

# Republic of Belarus

**NGO report on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by the Republic of Belarus,**

**in relation to the review of Belarus at the 47<sup>th</sup> session of the United Nations Committee against Torture**

The report was prepared by the following Belarusian independent non-governmental organisations:

- Committee Solidarity
- Legal Initiative
- Belarusian Helsinki Committee
- Legal Transformation Centre
- Platform
- Human Rights Centre Viasna

In partnership with the Penal Reform international, and in cooperation with and the support of the Belarusian Human Rights House and the Human Rights House Foundation

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**PART I**  
**REPLIES TO THE LIST OF ISSUES**  
**ADOPTED BY THE COMMITTEE AGAINST TORTURE AT ITS 46<sup>TH</sup> SESSION**

**Article 1**

*1. According to paragraphs 61 and 62 of the State party's periodic report, the Convention is directly applicable in Belarus in accordance with article 20 of Act on the Laws and Regulations. Please provide examples of direct application of the definition of torture contained in article 1 of the Convention by domestic courts.*

Belarusian legislation does not contain the definition of torture.

There are no examples of direct application of the definition of torture contained in article 1 of the Convention by domestic courts. There are no precedents of direct application of international law provisions in the Republic of Belarus.

*2. Please provide the exact legal definition of torture in domestic law and clarify the State party's position with regard to its understanding of acts of psychological torture. In light of the recommendation made in the course of the Universal Periodic Review (A/HRC/15/16, paragraph 98.21), does this definition include all the elements contained in article 1 of the Convention?*

Inadmissibility of torture and other types of cruel, inhuman or degrading treatment or punishment is guaranteed by the Constitution (article 25, para. 3 of the Constitution).

However, none of Belarusian laws or regulations contains the definition of torture, as determined in the article 1 of the Convention. Republic of Belarus' legislation does not define acts of cruel, inhuman or degrading treatment or punishment, directly linked to acts of torture and differentiated by the level of cruelty. The Criminal Code contains definitions of "torment" and "violence" and provides for measures of criminal liability (Article 154 *Torment/Istiazanie*) or increased criminal liability (Article 394, part 2 and Article 426, part 3). The concept of "torment" as defined by Article 154, part 1, in the context of Article 149, part 1, contains criteria that, if differentiated by the degree of cruelty, might be attributed to any of the three elements of cruel treatment: torture, inhuman or degrading treatment. It should be noted, however, that *Torment* and *Violence* articles do not mention crimes committed by a public official and sanctions provided for by these articles do not correspond to the gravity of the crimes in case they constitute torture or inhuman treatment.

**Article 2**

*3. Does the State party's legislation specifically provide that no exceptional circumstances whatsoever may be invoked as a justification for torture and that an order from a superior officer or a public authority may not be invoked as a justification for torture? Please provide examples of the application of these principles by courts.*

Republic of Belarus legislation does not contain such specific provisions.

*4. Please provide information on measures taken by the State party to ensure that all persons deprived of their liberty are afforded, in practice, fundamental legal safeguards, as elaborated in paragraphs 13 and 14 of General Comment No. 2 (CAT/C/GC/2), from the very outset of detention.*

*a) According to information before the Committee, those who have been charged under article 293 of the Criminal Code have had extremely limited access to their lawyers and some lawyers reported that they were being obstructed from seeing their clients or they were allowed to see their clients only in the presence of officers from the State Security Committee (KGB). In particular, following the arrests on the day of the presidential election, 19 December 2010, in many cases, detainees who requested access to pro bono lawyers or private lawyers were reportedly not given such access for several days and those who were allowed to contact lawyers were nevertheless denied the ability to speak with them privately. Amnesty International has reported the case of a female detainee beaten by guards after having requested a lawyer. Please comment on these allegations and explain the measures that have been put in place to guarantee that all persons detained are permitted to contact an independent lawyer and to communicate with their lawyers in private within a short period of time after their apprehension.*

The first ten days after the detention and before the charges were filed some of the detained who were kept in KGB pre-trial prison under the article 293 of the Criminal Code were deprived of the right to meet their lawyers (Nekliaev V, Otroshenkov A, Radina N.). After being charged, they were denied the right to legal assistance for another 2 months' period.

The presence of lawyers was subsequently accepted, but meetings could not take place in private. All the meetings were held in the presence of KGB investigators who prohibited lawyers to communicate with their clients in whisper or to write notes to each other.

Despite his lawyer's daily attempts, Alexander Otroshenkov saw him only during the arraignment at the end of December 2010, and two month later when acquainted with the materials of the criminal case. During these two months, KGB investigator continued to hold conversations with Alexander Otroshenkov without his lawyer's presence.

The lawyers of the detained often filed complaints when confronted to refusals to meet their client; the followings facts were later claimed in court.

*b) According to information before the Committee, a significant number of the individuals detained in connection with the December 19, 2010 protest were not permitted to contact their family members. In some cases, families did not have information about the fate and whereabouts of their detained relatives for several days. Some detainees were reportedly denied visits from family members for one month or longer. Please comment on these allegations and explain the measures that have been put in place to guarantee that all persons detained are permitted to contact members of their families within a short period of time after their apprehension.*

During the first month of arrest the prisoners' relatives did not receive information about the state of health of detainees kept in KGB pre-trial prisons, included health state of detainees severely beaten by the Militia during detention (Sannikov A. and Nekliaev V.).

Nikolai Statkevich went on hunger strike in KGB pre-trial prison; the attempts of his relatives to get information about his health were unsuccessful.

In some cases, transfer of detainees is done without notifying the families. For example, within the same week, Alexei Mikhalevich was transferred from KGB pre-trial prison to pre-trial prison

№1 and back without notifying the relatives. On the other hand, KB police often misled families by accepting parcels sent to the former detainee pre-trial prison long after his/her transfer.

Furthermore, within the first month of arrest, relatives of KGB pre-trial detainees did not receive letters from each other. They did not receive any kind of information. Some of the prisoners declared to have written under the guidance of the head of the pre-trial prison Vadim Zaitzev. In several cases detainees were forced to rewrite their letters, which had not satisfied the administration of the facility. Relatives could not get a visit until the end of investigation and the transfer of cases to courts.

*c) According to information before the Committee, several individuals who were beaten by the authorities in connection with the December 19, 2010 protest, either in the course of their arrest or thereafter, were subsequently denied adequate medical attention and the right to be examined by an independent doctor. In particular, the lawyers representing Andrei Sannikau (Sannikov) and Uladzimir Nyaklyayeu (Neklyayev) expressed serious concern about their clients' health on December 20 and December 29, respectively. Sannikau's lawyer reported that his client was unable to stand as a result of his injuries and could barely move. Nyaklyayeu's lawyer reported that he was so ill he was incapable of speaking. Please inform the Committee whether these allegations have been investigated and what measures have been taken to ensure that all detainees are permitted to request and receive an examination by an independent doctor within a short period of time after their apprehension and to ensure that all persons in custody receive necessary medical care. Please also indicate the measures in place to prevent fabrication of medical reports, such as permitting detainees to read such reports.*

During the peaceful action in Nezavisimosti Square in Minsk on December 19, 2010 candidate for presidency Andrei Sannikov was severely beaten by militia and received serious head and leg injuries. Sannikov was detained right after the meeting and kept in a KGB pre-trial prison. He could not walk on his own, he suffered from severe headaches, but in spite of this he was not hospitalised and examined by doctors. Additionally, he was kept in a overcrowded cell and forced to sleep on the floor. His lawyer asked to change the measure of restraint but the Central Court of Minsk dismissed his appeal.

On December 19, 2010 at about 19h30 candidate for presidency Vladimir Nekliaev was beaten by militia in Collectornaia street and suffered from a serious head trauma. He was soon admitted to Minsk City Emergency Hospital, but a few hours later on December 20, 2010 at about 1am and while still in observation, agents of the Special Forces took him away and placed him in a KGB pre-trial prison. There was no information about Nekliaev's health condition during the first ten days of his detention and no visit granted to his lawyer. On December 30 V. Nekliaev suffered an hypertensive crisis. He was not hospitalised. According to information provided by Nekliaev's lawyer Sidorenko T. his client's speech was slow and he had an unusually very high blood pressure 220/160. Nekliaev's lawyer wrote an appeal requesting Nekliaev's hospitalization and the change of the restraint measure, but it was dismissed January 6, by Central Court of Minsk.

December 19, 2010 during the dispersal of the peaceful assembly in Minsk in Nezavisimosti Square Natalia Radina, journalist of independent media, was beaten and detained by militia. After she had received head injury her ears were bleeding for 10 days. KGB doctor acclimatisation diagnosis avoids her from receiving proper medical treatment.

Prison poor conditions aggravated state of health of the detainees. In their first months of detentions, Vladimir Kobets and Natalia Radina had bronchitis as a result of the low cells' temperature. Detainee Dimitri Bulanov suffered from a rheumatoid attack and an infective endocarditic.

It took his relatives over a month to convince authorities he needed treatment. Hospitalisation came only after his legs failed and forced him to seek help to walk.

Detainees were not allowed to choose their doctors. In practice, proper medical aid is not rendered in pre-trial prisons and hospitalisation in very rare and only approved in critical cases.

*d) Please indicate whether all detained persons are guaranteed the ability to challenge effectively and expeditiously the lawfulness of their detention through habeas corpus. Please also indicate the number of claims for habeas corpus filed during the reporting period and the number of those that were successful. Please provide information on any other mechanisms in place to independently monitor the legality of pre-trial detention and the conditions of such detention.*

The order of appeal depends on the legal status of the detained person.

### **Detained on criminal charge**

According to article 143, part 1 of the Criminal Procedural Code complaints of persons kept in custody, against detention conditions, are filed to court through the administration of the pre-trial detention facility.

Article 144, part 3 of the Criminal Procedural Code says, that in necessary cases for the participation in the processing of the complaint, the judge has the right to summon the detained person kept in custody and in home arrest.

### **Detained on administrative charges**

According to article 7.2, part 3 of the Procedural Executive Code of Administrative Offences, administrative detention of a person who is a suspect in an administrative case, can be appealed to prosecutor or to the district court.

Because there is no legally defined procedure of appealing against administrative detention in the Procedural Executive Code of Administrative Offences, detainees on administrative charges are not brought before a judge for the procedure of appeal consideration. There is no practice of appealing against administrative detentions.

Detainees on criminal charges are kept in detention centres and pre-trial prisons. Prison conditions in detention centres and pre-trial prisons do not correspond with Standard Minimum Rules of Treatment of Prisoners.

According to article 13 of the Law On the Order and Conditions of Keeping Detainees in Custody:

- Cells should be equipped with detached toilet and sink, place for food intake, means of radio broadcasting and ventilation equipment. If it is possible cells should be provided with refrigerators and TV-sets;
- The norm of sanitary space in the cell for one person is set in amount not less than 2,5 square meters. For pregnant women and women with children, it should not be less than 4 square meters.
- Detainees are provided with individual sleeping berth, place for keeping the means of personal hygiene, writing utensils, documents and records, relating to criminal case, clothes and food. Detainees should be given bedding, dishes and tableware.

In practice the majority of cells in pre-trial prisons and detention centres are overcrowded, sometimes there are 2 or 3 times more people than should be, and people have to sleep in turns. Very often there is no ventilation and proper natural illumination, there is no detached toilet and sink. Such conditions do not correspond with the demands of MSR.

*5. Please elaborate on the mandatory registration of a person at the moment of apprehension. Is a central register maintained? What are the measures taken if the rules and procedures are not followed? Has any official been disciplined or sanctioned for failure to register detainees? Are there any exceptions to the mandatory registration?*

In compliance with article 107, part 1 of the Criminal Procedures Code apprehension consists in the actual detention of a person, transporting him/her to a criminal prosecution authority and briefly keeping the person in custody at places and conditions defined by the law.

Article 110 of the Criminal Procedures Code provides for the apprehension procedure:

1. Immediately after a detainee is delivered to a criminal prosecution authority a detaining official writes a report stating the grounds, the place and time of the apprehension (with hours and minutes indicated), the results of a personal search, as well the time at which the report was written.
2. Within three hours after a detainee is delivered to a criminal prosecution authority, an investigating authority, an investigating officer or a public prosecutor is to decide upon the apprehension of the detainee, on which a pertinent order is issued that serves as legal grounds for briefly keeping the detainee in custody at places and conditions defined by the law; or decide upon releasing the detainee. The detainee is informed of the order.
3. The investigating authority or the investigating officer should inform the office of the public prosecutor about the accomplished apprehension within 24 hours after the order has been issued.

Temporary detention facilities and pre-trial facilities keep their own in-house records of incoming detainees. However, law does not provide for maintaining of registers of incoming detainees. As a rule, at pre-trial facilities and temporary detention facilities all detainees are put on the registers. There is no centralized register.

