

The application of the universal jurisdiction principle in respect of cases from Belarus

Submission by the International Strategic Action Network for Security (iSANS) to the UN Working Group on Enforced or Involuntary Disappearances

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This information is submitted in response to the call for inputs for a research by the UN Working Group on Enforced or Involuntary Disappearances on the use of universal criminal jurisdiction in cases of enforced disappearance.¹ Our organisation, International Strategic Action Network for Security (iSANS), focuses in its documentation, research and advocacy work primarily on the situation in Belarus and the region of Eastern and Central Europe. In 2023, we conducted research into challenges to the effective application of the universal jurisdiction principle in cases of international crimes committed in Belarus by studying the situation in four European states (Lithuania, Germany, Poland, and Czechia) where lawsuits from victims from Belarus have been submitted. We also looked into a court case in Switzerland. In the course of the research, we identified several major problems in this area and developed 12 concrete recommendations.²

In the present submission we provide a brief overview of the current situation with enforced disappearances in Belarus, refer to key findings of our research, and provide an update on the progress in the application of the universal jurisdiction to cases from Belarus. The cases covered in our research included torture and other forms of inhuman and degrading treatment allegedly committed by the police and personnel of penitentiary institutions in Belarus in response to mass protests in summer and autumn 2020. None of the cases covered in the research included enforced disappearances. To the best of our knowledge, no complaints regarding recent or the ongoing cases of enforced disappearances in Belarus (prolonged incommunicado detention in prison) have been filed to law enforcement bodies in other states. Therefore, this submission does not cover information on the application of the universal jurisdiction principle in cases of enforced disappearances as requested in the questionnaire distributed by the WGEID. However, we believe that information we possess may be useful for WGEID research as our findings regarding general challenges in the application of the universal jurisdiction would likely have impact on possible investigation into cases of enforced disappearances, should such complaints be submitted.

Cases of enforced disappearances In Belarus

In response to the falsification of the results of the 2020 presidential election, mass protests broke out across Belarus. The security services responded with brutal force, mass arrests, and the wide use of torture during the dispersal of protests and in detention. According to the Human Rights Council, the High Commissioner, and the Special Rapporteur on the situation of human rights in Belarus, the level of brutality

¹ Call for inputs for a research by the Working Group on Enforced or Involuntary Disappearances on the use of universal criminal jurisdiction in cases of enforced disappearance, <https://www.ohchr.org/en/calls-for-input/2025/call-inputs-research-working-group-enforced-or-involuntary-disappearances-use>

² Challenges in the application of the universal jurisdiction principle in respect of cases from Belarus. Research report. iSANS, 2023. <https://isans.org/human-rights/challenges-in-the-application-of-the-universal-jurisdiction-principle-in-respect-of-cases-from-belarus.html>

of repression by the Lukashenka regime “may amount to crimes against humanity”.³ HRC referred to cases of enforced disappearances lasting several days documented by OHCHR.⁴ According to human rights NGOs, at least nine persons (Viktar Babaryka, Ihar Losik, Maryja Kalesnikava, Maxim Znak, Mikalai Statkevich, Siarhei Tsikhanouski, Uladzimir Hundar, Yauhen Afnabel, and Palina Sharenda-Panasyuk) were held *incommunicado* for a considerable period of time. No official information about their condition has been known for almost two years since February 2023 (while Maryja Kalesnikava remained incommunicado for more than 600 days). Only occasional testimonies by other prisoners released from these colonies became available – but no official information or first-hand evidence by relatives, lawyers, independent doctors or international observers. It is very likely that several other imprisoned regime critics are also held *incommunicado* in prison but their relatives do not disclose this information out of fear of retribution.

In the months leading up to the January 2025 presidential elections, the Lukashenka regime took unprecedented measures designed to demonstrate its willingness to use the “card” of improving the situation of political prisoners in negotiations with the West with a declared goal of obtaining a lifting of international sanctions and recognition of the legitimacy of the election results. In November 2024, propagandist Raman Pratasevich demonstrated photos of a meeting between Maryja Kalesnikava and her father in a prison hospital,⁵ while in January 2025, interviews with Viktar Babaryka⁶ and Ihar Losik⁷ were broadcasted in the state media. The prisoners’ relatives and the general public, including the international one, this way got informed that Maryja Kalesnikava, Viktar Babaryka and Ihar Losik were alive. However, it should be noted that they have not received the opportunity to communicate with relatives (except Ms. Kalesnikava who had a single brief visit by her father), lawyers and doctors, and there was no further information about their whereabouts and health condition. Therefore, it cannot be claimed that their *incommunicado* detention came to an end.

