rome Statute of the International Criminal Court, “persecution” means the intentional and targeted deprivation of fundamental rights of a population group on political grounds within the framework of a widespread and systematic attack.

Therefore, the existing practice of applying special proceedings in the Republic of Belarus possesses all the hallmarks of a crime against humanity in the form of persecution, qualified in accordance with international criminal law, and requires proper legal assessment at the international level.