In compliance with Article 171 of the Internal Regulations for Pre-Trial Facilities of the Penal System of the Ministry of Internal Affairs, individuals kept in custody after being transferred to pre-trial facilities undergo a mandatory medical examination at the medical unit of the pre-trial facility, as well as radio photographic and laboratory examination, within three days after their arrival. Individuals who have not passed medical examination are kept apart from other inmates. Results of the medical examination are registered in each inmate's health record.

In compliance with Article 113 of the Internal Regulations for Temporary Detention Facilities of the Ministry of Internal Affairs, individuals kept in a temporary detention facility are interrogated by the officer on duty about their health conditions in order to identify those in need of urgent (emergency) medical aid, and are also checked for pediculosis. The results of the interrogation, any complaints related to health conditions and the nature of medical aid provided are registered by the officer on duty, in compliance with the Appendix 9.

In compliance with Article 125 of the Internal Regulations for Pre-Trial Facilities of the State Security Bodies, inmates undergo mandatory medical examination within three days after their

arrival to the pre-trial facility. Individuals who have not passed medical examination are kept apart from other inmates. Results of the medical examination are registered in the inmate's health record.

All individuals delivered to pre-trial facilities and temporary detention facilities should thus undergo primary medical examination. However, there is evidence of improper registration, improper medical assistance and absence of primary medical examination in the temporary detention centre in Minsk where were held December 19, detainees. Detainees were put into cells with knowingly unacceptable conditions. Floor space was insufficient and violated sanitary norms. The detainees were 3 to 4 squeezed in 2 square meters' cells and they were held there for 3 or 4 hours awaiting registration. In addition, temperatures in the cells, not exceeding the 10 degrees Celsius, resulted painfully low.

Officers of temporary detention facilities and pre-trial facilities are not held accountable. Complaints submitted to courts with regards to inadequate conditions of detention are not accepted. Therefore, the current situation rejects the possibility to hold officers of temporary detention facilities and pre-trial facilities accountable for cruel treatment and to seek compensation for the damage inflicted by cruel or inhuman conditions in temporary detention facilities and pre-trial facilities.

*6. Please comment on reports that bar associations, though independent by law, are in practice subordinate to the Ministry of Justice. Please comment on reports at the request of the Justice Ministry the following lawyers were subsequently expelled from bar associations and effectively prohibited from practicing law as a result of their representation of individuals detained in connection with the rally on December 19, 2010, and inform the Committee whether an independent entity has reviewed their expulsion from the bar, and if so, the results of that review:*

The Bar Association is an independent legal institution with the aim, as defined by the Constitution art 62 and by the Law "On the Bar", to implement professional human rights activities<sup>1</sup>.

The Bar Association is a non-profit organisation that exists solely through contributions from the funds received from individuals and legal entities for the provision of legal aid<sup>2</sup>. The Law On the Bar (Article 13) established the closed list of bar associations. Attorneys at law cannot create their own bar association other than those mentioned above.

### **Creating a Bar Association**

Bar associations are formed at the request of the groups of founders (i.e., attorneys at law) and act in accordance with the by-laws adopted by the general assembly of the members of the pertinent bar association. The supreme body of the bar association is the general assembly of the members; its executive body is the presidium. Legal regulation of bar associations' activities may, in principle, be administered by any legal or regulatory act of the competent government authority, which creates a potential legal uncertainty (volatility). The Ministry of Justice performs the state registration of bar associations, changes and amendments to their by-laws<sup>3</sup>. Both the Law On the Bar and the Regulations on State Registration of bar associations determine an open list of grounds for registration refusal, since paragraph 8 of the above Regulations, as well as Article 15-3 of the Law On the Bar provide for "the presence of other grounds stipulated by

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1 Article 1, the Law "On the Bar"

2 Article 13-2, the Law "On the Bar"

3 Article 15.1, the Law "On the Bar"; paragraph 2 of Regulations on State Registration of bar associations.



legislative acts.” Decision to refuse the state registration of a bar association, approve changes and amendments to their by-laws, may be appealed in the court in the manner prescribed by law.

### **The functioning of the bar associations**

The internal organization and operation of bar associations, their structure, the status of governing bodies and other issues related to activities of bar associations, are defined by their by-laws, unless otherwise stipulated by legislative acts.<sup>4</sup>

The Ministry of Justice in particular, has the right to: 1) adopt in accordance with the law regulatory legal acts that regulate activities of the bar, and 2) suspend unlawful decisions of the governing bodies of bar associations and make proposals to those bodies to cancel these decisions 3) monitor compliance with the law by all members of the Bar, and 4) organize within its authority inspections of bar associations' activities.

### **Independence of lawyers**

*De jure* the Law On the Bar fully guarantees independence of a lawyer.

Lawyers are independent in their work and they only have to obey the law. Interference with professional activities of a lawyer, demanding disclosure of any information that constitutes the subject of lawyers' secrecy, as well as demanding such information from officers and technical staff of lawyers' self-government bodies and lawyers' associations<sup>5</sup> is banned. While performing their professional duties a lawyer enjoys the freedom of speech in oral and written forms within the limits determined by tasks of the Bar and the provisions of the current Law. Lawyer's statements affecting honour and dignity of a party, their representative, a prosecutor or a defence counsel, a witness, a victim, an expert, an interpreter, shall not be prosecuted in case they do not violate the Rules of the professional ethics of the lawyer<sup>6</sup>.

On the other hand, over any lawyer there is “the sword of Damocles” in the form of the Rules of the professional ethics of the lawyer, adopted by Ministry of Justice, and also possible sanctions as provided for by Chapter 5 “Disciplinary liability “ of the Law On the Bar.

According to Article 19 of the Law On the Bar complaints against members of the Bar are considered by the Bar Qualification Commission, the National, oblast, Minsk City's and Belinurcollegia Bar associations within their competences, and the Ministry of Justice. Proposals made by the Ministry of Justice are subjected to mandatory consideration within two weeks time.<sup>7</sup> However, the Qualification Commission comprises not only of representatives of the Bar, but also those of the Supreme and Higher Economic Courts and the Prosecutor General's Office as well as the Ministry of Justice officials and is headed by the Deputy Minister of Justice. Ministry of Justice can exert influence onto regional bar associations in other ways, defined in Article 31 of the Law On the Bar:

- a. In case of violations of the law Ministry of Justice submits a proposal to the general meeting (conference), the presidium of the National Bar Association on early withdrawal of

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4 Article 13, the Law “On the Bar”

5 Article 16, the Law “On the Bar”

6 Article 17, the Law “On the Bar”

7 Article 21, the Law “On the Bar”

- the chairman of the bar association, takes other measures to correct detected violations;
- b. Submits proposals to bar associations on taking disciplinary actions against lawyers;
  - c. Organizes within its authority inspections of bar associations;
  - d. Monitors the due process of law by all members of the Bar
  - e. Adopts in accordance with the law regulatory legal acts governing activities of the Bar; and
  - f. Suspends unlawful decisions of the governing bodies of bar associations and makes proposals to these bodies to cancel these decisions. The Ministry of Justice has all the legal tools to punish any specific lawyer.

### **Measures taken by the authorities in order to strengthen the independence of bar associations in practice**

The government is reforming not only the Bar and bar associations, but also the whole legal service institution.

Regulation #114 of the Ministry of Justice, which has modified Directions on the procedure of Bar certification, added paragraph 21 to the Instructions, under which: *"In the case of obtaining information about or revealing facts of systematic and (or) gross violations by a number of lawyers of the terms and conditions established by regulatory legal acts regulating Bar activities, the Ministry of Justice may order extraordinary certification of legal advice agencies, other institutional forms of bar activities and (or) bar associations. The extraordinary certification is conducted by regional certification commissions, set up by the chief departments of justice of oblast and Minsk City executive committees, in the manner determined by the order of the Minister of Justice".*

On May 30, 2011 the Ministry of Justice issued Order #135: The Order provides for an extraordinary certification of oblast (Minsk City) bar associations from June 15, 2011 to September 15, 2011. Certification assesses lawyers' qualitative and quantitative work in a range of cases, from provision of pro bono legal aid, legal education of the public, record of disciplinary actions, and proposals to orders by the Ministry of Justice bodies to correct violations of law.

At least two lawyers who represented defendants of criminal proceedings related to the events of December 19, 2010 failed to pass certification process from the first time (Anna Bakhtina who defended Irina Khalip and Daria Lipkina, the defender of Nikita Lihovid). However, their second attempts were successful. There is every reason to believe that successful certification of these lawyers was facilitated by the reaction of human rights defenders, who have, amongst other things, sent a notice to UN Special Rapporteur on the Independence of Judges and Lawyers. Contrary the rule that has always been in place that the certification is conducted by lawyers themselves in respect to their colleagues, Ministry of Justice, taking advantage of Article 31 of the Law On the Bar, that empowers the Ministry to issue regulatory legal acts to regulate activities of the Bar, empowered itself to conduct and organize certification of lawyers at their own will and engaging Ministry of Justice officials into certification process.

*a) Pavel Sapelka, a former member of the presidium of the Minsk Bar Association, who was expelled from the bar on March 3, 2011 after he reported that his client Andrei Sannikau, a presidential candidate detained at the rally December 19, had been subjected to mistreatment in pre-trial*

*detention and after he agreed to represent Pavel Severinets, a youth leader who was also detained in connection with the rally.*

The communication by the Ministry of Justice<sup>8</sup> says that Pavel Sapelka, a Minsk City Bar Association lawyer, who defended former presidential candidate Andrei Sannikau and Pavel Severinets, campaign manager of the presidential candidate Vital Rymasheuski, according to Ministry of Justice, made incorrect statements about the Bar as an independent legal institution, questioned the validity of actions of the Ministry of Justice, as the state licensing authority, having stated that there was "pressure from the government on the activities of public lawyers."

The Ministry of Justice filed a proposal with the bar association to take disciplinary action against him. Sapelka referred to the condition his client Andrei Sannikau was in as poor: "Sannikau is severely beaten and looks 'a terrible sight'. He could hardly move." In addition, despite a written non-disclosure statement, he stated that the former presidential candidate was "absolutely innocent and suspicions against him were totally groundless, everything that happened during the mass event, we, the defence, believe to be an obvious provocation;" and that he planned to file a complaint with the office of the public prosecutor over unmotivated use of force against Sannikau during his arrest.<sup>9</sup> Pavel Sapelka also said that during the investigation his client had to stay "in conditions that are good for animals only and also be artificially isolated -- having no news about his wife, neither about his child, nor being able, eventually, to respond to election results."<sup>10</sup>

The lawyer was dismayed by the position of the Ministry of Justice and its statement of December 29, 2010 with regards to lawyers representing defendants and suspects of December 19, 2010 events. According to him, it was the first time he encountered "the phenomenon of pressure from the government on the activities of public lawyers." On March 3, 2011, the conference of the Minsk City Bar Association considered the proposal of the Ministry of Justice in respect to lawyer Pavel Sapelka. He was expelled from the bar by the decision of the presidium of the Minsk City Bar Association. In accordance with the Law On the Bar (article 19, paragraph 3) the exclusion of Pavel Sapelka from the bar means he can no longer be engaged in advocacy and work as an attorney at law.<sup>11</sup>

*b) Tatsiana Aheyeva, whose license was revoked by the Ministry of Justice on February 14, 2011.*

*c) Uladzimir Toustsik, whose license was revoked by the Ministry of Justice on February 14, 2011.*

*d) Aleh Aheyeu, attorney for the presidential candidate Ales Mikhalevich, whose license was revoked by the Ministry of Justice on February 14, 2011.*

*e) Tamara Harayeva, attorney for journalist Irina Khalip, a reporter for Novaya Gazeta and the wife of Andrei Sannikau, whose license was revoked by the Ministry of Justice on February 14, 2011.*

On February 17, 2011, during the ongoing scheduled inspection of the Minsk City Bar Association the Ministry of Justice revealed gross violations of the law, incompatible with the title of a lawyer. A Regulation of the Ministry of Justice of February 14, 2011 terminated bar licenses of the following lawyers: Tatiana Ageeva, Oleg Ageev, Vladimir Tolstik, Tamara Garayeva.

Alexander Pylchenko, chair of the Minsk City Bar Association, told BelaPAN news agency on February 18, 2011 that no disciplinary proceedings were initiated in respect to these lawyers be-

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8 [http://www.minjust.by/ru/site\\_menu/news?id=737](http://www.minjust.by/ru/site_menu/news?id=737)

9 <http://telegraf.by/2010/12/sapelko-sannikov-predstavljaet-iz-sebja-uzhasnoe-zrelische.html>

10 [http://news.date.bs/incidents\\_210553.html](http://news.date.bs/incidents_210553.html)

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cause the bar association received no proposals from the Ministry of Justice with regards to these lawyers' professional activities<sup>12</sup>.

On March 24, 2011 the Moscovskii court district in Minsk considered a complaint by Vladimir Tolstik over the decision of the Ministry of Justice to cancel his bar license. The court dismissed the complaint<sup>13</sup>.

