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THE ROLE OF ALTERNATIVE WAYS FOR TRANSITION IN BELARUSIAN POST-CONFLICT SOCIETY

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INTRODUCTION

Today the world knows many forms and regimes of government. From authoritarian and totalitarian regimes to democratic ones. It so happened statistically that the most successful in the economic sense states have democratic regimes of government.[1] Most countries of the world have defined democracy as the best among the existing regimes of governing the country and are striving to acquire such a regime. Countries such as the Republic of Belarus and the Russian Federation, while not sharing completely democratic values in practice, actually have statements in their Constitutions that they are democracies. Article 1 of the Constitution of the Russian Federation declares that The Russian Federation – Russia is a democratic federative legal state with a republican form of government.[2] While Article 1 of the Constitution of the Republic of Belarus has a statement that the Republic of Belarus is a unitary democratic social legal state.[3] Thus, even countries where human rights are not fully respected, and many freedoms are not guaranteed to citizens, choose to comply at least on paper with democratic values. Speaking about values, I would like to make a note that according to Article 2 of the Treaty on European Union, the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.[4]

However, despite the widespread opinion about the advantages of democracy, there are still states or governors in the world who explicitly or implicitly support authoritarianism or dictatorship. The Republic of Belarus after 2020 became a country that stopped even trying to convince others that it shares democratic values and started being pretty much explicit on its real undisguised attitude toward democracy. Thus, for example, Alyaksandr Lukashenka (hereinafter – Lukashenka) and his press secretary repeatedly and to a large audience declared about "advantages of dictatorship",[5] calling a dictatorship in Belarus – the brand of the country, as well as stating: "We have a

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[1] Robinson, J. *et al*. Democracy causes economic development? (May 2014) https://cepr.org/voxeu/columns/democracy-causes-economic-development (20.04.2023)

[2] The Constitution of the Russian Federation http://www.constitution.ru/10003000/10003000-3.htm (20.04.2023)

[3] The Constitution of the Republic of Belarus https://president.gov.by/ru/gosudarstvo/constitution (20.04.2023)

[4] The Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union (7.6.2016) – Official Journal of the European Union, C201/1 https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12016ME/TXT&from=EN (20.04.2023)

[5] Lukashenka's press secretary says 'dictatorship' is Belarusian brand (10.03.2019) https://euroradio.fm/en/lukashenkas-press-secretary-says-dictatorship-belarusian-brand (21.02.2023)

dictatorship. You all criticized me: dictatorship, dictatorship. But there is order in this dictatorship. There would be no dictatorship, so we would go naked".[6]

Unfortunately, such adherence to undemocratic ways of governing absolutely always leads to a situation when people of these countries become victims of crimes committed by such regimes. Apart from modern Belarus, the people of South Africa, Rwanda, Yugoslavia, Spain, and other countries have also found themselves in such a situation.

Fortunately, nothing lasts forever, which means that the period of governing of such regimes always comes to an end. And it is at this point that the society of a given country has a chance to choose a way to deal with the consequences of the crimes committed, that is, to tell and record the truth, to compensate the victims of crimes, and to try to reconcile society sometimes even by granting amnesties to alleged perpetrators, or to choose another way that will exclusively achieve justice and bring the criminals to individual criminal responsibility.

The ultimate goals of Transitional Justice are, from one perspective, recognition and acknowledgment of the atrocities as well as human rights violations of the past, and from another – not just delivering harsh justice but also reconciling society. To deliver the so-called restorative justice. Transitional justice is flexible in the sense that sometimes is even about the decision not to punish people. It is not always about the law in the meaning of justice and in the end, it is for the society and new governors to decide what to do with the people who obviously committed crimes.

The background information I have given here now allows for comparing the current regime of Lukashenka with the rest of the civilized democratic world. The geographical position of Belarus is, in fact, the center of Europe, as well as its political past – a former member of the USSR, gives us the right to assert that Belarus had and still has many chances to become a real democratic state that respects the rights and the freedom of its citizens and to have these values in practice eventually. It is obvious that the Belarusian state is not somehow different from other former communist European countries that successfully carried out a transition in the past. Instead, Belarus has become infamous for its long-standing illegitimate ruler, dictator, and a person who

[6] "Thank God we have a dictatorship": Lukashenko criticizes Western democracy (29.04.2022) https://westobserver.com/news/europe/thank-god-we-have-a-dictatorship-lukashenko-criticizes-western-democracy/ (21.02.2023)

illegally holds power in the country. Members of the European Parliament even call Lukshenka's regime "the last dictatorship in Europe" openly.[7]

Human rights violations in Belarus reached their peak after the falsified presidential elections in 2020.[8] Already in the first hours after the publication of the voting results, tens of thousands of Belarusians took to street protests throughout the country. The state chose to respond to the protest of the population demanding new elections with a level of violence unprecedented in the past. In this study, the author will further analyze in detail how the state and the population reached the point where the most massive protest in the history of modern Belarus happened; will consider exactly what human rights abuses have been committed by the Lukashenka regime since 2020, as well as what consequences all these events have had.

The research problem of the Thesis is the role of alternative transitional justice measures in Belarusian post-conflict society, i.e. the possibility of usage of alternative to judicial transitional justice measures to reach justice, truth, and reconciliation within the post-conflict society of Belarus after the fall of the dictatorial regime of Lukashenka.

The aim of this study is to analyze the possibility of referring to such transitional justice measures and by alternative the author means the ones that are different from the measures which use the trials of any nature – domestic, international, or semi-international – as the method to "reach peace" and justice within a post-conflict society. The author aims to propose alternative measures of transitional justice that could potentially be used in the situation with Belarus, to consider their possible contradictions, and to discuss the conditions as well as consequences of using such measures.

The significance of raising this topic is that in the view of the author, it is essential to prepare as extensively as possible for the moment of transition so as not to make mistakes, which can cost society a repetition of the events of the past in the future or several attempts to commit a transition in the future. It is important to consider such issues beforehand. Dictatorship in Belarus still exists but it does not mean it will last forever. Moreover, the end of it may happen unexpectedly and pretty fast. Unexpectedly for Belarusian people too. It can happen due to natural reasons and not because of the sanctions, the economic situation in the country, an ongoing war in Ukraine, etc. It

[7] Belarus: The Last Dictatorship in Europe – European Parliament https://www.europarl.europa.eu/RegData/presse/pr_info/2006/EN/03A-DV-PRESSE_IPR(2006)03-31(06898)_EN.pdf (20.04.2023)

[8] Dr. Benedek, W. OSCE Rapporteur's Report under the Moscow Mechanism on Alleged Human Rights Violations related to the Presidential Elections of 9 August 2020 in Belarus (29.10.2020) – Organization for Security and Co-operation in Europe Office for Democratic Institutions and Human Rights https://www.osce.org/files/f/documents/2/b/469539.pdf p. 20.

definitely can provoke a lot of uncertainty within society. The current war in Ukraine (assuming the victory of Ukraine) and if to be more precise its outcome may provoke chaos and fast changes in the government in Belarus, i.e. the fall of the dictatorship. Thus, the author believes that it is better to be ready for such changes and to be prepared to commit a transition to democracy. The current existence of the dictatorship should not prevent us from studying ways that can be implemented to achieve justice within the post-conflict society in Belarus. Such "pre-analyses" can be very useful for post-conflict society not to make a huge amount of mistakes and to have a successful transition from the first attempt.

The controversial nature of the application of those alternative measures also confirms the need to study. From the author's point of view, there is almost nothing to discuss if society decided to choose "the way of trials" to bring justice and democracy, or anything else. Such a way of dealing with human rights violations and past regime atrocities will not trigger huge questions nor will it provoke mass disputes within the society. There is always a relatively simple procedure and an understandable result for the "mass consciousness". While the necessity to address such alternative measures like lustrations or vetting, amnesties, and Truth Commission establishments would most likely create a lot of controversies as well as valid questions within the post-conflict society, i.e. questions from victims of the past regime for sure as well from the civic society regarding, for instance, the liability of criminals, retaliation or retribution aspects. Thus, without discussing them there is a high chance that the post-conflict society will appear in a situation where chosen measures, for instance, by the newly elected politicians, were wrong and their application had either zero effect and society stayed on the same stage in the sense of moving towards peace and democracy or it even creates an overlap of existing before problems with the problems caused by the wrong choice.

This study highlights the following questions:

1. Are transitional justice measures suitable for implementation in Belarusian post-conflict society: the possibility of application of alternative to judicial transitional justice measures.
2. What kind of alternative transitional justice measures could be potentially used in Belarusian post-conflict society?
3. What are the cases when societies may refer to these measures? What are the rules of such an application?

To answer the questions mentioned above the author will need to answer the following sub-questions:

1. What does the portrait of Belarusian society look like during the existing dictatorship: the current status of Belarusian society?
2. What are the alternative transitional justice measures?
3. Learning from previous experience of other states: what alternative measures have been used, what are the consequences of that and how does analyze practice can be helpful for Belarus?
4. What victims' groups can be currently identified in Belarus?
5. What crimes have been allegedly committed by the regime representatives in Belarus starting from 2020?
6. Is the Belarusian case suitable for alternative transitional justice implementation from the transitional justice perspective?
7. Which state institutions need to be considered when applying such methods in the period of transition?
8. What effect do international instruments have on the current situation in Belarus?

To achieve the aim of the Master's thesis several scientific methods will be used by the author. The method of scientific analysis will be used throughout the study and will be the main method for describing the research problem. While analyzing the portrait of Belarusian society and its current status, the historical method will be used. Moreover, the author refers to the empirical method in order to study the experience of countries that once went through similar situations and used alternative measures to achieve justice.

The study will be conducted with the help of various types of sources, mainly books and academic articles that were found online. The topic is pretty new so the amount of online sources that have not reached the size of the books for publication is fairly big. However, this condition does not in any way affect the quality of the research. The author used several Belarusian national legislative acts relevant to the topic under study. For the most part, these were Laws that in one way or another affected the implementation of freedom of speech, expression, and assembly. The author also refers to the case law of the European Court of Human Rights. Several international instruments to respect human rights were used as well, mainly in the form of international conventions and recent reports of international institutions on the Belarusian situation with human rights.

The Belarusian issue, namely the issue of violation by the Republic of Belarus of international obligations to provide and respect the human rights of its citizens, is not new and has been studied many times before. The issue of the crisis that occurred in Belarus after the "stolen" presidential elections in 2020 has also been the object of study by researchers several times, both from the

position of law and from a political perspective. The question of transitional justice in relation to post-conflict Belarusian society became the subject of discussion in some articles, mainly online resources. However, to the author's knowledge, this issue has not been awarded an in-depth study at the level of a master's thesis or a book devoted exclusively to the topic of Belarus in the plane of transitional justice.

The structure of the Thesis is as follows. It consists of 4 main parts – 4 Chapters. In addition to Chapters, there are up to 4 Subchapters in each Chapter. This work structure is based on the research questions and subquestions that were identified above in the Introduction. It is assumed that in each Chapter the author will be able to answer the research questions posed. The first Chapter aims to analyze the portrait of Belarusian society during the current dictatorship. The chapter describes the path of Belarusian society to the events that happened in 2020. It shows the relationship between the government and Lukashenka himself with the three branches of power. It also describes their role in the implementation of political repression. The second chapter has its goal of analyzing the existing alternative measures with the identification of the ones that will be described in this study and can be potentially implemented in post-conflict Belarusian society. The chapter contains examples of the implementation of alternative transitional measures in other states of the world. The third chapter presents research on the issue of victims in transitional justice in general, and in regard to the Belarusian case specifically. It offers the groups of victims of post-conflict Belarusian society that could be identified and the classification of which could be helpful while realizing a victim-centered approach within the future transition. The last chapter juxtaposes everything researched in the previous chapter of the Master's thesis with the aim to conclude on implementing alternative transitional justice measures in Belarusian post-conflict society. It also has a short analysis of the international tools that could be used by the international community to impact the current situation in Belarus. Moreover, it has a conclusion about the changes to the existing Belarusian legislation for it to facilitate the future transition.

The requirements for the volume of the Master's thesis oblige to notify the reader about the limitations of the study of this topic. One of the main limitations is that the author studied the period of human rights violations, starting from 2020 and at the beginning of 2023, and not from, the moment when the current dictatorship started forming. Thus, there is no analysis of the human rights abuses from approximately 1996 until 2020. Among other things, the author does not have an opportunity to predict the possible consequences of using alternative measures, as well as to analyze in more detail the process of applying them, that is, to identify smaller groups of state structures that are subject to verification during the transition period. The same goes for groups of victims. The classification of groups proposed in this study is quite general, and the selected groups

may, in practice, include other groups worthy of independent selection. The study does not contain a description of the violations of the social and economic rights of Belarusians.

1. THE PORTRAIT OF BELARUSIAN SOCIETY DURING THE CURRENT DICTATORSHIP

The main aim of this Chapter is to give an analysis of Belarusian society during the current dictatorship, i.e. its social and political portrait. Describe the facts of why it became possible for the dictator to gain that much power in the country and why it took 26 years for Belarusians to form a strong civic society. The Chapter also aims to show the relationship between the government and Lukashenka himself with the three branches of power and describes their role in the implementation of political repression.

1.1. Path of the Belarusian society to the events of 2020

The actual description of the portrait of Belarusian society in a post-conflict state in my opinion should begin with a description of the pre-election period, shortly before the fraudulent presidential election and the subsequent violence against protesters.

The political situation in which Belarusians appeared now did not come out of anywhere within the last two or three years. It started forming in the years after the collapse of the Soviet Union and right within the period of the coming of Lukashenka to power. During that period, independent Belarus did not choose the path to democratization, did not reflect on the political repression in Soviet times, i.e. political ones, for instance with the use of the Gulag system, and, unfortunately, did not start its way to respect human rights. Even though after the collapse of the USSR Belarus signed or ratified most of the significant international treaties aiming to respect human rights, the country always had issues with ensuring human rights. On the contrary, since that time Belarus began to align itself with non-democratic Russia, to support the rhetoric of praising the Soviet times, the process of destroying human rights in general, and human rights organizations in particular, and the cleansing of any political activity. However, in my Master's thesis, I would like to pay extra attention to the more recent events, i.e. to analyze how the part of the current Belarusian society, which, from 2020 to the present day in 2023, expresses its strong disagreement with the actions of the Lukashenka regime and how it became a real civic one; what triggered people to take part in mass protests; how the governmental institutions reacted to it, and what happened afterward.

Without the slightest doubt, one of the main reasons why Belarus nowadays is in no sense a democratic country, where human rights are respected, is the existence of the dictatorship of Lukashenka. Over the last two decades, the human rights violations have systematically been carried out in Belarus as a matter of policy to suppress any real or suspected dissenting voices and

to keep Lukashenka's regime in power:[9] His indisputable accomplishment in concentrating all state power in his own hands, his role in carrying out human rights abuses, as well as in creating a system where those mass abuses became possible, has certainly brought the country to the point it is now, thereby making Belarus' transition to democracy, the rule of law, and justice way more complicated. Thus, I consider it necessary to shed some light on Lukashenka's path to becoming the "last dictator in Europe".[10]

Lukashenka, who was first elected in 1994 in a public backlash against economic decline and corruption, has remained popular for some time owing to the ability of his government to provide acceptable living standards and full employment to the population. It is commonly accepted that only the first presidential election, which brought Lukashenka to power, was fair and the results were not falsified.[11] The majority of the population viewed him as a young alternative to incumbent Prime Minister Kebich. The vote was very much a protest against Kebich personally. Therefore, Lukashenka became famous as a fighter against corruption, an agriculturalist, and "a man of the people". As I mentioned earlier after Lukashenka became president, he soon managed to consolidate all the branches of power in his hands, technically through the legal means: legislative, executive, and judicial. Later in the Thesis I will show the way how Lukashenka did it. The accumulation of power in the hands of one man led to a gradual formation of the entire state system into an absolutely authoritarian one. This method of governing, which he keeps until now, is expressed in the fact that one day Lukashenka goes to the town of the Belarusian regional center and inspects the condition of cows there, hands out advice on feeding the animals, making harsh reprimands, especially noting that the cows were completely covered in excrement,[12] and the next day he sits in a suit at a meeting on national security and talks about geopolitics.

It should be noted that Belarus remained authoritarian only until the summer of 2020 and is now absolutely a dictatorship. Alena Laptsionak, a Belarusian human rights activist and a member of the Human Rights Center "Viasna", at the recent annual conference "War, Dictatorship and Human Rights", organized by the Estonian Institute of Human Rights, emphasized that "now the autocracy that existed in Belarus for several decades has developed into a real dictatorship, and as a result,

[9] Andreyuk, E., Anonymous International Mechanisms for Accountability for Human-Rights Violations in Belarus. – Policy Paper, The German Marshall Fund of the United States, January 2022, p. 6.

[10] Alexander Lukashenko https://en.wikipedia.org/wiki/Alexander_Lukashenko (17.02.2023)

[11] Wesolowsky, T. Elections In Belarus: How Lukashenka Won And Won And Won And Won And Won (05.08.2020) https://www.rferl.org/a/elections-in-belarus-how-lukashenka-won-and-won-and-won-and-won-and-won-/30767860.html (17.02.2023)

[12] "She's all crap!": how cows ate Lukashenka's officials "Ona zhe vsya obosrannaya!: kak korovy s'jeli chinovnikov Lukashenko" (26.03.2019) https://euroradio.fm/ru/lukashenko-vozmutilsya-abosrannymi-korovami-zachem-vy-menya-syuda-privezli (17.02.2023)

we have repressions that can already be easily compared to Stalin's ones." This information was obtained by me due to my participation in the mentioned-above conference.

In order to describe the social and political portrait of Belarusians I also need to mention that people, in the period between 1991 – 1996, were not ready enough to be active members of the public. It seems to me that at that time society had not formed a demand for change of this nature and many of them did not have enough will to become an independent state, so they were pretty happy and satisfied to keep on being just a part of a bigger state like the USSR. Since I am writing my thesis at the University of Tartu, in Estonia, a country that has its own record of relations with the Soviet Union, i.e. had fought the Soviet occupation regime, whose citizens wanted to be an independent country, etc. I find it worth noting the fact that Belarusians have never felt any particular resentment toward the Soviet authorities, like, for instance, the Baltic states: Estonia, Latvia, and Lithuania. At school, I, as well as the children of several generations before me, was taught that the existence of the Byelorussian Soviet Socialist Republic was absolutely correct and natural. Moreover, Belarusians, in their majority, did not consider themselves occupied by the Soviet Union back then. I recall a personal genuine surprise when I heard for the very first time that in the Baltic countries, the period of being a part of the USSR is considered to be a Soviet occupation and oppression of local people. Although nowadays, after getting the information from also academic sources, it seems the only logical attitude towards those events.

