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# Belarus

## **Criminal Code**

**(adopted on 9 July of 1999, latest amendment - 20 July 2007)**

(...)

Art. 130: Incitement to racial, national or religious hatred or discord

1. Willful actions aimed at inciting racial, national or religious hatred or discord, degradation of national honor and dignity, shall be punishable by a fine or by arrest for up to six months, or restricting the freedom for a period of up to five years, or by imprisoning for the same period of time.

2. If these actions are carried out, with the use of violence, or by a person who has made use of his/her official position, shall be punishable by imprisoning the guilty person for a period of from three up to ten years.

3. Actions, specified in parts 1 and 2 of this article, if committed by a group of persons or which entailed death or other grave consequences, shall be punishable by imprisoning the guilty person for a period of from five up to twelve years.

(...)

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# Case Law

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## **Belarus**

### **Urgent appeal**

140. On 24 August 2009, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders, sent an urgent appeal to the Government regarding the judgment of the Supreme Court to maintain a previous decision by the Ministry of Justice not to register the human rights organization ‘Nasha Viasna’ (Our Spring). Nasha Viasna, previously known as Viasna, has been working on various human rights issues since 1999, advocating for human rights through the media, organizing education programs, preparing alternative human rights reports on Belarus and monitoring elections. In January 2009, it launched a campaign for the abolition of the death penalty in Belarus.

141. The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders previously sent a joint communication on 14 May 2009, concerning the refusal to register Nasha Viasna.

142. According to the new information received, on 12 August 2009, the Supreme Court of the Republic of Belarus rejected an appeal of Nasha Viasna, confirming the decision by the Ministry of Justice of 25 May 2009, not to register the organization. During the trial before the Supreme Court, which commenced on 10 August 2009, the Ministry of Justice reportedly criticized minor details in Nasha Viasna’s registration application and accused members of including distorted information in the application. In response to this, members of Nasha Viasna argued that what the Ministry referred to as distorted information concerning the identities of the founding members were clerical errors. Also, the legal validity of a letter of guarantee for the organization’s future premises was reportedly called into question by the Ministry of Justice. Representatives for Nasha Viasna highlighted that the Ministry of Justice had not objected to the same letter in previous registration attempts. Despite the fact that the reasons given for nonregistration of Nasha Viasna are not listed among those in Article 15 of the Law of the Republic of Belarus on Public Associations which stipulates the grounds on which registration of a public association can be denied, the Supreme Court Judge, Mr. Anatol Tserakh, subsequently agreed with the decision of the Ministry of Justice confirming the denial of registration for Nasha Viasna. The human rights organization was reportedly also denied the possibility of correcting its application so that it might comply with the requirements of the Ministry of Justice, in contradiction with Article 15 of the Law of the Republic of Belarus on Public Associations which allows for such corrections.

143. Considering that participating in the activities of an unregistered organization is a crime in Belarus under Article 193.1 of the criminal code, members of Nasha Viasna now risk being arrested if they continue their work in defense of human rights.

144. Nasha Viasna has previously tried to register on several occasions, both under its original name ‘Viasna’ and more recently under the new name ‘Nasha Viasna’. On 15

June 1999, Viasna was originally registered by the Ministry of Justice. However, in 2003, following an inspection by the Ministry of Justice of the statutory activities of Viasna's branches, the Ministry of Justice filed for the dissolution of the organization with the Supreme Court of Belarus, based on Article 29 of the Law on Public Associations, and Article 57 paragraph 2 of the Civil Procedure Code. The Supreme Court subsequently ordered the dissolution of Viasna finding that Viasna did not comply with the established procedure of sending its observers to the meetings of the electoral commission and to the polling stations. The Court also found that the breach of the electoral laws was reason enough to warrant the dissolution of Viasna. An appeal by Viasna to the Chairperson of the Supreme Court was rejected on 24 December 2003.