On April 4, 2011 Viktor Golovanov, Belarus Minister of Justice, told reporters that the first instance court upheld the position of the Ministry of Justice to cancel licenses of some lawyers. According to him, MOJ's decision to derogate licenses was also appealed by Vladimir Tolstik and Tamara Garaeva. The court similarly dismissed their lawsuits<sup>14</sup>.

*7. Please also comment on reports that Alyaksandr Pylchanka, the Chairman of the Minsk City Bar Association, was dismissed by the Justice Minister, for expressing concern about the ministry's decision to revoke the licenses of some of the aforementioned lawyers. In light of these reports, please indicate what steps the State party is taking to strengthen the independence of bar associations in practice.*

On February 18, 2011 the Minsk City Bar Association held an extraordinary emergency session, during which, while commenting on the initiative of the Ministry of Justice to adopt new rules of professional conduct of lawyers, Alyaksandr Pylchanka, the Chairman of Board, suggested that such rules "should only be adopted by the Bar itself: All governing bodies of the Minsk City Bar Association consider this situation to be critical and threatening to the independence of both the Bar, as a legal institution, and the independence of individual lawyers."<sup>15</sup> On the same day, on February 18, 2011, Chairman of the Minsk City Bar Association Alyaksandr Pylchanka was expelled from the Bar Qualification Commission, pursuant to the Order of the Minister of Justice #36 of February 18, 2011<sup>16</sup>.

*8. Please provide information on measures in place to fully ensure the independence of the judiciary in the performance of their duties in conformity with international standards, notably the Basic Principles on the Independence of the Judiciary. Please provide details on the procedure for the appointment of judges, the duration of their mandate, the constitutional or legislative rules governing their irrevocability and the way in which they may be dismissed from office. Please provide information on steps that have been taken to strengthen the independence of the judiciary since the publication of the February 2001 report of the Special Rapporteur on the Independence of Judges and Lawyers who stated that "the placing of absolute discretion in the President to appoint and remove judges is not consistent with judicial independence."*

Lack of judicial independence is a major problem. The real participation of the judicial self-government in the selection of candidates for judges' positions, their further promotion, and dismissal is limited to a minimum. The selection processes is neither based on objective criteria nor open to the public. In fact, the Ministry of Justice and its regional bodies are selecting judges, heads of local administrations then approves the shortlisted candidates and the list is forwarded to the staff department of the Presidential Administration. The President via an appointment decree makes the final decision. Newly appointed judges are appointed for five years and then

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12 <http://charter97.org/ru/news/2011/2/25/36350>

13 <http://spring96.org/ru/news/42056>

14 <http://get-newz.com/society/43927-sud-podderzhal-poziciju-minjusta-po.html>

15 <http://charter97.org/ru/news/2011/2/25/36350>; <http://www.yurist.by/aleksandr-pylchenko-glava-minskoy-gorodskoy-kollegii-advokatov-isklyuchen-iz-sostava>

16 [http://www.minjust.by/ru/site\\_menu/news?id=784a](http://www.minjust.by/ru/site_menu/news?id=784a)

for life. Not infrequently, based on the results of their work, a judge is again appointed for a five-year term, and the law has no clear criteria for when a judge is to be appointed for life or for a new five-year term. In such a situation the judge is very vulnerable and the possibility of putting pressure on them increases.

The established order of remuneration of judges and their dependence on the executive authorities and the Presidential Administration in matters of staff issues, social, living and other conditions endanger the ability of judges to make independent and legitimate decisions.

According to international experts, the judicial system in the Republic of Belarus is de facto not independent. This situation was confirmed by the report of the International Commission of Jurists (ICJ), presented at the Universal Periodic Review of Belarus, in November 2009<sup>17</sup>. In the mentioned report, experts recognised that the judicial system of Belarus was not independent enough, that it was broadly subject to severe presidential power, including the right to appoint and dismiss judges and other government representatives at the discretion of the President. The President controls the appointment of judges, and appoints all the judges of ordinary courts, as well as six out of twelve judges of the Constitutional Court. The President also has the exclusive right to dismiss judges from office while safeguards against arbitrary dismissal are non-existent.

The Code on Judicial Organization and Status of Judges gives the President the right to impose "any disciplinary penalty with regards to any judge without disciplinary proceedings," which, amongst other measures includes the removal of judges from office. In case disciplinary proceedings are initiated the grounds may be vague or too broad. Judges' salaries are entirely up to the executive authorities. Under the Presidential Decree 25 dated 1997, homes of judges were defined as "official premises," which they lose in the event of dismissal. Taken together, these measures establish the subordination of the judiciary to the executive branch.

Of particular concern to the ICJ is President's power to intervene directly in the judicial process. In 2000, the President created an interagency commission to monitor the "resonant" cases. The Commission is working secretly and publishes its decisions on criminal cases before court hearings. Moreover, in accordance with Presidential Decree #426 adopted in 2005, the President gave himself the right to waive any criminal prosecution of those responsible for crimes related to damaging public property or public interest. Such non-judicial mechanism is contrary to the principles 3 and 4 of the Basic Principles on the Independence of the Judiciary and the right to a fair trial by an independent impartial tribunal.

The report of Special Rapporteur on the Independence of Judges and Lawyers on the country visit to Belarus on June 12-17, 2000<sup>18</sup>, also mentions that Belarusian judges are not unbiased. It expresses concern that a large number of inexperienced judges, poor working conditions of their service and their dependence on the government threaten the independence of the judiciary and enhance opportunities for exerting pressure on the judiciary and corruption. Low levels of remuneration of judges and their dependence on the executive branch and the Presidential Administration in matters of promotion and sustaining of other minimum conditions of service threaten the ability of judges to make decisions. The low level of remuneration also creates opportunities for corruption amongst judges.

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[http://lib.ohchr.org/HRBodies/UPR/Documents/Session8/BY/ICJ\\_UPR\\_BLR\\_S08\\_2010\\_InternationalCommissionofJurists.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session8/BY/ICJ_UPR_BLR_S08_2010_InternationalCommissionofJurists.pdf)

18 Report of the Special Rapporteur on the Independence of Judges and Lawyers (UN Doc.: E/CN.4/2001/65/Add.1).

*9. Please comment on allegations of widespread harassment of human rights defenders, journalists and other media workers by law enforcement officials. What measures have been taken to investigate such cases and prevent future occurrences? Please comment in particular on the following cases:*

*a) The arrest and detention of the Chair of the Belarusian Helsinki Committee (BHC), Aleh Hulak, on 20 December 2010; the January, 5, 2011 search of the office of BHC and Aleh Hulak's home by KGB officers; and the January 12, 2011, official written warning sent to BHC by the Ministry of Justice, citing it "spreading false information that discredits law enforcement bodies and judicial institutions of the Republic" in a communication sent to the UN Special Rapporteur on the independence of lawyers and judges.*

Oleg Gulak the chair of the Belarusian Helsinki Committee (BHC) was detained on December 19 after the dispersal of peaceful assembly in Nezavisimosti Square. On December 21 he was released. The search of Belarusian Helsinki Committee's office took place on January 5.

KGB officers showed the search warrant on criminal case filed on the facts of mass riots. Two computers were confiscated. The search was also held in Gulak's apartments.

In the period from December 20, 2010 until March 2011, KGB officers held searches in many human rights defence organizations of Belarus: Human Rights Defence Centre, Legal Aid to Citizens, all regional branches of the Human Rights Centre "Viasna", and the Gomel branch of Law Initiative. During every search computers, laptops, flash cards and other data carriers were confiscated. All the appeals against the actions of KGB officers were even not considered. Furthermore, no investigation was carried out to consider illegal searches targeting human rights defence organisations and a number of human rights defenders.

The Ministry of Justice gave its first warning in December 12, 2010 to the BHC after paying special attention to the activities of the mentioned organisation that had recently filed an appeal against the political pressure received by lawyers who were defending suspects of the December 19, 2010 riots, and who were as well following closely other cases of persecution and intimidation of lawyers in Belarus with **Gabriela Knaul**, United Nations Special Rapporteur on the Independence of Judges and Lawyers.

The Ministry of Justice considered that the appeals sent to Mrs. Knaul contributed to "the spread of inadequate information, discrediting the law enforcement bodies and the Ministry of Justice". Additionally, the Ministry of Justice blamed BHC to be acting under a different name, BHC instead of Republican Human Rights Defence Public Association, what constituted a legislation violation. On March 12, the Supreme Court dismissed the appeal of BHC against the warning issued by the Ministry of Justice.

On June 6, 2011, the Ministry of Justice gave a second written warning to BHC, arguing sustained tax legislation violation. As a result, BHC was requested to compensate the Ministry of Taxes with the equivalent to over Br 205 million in taxes and fines corresponding to 2002-2003 European Union grants; grants that were given on tax-free basis according to international agreements. It is worth mentioning that 2 NGOs were subjected to these measures, despite that The European Union had financed 30 NGOs in Belarus in the framework of international technical aid agreements.

Today, BHC must pay all its debts in a monthly basis. In addition, the NGO is deeply concerned to soon face trial on liquidation as National legislation allows it after the issue of two warnings in a one-year period.

*b) The arrest, prosecution, and conviction of upon journalist Irina Khalip in connection with the December 2010 post-election demonstrations, which has been condemned by the OSCE Representative on Freedom of the Media.*

Independent journalist, Irina Khalip, was detained on December 19, after the peaceful meeting of protest in Minsk in Nezavisimosti Square. She was kept in a KGB pre-trial prison. Ten days after the detention she was charged under article 293 parts 1 and 2 of the Criminal Code (mass riots). When she was held in custody in KGB pre-trial prison the authorities were trying to deprive Irina Khalip of parental rights and take away her 3-year old son, Danil Sannikov, who stayed at his grandparents home. On January 29, 2011 her measure of restraint was changed to house arrest. On April 4<sup>th</sup> 2011 her charges were changed to article 342 of the Criminal Code (Organization and preparation of actions violating public order or active participation in such actions). On May 16, 2011 Irina Khalip was sentenced to 2 years of imprisonment with arrest of judgment for 2 years.

*c) The April 2011 arrest and charging of journalist Andrzej Poczobut, reporter for the Polish Gazeta Wyborcza weekly and leader of the Union of Poles, with defamation of President Aleksandr Lukashenko.*

Prosecutor's office of Grodno Oblast filed a criminal case against Andrei Pochobut under article 368 part 1 of the Criminal Code (Insult of the President). On March 28, 2011 he was charged. On March 29, 2011 KGB officers held search in his apartment and confiscated computer as the means of committing the crime. On April 9, 2011 the measure of restraint was changed from recognizance not to leave to arrest and Pachobut was put to Grodno pre-trial prison. In addition to article 368 part 1 he was also charged with article 367 part 1 of the Criminal Code (Libel against the President).

On June 5, 2011 he was acquitted under article 368 part 1 of the Criminal Code and sentenced under article 367 part 1, to 3 years of imprisonment with arrest of judgment for 2 years.

*12. The State party's periodic report has not provided information on measures taken to adequately prevent, combat and punish violence against women and children, including sexual and domestic violence. Please indicate if such violence is criminalized under the legislation of the State party and provide statistical data on complaints relating to violence against women and children, and on the related investigations, prosecutions, and penal sanctions as well as on any compensation provided to victims<sup>19</sup>. Has the State party introduced a comprehensive strategy to combat all forms of violence against women, including sexual and domestic violence, as recommended by the Committee on the Elimination of Discrimination against Women in 2011 (CEDAW/C/BLR/CO/7)? What steps, if any, has the State party taken to address the Belarusian State University's March 2010 report which found that four out of five women between ages 18 and 60 claimed that they were subjected to psychological violence in their families, one in four women claimed they suffered from physical violence, and 13 percent of women reported that their partners sexually abused them?*

Belarus has no law "On Preventing and combating violence in family and domestic relations," which indicates the lack of attention to this matter by the state. Therefore, although there is the problem, we lack methods to solve it.

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<sup>19</sup> CEDAW/C/BLR/CO/7, paras. 19-20; UPR, A/HRC/WG.6/8/BLR/2, para.28; A/HRC/14/32/Add.2.

The aforementioned draft law based on model legislation proposed by the UN has been in existence since 2002, but so far the Parliament of Belarus has not approved it, so as the law "On gender equality".

Many of the facts published in the alternative report to the CEDAW Committee indicate the existence of discrimination and violence against women.

Yet it should be noted that, in recent years,

"The Ministry of the Interior pays special attention to the prevention of offenses committed in the sphere of **family relations**. Necessary steps are taken at the state level to improve efforts to prevent domestic violence. The Republic of Belarus is the first post-Soviet state that on November 10, 2008 adopted the Law "On the Basics of Offense Prevention", that entered into force in February 2009. Most notably, the concept of the Law for the first time laid the foundations for the prevention of specific types of offenses, including drunkenness, domestic violence" (reference from the Ministry of Internal Affairs).

Violence against women and domestic violence are the very few issues on which the state is cooperating with NGOs.