Sustainable economic growth, rising standards of living, and stable payments of constantly increasing salaries, and pensions in the country, where about eighty percent of the industry remains in state hands, defined Lukashenka's popularity among voters. Such sentiments remained dominant in society for a very long time. As an example, the Independent Institute of Socio-Economic and Political Studies conducted polls in December 2003 and in August 2006. Answering the question "What is more important for you, improvement of economic situation in Belarus or country's independence?" in 2003, 62% of the polled chose improvement of the economic situation which is much more than the number of those who chose independence – 25%.[13] There was no request from the people in Belarus for such radical changes, i.e. to oppose the current regime of Lukashenka, as it was done now. So here I can conclude that the number of those who saw the need for changes towards democratisation was unfortunately too low. Therefore, the opposition campaigns, built on the advocacy of democracy and freedom, and independence were doomed to failure beforehand.

[13] Who believe in independent statehood of Belarus? – Independent Institute of Socio-Economic and Political Studies http://www.iiseps.org/?p=1703&lang=en (17.02.2023)

This portrait of Belarusian society has persisted for a very long time. Certainly, the percentage of people interested in participating in state politics, keen on national interests, as well as people who want to see Belarus as a democratic country with the supremacy of rule of law, was gradually changing and growing. The fact that the political portrait of society was changing and civil society was forming was evident by the participation of a large number of individuals in the demonstrations of 2010[14] and 2015[15], which took place after the once again fraudulent presidential elections. Nevertheless, the number of Belarusians, who were not, so to speak, "indifferent", and by that I mean the people who understood that changes were necessary, remained insufficient until 2020 to capture essential changes.

Everything changed in 2020. 2020 was the year when the strong and pretty stable civic society was formed. It also was the year when the people's willingness to participate in the political life of the country prevailed over the necessity to think about individual needs, better living conditions for the concrete person or family, and economic stability in the country. It was a year when most of the individuals decided that their own needs can be put on the lower places but the collective necessities and desire to live in a democratic Belarus where the human rights of people are respected, where the government fulfills its obligations to the people.

These changes in the public mind became obvious when the pre-election company started and people were leaving their signatures in support of presidential candidates. It was a moment of significant and unprecedented intensification of public activity, which resulted in voters lining up to offer their signatures in support of the nomination of alternative candidates, clearly demonstrated the demand for political change in the majority of Belarusian society.[16] The authorities reacted to this unexpected political activity with repression. By the beginning of the voting day on August 9, there were already 24 political prisoners in the country, after they were recognized as such by the Belarusian human rights community: bloggers, members of nomination groups, and opposition figures.[17] As of April 24, 2023, 1495 persons in Belarus are considered as political prisoners[18], which means that the repressions keep being massive but people are still choosing to participate in the political life of the country, hoping to change the current state of things, etc.

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[14] Parfitt, T. Belarus protests: more than 600 charged and opposition leaders in jail (21.12.2010) https://www.theguardian.com/world/2010/dec/21/600-charged-belarus-protests-lukashenko (27.02.2023)

[15] Belarus vote: Lukashenko re-elected president by landslide (12.10.2015) https://www.bbc.com/news/world-europe-34499387 (27.02.2023)

[16] Human Rights Situation in Belarus in 2020 – Human Rights Center "Viasna" Analytical review, p. 4.

[17] *Ibid.*

[18] List of political prisoners – Human Rights Center "Viasna" website https://prisoners.spring96.org/en (24.04.2023)

In my opinion, a strong civic society was formed in Belarus not only due to the fraudulent presidential election. As I mentioned before, only the results of the election in 1994, where Lukashenka was elected for the first time, were honest and democratic. Starting already from the second presidential election in 2001 they have been falsified every next time.[19] Of course, we can be sure that an extremely violent reaction of the government or *siloviki*, i.e. "men of force", i.e. police officers any department as well as the regular army towards participants of protests was unexpected and Belarusians experienced such amount and intensity of violence for the first time ever.

At the same time, there were some events or so to say certain "triggers" that happened before the pre-election campaign in 2020 and made people think about the role of the government in their life, as well as their role in the fate of the state. I believe that without them the scale of protests in 2020 could be much less and even not enough to reach the changes.

The first such trigger that happened in late 2019 is an intensification of the rhetoric of authorities on the "advanced integration" of Belarus and Russia with subsequent protests against it. The Lukashenka regime from the very beginning of its existence has chosen an ally for Belarus. Lukashenka sees Russia, and personally Vladimir Putin, as such an ally against the entire Western world. Since 1994, talks about the corresponding integration have been constantly changing their intensity. It is worth mentioning that this was influenced by a kind of political intuition of Lukashenka, which made him change the vectors of his foreign policy: from support for Russia to complimentary speeches towards the West and then back to support for the Putin regime. With this approach, Lukashenka has long ensured his loyalty on the part of Western partners, namely the countries of the European Union. In my opinion, the concrete and unambiguous choice of rhetoric for deep integration with Russia happened in 2019. It all started with the fact that in November of 2019, the government agreed on the so-called "roadmaps", i.e. integration of Belarus and Russia programs. Within a month, relatively massive protests began to take place in the cities of Belarus, the outcome of which was 202 trials.[20]

In my opinion, it was the first time people felt they could participate in politics. However, these events were still not enough for the protests to become truly massive, affecting a large part of the population.

[19] Belarus vote 'neither free nor fair' (10.09.2001) http://news.bbc.co.uk/2/hi/europe/1534621.stm (26.04.2023)
[20] Picks of the week (28.02.2020) https://spring96.org/en/news/96110 (28.02.2023)

Tension escalated as citizens faced the COVID-19 pandemic and felt the government's response to global problems firsthand. Actions taken by the government as measures intended to prevent the spread of the coronavirus proved ineffective. Counterintuitive and self-contradictory statements by top government officials, downplaying the scale of the problem, lack of comprehensive information and the obvious tampering with statistics caused dissatisfaction among the public.[21] The challenges were already faced by an entirely different segment of the population, i.e. by the "ordinary" people, who have never been interested in politics before. As a result, people paid attention to the role of the government in their lives. They realized what it was incapable of and how much could be done if they began to organize themselves. Thus, people joined the volunteer campaign launched under the hashtag #bycovid19. Face shields, protective masks, plastic gowns, hospital-bed dividers, and sanitary mats have all been turned out here by Belarusians who are doing it for free – though some have lost their jobs and have little or no income.[22] #BYCOVID19 can be taken as a telling example of how people self-organized to fight a single problem, with absolutely no involvement in the political life of the state at first. Then, most of these people realized that they were capable of much and remained active during the election campaign and started helping protesters against the results of these elections who have been harmed in any way in the exercise of their civic position. Thus, the leader of the movement, Andrej Stryzhak, was able to unite people who were not previously interested in politics in Belarus already under the different volunteer organization – BYSOL. With the help of #BYCOVID19, he was able to show ordinary Belarusians what they are capable of when they unite and do not count on support from the state.

Throughout 2020, 2021, and 2022, the scale of repression was so massive and its level so high that the current government was able to take control over the majority of protesters and thus destroy street protests. At the time of writing this thesis, in early 2023, it is no longer possible for any street protests to take place in Belarus. However, it is important to understand that this is not a sign that the population has changed its mind and agreed with the regime. After all, you cannot make people love you with violence. Belarusians, who are still in the country, are definitely frightened. Their fears are objective: at the moment no public protest is possible in Belarus. Any expression of disagreement with the regime will be severely condemned. The fact that Belarusians have not changed their opinion during these two years and have remained a strong established civic society is confirmed by the fact that after Russia started its war against Ukraine, citizens in Belarus took

[21] Human Rights Situation in Belarus in 2020 – Human Rights Center "Viasna" Analytical review, p. 3.

[22] Wesolowsky, T. "Who Will Do It, If We Don't?" Belarusians Step Up As President Plays Down COVID-19 Threat (05.05.2020) https://www.rferl.org/a/belarusians-colunteer-coronavirus-lukashenka-plays-down-covid-19-threat/30594557.html (01.03.2023)

to the streets again, despite the already existing threats of detention and conviction to imprisonment for years. According to the Human Rights Center "Viasna", the most massive protests occurred on February 27 and 28, 2022, which amounted to at least 1 500 detentions throughout the country. People were also arbitrarily detained for displaying anti-war signs and banners and chanting pro-Ukrainian slogans.[23]

I can notice that now the protest has completely moved to the Internet, and has taken on the nature of the partisan fight. For instance, since the beginning of the war, "railway partisans" have appeared in Belarus, who with their sabotage of the railroad was able to stop the Russian military from using the railroads to deliver military equipment to the battlefront. The railway partisans were sentenced to terms of 21 to 23 years. In addition, in late February-March 2023, it became known that other Belarusian partisans, using drones, were able to blow up a $330 million Russian military plane, which was at an airfield in Belarus at the time of the sabotage.[24]

As I noted earlier in this paper, a dictatorship in Belarus emerged only in 2020. Until then, there was absolutely a type of non-democratic political regime in the country, such as autocracy. This was expressed in the fact that all three branches of power were in the hands of Lukashenka, but the existing power was not characterized by widespread mass repression. Everything changed with the protests in 2020, namely with their suppression and suppression of any dissent. Many have noted that Lukashenka himself, as well as his regime, are vindictive. This trait has led to political cleansings that are still occurring today. It is crucial for the regime to carry out the cleansings in such a way that everyone inside and outside the state system is unconditionally loyal and constitutes an unhindered environment for the existence of the established dictatorship. Even three years after the peak of the protests, the regime continues to seek out protesters, threaten them, and launch criminal cases. Unfortunately, I can provide a personal example of how, in mid-February 2023, my mother was summoned by the Committee for State Security (hereinafter – KGB) for having transferred money to the victims of the summer of 2020 repression. The KGB based its accusation on the fact that the volunteer organization to which my mother made the money transfer was later found to be extremist. It is important to note that the investigation uses the fact that the statute of limitations for these crimes is 3 years, so the regime still has time until summer to bring criminal charges against people who expressed their disagreement in the distant 2020. It is known for certain that such a campaign by the KGB was launched in February all over the country and is

[23] OHCHR, Report on the Situation of human rights in Belarus in the run-up to the 2020 presidential election and in its aftermath (27 February –31 March 2023), para. 25, pp. 6-7.

[24] Roth, A. Belarus partisans say they blew up Russian plane near Minsk (27.02.2023) https://www.theguardian.com/world/2023/feb/27/belarus-anti-war-partisans-russian-plane-drones-machulishchy-damage-claim (03.03.2023)

still going on. People are being pressured to confess, extorted money, and forced to resign from state enterprises.

This dictatorial regime of Lukashenka is assisted by all three branches of power, which he controls. Here I would like to give examples of how this cooperation works in all these branches of power: legislative, executive, and judicial. These examples will help to understand: 1) how representatives of each branch of power have participated and continue to participate in human rights violations, 2) what their role is in the fact that transitional justice has not yet occurred in Belarus, and why it is impossible at the moment.

1.2. The legislative branch of power and its role in the implementation of political repression

The situation in the country has become well-known as one of "legal default" – a concept introduced by the lawyer and member of the opposition Coordination Council Maksim Znak that holds that the violations of Belarusian legislation by state bodies are so widespread and systematic that the law has stopped functioning and is used only to serve the current regime and repression.[25]

The country's legal system has demonstrated its inability to protect the rights of citizens, its complete dependence on the current government and active participation in political repression against the country's citizens.[26]

It is noteworthy that Belarus is one of the few countries where presidential decrees and directives take precedence over other laws. This fact directly attests to Lukashenka's complete control over the representatives of the legislative branch. Thus, Article 28 of the Law of the Republic of Belarus On the President of the Republic of Belarus stipulated that decrees and temporary decrees have the force of law, while decrees and presidential directives, unless otherwise stipulated by the Constitution, have supremacy over acts of other bodies and officials.[27]

In addition to this vivid demonstration of the hierarchy in the system of legal acts in the republic, one recent example of how the legislative branch in Belarus works for the benefit of the dictatorial regime is the changes made to the administrative and criminal codes, as well as to the Constitution of the Republic of Belarus (hereinafter – the Constitution). In the winter of 2021, amendments

[25] Andreyuk, E., Anonymous International Mechanisms for Accountability for Human-Rights Violations in Belarus. – Policy Paper, The German Marshall Fund of the United States, January 2022, p. 7.
[26] Human Rights Situation in Belarus in 2020 – Human Rights Center "Viasna" Analytical review, p. 2.
[27] On the President of the Republic of Belarus – The Law of the Republic of Belarus, "Zakon Respubliki Belarus' ot 21.02.1995 No. 3602-XII", https://pravo.by/document/?guid=3871&p0=V19503602 (09.03.2023)

were made to the Code of Administrative Offences[28] (hereinafter – the Administrative Code). These changes can be considered a response of lawmakers to the protests of 2020. The main changes affected the articles that provide liability for participation in mass events, distribution of extremist materials, insulting [for example, the president of Belarus or a representative of the authorities], etc. In the new Administrative Code, the penalties under the named articles were significantly increased, namely, in some of them, the number of fines was raised tenfold. The changes in relation to administrative arrest seem noteworthy. Before the changes, the maximum term of administrative arrest was 15 days. In the new code, this term remained the same for all offenses but for violations of the procedure for organizing and holding mass events – article 24.23 – the same "people's" article, under which, during the period of 2020-2021, many Belarusians were convicted. Now the maximum period of administrative detention under this article has doubled to 30 days. An analysis of these amendments leads us to the conclusion that they are aimed at preventing citizens from exercising their right to freedom of expression and freedom of peaceful assembly, guaranteed by many European and international instruments, including paragraph 2 of Article 19 and Article 21 of the International Covenant on Civil and Political Rights.[29] These changes are aimed at further intimidation of citizens, which in no way contributes to the transition of society to justice, democracy, and the rule of law. My words can also be confirmed by the country-wide practice of law-enforcement bodies of that time, which my family also experienced, such as the so-called warning conversations, to which the citizens, noticed in participation in rallies, were summoned. A citizen was summoned to the city prosecutor's office, where he was *offered* to get familiarized with amendments to the Administrative Code, against a signed acknowledgment of receipt. A citizen was also required to sign a "document", stating that he undertook not to participate in mass rallies anymore. Any refusal to obey the demands of the prosecutor's office was punished with arrest and detention for disobedience to the legal demands of the officer.

Among other things, the Criminal Code[30] Article 361, which provides for liability for actions aimed at harming the national security of the Republic of Belarus, was redrafted. Thus, liability for calls to impose sanctions against Belarus, including those made via the Internet, was added to

[28] Code of the Republic of Belarus on Administrative offenses – "Kodeks Respubliki Belarus' ob Administrativnyh narusheniyah ot 06.01.2021 No. 91-З" https://pravo.by/document/?guid=12551&p0=HK2100091&p1=1 (04.03.2023)

[29] International Covenant on Civil and Political Rights, United Nations General Assembly, 1976 https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights (04.03.2023)

[30] Criminal Code of the Republic of Belarus – "Ugolovny Kodeks Respubliki Belarus' ot 09.07.1999 No. 275-З" https://pravo.by/document/?guid=3871&p0=hk9900275 (04.03.2023)

this article. The sanction for such actions is imprisonment for up to 12 years. Many Belarusians see sanctions as one of the most important ways to influence the regime from the outside. Therefore, since the very beginning of 2020, people inside and outside the country have been calling for democratic countries to impose sanctions against the regime. Consequently, such an amendment to the criminal code would entail a large number of criminal cases for calling for sanctions against Belarus, which again violates the right to freedom of speech, as enshrined both in international instruments and in the country's Constitution. The Constitution retains the death penalty, widening the scope of the Criminal Code to broadly defined acts of terrorism involving the attempted murder of government officials or public figures. Consequently, the death penalty may now be imposed for crimes not involving intentional killing, contrary to international minimum standards on the use of the death penalty, which limit it to the most serious crimes, involving intentional killing.[31]

Speaking of the Constitution[32] it is important to recall the most recent changes to it, adopted in March 2022. Analysis of the amendments made to the Constitution allowed us to identify the most striking amendment among them, which directly affects the transition, namely making it impossible in practice at the moment. Such an amendment is one on the immunity of the incumbent head of state. Article 89 of the new version of the Constitution stipulates that the president, who has terminated his powers, cannot be held liable for actions committed in connection with the exercise of his presidential powers. Thus, Lukashenka, through representatives of the legislative power, managed to secure *immunity for life*. This article, for example, makes it impossible to prosecute Lukashenka for his involvement in crimes against humanity if the current regime in Belarus remains in place. It is important to note that the added norm contradicts the established international practice. For many years, leaders of absolutely different countries have eventually been convicted of international crimes, despite any laws they have adopted. On the international level, the judgment constitutes another act of state practice confirming the exclusion of functional immunity in cases of crimes under international law.[33] This amendment makes the transition impossible, at least because the transition from dictatorship, lawlessness, and violations of human rights to democracy, the rule of law, and justice is impossible with Lukashenka in power or with his impunity. Post-conflict Belarusian society will need transitional mechanisms over representatives of all levels of power: from a simple policeman who detained protesters, to a judge

[31] OHCHR, Report on the Situation of human rights in Belarus in the run-up to the 2020 presidential election and in its aftermath (27 February –31 March 2023), para. 52, p. 12.
[32] The Constitution of the Republic of Belarus https://president.gov.by/ru/gosudarstvo/constitution (04.03.2023)
[33] Epik, A. No Functional Immunity for Crimes under International Law before Foreign Domestic Courts. – Journal of International Criminal Justice 19 (2021), 1263–1281 p. 1280.

who delivered an illegal sentence, to ministers of justice and ministers of internal affairs, to the head of the state and members of the government. The only question will be what types of transitional justice mechanisms will be used. Whether it will be related to the trials of the alleged perpetrators, or whether it will take the form of the Truth and Reconciliation Commissions, where the whole truth about the repressions committed during the dictatorship will be revealed. Will the process of lustration be implemented, for example, within the judicial system, or will society decide on granting amnesty to criminals who told the truth and confessed their crimes? However, the number of people who suffered from repressions, who make up the post-conflict Belarusian society, will definitely want to see Lukashenka himself in the dock.