Investigation of cases from Belarus in other countries under the universal jurisdiction principle

Following the wave of repression in 2020, thousands of victims of international crimes fled Belarus to other countries. Dozens have submitted applications within the framework of the universal jurisdiction principle in different countries, including Lithuania, Germany, Poland, and Czechia. However, several years after the submission of these applications, there has been no progress in investigation in spite of the existence of a wide consensus with regard to necessity to ensure justice for victims of international crimes in Belarus both on the national level⁸ and on the level of inter-governmental organisations.⁹

³ A/HRC/RES/55/27 of 11 April 2024. P.2.

⁴ A/HRC/ 52/68 of 3 February 2023. Para. 22

⁵ Мария Колесникова встретилась с отцом. С белорусской политзаключенной не было связи полтора года. BBC News Русская служба, 12 ноября 2024. <https://www.bbc.com/russian/articles/cy4nxe3jylo>

⁶ Belarus Review by iSANS — January 13, 2025. <https://isans.org/analysis/belarus-review/belarus-review-by-isans-january-13-2025.html>

⁷ Belarus Review by iSANS — January 20, 2025. <https://isans.org/analysis/belarus-review/belarus-review-by-isans-january-20-2025.html>

⁸ In May 2024, Polish Minister of Justice and Prosecutor General Adam Bodnar announced that the Polish Prosecutor General’s Office was ready to assist in the investigation of Belarusians’ cases under universal jurisdiction. The Minister also informed about the ongoing reform of Polish legislation, which will create the possibility of wider application of the principle of universal jurisdiction in Poland and the prosecution of those responsible for the most serious international crimes. See: Минюст Польши проанализирует привлечение Лукашенко к ответственности в МУС. Reform.news, 18.05.2024. <https://reform.news/minjust-polshi-proanaliziruet-privlechenie-lukashenko-k-otvetstvennosti-v-mus>

⁹ See, among other, European Parliament resolution of 19 September 2024 on the severe situation of political prisoners in Belarus (2024/2804(RSP)), in which the European Parliament, among other, expresses utmost concern about the situation of many political prisoners many of whom have been held incommunicado for months or years and called for the EU and its Member States to work towards holding the Lukashenka regime accountable for its crimes and to apply the principle of universal jurisdiction (https://www.europarl.europa.eu/doceo/document/TA-10-2024-0009_EN.html) and European Parliament resolution of 22 January 2025 on the need for actions to address the continued oppression and fake elections in Belarus (2024/3014(RSP)), in which it called for the EU and its Member States to continue to investigate human rights abuses in Belarus

A number of investigations and prosecutions within the frame of the universal jurisdiction worldwide is increasing every year. Convictions have been obtained in relation to situations as diverse as Syria, Afghanistan, Iran, Rwanda and Liberia, sometimes for crimes dating back 40 years. The year 2022 was marked by an unprecedented mobilisation of legal and judicial resources to respond to the international crimes committed in Ukraine. Against the background of a swift and massive uptake of universal jurisdiction in response to the atrocities committed in Ukraine, the absence of progress with cases related to events in Belarus looks disappointing.

At the moment, the Harausky case¹⁰ remains the only Belarusian case that made it to a court under universal jurisdiction in any country. Investigation of other cases has either not been open, has been suspended, or have not yet led to tangible procedural results. In Poland, where there is no specialised body for the review of cases under the universal jurisdiction principle, for example, in both cases of Belarusian citizens submitted for investigation, the decision not to initiate an investigation was taken. In one case, the refusal to launch an investigation was explained by the lack of “the interest of the Republic of Poland” which clearly demonstrated absence of relevant knowledge and understanding of international law among the investigative authorities. In the second case, the reason was the “inability to conduct an investigation,” in particular, to receive information from the state bodies of Belarus. In the Czech Republic, where the single filed case is handled by the Department of the Ministry of Internal Affairs for Combating Organized Crime, a decision was made to “postpone the consideration of the case”, with a short justification. Most of the arguments cited in it do not stand up to any criticism, since they are refuted by information readily available in open sources. There is no specialised body for the review of cases under the universal jurisdiction principle in Czechia. In Germany, where such specialised investigation body exists and is known for its professionalism, after initiating a so-called monitoring process, a sort of preliminary investigation procedure, and interviewing a witness, the prosecutor’s office decided in the summer of 2023 not to initiate investigations against the suspects named in the complaint, alleging there were no further possibilities to successfully investigate the facts of the case in Germany.