One of the positive results of such cooperation between NGOs and the Ministry of Internal Affairs is the fact that in 2011 the prevention department at the Ministry of Internal Affairs drafted pertinent changes and amendments to the Law "On the Basis of Offense Prevention", which provides for:

- 24/7 hotline on domestic violence issues;
- Free psychological, educational, medical, legal, financial assistance to individuals who may become or are victims of domestic violence;
- Provision, if resources permit, of temporary residence, including bed and meal;
- Participation in appropriate remedial programs, etc.

It also provides for: studying and generalizing of the family violence problem, causes and conditions of its specific manifestation

In addition, there was a proposal to adopt foreign experience with regards to issuing **protection orders** prohibiting to:

- Commit acts of domestic violence;
- Obtain information on the location of the victim of domestic violence;
- Search for the victim of domestic violence;
- Communicate with the victim of domestic violence, etc.

And prescribing to:

- Temporarily leave the common place of residence;



- Undergo a course of treatment or a correctional program.

The work was underway to introduce amendments to the Administrative Offenses Code to supplement it with the provision that introduces liability for causing physical and mental suffering, as well as beating. (For those cases where a person subjected to violence, has no traces, but battering did take place and at the same time it is possible to prove that it caused pain, physical and mental suffering).

Use of violence may result in both criminal and administrative liability.

Therefore, the national legislation of Belarus establishes the grounds and conditions of criminal and administrative liability, penalties and other measures of criminal liability, which can be applied to persons who have committed crimes, included those related to domestic violence.

The above partially solves the problem of identifying criminal aggression at the early stages of a conflict, when the situation has not yet resolved in a murder and another grave and especially grave crime against life and health of an individual.

Furthermore, on top of causing critical material and moral damage to society and having a negative impact in the country demography, the abusive consumption of alcohol exacerbates domestic crime. In (which year?) 180,000 Belarusian citizens were registered with narcotic drugs addiction.

Despite the efforts to punish those responsible for gender-based crimes, only little is done to prevent such crimes to occur. The absence of a preventing law does not give the opportunity to engage with positive **prevention** actions. Additionally, many preventing measures planned at the State level are not put into practice due to the lack of funding. As a consequence, a substantial part of the implementation work is done on a volunteering basis by non-governmental organizations.

On the other hand, crime statistics related to violence against women and children are kept confidential and sex data disaggregation is rarely done and has little constancy.

#### Article 4

*16. Regarding paragraph 63 of the State party's periodic report, please describe steps taken to ensure that torture is made punishable by appropriate penalties which take into account its grave nature, in accordance with the requirements of article 4, paragraph 2, of the Convention. In addition, please provide detailed information on criminal provisions concerning offences such as attempted acts of torture, the commission of torture or the order to commit torture by a person in authority and the exact penalties imposed for any of these offences, including disciplinary measures. Please provide information on the number, the nature and the outcome of the cases in which those legal provisions were applied, including the penalties that were imposed or the reasons for acquittal.*

Article 394 of the Criminal Code, "Coercion to testify," provides for imprisonment depending on the severity of the crime.

Article 394, part 1, of the Criminal Code provides for deprivation of the right to occupy certain positions or engage in certain activities or restraint of liberty for up to 3 years, or imprisonment for the same period, with deprivation of the right to occupy certain positions or engage in certain activities or without such deprivation, over coercion of a suspect, an accused, a victim, a witness or an expert to give a conclusion via the use of threats, blackmail, or committing other illegal acts by a person administering inquiry, preliminary investigation or justice.

Sanctions that are provided for in this section are interpreted very widely, ranging from deprivation of the right to occupy certain positions to imprisonment for up to 3 years, without taking into account the seriousness of the offense.

Article 394, part 2, of the Criminal Code provides for imprisonment for 2 to 7 years, with deprivation of the right to hold certain positions or engage in certain activities or without such deprivation over the same actions if accompanied by violence or torment.

Article 394, part 3, of the Criminal Code provides for imprisonment for 3 to 10 years, with deprivation of the right to hold certain positions or engage in certain activities or without such deprivation over actions provided for by part 1 of this Article if accompanied by torture.

Provisions, mentioned in parts 1-3 of the Article, only apply to officials who administer inquiries, preliminary investigations or justice and who commission violence against a suspect, an accused, a victim, a witness or an expert. The sanctions, provided for by this article do not apply to other officials who have used violence against individuals who are not parties to the investigation, for example torture in prisons, torture against those detained over administrative offenses.

On the gravity scale, it relates to less serious crimes. That is, the national law is putting it on the second out of four degrees of severity, thereby not relating it to grave or particularly grave crimes.

Article 426, part 1, of the Criminal Code, "Abuse of power or official authority," provides for deprivation of the right to occupy certain positions or engage in certain activities with a fine or imprisonment for up to 3 years, deprivation of the right to occupy certain positions or engage in certain activities, over deliberately commissioning actions that transcend rights and powers granted to an official pursuant to their official capacity, which caused damage on a large scale or significant harm to the rights and lawful interests of citizens or state or public interests.

Article 426, part 3, provides for imprisonment for 3 to 10 years with confiscation of property or without confiscation and deprivation of the right to occupy certain positions or engage in certain activities over actions mentioned in parts 1 or 2 of this Article commissioned by a person in authority, or actions that caused serious damage, as well as deliberately commissioning actions that transcend rights and powers granted to an official pursuant to their official capacity, accompanied by violence, torment or insult of the victim or use of weapons or special equipment.

Article 426 deprives the victim of misconduct of the right to compensation for moral and material harm as a victim of torture.

In addition, Article 64 of the Criminal Code lists circumstances aggravating responsibility without mentioning misconduct accompanied by torture. This suggests that the state does not recognize the use of torture in criminal proceedings as an aggravating circumstance. In addition, Article 12 divides all crimes into four categories:

- Not presenting serious public danger;

- Less grave;
- Grave;
- Particularly grave.

In terms of category, crimes concerned by Article 394, part 3, and Article 426, part 3, of the Criminal Code fall under less grave ones. I.e. national legislation puts them onto the second out of four degrees of severity, thereby not relating them to the grave or particularly grave crimes.

Therefore, certain difficulties arise when qualifying offenses related to acts referred to in Articles 394, 426, since no regulatory legal act contains a definition of "torture" as it is specified in Article 1 of the Convention. What is more, the Criminal Code does not provide for criminal liability for torture, attempted torture or order to commit torture given by a person in authority.

The Universal Periodic Review by Belarus to the UN Human Rights Council, submitted in 2010, states its paragraph 142 on "The ban on torture and implementation of the right to humane treatment and respect for the inherent dignity of human beings" that "The application of impermissible methods of treatment to participants in criminal proceedings is qualified as a serious criminal offence entailing deprivation of the right to perform certain duties or activities. The effective use of this measure to combat torture is demonstrated by the fact that the number of people charged under this article of the Criminal Code was 12 in 2008 and 11 in the first six months of 2009"<sup>20</sup>. The Review however, fails to specify which article of the Criminal Code it refers to and on what grounds those individuals were held accountable, thus allowing wide wording interpretation. The latter affects, in particular, the wording interpretation of Article 424 "Abuse of power or official authority" and Article 426 "Transgression of power or official authority" of the Criminal Code, making these crimes fall under the category of less grave crimes.

There are no other country-specific statistical data.

### **Articles 5, 6 and 7**

*17. Please provide information about the measures taken to establish the State party's jurisdiction over acts of torture in cases where the alleged offender is present in any territory under its jurisdiction, either to extradite or prosecute him or her, in accordance with the provisions of the Convention. Also, please provide information on whether domestic legislation may provide for the establishment of universal jurisdiction for the crime of torture. Please inform on any application of this jurisdiction by the State party's courts, if any.*

Pursuant to of Article 3, part 3, of the Criminal Code, perpetrators of crimes are equal before the law and are to be held criminally liable regardless of gender, race, ethnicity, language, origin, property and official status, place of residence, religion, beliefs, public associations membership, as well as other circumstances.

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<sup>20</sup> Human Rights Council Working Group on the Universal Periodic Review Eighth session Geneva, 3–14 May 2010, National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1, Belarus, par. 142, p. 14-15.

## Article 10

*19. Please give detailed information on training programmes, including those referred to in the State party's periodic report (paragraphs 39 - 43), provided to persons enumerated in article 10 of the Convention in order to inform them about the prohibition of torture, including their obligation not to follow orders to commit torture. Please indicate when and how often this training is provided and also outline information on the availability of gender-sensitive training. Following the closure of the Minsk office of the Organization for Security and Cooperation in Europe (OSCE), how will the training programmes be provided for employees of the Ministry of Internal Affairs referred to in paragraph 42 of the State party's periodic report?*

On August 17, 2011 during the hotline with readers of the *Respublika* newspaper, Interior Minister Anatoly Kuleshov said that it was him, who ordered police officers to work plainclothes during peaceful rallies<sup>21</sup>. This made it impossible to identify whether individuals who were beating and detaining peaceful citizens were in fact police officers and to which police stations arrested citizens were being transferred to. The above facts illustrate the reluctance of the State, at the level of senior officials, to abide by the commitments undertaken in connection with the signing of the Covenant.

On December 31, 2010, Belarusian authorities did not extend the mandate of the OSCE Office in Minsk. The resultant lack of funding led to the cancellation of the Major in "Practicing Psychologist in the Law Enforcement Activities" addressed to correctional system officers of the Ministry of Internal Affairs in Minsk.

On the other hand, Belarus registered in 2011 a step backward in terms of gender equity. Women quota for admission into the Interior Ministry Academy was reduced from 10 to 5 %. According to the chief of the Academy, Vladimir Bachilo, "admission was reduced because of the complexity of both the profession and training in the Academy. (...) The police officer should have certain psychological characteristics and moral traits, have good physical fitness and endurance and meet the requirements of the highest standards. In addition, he added, "no one will wait for three years until the maternity leave is over"<sup>22</sup>.

*20. Please provide information on the training of forensic doctors and medical personnel dealing with persons in detention, including asylum-seekers and refugees, to detect physical and psychological evidence of torture and ill treatment in accordance with international standards, as outlined in the Istanbul Protocol.*

According to Ms. Krasovskaya-Kasperovich, who worked as a nurse at the Republican Hospital of the Department of Corrections of the Ministry of Internal Affairs of Belarus in 2005-2006, during her work at the hospital there were numerous cases when prisoners arrived with bruises, mostly from the pre-trial detention centre #1 (SIZO-1) in Minsk or after being transported from one correctional facility to another. The medical staff were not instructed or trained to track and report to the administration of the correctional facility about the battered prisoners cases. Additionally, when inquired, the prisoners were often reluctant to point out the real sources of their bruises and scars, explaining instead that they had stumbled, fell down and there was no one except them to blame. Alleged battered prisoners received medical assistance to the same extent as other patients of the Republican Hospital did. For fear of reprisals, battered prisoners were even more reluctant to trust hospital operatives who were to interrogate them about the circumstances of injury to report the information further. As a consequence, explanations given in

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21 <http://telegraf.by/2011/08/kuleshov-ya-lichno-prikazal-milicii-po-sredam-rabotat-v-shtatskom>

22 <http://euroradio.fm/ru/report/akademiya-mvd-ne-khochet-feminizatsii>

the operative's office were only a formality, which certified the absence of beating, rather than the other way around. Ms. Krasovskaya-Kasperovich said she did not know about a single criminal investigation being initiated over bruising among incoming patients.

It also worth mentioning, that in case of forensic medical examination, issues of psychological traces of torture are not raised.

### Article 11

*21. Please describe the procedures planned or in place to keep under systematic review interrogation rules, instructions, methods, practices and custody arrangements with a view to preventing instances of torture in accordance with article 11 of the Convention. If so, please indicate the frequency with which these methods and practices are reviewed and identify the officials responsible for conducting this review. Please comment on reports that prison inspections conducted by the authorities lack credibility and do not respond to detainees' complaints, and particularly the December 31 review of the KGB pre-trial detention facilities in Minsk by an official of the Prosecutor General's office, which failed to raise any concerns regarding conditions at the facility, despite numerous credible complaints from lawyers and family members of the detained. Please provide data on the number of reviews of detention facilities that have been conducted during the reporting period, including information about the results of these reviews and recommendations made, and the steps taken to follow up on them.*

According to part 3 article 11 of the Criminal Procedural Code, no participant of criminal procedure should be the subject to violence or other cruel and inhuman treatment and be the subject to medical or other tests without their consent. The rules of conducting interrogations are written in chapter 25 of the Criminal Procedural Code in which there is no direct prohibition of tortures and cruel treatment.

Teaching of investigators is held on the basis of methodological materials for official use only, reason why it is not possible to get free access to these materials.

According to part 1, article 2 of the Law on "The order and conditions of keeping detained in custody" from June 16, 2003 № 215-3, keeping detainees in custody is carried out on the principles of legality, humanism, equality of all citizens before the law, respect for human dignity in accordance with the Constitution, the principles and norms of international law and international treaties signed by the Republic of Belarus, and should not be accompanied by a cruel, inhumane treatment, which may compromise the physical or mental health of persons in custody.