In addition to changes to the two above-mentioned codes and the Constitution, lawmakers implemented a number of repressive changes to the following laws:

1. The Law "On the order of exit from the Republic of Belarus and entry into the Republic of Belarus of the citizens of the Republic of Belarus". This act expanded the list of grounds on which the right to leave Belarus can be restricted. Among other things, exit can be restricted if it "contradicts the interests of national security of the Republic of Belarus" or if administrative proceedings are conducted against a person, including under the "political" articles of the Administrative Code.
2. The Law "On Citizenship of the Republic of Belarus". Now the regime has the possibility to deprive people of Belarusian citizenship on the basis of two conditions: 1) if a verdict has come into force against the person, confirming his participation in "extremist activity" or causing "serious harm to the interests of the Republic of Belarus"; 2) such a person is outside of Belarus.

Such changes are elements of a complex mechanism created to punish people prosecuted for political reasons, including attempts to influence people who are abroad and are to some extent inaccessible to the law enforcement authorities of Belarus. Here I would like to point out that according to various estimates, from one to several thousand people have left Belarus since 2020. An analysis of the amendments made to all the legislative acts listed in my work shows that the legislative branch performs punitive functions in exactly the same way as representatives of the judicial and executive branches do. As of today, legislators in Belarus are definitely puppets of the Lukashenka regime and will perform all the functions necessary to maintain the functioning of the current regime.

1.3. The executive and judicial branches of power and their role in the implementation of political repression

It does not seem logical to me to discuss the actions of representatives of the executive and judicial branches of power in the same depth since their participation in human rights violations is highly transparent and obvious to anyone who is even slightly familiar with the events taking place in the country. Thus, representatives of these branches of power in Belarus continue to detain, arrest, intimidate, and prosecute people every day, thereby participating in the political repression of Lukashenka's regime. Since this regime is built on violence and suppression of dissent, the existence of a dictatorial regime in Belarus requires a system with people capable of carrying out the most insane orders. Throughout his entire presidency, Lukashenka has been engaged in building a loyal system that is ready to carry out any order he commands without hesitation. A system where non-compliance would have negative consequences for everyone within the system.

Representatives of the executive and judicial branches are people whose working lives are directly dependent on Lukashenka's decisions. He appoints and dismisses judges, and he also appoints and approves ministers of internal affairs.

The analyzed changes to the above-mentioned legislative acts clearly show that at the time of writing this thesis, the transition cannot be implemented. All the changes introduced by the regime are contrary to the rule of law and the legal framework and do not comply with international human rights standards. Besides the changes introduced during the last three years, repressive legislative acts, aimed at preserving the dictatorship and keeping the regime in power, continue to exist in Belarus. For instance, such a law is the Law on Mass Events.[34] This law contains an approach that is contrary to international practice: the procedure for agreeing on a mass event is "permissive" and not "notifying". That is, any mass event in Belarus must be authorized in advance by representatives of the current regime. Consequently, no mass event that is even slightly oppositional in nature will be allowed to take place.

Here we can draw an intermediate brief conclusion. The portrait of Belarusian society in 2023, under the existing dictatorship, is people experiencing mass political repression every day. The portrait of Belarusian society in 2023 is 72 people convicted of criminal liability under a political article in only 1 month [February 2023]. This is a society where over 1,400 people are currently recognized as political prisoners in the country, with a population of only 9.3 million people. The

[34] On Mass Events – The Law of the Republic of Belarus, "Zakon o Massovyh Meropriyatiyah ot 30.12.1997 No. 114-З", https://pravo.by/document/?guid=3871&p0=h19700114 (14.03.2023)

portrait of Belarusian society in 2023 is when several thousand Belarusians, beginning in the summer of 2020, were forced to leave the country for fear of political repression.

2. ALTERNATIVE TRANSITIONAL JUSTICE MEASURES

Pablo de Greiff, the former UN special rapporteur on the promotion of truth, justice, reparation, and guarantees of non-recurrence, once said: "Transitional justice is not meant to take people to Heaven, it is meant to take people out of Hell." If we talk about transitional justice in more legal scholarly terms, this is the definition. Transitional justice is the "conception of justice associated with periods of political change, characterized by legal responses to confront the wrongdoings of repressive predecessor regimes."[35] I do not have the objective of describing transitional justice in my paper, so the thesis will not consist of large theoretical paragraphs.

During the history of the world, there have been dozens of undemocratic regimes: authoritarian regimes, totalitarian regimes, dictatorships, tyrannies, etc. The international community has repeatedly had to cope with such regimes. To influence them and stop them with sanctions imposed on such regimes, to prevent their undemocratic influence from developing and spreading, and to consistently condemn human rights violations as well as international crimes committed by such regimes. However, the issue of bringing perpetrators of international crimes and human rights violations to responsibility remains largely untouched.[36] The last two aspects are close to transitional justice in general and to the choice of measures of transitional justice in particular. This is what transitional justice in general is about.

In this chapter, I would like to take a relatively brief look at the major transitional justice measures currently in existence, but alternatives to those used by judicial processes to make the transition, that is, to convict alleged offenders and deliver justice. To simplify the terms used, in this paper, I will use the following: alternative measures; alternative transitional justice measures; additional measures; measures of transitional justice.

2.1. The legislative branch of power and its role in the implementation of political repression

One of the main reasons why society needs to turn to alternative measures of transitional justice can be complicated situations in which the conflict in a country has been protracted or so widespread that there are almost no people left in the state who are not involved in committing human rights violations and carrying out repressions. Situations are also possible in which the judicial branch of government was involved in repression no less than members of the executive and legislative branches. In such situations, it is impossible to imagine the use of transitional justice

[35] Sweeney, J.A. Transitional Criminal Justice at the ECtHR: Implications for the Universality of Human Rights, – Brill, 187-218 p. 190.

[36] Andreyuk, E., Anonymous International Mechanisms for Accountability for Human-Rights Violations in Belarus. – Policy Paper, The German Marshall Fund of the United States, January 2022, p. 3.

measures involving judicial proceedings. Simply because, firstly, it seems extremely resource-consuming to conduct trials of such a huge number of alleged criminals. Secondly, it does not seem possible to entrust trials to judges who have once been personally involved in carrying out repression, for example, by convicting deliberately innocent people or by-laws that are elementarily inconsistent with the legal framework and international standards. Resorting to the courts as the primary method of transitional justice in such situations means that the state will first have to carefully select judges who have not been involved in repressions and invite judges from other countries or international institutions with experience in such processes. Trials may be the most understandable way to achieve justice, but it is worth acknowledging that this is not always the best approach in the long run. Not only is there a duty to prosecute serious human rights crimes […], but a transitional justice strategy will also be more effective and legitimate if the various transitional justice initiatives, in particular prosecutions, truth-telling, reparations and institutional reform, complement each other.[37]

Since one of the goals of my work is to analyze alternative measures of transitional justice, I will outline which ones I consider as such:

- Lustration.
- Amnesties.
- Truth and Reconciliation Commissions; Institutes of National Remembrance.

To begin with, we will outline the essence of each of these measures, then we will review the practice of their application, and discuss the advantages and possible disadvantages of alternative measures. All of these steps must be taken in order to find out in the following chapters 1) whether such measures of transitional justice in Belarus after the change of power are possible in principle and 2) which of them can be used in the post-conflict period.

Julia Emtseva, Research Fellow at the Max Planck Institute for Comparative Public Law and International Law, thinks that the examples of civil resistance in Ukraine and transition taking place in The Gambia come in handy here [looking for options for transition in Belarus]. Although the second example might not strike as the most relevant to Belarus, […] the Eastern European nation shares some common features with this small West African state and Belarus could drag some inspirations from their post-dictatorial experiences.[38]

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[37] Rule-of-Law Tools for Post-Conflict States. Vetting: an operational framework. – Office of the United Nations High Commissioner for Human Rights, HR/PUB/06/5, 2006, p. 5.

[38] Emtseva, J. Transitional Justice – A Bridge to Democracy in Belarus (17.08.2020) – In association with the International Commission of Jurists. http://opiniojuris.org/2020/08/17/transitional-justice-a-bridge-to-democracy-in-belarus/ (30.03.2023)

[…] there is a likelihood that the punishment of very serious crimes may be questioned – or at least considerably attenuated – for noble reasons such as the restoration of democracy. That such measures may sometimes be inevitable for inescapable political reasons, may be accepted, even by the victims.[39]

Mark Freeman states, "The legitimacy of transitional justice mechanisms is measured by the extent to which victims oppose or support them, and the degree to which they are able to participate in and benefit from them."[40]

Alternative dispute-resolution methods can provide occasions for individual wrongdoers to apologize, and for victims and survivors to forgive, but these methods can also be marred by corruption, compromise, and an appearance of condoning terrible acts.[41]

2.2. Lustration

Having analyzed a vast amount of academic literature, as well as the practice of Eastern Europe, former Soviet Union member states, Latin American countries, and European Union member states, I believe that the use of lustration or, as this process is also called, vetting, as a way of accomplishing transitional justice, is the most popular method. Vetting can be defined as assessing integrity to determine suitability for public employment. Vetting processes aim at excluding from public service persons with serious integrity deficits in order to (re-)establish civic trust and (re-)legitimize public institutions.[42] The purpose of lustration can be described as a kind of "purge" (*lustratio* in Latin means purification by sacrifice) within the state system, which is most often the source of repression, from its members of the repressive machine personally involved in the implementation of repression or contributing to it. It is also worth noting that lustration is definitely conducive to social reconciliation. The new government will thus be able to bring to justice those involved in the repressions who have held any positions in the state apparatus in the past, which will have a positive effect on the sentiments in the society affected by the repressions. Among all the existing alternative methods of lustration seem to be the most understandable and non-contradictory for society, unlike, for example, granting amnesties to alleged criminals.

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[39] Sottas, E. Transitional justice and sanctions. – International Review of the Red Cross, 2008/90, No. 870,, 371-398 p. 398.

[40] *Ibid.*, p. 377.

[41] Minow, M. Do Alternative Justice Mechanisms Deserve Recognition in International Criminal Law?: Truth Commissions, Amnesties, and Complementarity at the International Criminal Court. – Harvard International Law Journal, 2019/60, No. 1, p. 3.

[42] Rule-of-Law Tools for Post-Conflict States. Vetting: an operational framework. – Office of the United Nations High Commissioner for Human Rights, HR/PUB/06/5, 2006, p. 4.

As I noted earlier, unfortunately, the world is quite familiar with bloody regimes, wars, and other conflicts in the course of which countless human rights violations are committed. In this context, one can say that the use of even alternative measures of transitional justice is indeed widespread.

Here I would like to turn to a few examples of the use of lustration in post-conflict societies. Poland is one such example.

2.2.1. The experience of Poland in resorting to lustration

Today Poland is a parliamentary democracy, and only about 30 years ago it was part of the Soviet Union and glorified the ideas of communism. Already in the first half of 1989, the citizens thought about changing the structure of the country and as a result of the "Round Table", negotiations about the future of the country between the trade union movement and members of the Politburo, a transition to democracy actually takes place. It was agreed that the Round Table talks were to lead to the establishment of a "social contract" – a joint declaration defining the shape of the future system, including upcoming elections, the office of president, economic policy, organization of the judiciary and local government.[43] The following year, the Communist Party of Poland announces its dissolution, and the elections result in Lech Wałęsa, chairman of the Solidarity trade union, becoming the first president of a democratic Poland.

Here I would like to point out the "scale of the problem" that had to be solved for the transition to democracy. The Security Service of the Interior Ministry, the political secret service under communism, was much more powerful than in countries like Hungary or Czechoslovakia, and more like the KGB in its methods of work and its repressive apparatus. The scale and involvement in repressions, as well as a large number of informants, meant that the lustration legislation in Poland was one of the most complicated and politicized in Eastern Europe.

Work on the lustration process began in 1992 when the Polish Sejm obliged the Minister of the Interior to provide it with archived information on civil servants, senators, and members of the Sejm, as well as judges, prosecutors, and lawyers who had been informants for the Security Service or in any other way cooperated with the secret services between 1945 and 1990. When on 26 May 1992 Wałęsa informed the Sejm that he had lost confidence in the government, Olszewski, in order to preserve his position, looked for a weapon in the secret files of the Ministry of Internal Affairs and pushed through the Sejm the lustration resolution allowing the minister of internal affairs to provide the Lower House with full information about the holders of high office who in 1945-1990

[43] Kozłowski, T. The long route to Poland's Round Table Agreement. 33rd Anniversary of the Round Table in Poland https://polishhistory.pl/the-long-route-to-polands-round-table-agreement/ (02.04.2023)

had been collaborators or secret agents.[44] As a result, the published "Macierewicz list" provoked the resignation of the government: according to archive data, many prominent politicians cooperated with the Security Service. Nevertheless, there were questions about the fairness of the list provided, as it was only a list of names without specific details about the form and duration of cooperation. The list was later exposed as full of inaccuracies and falsifications.[45] On June 19, 1992, the Constitutional Tribunal held that the lustration resolution violated the Constitution and, specifically Article 1, the "democratic state of law" provision.[46] Thus, the list was declared unconstitutional, and the adoption of any resolutions based on it became prohibited. And only a few years later finally, the Constitutional Tribunal passed and the President signed the amended lustration law, which will be fully implemented from the beginning of 1999. It is expected that around 20,000 people (all state officials, from the deputy governor to the President, parliamentary deputies, judges, prosecutors, and candidates to those posts) will be screened to determine if they had cooperated with the communist-era secret service. Persons under lustration will be asked to declare in writing whether they were ever a secret service functionary or collaborated with one before 1990.[47]

In the lustration declaration, it was necessary to indicate all the facts and the nature of the cooperation with the Security Service and a dozen other institutions, which in one way or another participated in the persecution of Poles during Communism. The decision on such an appeal is final and a verdict of guilty of being untruthful in one's lustration statement is published in the governmental gazette and excludes the defendant from public office for ten years. However, the lustration law does not impose any punishment for being a collaborator; it only aims at the exclusion from public life of people caught lying about their past as not preserving high moral standards.[48]

2.2.2 The experience of Czechoslovakia in resorting to lustration

The experience of former Czechoslovakia may be useful for Belarus because of its special attention to representatives of the judiciary. For example, in 1991, the Minister of Justice of Czechoslovakia was given the right to remove judges who during the communist dictatorship "violated the

[44] Misztal, B. A. How not to deal with the past: lustration. – European Journal of Sociology, 1999/40, No. 1, 31-55 p. 38.
[45] Brzezinski, M.F. Constitutionalism and Post-Communist Polish Politics. – Loy. L.A. Int'l & Comp. L. Rev, 1998/20, 433-453 p. 440.
[46] *Ibid.*, p. 44.
[47] Misztal, B. A. How not to deal with the past: lustration. – European Journal of Sociology, 1999/40, No. 1, 31-55 p. 50.
[48] *Ibid.*

principle of unbiasedness and impartiality" or "took decisions contradicting the law during their judicial practice". This aspect coincides exactly with the situation in the current judicial system of Belarus, where a huge number of judges and judicial officers are involved in the implementation of repression and complicity in the maintenance of lawlessness in the country. It also seems interesting that in Czechoslovakia judges could be discharged from service if they "lacked the necessary competence".

An official lustration law was adopted in Czechoslovakia in October 1991. However, local politicians, civil organizations, and some international organizations have spoken out against the lustration law, believing that its adoption would provoke more animosity among people and destabilize the political and economic environment. A representatives of the Civic Movement and of the Social Democratic Party […] [b]esides the supposed application of the principle of "collective guilt", they criticised the law for its retroactive nature, the generalised way in which it laid blame and the problematic screening of people on the basis of documents of Communist origin.[49]

The lustration law concerned the following categories. The categories of excluded people encompassed, among others, officers and collaborators of the State Security Service, high officials of the Communist Party, members of the People's Militias or students of certain high schools (so called suspected positions).[50] Those who were already in the civil service, or just wanted to enter it, had to provide two documents: a lustration certificate and a written affidavit.

It is important that the lustration process took place non-publicly – publication of lustration certificates was not allowed without the written permission of the lustrated person. […], in contrast to Poland, the Czech Lustration Act allows for complete secrecy when it concerns lustrated individuals. The entire lustration process is kept secret; the lustration certificate is delivered to the person concerned and cannot be published without the persons consent. In the end, if there is a positive lustration the individual has to resign from their position without any public knowledge of their collaboration.[51] According to various estimates, half a million people were lustrated.

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[49] Blažek, P. Transitions to Democracy and the 'Lustration'. Screening Process, Transformation: The Czech Experience. – People in Need with the support of the Ministry of Foreign Affairs of the Czech Republic, 2006, 173-180 p. 178.

[50] Bílková, V. Report: "Lustration: the Experience of Czechoslovakia / The Czech Republic" (19.11.2015) – European Commission for Democracy through Law (Venice Commission) in cooperation with the Institute of International Relations Prague – IIR. https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI(2015)028-e (03.04.2023), p. 2.

[51] Chmielewski, M. Lustration Systems in Poland and the Czech Republic Post-1989.The aims and procedures of political cleansing. – https://theses.cz/id/6655ba/104185-205175600.pdf, Thesis. Poland, 2010, pp. 56-57.

2.2.3 The experience of Hungary in resorting to lustration

The peculiarity of the Hungarian way is that by the time of the fall of the regime, civil society did not see any particular need for retribution, and the processing of the past began rather at the initiative of the top. But lustration was less of an issue and more about restitution and compensation for victims of the regime.