145. In April 2004, the President of Viasna lodged a complaint with the UN Human Rights Committee seeking whether the dissolution of Viasna amounted to a violation of the author and his co-authors' right to freedom of association. The Committee observed that, in accordance with Article 22, paragraph 2 of the International Covenant on Civil and Political Rights, in order for the interference with the freedom of association to be justified, any restriction on its exercise must cumulatively meet the following conditions: (a) must be provided by law; (b) may only be imposed for one of the purposes set out in paragraph 2; and (c) must be "necessary in a democratic society" for achieving one of these purposes. The State party must further demonstrate that the prohibition of an association is necessary to avert a real and not only hypothetical danger to national security or democratic order, and that less intrusive measures would be insufficient to achieve the same purpose. In its communication of 24 July 2007 (no. 1296/2004), the Committee found that the court order which dissolved Viasna was based on perceived violations of the State party's electoral laws. The Human Rights Committee also concluded that the dissolution of the association was disproportionate and did not meet the requirements of Article 22, paragraph 2, thus the authors' rights under Article 22 (1) of the International Covenant on Civil and Political Rights had been violated. The Committee further considered that the author and co-authors of the complaint were "entitled to an appropriate remedy, including the re-registration of Viasna and compensation". It also found that "Belarus was under an obligation to take steps to prevent similar violations occurring in the future".

146. On 15 April 2008, the Parliamentary Assembly of the Council of Europe reiterated the position of the UN Human Rights Committee regarding the closure of Viasna and urged the Belarusian authorities to "repeal Article 193-1 of the Criminal Code, criminalizing activities of non-registered organizations" (resolution 1606 of 15 April 2008).

147. Despite the opinion of the UN Human Rights Committee, all subsequent attempts by Viasna to re-register under a new name have failed. In January 2009, 67 members of Viasna submitted an application to the Ministry of Justice to register the NGO under the new name 'Nasha Viasna', since Belarusian legislation prohibits the use of the name of an organization that had been liquidated. On 26 February 2009, the Ministry of Justice denied registration to the organization due to violations concerning the holding of its constituent congress. An appeal was lodged against this decision; on 22 April 2009 the

court refused to consider it. On 24 April 2009, the Supreme Court also rejected the complaint by the founders of Nasha Viasna against the decision of the Ministry of Justice. The Supreme Court found that the decision of the Ministry of Justice was legal due to several procedural violations by Nasha Viasna, including irregularities found in the founders' list and the organization's Charter. At the same time, the Supreme Court rejected all the other arguments of the Ministry of Justice, including the claim that the constituent congress of Nasha Viasna was not in full conformity with the relevant legislation.

148. On 25 April 2009, Nasha Viasna applied for registration for a third time. However, this application was also rejected on the grounds that some of the information given concerning certain founding members was "distorted", that some founding members had been the subject of administrative sentences, and that criminal charges had also been brought against some of them.

149. Concern was expressed that the continuous and sustained refusal to register the human rights organization Nasha Viasna might be related to its activities in the promotion and defense of human rights, in particular its campaign for the abolition of the death penalty in Belarus. Further concern was expressed that this verdict, and repeated refusal to register the organization, is in violation of international standards, in particular Article 22 of the International Covenant on Civil and Political Rights, to which Belarus is a party, and runs counter to the decision by the UN Human Rights Committee, and the resolution of the Parliamentary Assembly of the Council of Europe.

*["Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development", Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank LA RUE (Addendum - Summary of cases transmitted to Governments and replies received), Human Rights Council, Fourteenth session, 1 June 2010, Doc. A/HRC/14/23/Add.1, [http://ap.ohchr.org/documents/dpage\\_e.aspx?c=18&su=29](http://ap.ohchr.org/documents/dpage_e.aspx?c=18&su=29)]*

# Belarus

Constitutional Court: <http://www.kc.gov.by/>

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Председатель Конституционного Суда Республики Беларусь

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