Lithuania has clearly progressed the most among the countries studied. A special investigative group was created by a decision of the Prosecutor General’s Office on the basis of the Police Department for Especially Dangerous Crimes to consider Belarusian cases in the universal jurisdiction framework. This group was created immediately after the beginning of the investigation of the first case submitted in November 2020. It was decided by the investigators to combine other incoming cases with the first leading case (case of Maksim Kharoshin) into one large investigation, with the exception of a few situations that are clearly different from a legal point of view. According to various sources, today the case unites up to 55 victims. In 2023, there were plans to issue arrest warrants and wait until culprits visit one of the countries ready to detain and extradite them. However, according to a representative of the Prosecutor General’s Office, these plans were put on hold due to the fact that Lithuania has submitted a referral to the International Criminal Court. The non-obvious logic of suspending work on cases under universal jurisdiction is based on the fear that, having seen that the state is taking measures to bring criminals to

and to support accountability measures, including through universal jurisdiction and investigate, on the basis of universal jurisdiction, the crimes against humanity committed by the Lukashenka regime in Belarus and on EU territory (https://www.europarl.europa.eu/doceo/document/TA-10-2025-0002_EN.html).

¹⁰ The trial of Yury Harausky, an ex-fighter of the Special rapid response unit of the Ministry of the Interior of Belarus, was held in September 2023 in Switzerland. Harausky was accused of enforced disappearance in the case of abduction and murder of four Belarusian opposition politicians in 1999. To a strong disappointment of the filing parties and victims’ relatives, the court acquitted Harauski of the enforced disappearances. It held that his participation in the crimes could not be established beyond reasonable doubt. In September 2024, the applicants’ lawyers filed an appeal against the court’s decision. See discussion of this case in Challenges in the application of the universal jurisdiction principle in respect of cases from Belarus (cit. 2), pp. 20-23.

justice at the national level, the ICC Prosecutor may decide that there is no need to open an investigation based on the referral.

The key obstacles to the investigation within the framework of the universal jurisdiction principle

Lessons that can be learned from the application of the universal jurisdiction principle in respect of cases from Belarus largely reflect the general problems in this area noted by scholars and practitioners from the experience with cases from other countries. At the same time, lessons from the study emphasise the specifics of Belarusian cases which apparently are not considered by authorities in some states to be violations of international criminal law and threats to international public order.

There is currently no problem of lack of evidence of the physical elements of crimes against humanity committed in Belarus since the summer of 2020. It is estimated that NGOs have documented more than 5,000 potential cases. There are about 200 potential suspects who can be identified, including employees of the Ministry of Internal Affairs of Belarus, staff of isolation wards, and high ranking officials. Evidence of contextual elements of crimes against humanity in Belarus is also available in reports by the UN bodies, as well as in NGO reports. At the same time, as it turned out, this and other information, accumulated by NGOs, is often not available to the national law enforcement bodies authorised to investigate crimes within the framework of the universal jurisdiction. There is an obvious lack of vital communication and coordination between government agencies and civil society, as well as between the government agencies of different countries. The conclusion about the need to ensure closer cooperation between states in the search and collection of evidence, the search for suspects and the execution of arrest warrants was, according to the applicants' lawyers, one of the lessons of the Harausky case¹¹ and of all the country situations we researched. Our research has shown that representatives of the relevant agencies in some countries researched are aware of this issue and expressed hope that an interstate investigation team will be created.