The targets of lustration were high-ranking officials and party bureaucrats: those persons who had belonged to the communist nomenclature or who were deemed to be officers or collaborators of the former repressive internal intelligence structures.[52] It was not until 1994 that Parliament passed the lustration law, the purpose of which was to expose the connections of politicians and the cultural elite to the political police and make them public. […] the Parliament set up screening commissions composed by judges to control the possible totalitarian activity of Members of the Parliament, officials appointed by the Parliament, ministers, state secretaries, judges, prosecutors, ambassadors, other high ranked civil or military officers and executives of companies if the State was their owner.[53]

A specially formed lustration commission on its own initiative launched investigations. If the commissions found that a screened person was a contributor of the totalitarian regime, it called him/her to resign. If the contributor refused to resign, he/she could challenge the decision of the commission in a court. If the court agreed with the commission, the decision had to be published in the official journal.[54]

2.2.4 The experience of Estonia, Latvia, Lithuania in resorting to lustration

In Estonia, Latvia, and especially Lithuania, at the end of the 1990s and beginning of the 2000s, the parliaments actively adopted sometimes controversial laws related to the legal treatment of the past. In many ways following the Czech model, the parliaments of Lithuania and Latvia try to extend the circle of persons subject to lustration to all executive positions in the public and private sector, as well as limit the electoral rights of former agents and informants of intelligence agencies. However, such measures are quickly recognized as unconstitutional and contrary to the European Convention on Human Rights. Over time, the issue of lustration ceases to play an important role in Estonia, which has adopted the Polish model. In Latvia and Lithuania, however, arguments

[52] Bílková, V. Report: "Lustration: the Experience of Czechoslovakia / The Czech Republic" (19.11.2015) – European Commission for Democracy through Law (Venice Commission) in cooperation with the Institute of International Relations Prague – IIR. https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI(2015)028-e (04.04.2023), p. 4.
[53] *Ibid.*
[54] *Ibid.*

about the need for stricter legislation and new investigations into high-ranking politicians continue to this day.

The Estonian experience of lustration is interesting in its approach to the judicial system. During the presentation of the draft Courts Act, the Minister of Justice expressed his concern that while, on one hand, 80% of the judges would complete their term of office in summer 1992 and it was questionable whether they would be ethically and legally suitable for the reformed court system, at the same time it was vital for the system to retain those who had previous work experience in the courts. International experts recommended a full lustration process for higher civil servants, including the judiciary. This approach was not welcomed in Estonia. Instead, all elected state officials, along with candidates for such offices, including members of the judiciary, were required to swear an oath of conscience.[55] An important point was that the transition process in Estonia was accompanied by the depoliticization of judges. Already in 1990, candidate for Chief Justice of the ESSR Supreme Court J. Kirikal stressed that judges should not belong to any political party or movement, since their independence is possible only when they are subject to the law alone. [56] I also see this experience as applicable to the current state of affairs in the judicial system of Belarus. Formally, judges and judicial officers may not belong to any party and in theory be impartial. However, everyone is well aware that since the beginning of the protests and the emergence of "political cases", many decisions have been made in support of the regime and political repression, which cannot attest to the rule of law and impartiality of judges. Estonia has addressed this issue in the following way. […], the Presidium of the Supreme Soviet adopted a decree depoliticising the law-enforcement bodies and prohibiting political unions in them, thus paving the way for the later requirement that judges not be members of political parties.[57] I believe that it will not be easy to ensure the independence and impartiality of judges in Belarus. Nevertheless, the Estonian experience suggests aspects which should not be forgotten in the future transition and transformation of the judicial system.

As in many other cases, the post-communist countries of Eastern Europe are faced with a dilemma: the inevitability of lustration collides with the need to respect human rights and the international obligations undertaken.

To summarize briefly here, I would like to mention some of the contradictions or drawbacks of lustration. One striking example of the contradictions of lustration, according to Professor

[55] Luhamaa, K., Ristikivi, M. Rebuilding the Court System of Estonia after the Communist Regime. – Juridica International, 2022/31, 81-89 p. 88.
[56] *Ibid.,* 84
[57] *Ibid.*

Alexander Larin of Nizhny Novgorod State University, is the fact that lustration laws actually impose responsibility for actions that were not illegal at the time of their commission, and were often even encouraged by the state.[58] Thus, it can be interpreted as going against the prohibition of retroactive application of the law and the principle of *nulla poena sine lege*, which are expressly provided for in the constitutions of most states that have adopted laws on lustration. Some of the disadvantages of lustration can be seen in the decisions of the European Court of Human Rights (hereinafter – ECtHR, the Court). Nevertheless, an analysis of ECtHR judgments concerning lustration, namely alleged human rights violations when resorting to lustration, shows that each case is considered by the Court separately and in almost no connection with other similar cases. Thus, for instance, in one case the Court finds a violation of the right to a fair trial[59] or the right to respect for private and family life[60] – in other seemingly similar cases the Court finds no corresponding violation of the European Convention on Human Rights.[61]

There is also the view that lustration is one example of the collective responsibility of society. However, in my opinion, this argument has no sufficient basis, because, in theory, the approach to lustration, as well as to the granting of amnesties should be exclusively individual. Several international treaties and customary law make it clear that blanket amnesties granted to a whole class of perpetrators are illegal.[62] According to John Dugard, "[u]nconditional amnesty for atrocious crimes is […] no longer generally accepted by the international community."[63] However, sometimes practice differs significantly from theory and states continue to grant amnesties in order to evade criminal prosecution. So, for example, Pinochet granted blanket amnesties to himself and his fellow generals.[64]

To conclude, it is noticeable that the lustration process has its own benefits, as well as the limits, and described international experience in this subchapter helps us to see them. Thus, one of the main benefit I see is the opportunity to develop such a lustration law that would help to carry out a thorough check and selection of specialists in all state structures chosen by society. This allows society to approach the solution of such an important issue with a cool head, as well as respect for

[58] Larin, A. Lustration as a reason for restriction of electoral rights. – Theory and Practice of Social Development, 2014, No. 4, 246-249 p. 248.
[59] ECtHR 57986/00, Turek v. Slovakia.
[60] ECtHR 55480/00, 59330/00, Sidabras and Džiautas v. Lithuania.
[61] ECtHR 22588/08, Sõro v. Estonia.
[62] Roche, D. Truth Commissions Amnesties and the International Criminal Court. – Brit J. Criminol, 2005 p. 576.
[63] Majzub, D. Peace or Justice? Amnesties and the International Criminal Court. – Melbourne Journal of International Law, 2002/3, p. 13.
[64] Roche, D.Truth Commissions Amnesties and the International Criminal Court. – Brit J. Criminol, 2005 p. 576.

human rights. From my perspective, an advantage that can work for the benefit of a conflict society is the ability to announce a ban on the publication of the results of lustration.

Speaking of shortcomings, I believe they all lie in the mistakes that governments can make when implementing this process. Among these, I would include distrust of the source of data on the cooperation of certain individuals in the past with undesirable organizations. Also, in the process of lustrations, the state may be too "severe" and, in parallel with the proceedings with human rights violations in the past, independently violate such rights as the right to a fair trial, as well as the right to respect for private and family life.

2.3. Amnesties

The United Nations policy concerning amnesties is a corollary to the principles, which have been affirmed repeatedly within the United Nations system, that States must (a) ensure that those responsible for serious violations of human rights and humanitarian law are brought to justice […].[65] Amnesties, as well as lustration, are well-known practices in the international community. Amnesties, as an alternative measure, logically raise more questions in a repressive society than lustration. From my personal experience, I understand how difficult it is for a victim to accept the idea that an alleged criminal, your abuser, or a person who has violated human rights can be legally forgiven, which means not applying criminal punishment to him, not judging him. As soon as I began to explore the topic of my master's thesis – I was convinced that amnesties could not be applied to Belarus due to too many people affected and too deep a shock that society has experienced since 2020. Exploring the topic further, and getting acquainted with the practice of states using amnesties, I began to change my opinion. Here I would like to give examples that I think will be illustrative of how amnesties can be used rationally and can contribute to the more rapid achievement of justice and reconciliation in a post-conflict society. In addition to discussing the positives, I will mention the possible abuses of amnesties.

Louis Joinet presented a report entitled "Set of principles for the protection and promotion of human rights through action to combat impunity", in which he suggested that a distinction be made between the amnesties pronounced before any trial and sentencing could take place and those granted at the end of a process that has led to the conviction of a perpetrator. […] according to Louis Joinet, an amnesty granted after someone has been convicted, either to reduce the sentence

[65] Rule-of-Law Tools for Post-Conflict States. Vetting: an operational framework. – Office of the United Nations High Commissioner for Human Rights, HR/PUB/06/5, 2006, p. 27.

or even to enable the convicted person to avoid serving it altogether, could be not only acceptable but also favourable to the transition process.[66]

The most successful example of the use of amnesties, in my opinion, can be found in South Africa. […] the South African experience suggests that amnesties can help to provide a lasting peace provided they are administered on a conditional basis, and in a clear and transparent manner.[67] In general, society here reacted affirmatively to the decision to grant amnesty to alleged human rights abusers between 1948 and 1994. During this period of time, apartheid existed in the country. As a result, post-conflict society, in order to maintain political balance and achieve peace, concluded to turn to the ancient South African strand of ethics and humanist philosophy – ubuntu. Consider the African philosophy of "Ubuntu" – a concept in which your sense of self is shaped by your relationships with other people. It's a way of living that begins with the premise that "I am" only because "we are."[68] In the process of reconciliation, a Truth and Reconciliation Commission was established to try to bring victims and executioners to the same table, thus working in the spirit of Ubuntu. Criminals had the right (and it was welcomed) to ask for legal forgiveness, being prepared to be invited to the commission, to testify, to tell as much as possible about the facts of the crime, how things were, where the victims were buried, and so forth, and in exchange, they received forgiveness – amnesty. During the Commission's work in South Africa, a mother whose son was murdered by government agents, Cynthia Ngewu, explained her support for the amnesty process precisely because of the profound moral ambition to humanize victims and perpetrators alike.[69]

So far, South Africa is the country where the victims have been most willing to accept the need to limit punitive justice and to accept amnesties.[70] The South African example strikes with the strength of the people's spirit as well as the reasonableness of the government. South Africa's post-conflict society was able to choose an option that was contradictory, as it may seem at first glance, but that did not bring the country into a new conflict. The South African authorities favoured a system of restorative justice placing the emphasis on finding the truth and granting total or partial amnesties to offenders who co-operated with that quest for truth. Faced with the choice

[66] Sottas, E. Transitional justice and sanctions. – International Review of the Red Cross, 2008/90, No. 870, 371-398 p. 387.
[67] Roche, D.Truth Commissions Amnesties and the International Criminal Court. – Brit J. Criminol, 2005 p. 574.
[68] Paulson, S. "I Am Because We Are": The African Philosophy of Ubuntu (30.09.2020) https://www.ttbook.org/interview/i-am-because-we-are-african-philosophy-ubuntu (05.04.2023)
[69] Minow, M. Do Alternative Justice Mechanisms Deserve Recognition in International Criminal Law?: Truth Commissions, Amnesties, and Complementarity at the International Criminal Court. – Harvard International Law Journal, 2019/60, No. 1, p. 29.
[70] Sottas, E. Transitional justice and sanctions. – International Review of the Red Cross, 2008/90, No. 870, 371-398 p. 379.

of never knowing or accepting that the perpetrator would go unpunished, many placed a higher value on truth than on punishment. This "choice" is an experience shared by many relatives of people who have disappeared: anything is preferable to the torment of uncertainty.[71] Granting amnesties subject to disclosure of the truth is the best possible use of amnesties as an alternative transitional justice approach. This approach, in my view, should be applied in societies where human rights violations were extremely widespread. In societies where enormous numbers of people have been involved in a conflict in one way or another. The use of amnesties in this case allowed more people to be heard, more people to learn the truth about what had happened, and thus ultimately to form a nationwide collective memory of those terrible years. It is extremely important to be "cool-headed" when selecting a solution to a post-conflict situation of this kind, since non-controversial measures such as those related to trials (which seem clear to everyone and welcomed by all) may aggravate the subsequent situation in the country. Thus, unsuccessful trials can further divide society, feed the corruption of the judicial system, and provoke a situation where, after some time, it will be necessary to resort again to making the transition.

From a legal point of view, […] these amnesties run counter to the principle of international law that there should be no amnesty for the most serious human rights violations, and in particular crimes against humanity, of which apartheid is one.[72] And this opinion is one with which there is no reason to argue. However, in my view, the international community should, in evaluating all other aspects, give some kind of margin of appreciation to post-conflict societies if these actions can affect stability and tranquility in the region and the subsequent respect for human rights. In such cases, the decision not to prosecute the perpetrator(s) is not so much a result of balancing the needs of justice against those involved in bringing about a reconciled society as a choice between Scylla and Charybdis.[73] Here the author, whom I have chosen to quote, cites an analogy from Greek mythology, where Scylla and Charybdis were mythical sea monsters noted by Homer. Being between Scylla and Charybdis has been associated with the proverbial advice "to choose the lesser of two evils".[74] I believe that such a comparison accurately reflects the attitude of the international community toward amnesties. Speaking about amnesties that were implemented in Sierra Leone in 1999 Secretary-General noticed that […], the Government and people of Sierra Leone should be allowed this opportunity to realize their best and only hope of ending their long and brutal

[71] *Ibid.*, pp. 379-380.
[72] *Ibid.*, p. 380.
[73] *Ibid.*
[74] Between Scylla and Charybdis https://en.wikipedia.org/wiki/Between_Scylla_and_Charybdis (05.04.2023)

conflict.[75] We should also understand that transitions rarely meet the needs of peace, democracy, fair development and the rule of law to which traditional justice avowedly aspires.[76]

In this study, I have already noted the approach of the UN to resorting to amnesties. My view on amnesties as an alternative measure of transition is as follows. The international community should allow the use of such an alternative measure, at least because of the existence of international mechanisms such as the UN, the International Criminal Court, etc. It is almost impossible to get impunity in the end – every case of wrongly implemented amnesty might become a subject matter before the international courts. Member States should not take measures that prevent accountability, such as granting or endorsing amnesties for international crimes and other gross violations of human rights.[77] Thus, an amnesty for gross violations of human rights or serious violations of international humanitarian law would not prevent prosecution before foreign or international courts.[78] Carefully crafted amnesties can help in the return and reintegration of both groups and should be encouraged.[79]

2.4. Truth Commissions and Institutions of National Memory

Truth commissions are official, non-judicial bodies of a limited duration established to determine the facts, causes, and consequences of past human rights violations.[80] Truth Commission – also an innovation of the late 20th century – addresses the past in a different manner, by attempting to compile a truthful record of the abuses.[81] Declan Roche managed to explain the meaning of such commissions in the simplest way possible, thus, while international criminal law lay dormant for almost 40 years following the trials at the end of the Second World War, states developed their own processes for addressing state and mass crime. In a number of countries, these processes took the form of a truth commission. Independent bodies established in order to establish the truth, give victims a voice and make recommendations for addressing the past, […].[82]

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[75] UN doc. S/1999/836, 1999, para 54, p. 12.

[76] Sottas, E. Transitional justice and sanctions. – International Review of the Red Cross, 2008/90, No. 870, 371-398 p. 388.

[77] GA Res. 66/749, 2012, para 37, p. 12.

[78] Rule-of-Law Tools for Post-Conflict States. Vetting: an operational framework. – Office of the United Nations High Commissioner for Human Rights, HR/PUB/06/5, 2006, p. 29.

[79] UN doc. S/2004/616, 2004, para 32, p. 11.

[80] González, E., Varney, H. Truth Seeking: Elements of Creating an Effective Truth Commission. – Amnesty Commission of the Ministry of Justice of Brazil; International Center for Transitional Justice (2013) https://www.ictj.org/sites/default/files/ICTJ-Book-Truth-Seeking-Chapter2-2013-English.pdf (04.04.2023)

[81] Roche, D. Truth Commissions Amnesties and the International Criminal Court. – Brit J. Criminol, 2005 p. 565.

[82] *Ibid*., 566.

Unfortunately, sometimes states that create commissions may deliberately misuse their functions and grant blanket amnesties, which they believe would serve as a certain shield from later criminal justice and prosecution. At the same time, Commissions have huge advantages as well. Thus, the existence of such commissions, in my view, is the opportunity to record the truth about the crimes committed and to make the victims, as well as society as a whole, aware of the atrocities of the regime. Such activities, in my view, allow for the formation of a collective memory of the population, which can prevent the recurrence of such crimes in the future. Collective memory is a term first used by the sociologist Maurice Halbwachs and indicates communal or social remembrance established by means of collective acts of rituals, symbolic display, and marking of space. […], it is a process which uses ritual commemoration and sites of memorialisation to pass information about a given event through society or along generations. This "memorializing" capacity of law has been described as one of the most important functions.[83]

I see the next strength of the Commissions as the fact that they are satisfied with a lot of public support. Why is this relevant? Usually, such commissions are exceptionally well-thought-out, logical, and well-organized events. Thus, in order for a commission to be established, it must be evident to international society that there is the real consent of the people living on the territory of a given state. If the activities of the commission are not accompanied by public support, its objectives are unlikely to be achieved, and the Court has the right to take over cases that were previously before the Commission. In countries such as Rwanda, where the wrongdoers outnumber their victims, majority support for a truth commission would be an inadequate requirement, since it would simply allow wrongdoers to outvote their victims.[84] A final advantage I would like to point out is the multifaceted reforms that occur in the commission process. Thus, commissions are only one part of a wider programme of reform.[85] It means that in order for a state to transition to a democratic state and (or) survive large-scale crimes, the state must take care to undertake other reforms that contribute to these goals.

Here I would like to note the importance of the existence of freedom of expression during the commission, which should ensure that victims can speak without fear of a lawsuit for defamation.[86]

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[83] Buyse A., Hamilton M. Rights and victims, martyrs and memories: the European Court of Human Rights and political transition in Northern Ireland [Transitional Jurisprudence and the ECHR. Justice, Politics and Rights]. Cambridge University Press 2011, p 52.

[84] Roche, D. Truth Commissions Amnesties and the International Criminal Court. – Brit J. Criminol, 2005 p. 576.

[85] *Ibid*., 579.

[86] Minow, M. Do Alternative Justice Mechanisms Deserve Recognition in International Criminal Law?: Truth Commissions, Amnesties, and Complementarity at the International Criminal Court. – Harvard International Law Journal, 2019/60, No. 1, p. 30.