Rules № 3, 234, 20, defines regulations on medical examination of a person kept in custody, who sustained injury, by a medical worker on his request or initiative of pre-trial prison's or detention centre's authorities immediately and not later than in twenty-four hours term.

The possibility of medical examination of injuries by the workers of state health organizations is provided only in the following cases:

- By decision of the head of pre-trial prison or detention centre
- In case of absence in the staff of pre-trial prison or detention centre of a doctor (medical assistant)
- By decision of the body conducting criminal proceedings

- On appeal of a person in custody
- On a person's in custody lawyer's or legal representative's appeal

For examination by medical workers of health authorities' medical institution the person who sustained injury, his lawyer, or legal representative, should file an appeal to pre-trial prison's or detention centre's head. The appeal has to be considered in the following twenty-four hours.

Examination by medical workers of health authorities' medical institution is paid from the means available on personal account of person in custody, which can constitute a very serious obstacle.

The appeal against the rejection of medical examination can be filed to prosecutor's office or to court. Appealing lead to delay in investigation terms and destruction of the evidences of tortures.

Thereby, strong barriers resist medical examination by independent medical workers.

On the basis of Rules № 3, 234, 20, it is thus virtually impossible to be examined by an independent medical legal expert. The latter constitutes an important obstacle to document torture cases.

As a result, Criminal Procedural Code and Rules № 3, 234, 20 reject the provisions of Convention's article 11.

We want to report that any inspections by Prosecutor's Office and other state bodies are of a formal character, as poor prison conditions and many of the problems previously underlined in the present report are well known to all controlling bodies. However neither the prison administration, nor Prosecutor's Office are interested by the complaints. Previous to any inspection, facility's inmates are warned about the negative consequences resulting from complaints. Additionally, in practice, every cell for pre-trial detainees includes convicts who either have to serve their time in penal colonies, or serve their time in pre-trial prisons. The latter are the so-called "agents of the prison authorities". They are specially kept in the cells for pre-trial detainees to support order and to threaten detainees. Prison authorities give them information about the forthcoming inspection and ask them to threaten the detainees so that they would not complain. In cases when complaints are filed, the Prosecutor's Office, as a rule, cannot confirm the facts of violation of the rights of the detained.

For example, complaint against the prison conditions in pre-trial prison № 1 in Minsk (described in paragraph 22) from some of the detainees were left without answer, others got notices that the inspection did not find any facts of violation:

Klechkovski V.V. 16.05.1979 serving time in penal colony 8 (PC-8), according to his mother's appeal was beaten during detention in 2008. At the trial he claimed that during the investigation he was subject to constant beatings to the head, and as the result he started to suffer from constant headaches. In PC-8 he started to lose consciousness. His mother filed appeals to the Department of Execution of Punishment (DEP), Prosecutor's Office, National Assembly in order qualified medical examination (tomography) was held. But she received refuses in holding medical examinations. She got the following answer – medical examination was held, diagnosis – highmoritis.

Mamedov R.R., 21.03.1983, according to his mother, was beaten in Ivatsevichi penalty colony PC-5 on July 27, 2011 and after the beating, together with another inmate, was transferred in a stretcher to city hospital. Mamedov's mother appealed to General Prosecutor's Office but without any result. During serving time in PC-5 Mamedov many times asked for medical help because of ulcer, but was refused in proper medical aid.

Released prisoner told the mother of Sergeev V.V, 31.02.2975, who is serving time in PC-13 in Glubokoe, that her son had been beaten. Several times his mother asked about the urgent meeting with the head of the colony but got the refuse. Later the convict was transferred to PC-20, for refusal to obey the demands of colony's administration he got extra 6 moths of imprisonment.

Convict Kovernikov I.V., 15.07.1992 complaint to his mother that as a result of beatings he suffered from severe pains in kidneys and had blood in urine. He also showed a scar on his wrist. His mother demanded to hold medical examination, but the head of the colony refused to do it and said that her son simply did not want to work.

Bondarenko A.V. 14.04.1973, denied cooperation with the administration of the colony in Bobruisk and, as a result, was put into a disciplinary cell together with a tubercular sick convict. The punishment cell had no windows. He was made to stay alone for 20 days. In one occasion, Bondarenko was taken out to the roof of the building and threatened in case he would not cooperate. When freed from the disciplinary cell, he stayed 30 days in a special ward where he was beaten by the prison guard. (Appeals to General Prosecutor's Office, Prosecutor's Office for Inspectorate had no results).

General Prosecutor's Office held inspections in KGB pre-trial prison on December 31, 2010 and on January 24, 2011. His prison reports concluded that prison conditions complied with the demands of KGB pre-trial prison's normative documents. According to the inspection's conclusions, all the detainees were healthy; access to lawyers and relatives was provided; parcels were received in the set order; and extra staff of doctors was assigned for rendering qualified medical aid. Furthermore, according to the inspection's conclusion, no complaints were received from the detainees kept in KGB pre-trial prison during the inspection, including former candidates to presidency.

At the same time, lawyers of the detainees, kept in KGB pre-trial prison, were unsuccessfully trying to meet their clients despite their daily attempts. For example, Nekliaev's lawyer, T. Sidorenko, tried 9 times to get granted a confidential meeting with her client, with no success. During the reported period and despite the legal guarantee to an unlimited number of confidential lawyer-client meetings, none of the detainees was granted one.

Moreover, contradictory to what was stated in the General Prosecutor's Office conclusions, the detainees had explicitly expressed their complaints to the inspectors. For example, N. Radina complained against the prison conditions as she had to sleep on the floor and the temperature in the cell was about 10 degrees Celsius. She also protested against the disappearances of letters from friends and relatives and raised the issue of the infinite barriers to meet her lawyer. Furthermore, she revealed the psychological pressure exercised over her by the guards and the head of KGB. As a result of such pressure, on December 29, 2010, V. Nekliaev suffered a hypertensive crisis. During the first inspection, Statkevich N. was holding hunger strike.

*22. In relation to the measures taken to improve conditions in prisons and pre-trial detention centres, including the problem of the overcrowding, poor diet and lack of access to facilities for basic hygiene and inadequate medical care, please provide information on:*

*(a) The impacts of various measures listed in the State party's periodic report, inter alia the 2006–2010 State programme to enhance the Ministry of Internal Affairs penal correction system (paragraph 80) and the watchdog commissions attached to local executive and administrative bodies (paragraphs 82–83). To what extent have the proposals for such watchdog commissions been implemented? How often do civil society associations participate in the work of bodies and institutions carrying out sentences and other criminal sanctions (paragraph 81)? Please indicate if the public oversight commission is empowered to monitor police custody and pre-trial detention centres, how frequently it has exercised this function, and with what results.*

*(b) Whether the State party permits impartial monitors to conduct inspections, including unannounced visits, of prisons and detention centres, and the procedure in place to allow this to occur. Please comment on reports that there has been no independent monitoring of prison conditions by domestic or international human rights groups, independent media, or the International Committee of the Red Cross since at least December 2009 and indicate what steps, if any, the State party is taking to permit access to detention facilities to such independent monitors.*

Information presented by human rights organizations to the Committee against Torture is correct as of August 2011. The State programme to improve the penal system of the Ministry of Internal Affairs (2006–2010) was unable to solve the problems described in the report.

According to Belarusian legislation (Regulation #1220 by the Council of Ministers of Belarus of September 15, 2006 "On Approval of Regulations of the order of exercising control by national and local public associations over the activities of bodies and institutions administering penal activities and other measures of criminal liability") only members of public monitoring commissions created by government agencies have the right to exercise public control over the activities of bodies and institutions administering penal activities and other measures of criminal liability. Control over public associations is exercised via its membership — a commission may comprise 3 to 11 members. A contender for participation in the work of the commission shall be a citizen of Belarus, a member of a duly registered organization, whose by-laws provide for the protection of citizens' rights. A decision to include a representative of the public association into the commission is made by the Ministry of Justice, with the Regulations not mentioning grounds for denial and procedures to appeal such denial. In order to visit a penal institution or a pre-trial detention facility, the commission files a request with the head of the Department of Corrections and upon receiving permission negotiates the time of the visit with the correctional facility administration. At the same time the Regulations provide for the following rights of the Commission: to visit a facility if there is permit, contact the warden and other officials of the facility, responsible for ensuring rights of inmates, and talk with prisoners in the presence of the facility administration representative. Members of the commission are not allowed to: "acquaint themselves with the materials of the operative activities, personal files of inmates, other documents related to the execution of sentences"; to film, photograph, make video- and audio records, "take written requests from convicts." At the same time, the Regulations emphasize that in case of violation of these rules, as well as "providing false information about activities of bodies and institutions administering corrections to foreign state, foreign or international organizations, and the media", a commission member may be expelled. Regulations also provide for the participation of public associations only in social and "material" areas — participation in organizing labour activities, assisting convicts in their release from custody, etc. Possibilities to protect convicts' rights, mechanisms for resolving problems are not mentioned in the Regulations. Paragraph 28 also reveals problems in the work of these commissions.

It is worth noting that despite modest capabilities of Commissions, they do not include representatives of independent non-governmental organizations — commissions are made up of mem-



bers of pro-government organizations and in the course of their work the media did not make public any of the problems convicts were facing.

*(c) The degree of independent judicial oversight of the period and conditions of pre-trial detention. Please provide data on the number of cases in which individuals have been found by courts to have been unjustly detained or detained in unsatisfactory periods of detention and the remedies handed down by courts in those cases.*

In compliance with Article 126, part 3, of the Criminal Procedures Code the right to sanction the detention is granted to the General Prosecutor, prosecutors of oblasts, cities, districts as well prosecutors having the same status, and their deputies. Detention can also be sanctioned by order of the Minister of Internal Affairs, Chairman of the Committee for State Security, Deputy Chairman of State Control Committee of Belarus - Financial Investigations Department Director, or persons performing their duties. Court appeals against detention orders are usually considered without summoning the detainee.

The courts dismiss complaints about inadequate conditions of detention in pre-trial detention facilities and temporary detention centres.

*(d) The capacity and the occupancy rate of all places of deprivation of liberty.*

On 13 July 2010, the Minister of Internal Affairs, Anatoly Kuleshov, told a press conference that at that time Belarus' penal facilities of all types, included corrective labour facilities, housed a total of 47,000 inmates, with country's population being 9.5 million, and thus, per capita, prison population was 495 prisoners per 100,000 people<sup>23</sup>. According to the testimony of inmates and those held in detention centres, prison cells do not meet the occupancy rate standards provided for by Belarusian legislation — at least two square meters of floor space per person. Very often, the prisoners do not have enough beds and they take turns sleeping; at the same time, inmates are only allowed rest from 22.00 to 06.00 and sleeping at a different time is a violation of internal rules and regulations. In particular, according to Mr. Bondarenko, who was held in pre-trial detention centre #1 (SIZO-1) in Minsk, the cells convicts were kept in were overcrowded; their capacity was exceeded by a factor of 2 or 3. Accordingly, a cell with a floor area of 15-30 square meters housed 30 to 50 suspects who, as a result of the lack of sleeping berths, had to sleep in 2 or 3 shifts. In addition, all cameras are equipped with special window blinds nicknamed "eyelashes" that prevent daylight from coming into the cell. Hygiene items are not provided. Ventilation is not working or is not turned on in order to save electricity in violation of the Law #215-3 of 16 June 2003 "On the Order and Conditions of keeping Persons in Custody". In the summer temperatures in individual cells rise to 30-40 degrees Celsius. Bedding is in a dilapidated condition, with virtually no padding, usually dirty and torn. Meals are given three times a day; they are of low-calorie and of low quality. Kitchen bowls and cups are made of aluminium; when their content is hot they are almost impossible to keep in hand, which difficult eating. Personal hygiene is scarce. Showers are only possible once per week. They are only 10 shower cabins per 30 inmates and the entire group is given 20 minutes of time for personal hygiene. See also the answer to question 4d.

*23. Please provide information regarding allegations of mistreatment of protesters arrested and detained following the presidential election on 19 December 2010. According to the information before the Committee, hundreds of protesters arrested by the police were subsequently detained in overcrowded cells where they were forced to sleep on the floor, share beds, or take turns sleeping,*

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23 <http://www.interfax.by/news/belarus/75887>

*had very limited access to hygiene items and medical care. Additionally, several women detained in connection with the protests alleged that they were threatened with rape while in custody if they challenged officials' orders. Please comment on these allegations, the steps taken to investigate them, and the results of any investigations.*

#### **December 19, 2010. The arrests.**

On December 19, 2010, around 800 people in peaceful rally were detained by the police, in the Independence Square located downtown Minsk. More than 600 people were handed administrative arrest sentences. At first, the detainees were kept for 2 to 5 hours in overcrowded (about 30-35 people in a car) police vans. In the meantime the detainees were denied access to water and toilet. Many detainees were beaten during the arrest itself; there is evidence of fractures of upper and lower limbs and brain concussions (Varvara Krasutskaya, Ivan Logvinovich, Maya Abramchik).