The problem of the lack of regular information exchange between the investigative authorities and NGOs is compounded by the lack of publicity on universal jurisdiction cases. It is observed in all, without exception, countries studied. In Poland, a non-publicity clause ordered by judges covers not only the identity of the applicant and the accused, but also the entire investigation process. The lack of access to information for general public and NGOs hinders both the popularisation of the universal jurisdiction among potential applicants and the pursuance of the goal of deterring international crimes. Potential input of Belarusian diaspora in these countries as well as possible submission of new complaints by numerous Belarusian victims of international crimes also remain untapped as a result of the policy of secrecy.

The absence of a special department authorised to investigate cases within the framework of the universal jurisdiction, or, if it is established, the lack of resources and qualifications of its employees, was identified as one of the key problems by all respondents. In connection with the problem of qualification, the lack of methodological guidelines was also mentioned, which could be used by employees working with the universal jurisdiction cases, starting from the lowest level, including police officers who receive initial statements from applicants. The problem of the lack of necessary qualifications and resources extends to the judicial system. The Harausky case can, again, be referred to as an example here. According to the applicants' lawyers, the reason why the court concluded that Harausky's guilt could not be established "beyond reasonable doubt" was at least partly due to the unsatisfactory quality of the translation. The lack of a proper translation led to the fact that Harausky could not effectively participate in the process, which,

¹¹ "Реализация права на правду": в Вильнюсе прошла конференция об ответственности за преступления и нарушение прав человека в Беларуси. Вясна, 17.09.2024. <https://spring96.org/ru/news/116274>

according to plaintiffs' lawyers, led the judge to suspect that he had misled the court. This consideration became one of the arguments for the appeal.¹²

Another obstacle to the investigation of a number of filed cases, as well as the filing of new cases, is the problem of the applicant having international protection preventing the disclosure of information about him or her, allegedly necessary when communicating information about the opening of investigation to the state bodies of Belarus. This problem is not only legal (there is a fundamentally different interpretation of the existing provisions of interstate agreements on cooperation in criminal matters in the absence of a mandatory norm on the disputed issue), but also administrative, since the interpretation of the relevant norms is a prerogative of state bodies, and the adoption of an official interpretation that allows concealing the applicant's name by analogy with the protection measures used in criminal proceedings, could be a solution and would open the doors to dozens of new cases.

The lack of political will to investigate cases concerning international crimes allegedly committed in Belarus is evidenced by the absence of an initiative by states to clarify the applicable legislation. Our analysis shows that where the decision to prosecute is made at a high political level, the investigation is carried out more effectively. With regard to Belarus, we have to admit that most of the states researched are not yet fully ready to recognise the crimes carried out by the Lukashenko regime as a threat to the global rule of law and security and therefore are of direct national interest of the countries concerned, which leads to a formal approach to the investigation. For example, in November 2023, Poland suspended an investigation into the unlawful imprisonment and torture of three citizens of Poland detained in Minsk in 2020. It was reported that the Mazowiecki Department of the National Prosecutor's Office made such a decision due to the refusal of the Belarusian side to cooperate. Allegedly, it sent a request for legal assistance in the investigation to the Belarusian side in 2021, but have not received any response to this document.¹³ The formal approach to investigating crimes committed in Belarus is particularly demonstrative in comparison with the efforts that the same countries undertake to investigate cases related to war crimes and crimes against humanity in Ukraine - the refusal of the Russian authorities to cooperate does not prevent the initiation of investigation, as well as further investigative actions.

And finally, respondents from different countries, including civil servants, lawyers, and representatives of NGOs, refer to the unavailability of the suspects. A conflict between the need to impose personal sanctions, including travel bans, as an important tool of holding perpetrators accountable, and the necessity to ensure their arrest during their travel to countries whose authorities would be willing to detain and extradite them, has no clear solution. The absence of visible opportunity to arrest and try them has a significant cooling effect on the investigative authorities who do not want to open a case with no prospects, although collecting sufficient evidence, issuing arrest warrants, and waiting for the moment when the suspects arrive in countries where they can be detained, appears as a reasonable approach. Refusal to open investigation, collect evidence, and issue arrest warrants indicates not only a lack of understanding of the essence of the universal jurisdiction, one of the goals of which is to send a strong deterring signal to perpetrators that justice is in the work, but also the lack of a clear strategy, including a long-term one, in the field of universal jurisdiction.