The reason is that in the absence of one, alleged perpetrators will cease to feel "safe", will cease to admit their guilt, and talk about what they have committed. A rare person, much less a person who has committed one of the most serious crimes in the whole world, will be able to forget about his "safety", to repent of what he has done in absolutely unfavorable conditions for himself, knowing that the Court, using his testimony, will prosecute him and impose a real and far from minor punishment on him. Thus, I would insist that commissions are created by states that are certainly aware of all the consequences, and their reputational losses, and do not see any prospects that would justify such "negligence", if I may say so.

Another challenge that may arise in the course of the commission's work is that of remorse. Some believe that in the functioning of commissions, those who may be guaranteed amnesty should also feel remorse for the crime committed, but I don't think so for several reasons. First, the commission is called a truth commission because its main purpose is to reveal the truth to the victims or their relatives, as well as to the world community, and to document such truth in order to consolidate the truth among the society living on the territory of a given state. Second, remorse is as much about the feelings of the individual as well as reconciliation. There is not a single human emotion in the world that can be artificially simulated or ordered to be experienced by a person. In this connection, I am convinced that since the commission recognizes that it is impossible to "force" the victim and the perpetrator to reconcile, it is also impossible to make the perpetrator repent. Among other things, there is the view that even if it were possible to make a person repent or go to the use, there would be no point in such actions, since they would be fully coerced and would not come from the offender or the victim himself. Acts of apology, like those of forgiveness, only have meaning when they are not coerced.[87]

This is a common failing of a restorative justice programmes generally – the goal should be to create institutional spaces where victims can forgive and offenders apologize, but where neither is obliged, or even asked, to do so.[88]

Nevertheless, in the history of the commissions as an alternative way of achieving justice, there have been such types of events as "gacaca or village courts". One of the distinguishing features of these courts that I noticed was that the gacaca hearings unlike the South African TRC, encouraged the accused to apologize, with the positives and negatives of apologies given under pressure.[89] In

[87] Roche, D. Truth Commissions Amnesties and the International Criminal Court. – Brit J. Criminol, 2005 p. 576.
[88] *Ibid*., p. 579.
[89] Minow, M. Do Alternative Justice Mechanisms Deserve Recognition in International Criminal Law?: Truth Commissions, Amnesties, and Complementarity at the International Criminal Court. – Harvard International Law Journal, 2019/60, No. 1, p. 33.

my view, this illustrates vividly the voluntary nature of a person's decisions, namely, decisions to repent, apologize, or reconcile. Among other things, I consider such a feature of a hearing to be absolutely no better than forcing an innocent person to confess to a crime. Moreover, such a process did not have a positive impact on the victims of the crimes themselves. One study of sixteen widowed women who testified in the gacaca hearings found that all reported intense psychological suffering, new trauma, intimidation, and violence stemming from the process.[90]

The next thing I would like to point out is that before establishing a commission, the state needs to make sure that a large number of people can participate in the process.

I suppose that this requirement can also be seen as an unconditional advantage of commissions over international courts or tribunals. This is due to the fact that the crimes for which responsibility is prescribed by international law involve a large number of the population of a certain country, and the main object of such crimes is the global values of the whole society.

Here I would like to give a hypothetical example, which is very likely to become a reality later on. For almost 27 years, the Lukashenka's regime in Belarus has been violating human rights on a constant basis, but with varying degrees of intensity. After the fraudulent elections in 2020, the peak of human rights violations crossed a certain threshold and now such violations have turned into the commission of at least crimes against humanity by the regime holding power. The scale of the crimes was and continues to be such that it allows for certain generalizations today that virtually the entire Belarusian community has become victims of the regime's crimes. There are no more people left in Belarus who would be able to say that they or their relatives were not repressed in any way. Thus, when Lukashenka's regime comes to an end, there will be millions of people living in Belarus who consider themselves or their relatives, victims of the regime's actions. Consequently, I believe that the successful functioning of the commission is only possible if the state succeeds in ensuring the participation of the maximum possible part of the population who reasonably consider themselves victims of crimes. Only in this case, it will be possible to say that the goals of the existence of such a commission have been achieved and Belarusian society has been "satisfied". According to Martha Minow, a country – or its people – may prefer a truth and reconciliation commission to criminal prosecutions.[91]

It might be logical to assume that when the level of violations is so widespread that it affects virtually all of a country's society, and the nature of the crimes committed is extremely violent,

[90] *Ibid*., p. 34.
[91] *Ibid*., p. 6.

some criminals will want to be investigated by the Court so that they can subsequently be imprisoned, which would help them “escape” the victimized population and also feel safer than with amnesty and outside.

Analysis completed in this Chapter will help us to juxtapose the current information with the situation in the post-conflict Belarusian society. Therefore, the possible implementation of researched here alternative transitional justice measures is discussed in Chapter 4.

3. AN ISSUE OF VICTIMS IN TRANSITIONAL JUSTICE AND IN BELARUSIAN POST-CONFLICT SOCIETY

3.1. Introduction to the issue of victims in Transitional Justice

The issue of victims in transitional justice is quite controversial and has many aspects that could be analyzed and discussed. Nevertheless, in my thesis, I would like to focus my attention on the discussion of the importance of creating in the post-conflict society in the process of transition an environment where the voice of victims would be truly heard. This would require, among other things, identifying and highlighting groups of victims in Belarusian post-conflict society. In analyzing the problematic nature of the issue of victims, I noticed the following. On the one hand, the main characteristic of transitional justice that can be highlighted is its victim-centered approach. Transitional justice processes should be victim-centered: recognizing the centrality of victims and their special status in the design and implementation of transitional justice processes; their dignity, views, priorities, and concerns should be fully respected.[92] Moreover, Kovras asserts, victims should not be treated as mere passive recipients of truth processes. On the contrary, it is in fact the product of victims' groups' mobilization that the right to truth has emerged as an internationally recognized human rights principle.[93] In order to implement this approach, various agencies and institutions are being created during the transition process, the main purpose of which is to convey the will of victims in a post-conflict society and to represent the interests of victims of conflict. On the other hand, when the number of victims is large, when creating such organizations, there is a high risk that the victim as an individual will cease to exist and will merge with the entire group. In such a situation, the voice of the victims can be changed by accident or on purpose. Such a process risks re-silencing victims negating their potential for agency and reproducing the sense of powerless, which is much discussed in writings on victimhood in the developed democracies (e.g. Lamb, 1999).[94] A particular victim, in such a grouping, may not be understood, may not be heard, may be silenced. This means that where the issue of victims should theoretically be addressed in a case-by-case manner, in practice, individual cases may be grouped together, significantly weakening the importance of each particular victim within the group. […] some victims' groups have become "more about the group than about the victim" and that there are those who "are influencing and dictating the direction of victims…they're using the voice of

[92] About transitional justice and human rights. OHCHR and transitional justice https://www.ohchr.org/en/transitional-justice/about-transitional-justice-and-human-rights (15.04.2023)
[93] Grewal, K. The Role of Victims in Transitional Justice: Agency, Cooption and Exclusion. – International Journal of Transitional Justice, 2019/00, 1–12, p. 7.
[94] McEvoy, K., McConnachie, K. Victims and Transitional Justice: Voice, Agency and Blame. – Social & Legal Studies, 22/4, 489–513 p. 498.

victims…in order to put a particular point of view across" (Interview, 2 March 2017, interview 1). […] victims are consequently at risk of becoming a condensation symbol around which identities, roles and political positionality is played out.[95] Consequently, there will be a loss of individual approach to solving the issue, to the process of restoration of rights. Nonetheless, an orientation towards maximising victim agency, a pragmatic assessment of the risks and capacity which that orientation entails and a greater self-awareness of the dangers of "speaking for" victims are precisely what is required for effective praxis in transitional justice.[96]

Next, I will turn to the very question of defining victims in conflict and post-conflict societies, followed by a delineation of the groups of victims currently forming in post-conflict society in Belarus, beginning in 2020.

3.2. The definition of the victims in regard to Belarus. The OHCHR Report on the human rights situation in Belarus in Transitional Justice

There are a large number of definitions of victims in transition. Here I will give an example of the definition which seems to me the most general and at the same time accurate, and suitable for describing the situation in Belarus. […], victims are predominantly defined on paper as people who have suffered physical injury or material destruction – i.e. the dead, the wounded, the ill, the disappeared, the disabled, and the detained.[97] Certainly, in all definitions, one can find one's own shortcomings. Finding one "umbrella definition" for such a broad concept as victims is rather complicated. Nevertheless, the definition I have given also has its own nuances. For example, here we can see that in this case, the definition reflects the concept of victims of physical violence in conflicts. […] the legacies of conflicts are reduced to the legacies of physical violence which gives limited attention to wider structural causes and consequences of conflicts. The construction of victimhood is centered on vulnerabilities with a hierarchy of vulnerabilities from the dead, to the wounded, to the displaced and the disabled.[98]

The "Belarusian question" has been discussed by the international community, i.e. it has been on the agenda of international organizations since 2020. Russia's invasion of Ukraine has significantly and naturally changed the international agenda. Despite this, the democratic opposition leaders of Belarus, civil society inside, and much more significantly outside the

[95] Lawther, C. "Let Me Tell You": Transitional Justice, Victimhood and Dealing with a Contested Past (23.11.2020) – Social & Legal Studies, 2020/30 No. 6. https://journals.sagepub.com/doi/10.1177/0964663920974072 (15.04.2023)
[96] McEvoy, K., McConnachie, K. Victims and Transitional Justice: Voice, Agency and Blame. – Social & Legal Studies, 22/4, 489–513 p. 500.
[97] Jamar, A. Victims' Inclusion and Transitional Justice. – Global Justice Academy, 2018 p.18.
[98] *Ibid*.

country, do not allow the international community to fully shift its attention from the "Belarusian question" through their active work. They do not let us forget about the importance of condemning the human rights violations which have been and are still being carried out. The work of democratic forces is reflected in the recently published OHCHR report on the situation of human rights in Belarus in the run-up to the 2020 presidential election and in its aftermath (HRC res 49/36) (hereinafter the Report). At the moment, the relevance of the Report does not lie in the fact that it could potentially influence the Lukashenka regime in its attitude toward its citizens in terms of respect for their rights and freedoms. On the contrary, the regime has long made it clear to international organizations aimed at protecting human rights that such reports can in no way significantly change the authorities' established attitude toward this aspect. In addition, it is clear that previously the regime at least pretended that it was no stranger to generally accepted approaches to ensuring the human rights of its citizens. The release of political prisoners in 2015 is a striking example of such cooperation between the regime and the civilized democratic world.[99] Now that the situation in the world has changed so critically and the "collective West", as the regime is used to calling it, i.e. the European community, as well as the Lukashenka's regime, will not under any circumstances look for compromises. Hence, the dictatorship has not the slightest need to continue its hypocritical approach pretending that at least basic human rights are respected in Belarus and that Belarus is actually a democratic state, as it is stipulated in the country's Constitution, etc.

Despite the fact that the Report is in no way able to influence the current situation in the Republic of Belarus; it is not able to "talk sense" into the regime so that it starts respecting at least basic human rights, the importance of the Report is still there, though not so obvious. I found it interesting to draw a little analogy here with the role of lawyers, mostly providing legal assistance in "political cases" in Belarus since 2020. This will allow us to demonstrate the main goal of the Report. Belarus, since the beginning of the election campaign period and, for the most part, after the fraudulent presidential elections in the summer of 2020, has descended into so-called legal nihilism or, as lawyer Maksim Znak, currently serving a ten-year prison sentence, called it, legal default. This means that starting from the period I have mentioned, the rule of law in the country has ceased to be respected in any adequate way. For his part, Lukashenka said at a meeting with prosecutors and prosecutorial officials in September 2020 that "[in such situations] sometimes

[99] Belarus: UN expert hails release of political opponents, points to further steps ahead of presidential polls. Human rights in Belarus (26.08.2015). – The United Nations OHCHR https://www.ohchr.org/en/press-releases/2015/08/belarus-un-expert-hails-release-political-opponents-points-further-steps (19.04.2023)

laws are not the issue there."[100] Which only confirms the authoritative opinion of Maksim Znak. This approach to human rights and the law, in general, is reflected in the fact that since the emergence of political trials in 2020, the Belarusian courts have not issued a single acquittal against protesters. In the aforementioned period, not a single conviction was handed down against law enforcement officers, as well as other representatives of the regime. With all the violence and the huge number of victims of the regime's actions, as well as numerous statements by victims demanding to initiate administrative and (or) criminal proceedings against state officials and law enforcement officers based on the violence used against them, torture, abductions, and murders, not a single case was initiated against the above persons. In the course of communication between lawyers and police officers, investigative committees, prosecutors, and judges, in most cases, any request of lawyers, for example, to attach to the case file a video proving the innocence of a client, or any other evidence that could potentially and significantly affect the outcome of the case: to stop proceedings against the accused protester, reduce the requested sanction, or testify about violations by law enforcement, were arbitrarily rejected with the wording of the law. Based on my personal professional experience, I can conclude that in such circumstances the work of the lawyer was limited to the technical and routine documentation of the regime's crimes against human rights. Such documentation, in my view, is what the recently published Report is all about.

The Report contains information that some of the human rights violations documented may further amount to crimes against humanity, taking into account their intentionally directed, widespread and systematic nature against the civilian population defined by its real or apparent opposition to the Government and its claim to electoral legitimacy.[101] Paragraph 30 in the Report says that OHCHR documented disproportionately severe sentences passed by the courts, which are further illustrative of the instrumentalization and abuse of the justice system. Such sentences include those handed down against political opposition figures, bloggers, journalists, human rights defenders, and lawyers. In certain circumstances, grossly disproportionate sentencing could itself also amount to prohibited ill-treatment.[102] This Report will complement the numerous reports prepared by human rights defenders, lawyers, and human rights centers, as well as help to identify groups of abuses committed by the regime in relation to protesters, which will form a sort of classification, which can be referred to during the transition of the Belarusian post-conflict society from

[100] Lukashenka – to prosecutors: You know, sometimes there is no time for laws "Lukahenka – prokuroram: Znaete, inogda ne do zakonov" Лукашенко – прокурорам: Знаете, иногда не до законов (10.09.2020) https://nashaniva.com/?c=ar&i=258800&lang=ru (19.04.2023)

[101] Belarus report finds systematic, widespread and gross human rights violations (22.03.2023). – The United Nations OHCHR https://www.ohchr.org/en/statements-and-speeches/2023/03/belarus-report-finds-systematic-widespread-and-gross-human-rights (19.04.2023)

[102] OHCHR, Report on the Situation of human rights in Belarus in the run-up to the 2020 presidential election and in its aftermath (27 February –31 March 2023), para. 30, p. 7.

dictatorship to democracy. At the same time, the reliability and competence of the information contained in the Report will not be questioned by anyone, because the Report was compiled by the Office of the High Commissioner and the Secretary-General.

Thus, the crimes committed were grouped together in the Report into corresponding groups:

- Unnecessary and disproportionate use of force.
- Torture and other cruel, inhuman or degrading treatment or punishment.
- Arbitrary arrest and detention.
- Rights to due process and a fair trial.
- Freedoms of expression, peaceful assembly and association.
- Sexual and gender-based violence.
- Child separation and undue interference in family life.
- Forced exile.

3.3. Identification of victims group in Belarusian post-conflict society

With the help of other reports on the Belarusian question, in particular, the report of the Human Rights Center Viasna, the named groups of crimes can be correlated in the future with the groups of victims mentioned in such reports. Here, I would like to highlight the groups of victims of the actions of Lukashenka's regime in the period beginning in 2020. For this, I will use the Review Human Rights Center "Viasna" Human Rights Situation in Belarus in 2020 (hereinafter – the Review). Based on this Review for the state of 2020 the authorities repressed journalists in connection with their professional activities: according to the BAJ, 9 journalists are currently in prison as suspects or accused in criminal cases, 477 journalists were arrested, and 97 served terms of administrative detention.[103] It should be noted that the repression of the media continues, and as of April 2023, already 33 journalists are imprisoned.[104] Thus, journalists and representatives of mass media steadily form one of the groups of victims of political repression, which can be distinguished in the analysis of the mentioned report. The next group is human rights defenders and lawyers. 18 members of the Human Rights Center "Viasna" were subjected to various forms of repression during the year, including arrests and terms of administrative detention.[105] Currently, 6 Viasna members are currently in prison. Ales Bialiatski, Uladzimir Labkovich, and Valiantsin Stefanovic are now accused of smuggling (Part 4 Article 228 of the Criminal Code) and financing

[103] Human Rights Situation in Belarus in 2020 – Human Rights Center "Viasna" Analytical review, p. 3.
[104] Repressions against journalists in Belarus 2023, list of colleagues in prison (10.06.2022). – BAJ Press Service. https://baj.by/en/analytics/repressions-against-journalists-belarus-2023-list-colleagues-prison (19.04.2023)
[105] Human Rights Situation in Belarus in 2020 – Human Rights Center "Viasna" Analytical review, p. 3.

group actions that disrupted public order (Part 2 Article 342 of the Criminal Code). On March 3, 2023, the human rights defenders were sentenced to 10, 9 and 7 years in prison, respectively. Leanid Sudalenka was sentenced to 3 years in prison, Marfa Rabkova – to 14 years and 9 months, and Andrei Chapiuk – to 5 years and 9 months in prison.[106]

Throughout the period of political repression, they were also carried out against lawyers who either spoke out in support of the opposition or provided legal assistance to individuals engaged in protest activity. Since 2020, such lawyers have been stripped of their licenses to practice law, not certified, detained, and sentenced to prison terms solely for their professional activity. More than 90 lawyers – those who did their duty without regard to previous warnings, including those from the leadership of the bar – were deprived of their status and were forced to stop practicing law in Belarus.[107] Lawyers in Belarus are subjected to repressive practices that are incompatible with their professional guarantees: removal from defense, intimidation, and harassment for the performance of their professional duties, psychological pressure, arbitrary detention, and wrongful imprisonment. Lawyers are identified with clients on the basis of political views, punished, and deprived of their status for expressing their opinions both in public space and in the courtroom, thereby undermining their professional immunity. Lawyers are denied protection against these violations, both by bar associations and by state authorities and courts, which ignore allegations of violations of generally recognized principles of law and human rights standards.[108] International condemnation of the repression of lawyers was expressed in numerous communiqués of the UN Special Rapporteur on Belarus and the independence of lawyers and legal professionals, which also expressed concern about the situation of lawyers in Belarus.[109] Based on the analysis summarized here, we can conclude that human rights defenders form a separate group of victims of post-conflict Belarusian society.

