

Explanatory Note to the Act on Exemption from Liability and Restoration of the Rights of Persons Persecuted on Political Grounds

During 2020-2021, a huge number of Belarusian citizens were persecuted on political grounds. By the summer of 2021, the number of political prisoners in Belarus was around 500, tens of thousands were subject to administrative penalties, a large number of citizens were dismissed or forced to resign, and other sanctions were applied against citizens (confiscation of property, revocation of professional licenses, etc.).

All persons deprived of their liberty or detained on political grounds must be released, their criminal and administrative liability lifted, and decisions on dismissal and other decisions infringing the rights of citizens taken on political grounds must be rescinded.

However, there is no universal mechanism that would allow the immediate release of all political prisoners and the restoration of the rights of all repressed citizens. This is due to the following difficulties:

1. The list of political prisoners compiled by human rights organizations is not exhaustive. Unfortunately, not all cases of unlawful criminal prosecution are known to human rights defenders. Therefore, an individualized approach to the release of political prisoners and the restoration of the violated rights of citizens cannot be applied.
2. In addition, human rights defenders keep records only of those who are recognized as political prisoners, that is, persons detained on charges of a crime. However, a huge number of citizens were subjected to administrative liability, dismissed, or had their rights violated another way. What is needed, therefore, is a mechanism for restoring rights to a much wider range of persons than just political prisoners.
3. Political convictions, administrative proceedings, dismissals, etc. were often based on the same grounds and articles under which citizens were

tried fairly and lawfully. Therefore, it would not be possible to restore rights on the basis of a generalized approach (for example, release from liability of persons convicted under a specific article).

In view of the foregoing, the following principles are proposed for the restoration of the rights of persons persecuted on political grounds.

Principle 1. Citizens must be released immediately and proceedings under those articles of the Criminal Code and the Code of Administrative Offences in which all or almost all citizens have been persecuted for political reasons must be discontinued.

These include, for example, the following articles of the Criminal Code:

- Article 130. Incitement to racial, ethnic, religious or other social hatred or discord, rehabilitation of Nazism;
- Article 293. Mass riots;
- Article 342. Organization, preparation, or active participation in acts seriously disturbing public peace;
- Article 356. Treason against the state;
- Article 357. Conspiracy or other acts committed for the purpose of seizing state power;
- Article 361. Calls for actions aimed at harming the national security of the Republic of Belarus;
- Article 361-1. Establishment of extremist groups;
- Article 363. Resistance to an internal affairs officer or other person protecting public order;
- Article 364. Violence or threat of violence against an internal affairs officer;
- Article 368. Insult to the President of the Republic of Belarus;
- Article 369. Insulting a public official;
- Article 370. Desecration of State symbols;
- some other articles.

Under this mechanism, citizens facing administrative liability will also be released from liability under articles 23.4., 23.34. of the Code of Administrative Offences of the Republic of Belarus of April 21, 2003, and articles 24.3. and 24.23. of the Code of Administrative Offences of the Republic of Belarus of January 6, 2021.

No additional document was required for the dismissal of such cases and the release of prisoners. All those detained and imprisoned in criminal cases will be released within 2 days and in administrative cases within 1 day.

Principle 2. Persons prosecuted under those articles of the Criminal Code and the Code of Administrative Offences which were used to prosecute both on political and non-political grounds are not immediately exempted from liability. However, any person prosecuted under such articles will be able to request a review of the sentence(s) by an independent court. Until the case of such persons is reviewed, the enforcement of sentences in relation to such persons will be postponed, which will also allow them to be released pending trial.

Under this mechanism, cases may be reviewed under the following articles of the Criminal Code:

- Article 218. Willful destruction or damage to property;
- Article 235. Legalization ("Laundering") of the proceeds of crime;
- Article 243. Evasion of taxes, charges;
- Article 285. Establishment or participation in a criminal organization;
- Article 339. Hooliganism;
- and some other articles.

Cases under such articles are reviewed on the application of the person charged in the first instance. The reason for the annulment of the sentence(s) is the political motivation of the original sentence(s).

The Act proposes a definition of a politically motivated sentence (ruling, decision) so that the court may restore the rights of convicted persons (sentenced) on political grounds.

Applications for review of a sentence (ruling) and review will be regulated by a separate law.

The list of articles on Principle 1 and Principle 2 could be reviewed in light of the current situation.

Principle 3. Citizens who have been persecuted on political grounds are subject to reinstatement at work and to the restoration of other violated rights (confiscation, revocation of licenses, etc.).

Such decisions will be taken by the court as soon as possible on the basis of applications from citizens, regardless of the expiry of the time limit for bringing the matter before the court.

Such decisions would be regulated by a separate law.

Principle 4. All fines paid under annulled orders shall be payable to citizens, and to citizens who have been unlawfully prosecuted or whose rights have been infringed shall be compensated.

The procedure for determining the amount of compensation and deciding whether to refund it will be regulated by a separate law.