¹² Подана апелляциянная жалоба по делу причастного к насильственным исчезновениям собровца Юрия Гаравского. Вясна, 24.09.2024. <https://spring96.org/ru/news/116306>

¹³ Т. Гаргалык. «Важно, чтобы они ответили». Где могут наказать силовиков РБ. Deutsche Welle, 15.01.2024. <https://www.dw.com/ru/vazno-ctoby-oni-otvetili-gde-mogut-nakazat-belorusskih-silovikov/a-67981711>

In 2024, *Viasna* Human Rights Center and the International Committee for the Investigation of Torture conducted a sociological survey of 580 people who survived repression in Belarus in 2020.¹⁴ 57% of victims said that their desire to restore justice has not changed, 29% said that it has only intensified, and only 14% had weakened faith in restoration of justice. From the same study, it can be concluded that 84% of respondents believed that the degree of guilt of culprits should be determined by the court, that is, they look forward for not lynching, but a full-fledged trial.¹⁵ The burden of the investigation of thousands of cases from Belarus is unbearable for one state. Every state that supports the principles of democracy and the rule of law must overcome the obstacles that separate it from the implementation of the principle of universal jurisdiction.

Recommendations from our research are as follows:¹⁶

1. to amend legislation, where relevant, in order to eliminate provisions unduly restricting the scope of application of the universal jurisdiction principle or giving too broad discretion to the law enforcement officials such as the requirement to prove that the crime threatens national interests; expand the list of crimes covered by the universal jurisdiction to include torture, enforced disappearances and sexualised violence as stand-alone crimes; and bring the definitions of international crimes fully in line with the provisions of the Rome Statute;
2. to create specialised bodies to investigate international crimes within the framework of the universal jurisdiction, including international crimes committed in Belarus; in case of existence of such bodies, allocate necessary resources and strengthen them both numerically and in terms of expertise;
3. to strengthen inter-country cooperation on cases of universal jurisdiction covering international crimes committed in Belarus by creating a joint interstate investigation team to exchange expertise and data on suspects and specific situations;
4. to build up expertise of the relevant personnel dealing with the universal jurisdiction cases, including by regular exchange of experience with specialists from the countries that have strong experience in investigating cases under universal jurisdiction;
5. to build up expertise of relevant personnel dealing with the universal jurisdiction cases by producing and widely disseminating methodological guidelines on working with international crimes and organising corresponding educational programmes and trainings;
6. to increase the knowledge of the investigation team's staff about the criminal procedure, methods of working with evidence in situations of lack of interaction on the part of the authorities of the respondent state, protection of victims and witnesses, etc., including by taking into account the experience of the European Court of Human Rights and the UN Human Rights Committee;
7. to deepen the interaction of state bodies with NGOs, including by holding regular face-to-face meetings to discuss the available and required information on cases;
8. to agree on the interpretation of the norms of inter-state cooperation agreements providing for the need to report information about the case under investigation to the state bodies of Belarus, to ensure the safety of applicants and their relatives;

¹⁴ Belarus: How survivors of torture and/or cruel treatment perceive justice. Comprehensive Mixed-Methods Study by Viasna Human Rights Centre and The International Committee for Investigation of Torture in Belarus, November 2024. https://spring96.org/files/book/en/analytical_research_en.pdf

¹⁵ "Реализация права на правду": в Вильнюсе прошла конференция об ответственности за преступления и нарушение прав человека в Беларуси. Вясна, 17.09.2024 (<https://spring96.org/ru/news/116274>)

¹⁶ Challenges in the application of the universal jurisdiction principle in respect of cases from Belarus (cit. 2), pp. 60-61.

9. to compile a list of documents of intergovernmental and non-governmental organisations containing evidence of physical and contextual elements of crimes against humanity committed on the territory of Belarus for their use by investigative groups of different countries;
10. to compile a non-public database of evidence of alleged crimes committed in a certain location during a certain period of time, with information on linkages with suspects and the chain of command, that would be made available to investigators in different states;
11. to provide access to information that does not disclose the identity of the applicant and witnesses in cases of universal jurisdiction for NGOs and the academic community, and, at a certain stage of the investigation, for the general public, including outside the state administering universal jurisdiction;
12. to provide for the obligation of competent authorities to publish an annual report on the progress in investigation of cases of universal jurisdiction, including reasons for refusal to initiate or discontinue an investigation.

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