A particular group of victims may be made up of clergymen. Representatives of the Orthodox and Catholic churches condemned the violence, which later led to repression against some religious figures and priests, most notably the de facto deportation of the head of the Catholic Church, Archbishop Tadeusz Kondrusiewicz (the priest returned to the country in December after a representative of the Vatican was received by Lukashenka). The Prosecutor General's Office

[106] Viasna Case, https://freeviasna.org/en (19.04.2023)

[107] Report: The Crisis of the Legal Profession in Belarus: How to Return the Right to Defense. – Center for Constitutionalism and Human Rights of the European Humanities University in partnership with the "Right to Defense" project (defenders.by), https://drive.google.com/file/d/1cGbBv2r6bt5rCg7fOLAmGFoQLUBQQBvx/view (19.04.2023), p. 1.

[108] *Ibid.*, pp. 100-101.

[109] Mandates of the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the situation of human rights in Belarus (14.12.2021) https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=26892 (19.04.2023)

issued an official warning to the Vicar General of the Minsk and Mahilioŭ Archdiocese of the Roman Catholic Church in Belarus, Bishop Yury Kasabutski, and the chairman of the Synodic Information Department of the Belarusian Orthodox Church Siarhei Lepin.[110]

The repression is large-scale and affects many segments of the population in the republic. Vivid examples of groups of people who rebelled against the actions of the regime are workers in large state factories and enterprises who went on strike, as well as university students across the country expressing their dissent by protesting. The country's authorities use various forms of repression against dissidents, including dismissals of strike activists at a number of state-owned enterprises (Belaruskali, Hrodna Azot, Naftan, etc.). Students who took an active part in peaceful protests and solidarity events were repressed and expelled *en masse* from their universities.[111]

In addition to a kind of possible confrontation between a particular victim, a group of victims, and the agencies that represent their needs, there is another contradiction in the implementation of the victim-centered approach. Thus, there remains a tension, however, in all acknowledgments of the centrality of victims in transitional justice processes between victim priorities in seeing their needs addressed and a transitional justice practice that has always prioritised the building and legitimisation of the liberal state.[112] In my opinion, the challenges highlighted by legal scholars in their analysis of the issue of victims, and their needs in transitional justice, boil down for the most part to the fact that the real interests of victims, their requests for the method of achieving justice, are often deliberately or intentionally ignored by the new government. Thus, during the transition, there is a risk of ignoring the social needs of each particular victim or group of victims, in pursuit of the usual condemnation of past crimes, human rights violations, and resorting to legalism. The isolation from the social that legalism implies serves to alienate the practice of transitional justice from victims whose needs, experience and agency are entirely rooted in the social worlds in which they live.[113] I consider it significant for the victim issue to have a room not only for legalism but also for the social context. Moreover, because of the primacy of prosecution in legalist rights discourse, efforts to understand victims' priorities have often been distorted to fit such assumptions. However, when studies are performed with an unbiased methodology it is seen that

[110] Human Rights Situation in Belarus in 2020 – Human Rights Center "Viasna" Analytical review, p. 5.
[111] *Ibid.*
[112] Robins, S. Failing Victims? The Limits of Transitional Justice in Addressing the Needs of Victims of Violations. – Human Rights and International Legal Discourse, 2017/11, No. 1, 41-58. p. 43.
[113] *Ibid.*, p. 50.

a desire for prosecution is often only one of many demands, and frequently not the first priority of victims of violations, at least in states where other needs remain urgent.[114]

To summarize this Chapter, as well as the issues of victims in transitional justice in general, and in Belarusian post-conflict society in particular, I would like to note the following. The aspects raised here are of a highly sensitive nature, as illustrated, for example, by the analysis of the question of agency cooperation and the grouping of the general mass of victims into smaller groups. I reckon, that this nature stems from the fact that transitional justice is not exclusively about law or legalism or something like that. It is also allied with aspects such as social, psychological, and historical. Post-conflict society in transition aims to deal with past human rights abuses, where the main figures are the victims – ordinary people with their own personal tragedies, views on the subsequent transformation of the state, and desires for retribution. Nevertheless, this does not make the issue any less important to discuss, analyze, and work with during the transition itself. Still, transitional justice has a victim-centered approach, which does not allow us to ignore the issue of victims in every post-conflict society. In my view, for a successful transition from a violent in every sense of the past to justice, truth, respect for human rights, and the rule of law, society must pay due attention to the victims of conflict. It is necessary to identify groups of victims in a particular post-conflict society, to analyze their needs, focusing on the needs of each individual victim or small group of victims, and then to select measures suitable for that society, namely for the victims of that society, to achieve justice, to process the past and to build collective memory.

Always assuming there is no perfect solution, the limited scope of each of the measures that are part of a JT policy must be recognized, as DE GRIEF affirms, from the outset. “In fact, there is no transitional country that can legitimately claim great successes in this area. That is, there is no country that has undergone a transition that has prosecuted each and every perpetrator of human rights violations (let alone punished them in proportion to the gravity of the harm they caused); that has implemented a truth-seeking strategy that disclosed the fate of each and every victim or thoroughly identified the structures that made the violations possible; that has established a reparations program providing each and every victim with benefits proportional to the harm he or she suffered; or that, particularly in the short run, has reformed each and every institutions that were implicated in the violations in question” (DE GRIEFF, 2012, p. 35).[115]

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[114] *Ibid.*, p. 51.

[115] Remón, F. Q. Transitional Justice, Victims and Human Rights in the light of International Law and the Inter-American System of Human Rights. – The Age of Human Rights Journal, Universidad de Jaén, 2021, https://revistaselectronicas.ujaen.es/index.php/TAHRJ/article/view/6440/6242#toc (12.04.2023)

4. IMPLEMENTING ALTERNATIVE MEASURES IN BELARUSIAN POST-CONFLICT SOCIETY. INTERNATIONAL MECHANISMS' IMPACT ON TRANSITION IN BELARUS

In my thesis, namely in Chapter 1, conducting the analysis of the portrait of the conflicting Belarusian society at the present moment under the current dictatorship, I have touched to some extent the parsing of the political situation in the country. In Chapter 3, discussing the question of victims in transitional justice in general, and in the future transition of post-conflict Belarusian society from dictatorship to democracy and the rule of law, I made a more detailed analysis of the situation of victims in the country, suggested the main groups of victims that can be distinguished in the realization of transition in Belarus, and also gave an example of the classification of groups of crimes committed by the Lukashenka regime, starting in 2020. In this Chapter, I see my task as a more detailed examination of the situation in Belarus in terms of transitional justice. To be more precise, here, in my opinion, it is necessary to look at, let's call it so, the Belarusian case from the point of view of transitional justice. That is, to compare the current state of affairs with the historical cases of the countries that have already gone through a transition, including an analysis of the possibility of using the experience of those countries that I discussed in Chapter 2. Will analyze the possibility of using the alternative measures of transitional justice named in Chapter 2 for Belarusian post-conflict society. We will identify the most appropriate alternative measures to be used, highlighting the state structures in relation to which certain alternative measures can be applied. Thus, this Chapter will be a kind of generalization of what has been studied in the chapters before, with a comparison of experiences and factors of alternative measures' use in the Belarusian case. In the end, we will look at the international mechanisms that can be theoretically used already now, in order to influence the situation with brutal human rights abuses.

4.1. The Belarusian case from the perspective of Transitional Justice

In addition to the named branches of power in the state, a special role in political repression is played by members of the government, namely the highest state officials, ministers, etc. along with Lukashenka himself. That is why the role of these persons in the commission of human rights crimes should certainly be considered in the implementation of the transition in the future. Also, I believe that the top state officials, i.e. representatives of Lukashenka's government, are the persons to whom alternative measures of transitional justice should not be applied. Knowing the situation inside the country, and the mood of the population, in my opinion, it becomes obvious that the post-conflict society of the future will not be ready, for example, to grant amnesties to Lukashenka, Internal Affairs Minister Kubrakou, Chairman of the National Assembly Council of the Republic

Kachanava, Prime Minister Holovchenko, etc. We should separately raise the question of condemning and not leaving with impunity those persons who were not part of the government and were not state officials at the time of the repression, but who took a significant part in the implementation of repression, incited enmity among citizens, were bright supporters of the Lukashenka regime, and media personalities, who personified themselves with the current regime. By such persons I mean, for example, employees of state media, state-owned TV and radio companies, propagandists, propaganda journalists, and bloggers, known for their support of the dictatorial regime and repressions: Azarenok, Tur, Pustovoy, Artyukh, Mukovozchik, representatives of the presidential pool, Lukashenka's press secretary: Matveev, Eismont, famous current and former athletes who support the dictatorship: former hockey player Baskov, track and field athlete Nedosekov, hammer thrower Tikhon, Paralympic swimmer Talai, etc. In the first Chapter of my thesis, I already discussed in detail the ways in which representatives of all three branches of power contributed to political repression through their actions. However, I still believe that alternative measures of transitional justice can be applied to these individuals. We will later discuss which measures could be applied to the Belarusian case.

I believe that the future process of transition from dictatorship in Belarus can be compared in some respects to the transition from a communist society to a post-communist society. I draw this conclusion on the basis of a large number of similarities in societies. Thus, for example, both in the countries of the former Soviet Union and in modern Belarus, there are large-scale political repressions; most spheres of public life, including private life, are controlled by the state; the presence of propaganda and its role in maintaining regime stability; huge shortcomings in ensuring and respecting human rights of citizens inside the country; the absence of democratic institutions, etc. Transitions from communist to post-communist societies are rarely smooth and this arduous journey is rife with instability and other potential pitfalls.[116]

During the transition process in post-conflict Belarusian society, the new government and civic society, i.e. the post-conflict society, should follow the legality principle while building a new governmental system, as well as the regime of government. Thus, the principle of legality [is when] only the law can legitimately empower the state to restrict the freedom of individuals, while the actual exercise of such power is determined by legal provisions and monitored by an independent judiciary.[117] It means that within the Belarusian case, society will clearly have to meet the necessity

[116] Uildriks, N. Police Reform and Human Rights, Opportunities and Impediments in Post-Communist Societies, Antwerpen – Oxford, 2005 p. 7.
[117] *Ibid*., p. 20.

of dealing with the creation of an independent judiciary, will need to reform substantially the executive branch of the power as well as the legislature.

The OHCHR Report concluded in paragraph 54 that some of the violations may also amount to crimes against humanity, as defined in international customary law, when such acts are committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack. This finding is significant for the work that follows in preparation for transition and at the very moment of future transition. This finding once again, but already at the official level, records the fact that in Belarus, starting from 2020 at the time of the last presidential election, the regime, and representatives of the authorities have not just committed human rights violations, severe, but chaotically and without any particular intent, but have committed and, unfortunately, continue to commit crimes against humanity, targeting their own people. This conclusion of the Report confirms that the regime, in its repression of the protesters, carried it out knowingly. Such findings will enable a proper assessment of the rest of the regime's actions with regard to the commission of crimes and the failure to respect human rights at the time of the transition in the future. Due to this recently published Report, the crimes of the Lukashenka regime have once again been assessed and documented at the international level.

In my work, I decided to study the post-conflict society, which began, if I may say so, "traumatizing" in the period since 2020. Although, as I mentioned earlier, the dictatorship has not formed itself only in the past 2-3 years and it has been formed since Lukashenka came to power, and human rights in the country have not been respected since that very moment, the scope of my Master's thesis does not allow me to cover the 29-year period of "conflict". Nevertheless, it cannot be denied that the last three years of the dictatorship were the most vivid in terms of human rights infringements. Yet it is essential to realize that I am not examining all 29 years of human rights violations with their denial of the rights to freedom of expression, and freedom of assembly, with their arbitrary detentions, political prisoners, kidnappings, and killings, solely because of the length of the work. I am convinced that for Belarus to have a successful experience of transition from dictatorship to democracy, with respect for human rights and the rule of law, each case of each particular victim during those 29 years must be examined, analyzed, and addressed. If the aim is to bring about a real transition, surely it is necessary to address all serious human rights violations of the past.[118] They have to look back at the past twenty years and recall every possible violation or crime committed by those who have been there to protect, not to abuse. Lukashenko's damaging response to the COVID-19 pandemic, brutal suppression of post-election protests,

[118] Sottas, E. Transitional justice and sanctions. – International Review of the Red Cross, 2008/90, No. 870, 371-398 p. 389.

derogatory comments about women's ability to become politicians or businesswomen and much more have to be digested by the people in order to find a proper justice forum.[119]

Thus, if this approach is implemented, then the post-conflict society in Belarus has all the chances to successfully form a collective memory; to openly condemn all the wrongdoings of the Lukashenka regime with its violation of social, political, and economic rights of its citizens; and to do with one single, although possibly long, episode of the transition period.

The analysis of the situation formed in Belarus at the present moment, contained in the Chapters earlier, as well as the experience of the countries that have already passed through the process of transition, allows us to look at the Belarusian case in the dimension of transitional justice. At the moment, Belarus has a dictatorial regime of government. Belarus is a country where the illegitimate Lukashenka regime continues to carry out an inconceivable amount of repression on a daily basis. All three branches of power – legislative, executive, and judicial, are interested, and independently involved in the implementation of such repressions today. This means that not only the number of victims of political repression is large, but also the number of those who directly implement them. Each political case, whether administrative or criminal, brought against a protester within the country involves at least the following set of participants on the side of the authorities: one or more law enforcement officers (police, riot police, Department for Combating Organized Crime, etc.); officers of the investigative committee (investigator in charge of the case, his or her assistant, secretary); judges and court personnel (the judge who distributes cases among court judges, the judge to whom the case was assigned, the secretary of the court session and sometimes the court chairman); in some cases, judges and officers of higher and Appeal Courts, as well as prosecutors may be involved in the case, for example, in the event of an appeal of a sentence by a protester or an appeal of the actions of law enforcement officers and investigative committees. As of April 2023, we can use the 2022 annual report "Human Rights Situation in Belarus in 2022" (hereinafter – Annual Review) prepared by the Human Rights Center "Viasna" to understand the approximate number of persons subjected to reprisals in the form of administrative or criminal convictions from 2020 until December 2022. As the number of persons convicted provided by the Annual Review of Human Rights in Belarus, together with the example I gave above of the approximate number of state officials involved in each specific politically motivated case, we can imagine the approximate number of persons involved in the implementation of repressions. Thus, the Annual Review concludes that:

[119] Emtseva, J. Transitional Justice – A Bridge to Democracy in Belarus (17.08.2020) – In association with the International Commission of Jurists. http://opiniojuris.org/2020/08/17/transitional-justice-a-bridge-to-democracy-in-belarus/ (19.03.2023)

- according to the Human Rights Center "Viasna" a total of at least 2,627 individuals were convicted for the events triggered by the protests of 2020; almost 3,800 people faced criminal prosecution during this period;
- Viasna knows the names of 6,381 persons arrested and at least 3,272 convicted under administrative procedures for the exercise of their rights and freedoms, of which 2,274 were sentenced to short terms of administrative imprisonment and 938 were fined.[120]

Such reports contribute to the specification and individualization of political repression. It also means that thanks to human rights organizations, human rights violations in Belarus, especially such large-scale ones as in the period since 2020, will not be lost and will remain documented until the very moment of implementation of the transition and elimination of the consequences of abusive actions of the regime in the past.

4.2. Alternative measures implementation in Belarusian post-conflict society

As a result, today in Belarus we have a dictatorship, headed by dictator Lukashenka, who has strong power inside the country; due to a number of reasons, Lukashenka's power is not disputed by representatives of the entire state apparatus, namely representatives of the legislative branch – the national parliament in its activity is fully subject to the orders and decrees of the head of state, is not disputed also by representatives of the executive and judicial branches, since these employees serve to maintain the stability of the system. Thus we have a hundred percent penetration of dictatorial totalitarian ideas into the public masses of civil servants. The State Security Committee (hereinafter – KGB) is still active in Belarus, and its main objectives do not differ in any way from those of the KGB that existed during the time of the Belorussian Soviet Socialist Republic.

Meanwhile, it is important to realize that the scale of political repression within the country determines the enormous involvement of a large part of the population in its implementation. The scheme here is simple: the greater the amount of repression that the regime intends to implement, the more people will be involved in its implementation. When you begin to study the Belarusian case and take a look at it from the perspective of transitional justice, it almost immediately becomes clear that it is impossible to limit the use solely to judicial measures of transitional justice. No matter how much the citizens, whose families and relatives suffered from the actions of the regime, and the victims of political repression themselves would like it, it is necessary to understand that it will be simply impossible to convict all the perpetrators of the past, in the literal sense of the

[120] Human Rights Situation in Belarus in 2022 – Human Rights Center "Viasna" Annual Review, p. 3.

word, using the national judicial system, possibly with the involvement of international specialists or even using international tribunals. Firstly, because of the limitations of the Belarusian judicial system due to one simple factor – by the moment of implementation of the transition there will be an absolute minimum number of judges in the country, who have never participated in politically motivated cases, judges, who have not been tainted by execution of repressions themselves. Secondly, the number of "ordinary" alleged criminals is also extremely high, because not only top officials are involved in repressions, but also ordinary state officials and law enforcement officers. The actions of these individuals can remain unnoticed for a long time. It is important to pay attention to the fact that in the history of the world, there is no practice in which a post-conflict society was able to convict all or most of the persons who committed crimes against human rights by means of trials. In the practice of any country, there will remain a stratum of individuals who will escape punishment.

The aspects I have described are worth taking into account, but this does not mean that nothing can be done about this in the future. It is essential to accept the inability to try an ordinary police officer who in 2020, for example, participated in a search during a politically motivated criminal case, while violating even the procedural law in force at the time. It was for societies, and states under similar conditions that alternative measures of transitional justice were invented, such as lustration, the creation of Truth and Reconciliation Commissions or Institutes of National Memory, and, in some cases, the granting of amnesties. For this purpose, it is important to understand the public's attitude towards alternative measures, as well as to determine which alternative measures can be applied, when, and to whom. Post-conflict Belarusian society will need to be guided by the practice of countries that have already once resorted to alternative measures to achieve justice.