#### **Pre-trial custody conditions at the temporary detention centre and the offenders' incarceration centre.**

Upon arrival to the detention facilities at around 01:00 on 20 December 2010 the detainees were lined up in corridors and ordered to stand and to not move. They were not given drinking water, allowed to sit down; those battered did not receive appropriate medical care.

Police officers denied access to drinking, water and toilet from the arrest until completion of arrest reports, which could last for up to 10 hours.

There is credible evidence that many of the detainees received threats while arrest reports were being written. The detainees were put into cells around 05:00 - 06:00 on 20 December 2010. The cells had no bedding, drinking water; the temperature was about 10 degrees Celsius. At around 10:00 on December 20, 2010 the transportation of detainees to Minsk City district courts started; they were not given water or food.

#### **Post-trial custody conditions at the temporary detention centre and the offenders' incarceration centre.**

After being handed administrative arrests rulings, the detainees were taken to two temporary detention centres (TDC): TDC in the town of Zhodino (ul. Suhogradskaya, 1) and TDC in Minsk (ul. Skaryny, 20); and to the Offenders' incarceration centre (OIC) of the Minsk City Chief Department of Internal Affairs (Minsk, Pervyj pereulok Akrestina, 36).

Preceding the prison cells, many of the detainees were squeezed together in confine rooms (about 2 square meters) with no windows and no space to seat, in groups of 3-4 people, and kept there for 4-5 hours.

The interview<sup>24</sup> of 205 people punished with administrative arrests revealed overcrowded cells in all of the aforementioned detention facilities.

The administration of facilities routinely violated the principle of separation of inmates. Drinking water was not available for the whole duration of the arrest. Inmates had to drink water from the tap, located in the cell itself. The tap water was of poor quality and had a strong smell of

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24 <http://hrwatch-by.org/analiticheskaya-spravka-4-1>

chlorine. In the OIC inmates were not given separate beds and beddings - all of them had to share one plank bed together with 7 or 9 more people. At the TDCs, the detainees were given only mattresses. The temperature was around 10-13 degrees Celsius. Sanitary space per person was approximately 2 to 2.5 square meters. Smokers were placed together with non-smokers. There were no daily walks in open air.

### **Possibility to lodge a complaint over conditions of detention and beatings.**

No proper checks by public prosecutors were carried out on the complaints of those battered; no criminal cases were initiated over the beatings and injuries inflicted by police officers.

More than 50 people filed complaints over the conditions of detention in the TDCs and the OIC. The public prosecutor's office did not conduct an objective inquiry; the prosecutor did not visit TDCs and the OIC to check the conditions of detention. All the complainants received the same replies that the allegations mentioned in the complaint have not been confirmed.

Courts dismiss complaints about conditions in TDCs and the OIC.

## **Articles 12 and 13**

*25. According to information made available to the Committee, torture and cruel, inhuman or degrading treatment by law enforcement officials continue to take place throughout the country, while the number of investigations and prosecutions is very low<sup>25</sup>. Please provide the effectiveness of measures taken by the State party to fight impunity in line with articles 12 and 13 of the Convention, including information on<sup>26</sup>:*

*(a) The mechanisms to which individuals who believe they have been victims of torture can submit complaints, whether they are independent, and their mandate,*

*(b) The authorities and institutions competent to initiate and carry out investigations into allegations of torture, both at the criminal and disciplinary levels;*

*(c) Detailed statistical data on complaints submitted relating to torture and ill treatment allegedly committed by law enforcement officials, disaggregated by body to which the complaint was made, ethnicity of the alleged victim, age of the alleged victim, and sex of the alleged victim; and information regarding whether each complaint was investigated and by whom, whether this investigation resulted in a prosecution, and whether the perpetrators were convicted and the penal or disciplinary sanctions applied;*

*(d) Information on cases in which individuals have been convicted of attempting to exert pressure on the judiciary, in particular under article 110 of the Constitution and other national legislation listed in paragraph 69 of the State party's periodic report<sup>27</sup>;*

*(e) Whether individuals accused of torture are suspended from their duties and prohibited from further contact with the alleged victim while investigations into allegations against them are being conducted. Please elaborate on the measures taken to implement the General Assembly resolution of 2008 (A/RES/62/169), in which Belarus was urged, inter alia, to: suspend from their duties offi-*

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25 A/HRC/15/16/Add.1, para.56.

26 A/HRC/15/16, para. 98.22 and A/HRC/15/16/Add.1, paras. 60-63.

27 11 E/CN.4/2005/6/Add.3, para. 79.

*cials implicated in any case of enforced disappearances, summary execution and torture, and ensure that all necessary measures are taken to investigate fully and impartially such cases and to bring the alleged perpetrators to justice before an independent tribunal; and investigate and hold accountable those responsible for the mistreatment and detention of human rights defenders and members of political opposition.*

There is no criminal liability for torture and cruel, inhuman or degrading treatment, so investigations are being carried out with regards to the illegal actions of police officers, rather than torture. Victims of torture may file a complaint with the office of the public prosecutor, as inquiries into such complaints fall exclusively with its jurisdiction. The ineffectiveness of inquiries into such complaints is related to the problem of partiality of prosecutors. In accordance with Article 4, part 4, of the Law #220-3 of May 8, 2007 "On the Public Prosecutor's Office " (hereinafter the Public Prosecutor's Office Law), the task of the prosecutor's office is both supervising the enforcement of law in the course of pre-trial investigation and inquiry, and support of the public prosecution. In other words while investigating such cases, the prosecutor's office faces deliberately conflicting tasks — supervision and prosecution, which leaves room for uncontrolled decisions. There are many cases when complaints of torture and ill treatment are forwarded to departments of the Ministry of Internal Affairs, i.e. the same body that administered torture or cruel and inhuman treatment.

Criminal cases brought against police officers under articles 424 and 426 of the Criminal Code "Abuse of power or official authority" and "Transgression of power or official authority", are rare.

In most cases prosecutor's office inquiries are limited to the inspection of documents and the interrogation of police officers that allegedly committed torture. Effective steps to identify, collect, investigate and preserve evidence, as well as to identify witnesses, are almost never taken.

The established practice shows that the burden of proving the involvement of officials in torture falls on the victim, while virtually all cases with no evidence of torture by specific employees are permanently closed.

As information remains largely classified, there is only scarce alternative data available against those who have commissioned "unlawful practices to the participants of the criminal process", other than those provided by the government.

Furthermore, in Belarus, courts tend to frequently dismiss lawsuits resulting from improper conditions in pre-trial detention centres and TDCs.

It is of relevance to underline that criminal cases are often brought against the claimants of the alleged torture, under Article 363 "Resisting an Interior Ministry Officer or Other Person, involved in the Protection of Public Order", and Article 364 "Violence or Threat of Violence against an Interior Ministry Officer". The claimant accused under these articles cannot longer prove that he or she was victim of torture.

Statistics of complaints filed with the public prosecutor's office over the conditions of detention and torture shows that all complaints are being considered without visiting detention facilities and thus do not translate into proper reactions.

We do not have information about officials being suspended from their duties, having criminal charges brought against them or inquiries into improper treatment during interrogations.

*26. Please indicate the extent to which the State party has impartially and thoroughly investigated allegations of torture and ill treatment, in particular those mentioned below. Please provide detailed information on the findings of any investigations, prosecutions, and/or remedial measures implemented in response to allegations of torture made by the following individuals.*

As complaints are not properly investigated, convicts often feel exposed and they fear for further retaliations. As a result, complaints are rarely submitted. However, convicts from different time periods and facilities have confirmed the same facts, such as sexual and physical threats against prisoners to obtain false confessions and the existence of special regimes and cells for detainees under investigation.

*a) Ales Mikhalevich, a former presidential candidate, imprisoned in the aftermath of the post-election protests and released on 26 February 2011 after signing a commitment to collaborate with the Belarusian KGB that he has since publicly renounced and who has alleged that he was subjected to mental and physical torture in order to pressure him to confess to criminal allegations.*

On February 28, 2011, Ales Mikhalevich wrote an appeal to General Prosecutor's office against prison conditions in KGB pre-trial prison and torture practices that were used against detainees there. On March 10, 2011, he was informed that his appeal was accepted for consideration by the Military Prosecutor's office.

On March 13, 2011 and fearing for his life and integrity, Mikhalevich left the country and asked for political asylum in Czech Republic. On March 14, 2011, he was summoned to General Prosecutor's office for explanations. For security reasons, Ales Mikhalevich suggested an exchange in written form or a meeting in a country other than Belarus. However, investigator Pustoshilo refused to report a criminal case on the torture allegations without in-person explanation in Minsk by Mikhalevich and dismissed the case on April 5, 2011.

*b) Natalia Radina, the editor of the opposition Charter 97 website<sup>28</sup>, arrested in December 2010 in the aftermath of the post-election protests and who alleged that during her detention KGB officers had subjected her to psychological pressure and attempted to recruit her as a KGB informant*

Natalia Radina, investigated under Article 293 of the Criminal Code (mass riots), repeatedly informed KGB investigator Vasilchenko D.A about the pressure received from field officers and the head of KGB pre-trial prison Orlov, Vadim Zaitsev. She also frequently complained against prison conditions and the absence of letters but she did not get any positive reaction from her investigator. The latter discouraged her to file an official complaint.

*c) Several protesters at Kastychnitskaya Square in Minsk on September 9, 2009, who were beaten and insulted by riot police and officials of the Tsentralny district police department<sup>29</sup>.*

There is no information available on whether the officers of Tsentralny district police department received disciplinary or criminal penalties.

*d) Andrei Sannikau who was arrested in December 2010 in connection with the post-election protests testified in court in May 2011. During his five month pre-trial detention period, he was subjected to repeated beatings, forced to lay under the bunk beds on cold floors, repeatedly denied*

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28 European Parliament resolution of 10 March 2011 on Belarus (in particular the cases of Ales Mikhalevich and Natalia Radina), B7-0184/2011.

29 A/HRC/13/39/Add.1, para. 16.

*medical care despite injuries to his legs and head caused by the authorities during his initial arrest, denied visits from his lawyer and relatives, repeatedly threatened that his wife and child would be harmed or murdered if he did not confess to offenses fabricated by the prosecution, frequently ordered to strip naked and face personal searches by masked men, repeatedly intimidated by guards with shouting and banging on the walls with clubs, denied media as stipulated for prisoners by law, and forced to watch anti-Semitic and racist state propaganda films.*

In December 2010, A. Sannikov wrote a statement to the head of KGB pre-trial prison pointing out that the treatment he had received while detained constituted a violation of the Convention Against Torture. Furthermore, during the trial, Sannikov drew attention to the cruel treatments existing in KGB pre-trial prison. Unfortunately, his appeals did not translate into actions and the Prosecutor's office remained static. On the basis of the statement made by Sannikov in court "Belarusian Helsinki Committee" on May 16, 2011, wrote an appeal to the General Prosecutor's office. The Military Prosecutor's Office had to hold a check on the appeal. The check is currently being held.

*e) Guy Francois Toukam, a national of Cameroon, who was held in a pre-trial detention centre in Minsk for 44 days after his arrival in Belarus to participate in a soccer tournament and who alleged that he was beaten, denied legal assistance, experienced racial discrimination, and denied adequate nutrition in custody.*

Guy Francois Toukam is a national of Cameroon, who was held in the Offenders' incarceration centre of the Minsk City Chief Department of Internal Affairs (Minsk, Pervyj pereulok Akrestina, 36). On September 23, 2009 he filed a complaint with the Minsk City's office of the public prosecutor over cruel and inhuman detention conditions. In his complaint he indicated that he had been beaten by two guards; that he only had access to one 5 minutes walk since his detention; that he was not given drinking water; that he was feed with a piece of bread and a cup of tea for breakfast and supper; that the cell did not have an isolated toilet; that all inmates, 9 people in total, had to sleep on one plank bed; and that no bedding was given. An almost identical complaint was filed with the Moscovskii district court of Minsk.

In his answer on November 12, 2010, the Minsk City's office of the public prosecutor denied the aforementioned violations apart from the failure to provide a separate bed and bedding.

Moscovskii district court of Minsk ruled to dismiss the case.

The above clearly reflects the existing impediments to investigate torture and ill-treatment cases, as well as the impossibility to verify materials of inquiry.

*27. Please clarify whether any officials were sanctioned or punished for assault, excessive use of force, denial of necessary medical care, or any other offense in connection with the following events of December 19 and 20, 2010:*

*a) The severe beating of opposition candidate Uladzimir Nyaklyayeu by plainclothes' special forces in the early evening of December 19, prior to the outbreak of any violence related to the protests; and the subsequent forcible removal of Nyaklyayeu from the Minsk City Emergency Hospital by unidentified persons in plain clothes.*

The term of the investigation of the beating by plainclothes Special Forces of the ex-presidential candidate, Uladzimir Nyaklyayeu, expired on July 4, 2011. At any stage of the enquiry did the politician receive a response from the Minsk City's office of the public prosecutor that was conducting the case. On August 10, 2011, Minsk City's office of the public prosecutor refused to initiate a criminal investigation on the attack against former presidential candidate Uladzimir

Nyaklyayeu on December 19, 2010 due to the "lack of corpus delicti". Meanwhile Uladzimir Nyaklyayeu was summoned to undergo medical forensic examination to determine the severity of his injuries, seven months after the beating.