The recently published OHCHR Report allows us to assess citizens' attitudes toward some of the alternative measures. Thus, the Report had paragraph 62 on the accountability of those who committed these human rights violations. This paragraph contains an analysis of the answers of Belarusians, who were repressed during that period of time, on how alleged criminals should be held accountable. Answers showed that people are ready to have various options to reach justice. They mentioned specifically that they feel a deep distrust of national courts and identified judges as the enablers of repression.[121] The OHCHR also made it clear that people are ready to imply some alternative transitional justice measures such as lustration, as well as the establishment of some kind of Memory Institutions. This also includes truth-seeking or fact-finding processes by non-judicial bodies; individual, collective, material, and symbolic forms of reparation; and reform

[121] OHCHR, Report on the Situation of human rights in Belarus in the run-up to the 2020 presidential election and in its aftermath (27 February –31 March 2023), para. 62, p. 15.

of laws and institutions, including the police, judiciary, military, and military intelligence. Hopefully, an eventual democratic government in Belarus will have transitional justice as one of its first priorities.[122]

It is worth mentioning that in 2020 on the initiative of Sviatlana Tsikhanouskaya, there has been created a Coordination Council to organize the process of overcoming the political crisis and ensure social cohesion, as well as protect the sovereignty and independence of the Republic of Belarus. The Coordination Council (hereinafter – Council) is the unified representative body of the Belarusian people. In March 2021, the Concept of Law Reinstatement and National Reconciliation (hereinafter – Concept) was delivered by the Council. This Concept according to Chapter 3 suggests a mechanism for the creation of certain legislation that would describe the process of law recovery and national reconciliation.[123] I mentioned this fact because it shows us again that Belarusians on different levels are actually ready to refer to alternative measures when it is time to.

While studying and analyzing the experience of other countries that have gone through the transition process, I thought that if in the future the situation were such that the post-conflict society for some reason would not be loyal to the use of alternative measures of transitional justice, it would be possible to resort to some sort of hybrid approach to achieve justice. Under such an approach, I understand the unconditional trial of senior officials, members of the government, and certainly, Lukashenka himself, while at the same time guaranteeing amnesties for those "rank-and-file" criminals who can repent of their crimes, agree to tell the truth about their criminal deeds and share details of the victims' fates with their relatives, thus helping to create a collective memory about the past in the post-conflict society of Belarus. I also believe that if democratic opposition actors were to announce the possibility of such an approach in the future now, it could, in theory, provoke a split between ordinary state officials and high-ranking officials of the regime. Thanks to amnesties, it could trigger the desire of already doubting regime supporters to save their future careers.

Speaking of all of the alternative measures of transitional justice that I have considered, I would like to note that I believe the use of each measure is possible. As has been discussed repeatedly in this study, in situations where the judiciary and the law enforcement system have been closely tied to an undemocratic incumbent regime, society needs a special law or procedure that will help

[122] Andreyuk, E., Anonymous International Mechanisms for Accountability for Human-Rights Violations in Belarus. – Policy Paper, The German Marshall Fund of the United States, January 2022, p. 15.

[123] The concept of law reinstatement and national reconciliation – The Coordination Council https://rada.vision/en/the-concept (23.04.2023)

transform these systems with minimal loss of personnel and less economic expense. The lustration process plays precisely this role. When applying lustration in the post-conflict Belarusian society, one should refer to the experience of the current EU countries, the former USSR countries. For instance, the experience of Poland will be useful in the way Polish society applied the lustration law with such a mass of individuals who carried out repressions and the activity of state agencies engaged in it. It is the level of involvement in political repressions in Soviet-era Poland that can be compared with the number of persons involved in the implementation of repressions, as well as the deep connection between the dictatorship and all governmental systems in present-day Belarus. It was also mentioned by me in Chapter 2 that the experience of former Czechoslovakia may be useful too, as its conditions within the judiciary were almost identical to Belarusian. In short, the judges there did not adhere to the rule of law in their work. This is exactly the case in today's Belarus when it comes to politically motivated cases. Also, when referring to lustrations, the post-conflict Belarusian society, in my opinion, can resort to another practice of other states to ban the publication of the results of lustrations. Such a decision should affect the preservation of relative stability in society and prevent illegal attempts by persons subject to lustration to avoid this procedure.

Speaking about the creation of the Institutes of Remembrance, Truth and Reconciliation Commissions, etc., the following should be noted. Without working through the past with the subsequent creation of collective memory, it is impossible to make a successful transition to democracy, justice, and the rule of law. I think Belarus and Russia can serve as examples of countries with a failed transition process from communist to post-communist states with democratic governments. These are two countries where the society was not given the opportunity to properly condemn the crimes of the Soviet government and reflect on the theme of political repressions of the past. And now we can observe the consequences, including the unanalyzed past and the unformed collective memory that Lenin and Stalin were totalitarians, who personally participated in the repression of society, that the Soviet Union was not about respect for human rights and etc. This should not be the case for the future of Belarus if we aim to have a democratic country.

In addition, a truth commission could bring Belarusians national healing. The Gambian Truth, Reconciliation and Reparations Commission (TRRC) can serve as a good model for Belarus. Besides recent police brutality, the mandate of a truth commission in Belarus could cover such

issues as gender discrimination, violation of social, economic, political, and cultural rights, as well as policies directed to silence media.[124]

Speaking about amnesties I may conclude that I completely changed my view on their application within a Belarusian post-conflict society. If at first, I was absolutely sure that it is impossible to refer to this alternative measure while dealing with the atrocities of the past in Belarus – too many victims and repression has such a violent nature, now I am a sincere supporter of such a method. The practice we analyzed in Chapter 2 showed that amnesties if they are not "blanket", could shockingly help conflict or post-conflict societies to heal. Of course, when applying these measures, the society or new government must be careful. I would like to reiterate the paradox that certain legal scholars believe that sometimes amnesties can also be granted to those who allegedly committed international crimes such as genocide, crimes against humanity, and war crimes. Such an opinion runs counter to the opinion of the international community, including the views of the UN and the ICC. However, this practice exists. We discussed this earlier in the work.

According to the Report, some of the crimes committed by the Lukashenka regime correspond to crimes against humanity. I believe that the question of whether to grant amnesty to those involved in the commission of a named category of crimes should be publicly decided by the affected people. Belarus, as well as in the case of implementing other alternative measures, should pay attention to the practice of other countries. South Africa can be a good example. It is worth familiarizing yourself with the Belfast Guidelines on Amnesty and Accountability[125] and the experience of countries whose governments used amnesties as a shield for supporters of the previous government, organizing so-called blanket amnesties.

4.3. Reforming of the executive branch of power. Militia

I would like to separate out a bit the police and the security apparatus, since members of this state structure are, in my opinion, the most visible representatives of the repressive vehicle. Due to the simple fact that it is the law enforcement officers who, during the time period in consideration by me, detained, beat, raped, kidnapped, and murdered protesters. In the second place, in a peculiar and made-up hierarchy, I would put representatives of the judiciary. They also carry out political repression quite publicly. Employees of both of these systems publicly tarnish their reputations by leaving their names and signatures under every politically motivated case. Successful transitions

[124] Emtseva, J. Transitional Justice – A Bridge to Democracy in Belarus (17.08.2020) – In association with the International Commission of Jurists. http://opiniojuris.org/2020/08/17/transitional-justice-a-bridge-to-democracy-in-belarus/ (23.03.2023)

[125] The Belfast Guidelines on Amnesty and Accountability, Transitional Justice Institute. – University of Ulster, 2013

are contingent on legitimacy, which is undoubtedly the largest hurdle for post-communist societies in transition from an authoritarian to democratic system of government to overcome.[126] I see the same obstacles here in Belarusian case because, like it was mentioned before, nowadays, the state exists in legal nihilism and experiences “egal default. Neither judiciary, nor the police follow the rule of law.

At the same time, the police can be the most vulnerable state entity that is the most likely to be blamed by the public for violation of human rights, and the police are vulnerable in a sense that the public can easily interpret their actions […] as of police being used as the hands of the repressive government.[127]

Reforming process of the police system should be conducted mainly with the help of lustration and partly with the granting amnesties. There is an opinion that these countries [former communists] do not have the luxury of creating police forces from a blank sheet of paper, so the transformation process is a very important issue. Scholars and practitioners need to examine whether these countries can create a force that is embedded in democratic principles.[128] And for me, this is clearly the case of Belarusian post-conflict society in the sense that here we can easily make an analogy. I would like to clarify that here by police I mean not only police officers or militia, since at the moment there is militia in Belarus, but also officers of all other law enforcement agencies, as well as all military structures, some units of the army, who were involved in the violent suppression of protests in 2020-2021, fulfilling the will of the regime to hold power in the country. The force apparatus in Belarus is very numerous and virtually inseparable from the regime. To be able to work in such state structures one must be absolutely loyal to the system. If it is found in the course of political repressions that any of the officers support the opposition in any way or even express his disagreement with the current government even in private, the regime will choose the severest punishment. Only people who are reliable for the regime can work in the system. Therefore, it is safe to say that the majority of the security apparatus must go through lustration or the Truth Commissions, some of them, through trials. The apparatus must be reformed in the future in order to work in a truly democratic country.

The same is true with the other branches of power in Belarus. Almost any state official, to varying degrees, must be loyal to the current regime and support the actions of the dictatorship.

[126] Uildriks, N. Police Reform and Human Rights, Opportunities and Impediments in Post-Communist Societies, Antwerpen – Oxford, 2005 pp. 7-8.
[127] *Ibid*., p. 31.
[128] *Ibid*., p. 84.

4.4. An overview of the current status of the legislature in Belarus from the Transitional Justice's perspective. International instruments that could affect the current Belarusian human rights' situation

With the exception of the amendments made by the regime in recent years to the Constitution of Belarus, which I mentioned in Chapter 1 of this thesis, the Constitution of Belarus as a whole could potentially be the law of a democratic state. The only problem is that for some reasons, and to be more specific, due to the actions of the Lukashenka regime to retain power in the country, the current Constitution is not being fully implemented. Of course, in addition to the Constitution, Belarus must get rid of all laws that limit the functioning of democratic institutions in the country, as well as laws that contradict international human rights standards and the rule of law. Some of the most striking examples of such laws were also analyzed in Chapter 1.

Here in this Chapter, I would like also to discuss the relationship of the regime with international mechanisms in the field of human rights and the possibility of them affecting the situation in Belarus. With the total crackdown on civil society and any dissident voices in Belarus, international accountability mechanisms are one of the instruments left that might change the situation in the country.[129]

The most recent self-explanatory example of the relations of dictatorship with the international institutions and international tools that exist to ensure human rights is the case with the International Covenant on Civil and Political Rights and correspondingly with the Human Rights Committee. On 8 November 2022, Belarus denounced the Optional Protocol to the International Covenant on Civil and Political Rights, thereby withdrawing from the individual complaint procedure and preventing the Human Rights Committee from receiving individual complaints, despite article 61 of the Constitution, which allows for such applications.[130]

In the context of the 2020 presidential election and its aftermath, 17 participating states of the OSCE invoked the Moscow Mechanism – a tool aimed at addressing human rights concerns. Under the mechanism, an expert mission was tasked with establishing facts and providing advice on possible solutions to the questions raised. Although Belarus decided not to participate in the Moscow Mechanism process, the OSCE-appointed rapporteur completed his work and submitted his report in October 2020.[131] On November 4, 2021, almost a year after publication of the Moscow

[129] Andreyuk, E., Anonymous International Mechanisms for Accountability for Human-Rights Violations in Belarus. – Policy Paper, The German Marshall Fund of the United States, January 2022, p. 24.
[130] OHCHR, Report on the Situation of human rights in Belarus in the run-up to the 2020 presidential election and in its aftermath (27 February –31 March 2023), para. 61, p. 15.
[131] Andreyuk, E., Anonymous International Mechanisms for Accountability for Human-Rights Violations in Belarus. – Policy Paper, The German Marshall Fund of the United States, January 2022, p. 9.

mechanism report on Belarus, 35 OSCE participating states invoked the Vienna Mechanism in relation to Belarus.[132] All such mechanisms will or should be used by the Belarusian post-conflict society to bring criminals to justice, achieve justice and, subsequently, form a collective memory.

If we talk about what can be done with regard to holding members of the regime accountable for crimes committed by other countries of the world, then we can only talk about the mechanism of universal jurisdiction. Human rights activists are aware of cases of initiating criminal cases in Lithuania, Poland, the Czech Republic, and Germany against security forces under universal jurisdiction.[133]

Speaking about international mechanisms of influence on Lukashenka's regime, one should be aware of the existing political realities. Unfortunately, including at the beginning of the war in Ukraine, the world saw the imperfection of the UN mechanisms in maintaining peace, and international order and bringing to justice the violators of this peace. It is obvious that the jurisdiction of the International Criminal Court (hereinafter – ICC, the Court), as well as the jurisdiction of the International Court of Justice (hereinafter – ICJ, the Court), will be challenged beyond measure by the regime that holds power in Belarus at the moment. It should not be forgotten that one of the main principles of the work of ICC is the principle of complementarity, which means that the Court cannot work without voluntary cooperation with the national Belarusian courts. And the jurisdiction of the ICJ in the Belarusian case also requires a declaration on the recognition of jurisdiction by the state. Currently, Belarus has not been recognized *ipso facto* jurisdiction of the ICJ. Any procedures initiated by the UN to resolve the Belarusian issue will absolutely without a doubt be blocked by Russia with the right of veto.

Therefore, based on the remaining and existing international instruments that can, in theory, affect the situation in the country, there remain some Conventions that were previously signed and ratified by Belarus. These Conventions include the following:

- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- The Convention on Elimination of Racial Discrimination.
- The Convention on Elimination of all Forms of Discrimination against Women.
- The Chicago Convention for Civil Aviation of 1944.

[132] *Ibid.*, p. 10.

[133] Belarus: Calls for International Justice Continue. Hopes grow that diaspora may be key to pursuing criminal cases against current regime (31.08.2021). https://iwpr.net/global-voices/belarus-calls-international-justice-continue (24.04.2023)

Even though Belarus is a party to almost all core international human rights treaties, it will have to properly harmonize and domesticate them.[134]

Summing up this Chapter, I would like to note that the effect of international mechanisms and the activity of international institutions in relation to the Belarusian situation is unfortunately very limited. The situation is complicated by Russia's veto power, as well as the regime's understandable reluctance to cooperate in this area. However, the Belarusian issue must remain on the international agenda, organizations must continue to condemn the actions of the regime, albeit without significant consequences of such condemnation at the moment. The importance of the work of international organizations also lies in documentation through the collection of information, interviewing the victims of the regime, and compiling reports on the crimes of the regime in relation to its citizens.

[134] Emtseva, J. Transitional Justice – A Bridge to Democracy in Belarus (17.08.2020) – In association with the International Commission of Jurists. http://opiniojuris.org/2020/08/17/transitional-justice-a-bridge-to-democracy-in-belarus/ (30.03.2023)

SUMMARY

The issue of using alternative transitional measures, such as lustrations, Institutions of Remembrance, and Truth Commissions, or guaranteeing amnesties to criminals of the past, is quite controversial. The analysis carried out in the course of the Thesis allows us to draw several conclusions. Firstly, the conclusion that, in principle, the choice of measures for achieving justice, reconciliation, and the formation of collective memory by society is exclusively personalized. In the sense that preparing for the transition process is the task of each particular society, either still in a situation of conflict or already in the post-conflict phase. Although the international community may have its own vision of the situation in the country or region, at that time, all the processes that took place within society can be logically much more understandable to specific victims of the conflict or crisis, as well as to the new government if such changes also occurred. Here, the international community can only direct its efforts to educate the populations of countries that find themselves in similar situations. For instance, to bring to citizens the practice of other states with similar experiences in the past: to introduce them to the historical summary of the situation in the country with the prerequisites for choosing transitional justice measures, and the consequences of such a choice.

The second conclusion that can be drawn from the results of this study is the conclusion about the use of alternative measures of justice of the period. Although alternative measures may initially raise many questions and even controversies, for example, among victims of human rights violations, however, in some cases they are the best or even the only possible way to achieve justice and reconciliation in society. Here I would like to reiterate some of the advantages of alternative measures that may not be so pronounced throughout the work. Thus:

- very often in the course of implementation of selected alternative measures of transitional justice more people can see perpetrators, for instance, due to the public hearings in the course of the creation of the Truth and Reconciliation Commissions. There are many more chances that the needs of victims are going to be satisfied in that case;
- not every criminal will be held guilty or found responsible due to the trials, while the amnesty granting process will at least widen the scope of people who could hear the truth.
- even the most powerful states would not be able to prosecute each and every criminal but only the most “obvious” ones.

The last advantage of alternative measures stems from the disadvantage of transitional justice judicial measures. Even according to the results of the Nuremberg trials, many criminals were never convicted. This is due, among other things, to the fact that the crimes were incredibly

massive. The atrocities of the Nazis were so massive, and the scale of the defeat was so global, that for the daily operation of this "Nazi death machine", hundreds of thousands of people were needed to ensure its operation. In addition to the search for criminals, one of the problems in the implementation of such large-scale courts is the search for specialists capable of conducting these courts, namely judges, prosecutors, and lawyers.

Speaking about the use of alternative measures, we can move on to the third conclusion of this Master's thesis. It lies in the fact that such alternative transitional justice measures as lustration, amnesties, Truth and Reconciliation Commissions, or Institutes of National Remembrance can definitely be used in the post-conflict Belarusian society and will not harm the future of Belarus if they are used taking into account the practice of other countries, compliance with the developed rules for using, for example, amnesties, as well as an attentive attitude to the wishes and needs of the victims of the regime of the dictator Lukashenka. Recalling the currently existing international instruments for influencing the regime now, we can say that the current political situation in the country and in the region, unfortunately, will not allow effective pressure on the regime that continues to commit crimes against its people to this day. However, the work of international institutions is extremely important and may consist in documenting the facts of the commission of such crimes that will be helpful for the future process of the transition.