*b) The apparently indiscriminate beating by riot police of approximately 300 people in Independence Square, despite the fact that police had not previously ordered the people to leave the area and video footage appears to show that the protesters in question were peaceful and not resisting the commands of the officers.*

Today only one criminal case was initiated, i.e. into the beating of Maya Abromchik. She was severely battered and by riot police officers during the dispersal of a peaceful protest rally on December 19, 2010, in Minsk. Maya was diagnosed with a severe leg fracture. Shinbones were fractured so brutally, that her leg got deformed.

Maya Abromchik stated she was leaving metro station Ploshchad Lenina at around 23.30 with some friends and heading to the Independence Square when she got attacked by a group of uniformed riot policemen. They kicked and beat her, as well as her friends, with batons. She immediately fell down, yet the beating continued, despite her cries for help. Her friends were also being battered. When the beating stopped, they were ordered to go to the police van. As Abromchik could not walk by herself, one of her friends had to carry her. Once in the police van, she was forced to wait for three hours until she was taken to a hospital.

The findings of the forensic examination she had to undergo on request from the public prosecutor's office stated that the injuries revealed on Maya Abromchik body could have been made by an object resembling to a police baton. Nevertheless, the prosecutor has disregarded this fact and a criminal case was initiated under Article 155 of the Criminal Code (causing grievous bodily harm by negligence) "against an unidentified person". Ms. Abromchik requested that a case was to be initiated against riot policemen over the "abuse of power."

*c) The assault of opposition candidate Andrei Sannikau in Independence Square by riot police officers who reportedly pinned him down with a riot shield and repeatedly jumped onto it, severely injuring his legs.*

None of the police officers were held accountable over inflicting severe injuries to Andrei Sannikau.

*28. The State party's periodic report indicates (paragraphs 66 and 67) the role and functions of different bodies to investigate complaints of human rights violations, inter alia, the Commission for Human Rights, Community Relations and the Mass Media, the Public Advisory Council in the Office of the President, and the National Public Watchdog Commission. Please provide further information on the number of complaints received related to violation of the provision of the Convention, the action taken as well as their outcome. To what extent are those bodies authorised to accept and investigate individual communications on torture from alleged victims of torture including persons deprived of liberty, their lawyers, relatives and concerned non-governmental organizations? What efforts have been made to guarantee their impartiality and independence? Are their findings and recommendations public?*

### **Commission for Human Rights, Community Relations and the Mass Media.**

The Commission was created by a Regulation #9-P2/I of the House of Representative of the National Assembly on November 22, 2011.

### **Issues of competence**

Issues related to the rights, freedoms and responsibilities of citizens, citizenship, ethnic relations and information policy and mass media, political parties, trade unions and other public associations and religious organizations.

According to the OSCE, starting from 2000 all elections in Belarus failed to comply with international standards, as the President appoints members of parliaments at all levels. The Commission is comprised of seven members, none of them is a lawyer and no one has at least basic education in law and human rights. The Commission has thus neither independence nor the skills required to investigate allegations of torture.

### **Public Advisory Council in the Office of the President (PAC).**

#### **Issues of competence**

Citizens cannot appeal to the PAC, since the formation of this council is not provided for by any regulatory legal act, its powers are not listed; PAC is only an advisory council. It has no competence to receive and investigate complaints of violation of human rights. Each time the PAC convened at the direction of the Presidential Administration and did not have regular sessions. The last time the PAC convened in full was in September 2010.

### **National Public Watchdog Commission (hereinafter NPWC).**

#### **Issues of competence**

Commissions are visiting correctional institutions only after receiving approval from the head of the Department of Corrections of the Ministry of Internal Affairs and with a prior notification of the warden of the correctional facility. Members of NPWC can file requests with wardens of correctional facilities or their deputies, and also other officials supervising issues, related to ensuring rights and legitimate interest of inmates. Members of NPWC - in compliance with Regulation #1220 by the Council of Ministers of Belarus of September, 15, 2006, "On Approval of Regulations of the order of exercising control by national and local public associations over the activities of bodies and institutions administering penal activities and other measures of criminal liability"- cannot take written requests from convicts, sentenced to arrest, deprivation of liberty, and life imprisonment, including complaints related to violation of human rights. NPWC themselves do not have competences to accept and investigate complaints over violation of human rights.

As a consequence of their competences all three structures are virtually inactive.

It should be noted that Belarus has continuously violated international treaties on human rights and do not follows the decisions of the Committee on Human Rights.

*29. Please provide information on the measures in place to guarantee the confidentiality of complaints and to protect complainants from possible reprisals. Please elaborate on any witness protection programmes for victims of torture, ill treatment and related violations. Are there special mechanisms to receive complaints of sexual violence such as hotlines, specialised police departments? Please comment on allegations, such as those made by Andrei Sannikau in May 2011, reflecting that individuals in custody who submit complaints of ill treatment are frequently subject to reprisals. What steps is the State party taking to address these claims?*



According to convicts from various penal colonies, inmates do not always have the opportunity to get acquainted with the internal rules and regulations of correctional facilities — these are being deliberately withheld. Attempts to defend the rights of prisoners by complaining to the administration often result in beatings. For example, Mr. Andreevskii and Mr. Alexandrovich were severely beaten in the penal colony #13 (PC-13) in Glubokoe in 2010, for trying to seek clarification of their rights.

We also request the Committee to pay particular attention to the situation with a witness of torture in the penal colony #13 in Glubokoe, Yury Lingo. Mr. Lingo was released from the PC-13 in July 2011 and told, in a press conference organized by human rights defenders, that because of the abuse of prisoners some of them declared hunger strike demanding that Belarus Prosecutor General visited PC-13. In response, the administration of the penal colony commissioned the mass beating of convicts in the period from 16 to 22 June 2011. Most of the prisoners ended up severely injured and were denied with medical care, resulting in extreme measures such as attempted suicides. Convicts' mothers confirmed ill treatment and battering.

Nowadays, Yury Lingo faces extreme moral and physical pressure from the Ministry of Internal Affairs bodies — he has been repeatedly harassed both at home and at the police department in his hometown of Smorgon. Plainclothes officers, who did not give their names, have interrogated him. Illegal detention methods and physical force were used against him. On August 15, 2011, an ambulance was called to the Smorgon police department to take care of him. He was convicted of an administrative offense; however his witnesses were not allowed into the courtroom and certain procedural requirements were violated. On their way to the hearing, Mr. Lingo's lawyer and journalists were stopped by police patrols four times for documents checks, and recommended not to go to the trial.

The situation is today critical, as Mr. Lingo was released on probation and three violations of the "supervision regime" would mean going back to prison where he would stand high chances to end up killed. With already two violations at his counter, one for leaving the town of Smorgon without the permission from the police to participate on August 1, 2011 to a press conference on tortures in the penal colony #13, the second violation was via the fabricated administrative offense.

Witness protection programmes are not available and there are no specific mechanisms for receiving complaints of sexual violence. Psychological and physical coercion on witnesses and complainants is a very real issue of concern in Belarus.

*30. Please comment on the effectiveness of measures to provide independent judicial oversight of the period and condition of pre-trial detention. Please provide examples of application of articles 33 of the Criminal Procedures Code (paragraphs 87-88 of the State party's periodic report).*

The court may only consider complaints from individuals kept in custody over the detention, use of measures of restraint like detention, home arrest, prolongation of the term of detention, home arrest, as stipulated by articles 143, 144 of the Criminal Procedures Code.

In accordance with Article 139, part 1, of the Criminal Procedures Code, complaints about actions and decisions of the investigative body, and the investigator are filed with the public prosecutor who supervises enforcement of laws during a preliminary investigation. Complaints about actions and decisions of the prosecutor are submitted to a superior prosecutor.

In Belarus, the principle of judicial independence is being violated. This situation was confirmed in 2000 by the report of UN Special Rapporteur on the independence of judges and lawyers in

Belarus, Param Coomaraswamy.<sup>30</sup> The government have so far failed to fulfil her recommendations. Lack of independence of the judicial system in Belarus is also evidenced by the report of the International Commission of Jurists, submitted to the Universal Periodic Review in November 2009.

#### Article 14

*31. Please provide information on redress and compensation measures, including the means of rehabilitation, ordered by the courts and actually provided to victims of torture, or their families, since the examination of the last periodic report in 2000. This information should include the number of requests made, the number granted, the amounts of compensation ordered and those actually provided in each case. Please elaborate on the services available for the treatment of trauma and other forms of rehabilitation of torture victims.*

The State denies the very fact that torture exists in Belarus. The Criminal Code has no article explicitly related to the use of torture.

Minsk City courts dismisses claims seeking compensation for moral damage caused by the conditions at temporary detention centres and pre-trial detention facilities that violate the right to not be subjected to cruel, inhuman or degrading treatment. Courts as falling outside of their jurisdiction do not accept complaints about detention conditions seeking to recognize the violation of the right to not be subjected to torture or cruel, inhuman or degrading treatment.

#### Article 16

*34. Please inform the Committee of measures taken to protect and guarantee the rights of vulnerable persons deprived of their liberty, inter alia, children, women, and persons suffering from mental illness. In particular, please indicate<sup>31</sup>:*

*a) If juveniles and adults, and women and men are separated at all stages of detention;*

According to article 11 of the Law on “The order and conditions of keeping detainees in custody”, placing of persons kept in pre-trial prison to cells is done taking into account their personal qualities and psychological compatibility.

Detainees placed separately:

- Men and women;
- Minors and adults. With prosecutor’s agreement it is possible to place positively characterized adult detainees who are first time offenders and were detained for minor crimes together with minors;
- Sick with infection diseases or detained who need special medical care.

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<sup>30</sup> <http://www.unhcr.org/refworld/pdfid/3c7b90af4.pdf>

<sup>31</sup> E/CN.4/2005/6/Add.3, paras. 28, 48, 69-72 and 85; A/HRC/14/35/Add.1, para. 8.

However, pre-trial prisons are constantly overcrowded. Men and women are always kept separately, but very often boys are kept with adult males while girls with the women. According to article 71 of Criminal Procedural Code, men and women, minors and adults sentenced to imprisonment should be kept in penitentiary facilities separately. Convicts sick with infection diseases should be kept separately and should be isolated from healthy convicts. In penal colonies, this principal is frequently violated.

*b) If minors are kept in the same pre-trial detention centres (SIZOs) as adults and their detention is submitted to the same regime;*

Minors are kept in the same pre-trial prisons as adults. According to article 24 of the Law on “The order and conditions of keeping detainees in custody”, minors kept in custody should be provided with better everyday conditions and improved norms of nutrition, defined by the Government. Minors’ everyday walks should continue not less than 3 hours. During walks minors should have the possibilities for physical training and sport games. Disciplinary measures such as punishment cells cannot apply to minors kept in custody. If there are proper conditions for minors kept in custody, facility’s administration should ensure proper leisure activities such as watching TV, equip premises for sport exercises and also allow sports at open air. Minors kept in custody should have the possibility to get basic and secondary education. According to the rules of internal order, cultural and educational work should be held with minors kept in custody. Minors kept in custody have the right to buy and receive textbooks, manuals and writing accessories without any limitations. Minors also have the right to receive unlimited number of post packages, with no weight limitation.

Notwithstanding the above, pre-trial prisons are overcrowded and minors are often kept together with adults and subjected to the same detention regime.

*c) Any concrete measure aimed at ensuring that deprivation of liberty for children is always a measure of last resort used for the shortest appropriate period of time<sup>32</sup>;*

According to article 432 of Criminal Procedural Code, when the measure of restraint for minor suspect or accused is selected, the possibility of keeping minor under somebody’s supervision should be considered in every case. Detention, custody and home arrest, as measures of restraint, can apply to a minor in cases of minor, major or gravest crime. Parents or legal representatives should be immediately informed about the grounds of detention, the custody decision or the extension of the term of detention.

Legislation does not limit the term of minor’s custody.

On February 18, 2011 the Board of the Highest Court found sentence passed by Mogilev Oblast Court on November 29, 2010, for the murder of citizen Sidorov in Vitsebsk legal, and dismissed the appeal of General Prosecutor’s Office and Prosecutor’s Office. It finally acquitted two minors, Alexander Loginov and Alexander Napaiuk. Before the acquittal they had spent 17 months in pre-trial prison.

*d) If women are kept in the same pre-trial detention centres as male detainees, albeit in different cells, but under the supervision of male guards, as has been reported to be the case at the KGB pre-trial detention facility in Minsk.*

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32 CRC/C/BLR/CO/3-4, paras. 71-72.