It should not be forgotten that one of the main characteristics of transitional justice is its victim-oriented approach. This approach highlights the fact that the will of victims should be the deciding factor in the process of choosing transitional justice measures. Even in the "extreme" cases when society is ready to grant amnesties to the perpetrators who committed international crimes (that goes against the international law standards) on the condition that these perpetrators tell the truth about the crimes they committed and the fate of the victims to their relatives, etc. As was already mentioned, transitional justice is not always about punishing. Sometimes, the aim of the reconciliation of the society can be prior. Thus, if some societies will achieve these goals in the course of granting amnesties that way, I am sure, we should let them be. Nevertheless, amnesties should not take on traits of the "blanket" amnesties or the ones that the new government use as the "shield" for its former supporters, i.e. alleged criminals.

We can also conclude that at the moment, civic society is formed in Belarus and the dictatorship is still in a weakened state. The stability of Lukashenka's dictatorship was seriously shaken by the mass protests in 2020 and became absolutely dependent on Putin's regime after the start of the war in Ukraine. It is noteworthy that Russia has remained the only major partner of Belarus in the international arena. In general, at the moment, Belarus has practically no countries left that would

support it, and, accordingly, support Lukashenka's regime. A clear example is the recent vote in the UN Council on a resolution condemning imprisonment in violation of human rights, restriction of the right to freedom of opinion and expression, as well as freedom of peaceful assembly in Belarus. Thus, only 6 countries voted against the adoption of this resolution: Bolivia, China, Cuba, Eritrea, Kazakhstan, and Venezuela.[135]

Undoubtedly, the regime realized how it could take control of the street protests. However, the process was set in motion and its stability was already lost forever. The regime saw its weakness, while the people, i.e. democratic opposition, civic society, and Lukashenka's opponents saw their strength and unity. Nevertheless, the attempts of the regime to intimidate the public with repression, sadly happening every day, fortunately, have no global impact on the future of the country. The country's transition to justice, the rule of law, and democracy is inevitable.

[135] Morning – Human Rights Council Adopts Seven Resolutions – Extends Mandates on Rights to Freedom of Peaceful Assembly and of Association, the Elimination of Discrimination against Women and Girls, and Belarus (08.07.2022). – The United Nations https://www.ungeneva.org/en/news-media/meeting-summary/2022/07/morning-human-rights-council-adopts-seven-resolutions-extends (25.04.2023)

RÉSUMÉ

Küsimus alternatiivsete üleminekumeetmete, nagu lustratsioonid, Mälestusinstituudid ja Tõekomisjonid, kasutamise või mineviku kurjategijatele amnestia tagamise osas on üsna vastuoluline. Põhimõtteliselt on õigluse saavutamise, leppimise ja kollektiivse mälu kujundamise meetmete valik ühiskonna poolt eranditult isikupärastatud. Kuigi rahvusvahelisel kogukonnal võib olla oma nägemus olukorrast riigis või regioonis, võivad loogiliselt võttes ühiskonnas toimunud protsessid olla arusaadavamad konkreetsete konflikti või kriisi ohvritele ja ka uuele valitsusele, kui selles osas on muudatus aset leidnud. Mõnel juhul võivad alternatiivsed meetmed olla parim või isegi ainus võimalik viis ühiskonnas õigluse ja leppimise saavutamiseks. Selliseid alternatiivseid üleminekuaja õigusemõistmise meetmeid, nagu lustratsioon, amnestiad, Tõe-ja Lepituskomisjonid või rahvusliku mälu instituudid, saab kindlasti kasutada konfliktijärgses Valgevene ühiskonnas ja need ei kahjusta Valgevene tulevikku, kui neid kasutatakse võttes arvesse teiste riikide praktikat, vastavust väljatöötatud reeglitega, näiteks amnestiate kasutamiseks, samuti pöörates tähelepanu diktaator Lukašenka režiimi ohvrite soovidele ja vajadustele. Kahjuks ei võimalda olemasolevad rahvusvahelised režiimi mõjutamise vahendid praegu riigis ja regioonis valitseva poliitilise olukorra tõttu režiimi, mis jätkab tänaseni oma rahva vastu kuritegusid, tõhusalt survestada. Rahvusvaheliste institutsioonide töö on aga siinkohal märkimisväärne ja võib seisneda selliste kuritegude toimepanemise faktide dokumenteerimises. See on omakorda abiks edaspidisel üleminekuprotsessil. Ohvrikeskne lähenemine tõstab esile tõsiasja, et ohvrite tahe peaks jääma otsustavaks teguriks üleminekuaja õigusemõistmise meetmete valimisel. See tähendab, et nimetatud lähenemist tuleks järgida ka nn äärmuslikel juhtudel, näiteks kui ühiskond soovib anda armu rahvusvaheliste kuritegude toime pannud kurjategijatele. Sellegipoolest ei tohiks amnestiad omandada nn "üldamnestiate" tunnuseid ega ka omadusi, mida uus valitsus oma endiste toetajate, st väidetavate kurjategijate "kilbina" kasutada saaks. Lõputöö vajalikkuse määrab asjaolu, et Valgevene üleminek õiglusele, õigusriigile ja demokraatiale on vältimatu ning konfliktijärgne ühiskond peaks selleks valmis olema.

REFERENCE LIST

LIST OF LITERATURE

Literature

1. Andreyuk, E., Anonymous International Mechanisms for Accountability for Human-Rights Violations in Belarus. – Policy Paper, The German Marshall Fund of the United States, January 2022
2. Blažek, P. Transitions to Democracy and the 'Lustration'. Screening Process, Transformation: The Czech Experience. – People in Need with the support of the Ministry of Foreign Affairs of the Czech Republic, 2006, 173-180
3. Brzezinski, M.F. Constitutionalism and Post-Communist Polish Politics. – Loy. L.A. Int'l & Comp. L. Rev, 1998/20, 433-453
4. Buyse A., Hamilton M. Rights and victims, martyrs and memories: the European Court of Human Rights and political transition in Northern Ireland [Transitional Jurisprudence and the ECHR. Justice, Politics and Rights]. Cambridge University Press 2011
5. Bílková, V. Report: "Lustration: the Experience of Czechoslovakia / The Czech Republic" (19.11.2015) – European Commission for Democracy through Law (Venice Commission) in cooperation with the Institute of International Relations Prague – IIR. https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI(2015)028-e (03.04.2023)
6. Epik, A. No Functional Immunity for Crimes under International Law before Foreign Domestic Courts. – Journal of International Criminal Justice 19 (2021), 1263-1281
7. Emtseva, J. Transitional Justice – A Bridge to Democracy in Belarus (17.08.2020) – In association with the International Commission of Jurists. http://opiniojuris.org/2020/08/17/transitional-justice-a-bridge-to-democracy-in-belarus/ (30.03.2023)
8. González, E., Varney, H. Truth Seeking: Elements of Creating an Effective Truth Commission. – Amnesty Commission of the Ministry of Justice of Brazil; International Center for Transitional Justice (2013) https://www.ictj.org/sites/default/files/ICTJ-Book-Truth-Seeking-Chapter2-2013-English.pdf (04.04.2023)
9. Grewal, K. The Role of Victims in Transitional Justice: Agency, Cooption and Exclusion. – International Journal of Transitional Justice, 2019/00, 1-12
10. Jamar, A. Victims' Inclusion and Transitional Justice. – Global Justice Academy, 2018

11. Larin, A. Lustration as a reason for restriction of electoral rights. – Theory and Practice of Social Development, 2014, No. 4, 246-249
12. Lawther, C. "Let Me Tell You": Transitional Justice, Victimhood and Dealing with a Contested Past (23.11.2020) – Social & Legal Studies, 2020/30 No. 6. https://journals.sagepub.com/doi/10.1177/0964663920974072 (15.04.2023)
13. Luhamaa, K., Ristikivi, M. Rebuilding the Court System of Estonia after the Communist Regime. – Juridica International, 2022/31, 81-89
14. Majzub, D. Peace or Justice? Amnesties and the International Criminal Court. – Melbourne Journal of International Law, 2002/3
15. McEvoy, K., McConnachie, K. Victims and Transitional Justice: Voice, Agency and Blame. – Social & Legal Studies, 22/4, 489–513
16. Misztal, B. A. How not to deal with the past: lustration. – European Journal of Sociology, 1999/40, No. 1, 31-55
17. Minow, M. Do Alternative Justice Mechanisms Deserve Recognition in International Criminal Law?: Truth Commissions, Amnesties, and Complementarity at the International Criminal Court. – Harvard International Law Journal, 2019/60, No. 1
18. Remón, F. Q. Transitional Justice, Victims and Human Rights in the light of International Law and the Inter-American System of Human Rights. – The Age of Human Rights Journal, Universidad de Jaén, 2021, https://revistaselectronicas.ujaen.es/index.php/TAHRJ/article/view/6440/6242#toc (12.04.2023)
19. Robins, S. Failing Victims? The Limits of Transitional Justice in Addressing the Needs of Victims of Violations. – Human Rights and International Legal Discourse, 2017/11, No. 1, 41-58
20. Robinson, J. et al. Democracy causes economic development? (May 2014) https://cepr.org/voxeu/columns/democracy-causes-economic-development (20.04.2023)
21. Roche, D. Truth Commissions Amnesties and the International Criminal Court. – Brit J. Criminol, 2005
22. Sottas, E. Transitional justice and sanctions. – International Review of the Red Cross, 2008/90, No. 870, 371-398
23. Sweeney, J.A. Transitional Criminal Justice at the ECtHR: Implications for the Universality of Human Rights, – Brill, 187-218
24. Uildriks, N. Police Reform and Human Rights, Opportunities and Impediments in Post-Communist Societies, Antwerpen – Oxford, 2005

UN Publications

25. About transitional justice and human rights. OHCHR and transitional justice https://www.ohchr.org/en/transitional-justice/about-transitional-justice-and-human-rights (15.04.2023)
26. Belarus report finds systematic, widespread and gross human rights violations (22.03.2023). – The United Nations OHCHR https://www.ohchr.org/en/statements-and-speeches/2023/03/belarus-report-finds-systematic-widespread-and-gross-human-rights (19.04.2023)
27. Belarus: UN expert hails release of political opponents, points to further steps ahead of presidential polls. Human rights in Belarus (26.08.2015). – The United Nations OHCHR https://www.ohchr.org/en/press-releases/2015/08/belarus-un-expert-hails-release-political-opponents-points-further-steps (19.04.2023)
28. GA Res. 66/749, 2012
29. Mandates of the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the situation of human rights in Belarus (14.12.2021) https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=26892 (19.04.2023)
30. Morning – Human Rights Council Adopts Seven Resolutions – Extends Mandates on Rights to Freedom of Peaceful Assembly and of Association, the Elimination of Discrimination against Women and Girls, and Belarus (08.07.2022). – The United Nations https://www.ungeneva.org/en/news-media/meeting-summary/2022/07/morning-human-rights-council-adopts-seven-resolutions-extends (25.04.2023)
31. OHCHR, Report on the Situation of human rights in Belarus in the run-up to the 2020 presidential election and in its aftermath (27 February –31 March 2023), para. 25, pp. 6-7.
32. International Covenant on Civil and Political Rights, United Nations General Assembly, 1976 https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights (04.03.2023)
33. Rule-of-Law Tools for Post-Conflict States. Vetting: an operational framework. – Office of the United Nations High Commissioner for Human Rights, HR/PUB/06/5, 2006
34. UN doc. S/1999/836, 1999
35. UN doc. S/2004/616, 2004

Other Sources

36. Alexander Lukashenko https://en.wikipedia.org/wiki/Alexander_Lukashenko (17.02.2023)

37. Belarus: Calls for International Justice Continue. Hopes grow that diaspora may be key to pursuing criminal cases against current regime (31.08.2021). https://iwpr.net/global-voices/belarus-calls-international-justice-continue (24.04.2023)
38. Belarus: The Last Dictatorship in Europe – European Parliament https://www.europarl.europa.eu/RegData/presse/pr_info/2006/EN/03A-DV-PRESSE_IPR(2006)03-31(06898)_EN.pdf (20.04.2023)
39. Belarus vote: Lukashenko re-elected president by landslide (12.10.2015) https://www.bbc.com/news/world-europe-34499387 (27.02.2023)
40. Belarus vote 'neither free nor fair' (10.09.2001) http://news.bbc.co.uk/2/hi/europe/1534621.stm (26.04.2023)
41. Dr. Benedek, W. OSCE Rapporteur's Report under the Moscow Mechanism on Alleged Human Rights Violations related to the Presidential Elections of 9 August 2020 in Belarus (29.10.2020) – Organization for Security and Co-operation in Europe Office for Democratic Institutions and Human Rights https://www.osce.org/files/f/documents/2/b/469539.pdf
42. Between Scylla and Charybdis https://en.wikipedia.org/wiki/Between_Scylla_and_Charybdis (05.04.2023)
43. Chmielewski, M. Lustration Systems in Poland and the Czech Republic Post-1989.The aims and procedures of political cleansing. – https://theses.cz/id/6655ba/104185-205175600.pdf, Thesis. Poland, 2010
44. Human Rights Situation in Belarus in 2020 – Human Rights Center "Viasna" Analytical review
45. Human Rights Situation in Belarus in 2022 – Human Rights Center "Viasna" Annual Review
46. Kozłowski, T. The long route to Poland's Round Table Agreement. 33rd Anniversary of the Round Table in Poland https://polishhistory.pl/the-long-route-to-polands-round-table-agreement/ (02.04.2023)
47. List of political prisoners – Human Rights Center "Viasna" website https://prisoners.spring96.org/en (24.04.2023)
48. Lukashenka's press secretary says 'dictatorship' is Belarusian brand (10.03.2019) https://euroradio.fm/en/lukashenkas-press-secretary-says-dictatorship-belarusian-brand (21.02.2023)
49. Lukashenka – to prosecutors: You know, sometimes there is no time for laws "Lukahenka – prokuroram: Znaete, inogda ne do zakonov" (10.09.2020) https://nashaniva.com/?c=ar&i=258800&lang=ru (19.04.2023)

50. Parfitt, T. Belarus protests: more than 600 charged and opposition leaders in jail (21.12.2010) https://www.theguardian.com/world/2010/dec/21/600-charged-belarus-protests-lukashenko (27.02.2023)
51. Paulson, S. "I Am Because We Are": The African Philosophy of Ubuntu (30.09.2020) https://www.ttbook.org/interview/i-am-because-we-are-african-philosophy-ubuntu (05.04.2023)
52. Picks of the week (28.02.2020) https://spring96.org/en/news/96110 (28.02.2023)
53. Report: The Crisis of the Legal Profession in Belarus: How to Return the Right to Defense. – Center for Constitutionalism and Human Rights of the European Humanities University in partnership with the "Right to Defense" project (defenders.by), https://drive.google.com/file/d/1cGbBv2r6bt5rCg7fOLAmGFoQLUBQQBvx/view (19.04.2023)
54. Repressions against journalists in Belarus 2023, list of colleagues in prison (10.06.2022). – BAJ Press Service. https://baj.by/en/analytics/repressions-against-journalists-belarus-2023-list-colleagues-prison (19.04.2023)
55. Roth, A. Belarus partisans say they blew up Russian plane near Minsk (27.02.2023) https://www.theguardian.com/world/2023/feb/27/belarus-anti-war-partisans-russian-plane-drones-machulishchy-damage-claim (03.03.2023)
56. "She's all crap!": how cows ate Lukashenka's officials "Ona zhe vsya obosrannaya!: kak korovy s'jeli chinovnikov Lukashenko" (26.03.2019) https://euroradio.fm/ru/lukashenko-vozmutilsya-abosrannymi-korovami-zachem-vy-menya-syuda-privezli (17.02.2023)
57. "Thank God we have a dictatorship": Lukashenko criticizes Western democracy (29.04.2022) https://westobserver.com/news/europe/thank-god-we-have-a-dictatorship-lukashenko-criticizes-western-democracy/ (21.02.2023)
58. The Belfast Guidelines on Amnesty and Accountability, Transitional Justice Institute. – University of Ulster, 2013
59. The concept of law reinstatement and national reconciliation – The Coordination Council https://rada.vision/en/the-concept (23.04.2023)
60. The Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union (7.6.2016) – Official Journal of the European Union, C201/1 https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12016ME/TXT&from=EN (20.04.2023)
61. Viasna Case, https://freeviasna.org/en (19.04.2023)

62. Wesolowsky, T. Elections In Belarus: How Lukashenka Won And Won And Won And Won And Won (05.08.2020) https://www.rferl.org/a/elections-in-belarus-how-lukashenka-won-and-won-and-won-and-won-and-won-/30767860.html (17.02.2023)
63. Wesolowsky, T. "Who Will Do It, If We Don't?" Belarusians Step Up As President Plays Down COVID-19 Threat (05.05.2020) https://www.rferl.org/a/belarusians-colunteer-coronavirus-lukashenka-plays-down-covid-19-threat/30594557.html (01.03.2023)
64. Who believe in independent statehood of Belarus? – Independent Institute of Socio-Economic and Political Studies http://www.iiseps.org/?p=1703&lang=en (17.02.2023)

LIST OF LEGAL ACTS

65. Code of the Republic of Belarus on Administrative offenses – "Kodeks Respubliki Belarus' ob Administrativnyh narusheniyah ot 06.01.2021 No. 91-З" https://pravo.by/document/?guid=12551&p0=HK2100091&p1=1 (04.03.2023)
66. Criminal Code of the Republic of Belarus – "Ugolovny Kodeks Respubliki Belarus' ot 09.07.1999 No. 275-З" https://pravo.by/document/?guid=3871&p0=hk9900275 (04.03.2023)
67. The Constitution of the Republic of Belarus https://president.gov.by/ru/gosudarstvo/constitution (20.04.2023)
68. The Constitution of the Russian Federation http://www.constitution.ru/10003000/10003000-3.htm (20.04.2023)
69. On Mass Events – The Law of the Republic of Belarus, "Zakon o Massovyh Meropriyatiyah ot 30.12.1997 No. 114-З", https://pravo.by/document/?guid=3871&p0=h19700114 (14.03.2023)
70. On the President of the Republic of Belarus – The Law of the Republic of Belarus, "Zakon Respubliki Belarus' ot 21.02.1995 No. 3602-XII", https://pravo.by/document/?guid=3871&p0=V19503602 (09.03.2023)

LIST OF JUDICIAL PRACTICE

72. ECtHR 55480/00, 59330/00, Sidabras and Džiautas v. Lithuania
73. ECtHR 22588/08, Sõro v. Estonia
74. ECtHR 57986/00, Turek v. Slovakia