There are no gender specific pre-trial facilities. Men and women are kept in different cells and sometimes in different floors, but within the same facilities. In the majority of pre-trial facilities there are male and female guards, however women are guarded there both by men and women. Moreover, there are no women guards in KGB pre-trial prisons. Men guards escort women to walks, shower and cells' searches.

*39. According to the information before the Committee, those in death row are given no prior notification that they are about to be executed and their body is not handed over to the family. Their families are not informed of the date of and the place of burial is not disclosed to them<sup>33</sup>. Please provide detailed information on the treatment of detainees in death row, including any special regime.*

Human rights defenders are particularly concerned about the cases of torture of persons sentenced to death. There is evidence that suspects of particularly grave crimes, punished by the death penalty, were subjected to torture. In June-July 2009, the judicial panels of Brest and Minsk oblast courts sentenced Vasily Yuzepchuk and Andrey Zhuk to death. According to their testimonies and as evidenced by medical records, they have been repeatedly subjected to torture. Vasily Yuzepchuk stated that he was beaten, starved, given unknown pills and forced to take alcohol, as a consequence he was losing the ability to adequately evaluate what was happening to him. There had been no proper investigation into these cases.

Death penalty practices also draw criticism. Relatives are not informed of the date of the execution and the burial place of those who were put to death. The UN Committee on Human Rights recognized such practices to be a violation of Article 7 of the International Covenant on Civil and Political Rights (Communication No 886/1999 Bondarenko vs. Belarus\*, Communication No 887/1999 Liashkevich vs. Belarus\*). The practice of commissioning death sentences remained the same after publication of these decisions by the UN Committee on Human Rights.

In the summer of 2011, two residents of Grodno who had been sentenced to capital punishment a year earlier were executed by firing. Convicts were found guilty of killing three people in an apartment building in October 2010. After the verdict was issued, the convicts Andrei Burdyko and Oleg Grishkovets, appealed for pardon to the President; yet with no positive result. Similarly to the cases of Vasily Yuzepchuk and Andrey Zhuk, executed in 2010, they were put to death, despite the fact that both convicts appealed to the UN Committee on Human Rights and started pertinent procedures.

While referring to the official request of the UN Committee on Human Rights on the death penalty issue Interior Minister Anatoly Kuleshov noted that he "does not live by the laws of the United Nations." (...) I live by the laws of my country. Our legislation is a priority. (...) Today we live within the framework of our own law, rather than some norms introduced from the outside"<sup>34</sup>.

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33 A/HRC/13/39/Add.1, para. 14; see also CCPR jurisprudences, 887/1999, Mariya Staselovich on her own behalf, and on behalf of her deceased son, Igor Lyashkevich, v. Belarus; 886/1999, Natalia Schedko, on her own behalf, and on behalf of her deceased son, Anton Bondarenko, v. Belarus.

34 <http://www.moyby.com/news/19538/>

### Other

*40. With reference to paragraph 90 of the State party's periodic report, please update steps taken by the State Party to consider accepting the competence of the Committee under articles 21 and 22 of the Convention.*

In its fourth periodic report in 2009, the Government announced it was considering claims under articles 21 and 22. After two years, on July 26, 2011, the House of Representatives of the National Assembly informed<sup>35</sup> that relevant national governmental bodies were considering a possible response under article 21 and 22. In its reply<sup>36</sup> of July 13, 2011, the Council of the Republic stated that the Republic of Belarus was considering the possibility of making statements under articles 21 and 22 and deemed any other statements in this regard to be inappropriate at that stage.

*41. Please provide information on any measures taken to ratify the Optional Protocol to the Convention. Has the State party taken steps to set up or designate a national mechanism, which would conduct periodic visits to places of deprivation of liberty in order to prevent torture or other cruel, inhuman or degrading treatment or punishment?*

Belarus has not taken steps to ratify the Optional Protocol to the Convention.

*42. Please indicate if there is any legislation in place aimed at preventing and prohibiting the production, trade, export and use of equipment specifically designed to inflict torture or other cruel, inhuman or degrading treatment. If so, please provide information about the content and implementation of such legislation. If not, please indicate whether the adoption of such legislation is under consideration and any steps have been taken to demonstrate this commitment.*

There is no legislation in place in Belarus aimed at preventing and prohibiting the production, trade, export and use of equipment specifically designed to inflict torture or other cruel, inhuman or degrading treatment. Adoption of such legislation is neither considered.

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<sup>35</sup> <http://lawtrend.org/ru/data/762/>

<sup>36</sup> <http://lawtrend.org/ru/data/763/>

## **PART II OTHER ISSUES**

### **Articles 1, 2 and 4**

Inadmissibility of torture and other types of cruel treatment is guaranteed by the Constitution. However, none of Belarusian laws or regulations contains the definition of torture, as determined in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter the Convention).

After consideration of the Third periodic report, the Belarusian authorities have taken certain measures for the legislative prohibition of torture. The total prohibition of torture or degrading treatment contained in the Criminal Enforcement Code (CEC) (articles 3, 10) and the Criminal Procedures Code (articles 11, 12, 18), the Law "On the Order and Conditions of keeping Persons in Custody" (article 2), the Law "On the Internal Troops of the Ministry of Internal Affairs " (article 5), and the Law "On the State of Emergency" (article 29).

Some legislative steps to criminalize the use of torture have been taken. Two articles were added to the Criminal Code the Republic of Belarus, that are only in tangential relation to torture: article 394 ("Coercion to testify"), which establishes liability for "coercing a suspect, an accused, a victim or a witness to give testimony or an expert to give an opinion by the use of threats, blackmail, or committing other illegal acts by a person administering inquiry, preliminary investigation or justice (part 1); and the same actions combined with the use of violence or humiliation (part 2); actions provided for by the part 1 of this article, combined with the use of **torture** (Part 3)", as well as article 426 of the Criminal Code "Abuse of power or official authority," that does not even contain any mention of torture, with the applicability criteria being violence, torment, insult of the victim or the use of weapons or special equipment. The word "torture" is also used in article 128 ("Crimes against the security of mankind"), which provides for liability over "the deportation, unlawful detention, slavery, mass or systematic extrajudicial executions, abductions, followed by disappearance of those abducted, **torture** or acts of atrocity committed in connection with racial, ethnic identity, religious and political beliefs of the civilian population".

Although actions provided for under article 394, part 2, are not qualified as torture, they may fall under the criteria of torture contained in the Convention. Objects of crimes provided for by the mentioned articles of the Code are different: article 394 in the chapter "Crimes against justice", article 426 in the chapter "Crimes against interests of the service". According to this criterion, both of the offenses do not correspond to the concept of "torture" as provided for by the Convention, which defines torture as, first and foremost, a crime against a person.

Article 394 of the Criminal Code is often reclassified into article 426 of the same code, which deprives the victim of an official's misconduct the right to compensation for moral and material harm as a victim of torture. The above mentioned relates to article 455 of the Criminal Code, section "*Crimes against military service*" — "*Abuse of power, transgression of power or dereliction of power*".

Article 394, part 3, of the Criminal Code provides for imprisonment for 3 to 10 years, with deprivation of the right to hold certain positions or engage in certain activities or without such dep-

rivation. Under article 394, sanctions provided for by parts 1-3, only apply to officials who administer inquiries, preliminary investigations or justice and who commission violence against a suspect, a convict, a victim, a witness or an expert. The sanctions provided by this article do not apply to other officials who have used violence against individuals who are not parties to the investigation. For example, the case of torture in prisons and torture committed against those detained over administrative offenses. The maximum sanction under article 426 provides for imprisonment for 3 to 10 years with confiscation of property or without confiscation and deprivation of the right to occupy certain positions or engage in certain activities. The current legislation does not regulate the applicability of the provisions of the Convention against Torture in relation to acts, performed at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

Belarusian legislation does not contain any specific provision that no exceptional circumstances may be invoked as a justification of torture or that an order from a superior officer or a public authority may not be invoked as a justification of torture.

Article 64 of the Criminal Code lists circumstances that aggravate responsibility, and it does not mention misconduct accompanied by torture. This suggests that the state does not recognize the use of torture in criminal proceedings as an aggravating circumstance. In addition, article 12 of the Criminal Code divides all crimes into four categories:

- Not presenting serious public danger;
- Less grave;
- Grave;
- Particularly grave.

Category-wise, crimes provided for by article 394, part 3, and article 426, part 3, of the Criminal Code fall under less grave ones. I.e. national legislation puts them onto the second out of four degrees of severity, thereby not relating it to the grave or particularly grave crimes.

Therefore, certain difficulties arise when classifying offenses related to acts referred to in articles 394, 426, since no regulatory legal act contains a definition of “torture” as it is specified in article 1 of the Convention. In addition, the Criminal Code does not provide for criminal liability for torture, attempted torture or order to commit torture given by a person in authority.

Moreover, Belarus legislation does not define acts of inhuman and degrading treatment and punishment that gave the name to the Convention, directly linked to acts of torture and differentiated by the level of cruelty. The Criminal Code contains definitions of “torment” and “violence” and provides for measures of criminal liability (article 154 *Torment*) or increased criminal liability (article 394, part 2; article 426, part 3). The concept of “torment” as defined by article 154, part 1, in the context of article 149, part 137, contains criteria that, if differentiated by

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37 Article 394. Torment

1. Intentional infliction of prolonged pain or suffering in ways that cause particular physical and mental suffering of the victim, or systematic beatings, not entailing the consequences provided for in articles 147 and 149 of this Code, (torment) ...

Article 149. Intentional infliction of less serious bodily injury

the degree of cruelty might be attributed to any of the three elements of cruel treatment: torture, inhuman and degrading treatment.

However, the sanctions provided for in this article do not correspond to the gravity of crimes, if the latter are attributed to torture or to inhuman treatment. What is more, nothing in article 128 of the Criminal Code "Crimes against the security of mankind", article 149 of the Criminal Code "Intentional infliction of less serious bodily injury", article 154 of the Criminal Code "Torture" reflect that these crimes are acts committed by a public official or other person acting in an official capacity, or at the instigation of or with the consent or acquiescence. As a consequence, the definition of "torture" within the meaning of the Convention cannot be applied to these articles.

The concept of "violence" as defined in the legislation<sup>38</sup>, excludes activities related to the infliction of mental suffering, yet only indicates the infliction of physical pain.

Furthermore, it should be noted that the corpus delicti of the offences provided for by these articles does not cover torture and inhuman or degrading treatment or punishment committed outside of the coercion to testify or torture on a discriminatory basis, such as torture of persons serving prison sentences or other convicts.

The Law "On the Internal Troops of the Ministry of Internal Affairs" (article 5) establishes the inadmissibility of degrading. Although it declares the responsibility of law enforcement officers for abuse of power or official authority, transgression of power or official authority (article 34), as established by laws and regulatory acts, the Law contains no prohibition of torture, inhuman or degrading treatment. This situation is of special concern taking into account that the Ministry of Internal Affairs' bodies register an overwhelming majority of cases of violations of the Convention.

The problem of lawfulness and proportionality of the use of physical force, special means, weapons and special equipment by officers of the Ministry of Internal Affairs, the State Security Committee, special and internal troops and the Armed Forces, remains unresolved in the Belarusian legislation. The law "On the State of Emergency" (article 29) merely declares responsibility for the unlawful use of physical force, special means and firearms. In practice, this leads to police officers widely using excessive force to suppress participation in peaceful assemblies or even minor breaches of public order, as well as largely abusing of physical force and equipment while detaining persons and subjecting persons already deprived of its liberty.

Therefore, the legislation is inadequate and has limited effects. With regards to the prohibition of torture, national legislation does not meet the requirements as provided for by the Convention. The lack of proper domestic legal regulation does not allow the Republic of Belarus to fulfil the commitments undertaken within the framework of the Convention.

In its Fourth periodic report, the Republic of Belarus repeats once again the arguments given in its Third periodic report in 1999, that provisions contained in international treaties ratified by

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1. Intentional infliction of less serious physical injury ... caused by prolonged impairment of health for up to four months, or a significant lasting loss of the working ability less than on one-third ...

38 The violence should be understood as subjection of a victim to beating, infliction of bodily injuries, and also other violent actions, connected to infliction of physical pain or restriction of his freedom. (Decision of the Supreme Court of December 21, 2001 #15 "On the application of criminal law by courts in the theft of property cases." National Register of Legal Acts, 2002, # 8, 6/311)



the Republic of Belarus are part of the existing legislation applicable in its territory. (See paragraphs 1 and 2, part III, of the Fourth and paragraphs 2-4 of the Third periodic reports). The Criminal Code is yet the only criminal legal guidance in force in the territory. Belarus has no precedent of direct application of international provisions. Direct application of the notion of torture contained in the Convention is thus not viable; hence the Committee's recommendation remains unimplemented.

In addition, not a single consideration issued by the Human Rights Committee on individual petitions of citizens of Belarus State has been satisfied.

### Article 3

According to official data, Belarus had granted refugee status to 808 people from 13 countries, as of July 1, 2009<sup>39</sup>. Simultaneously, around 3,300 foreigners applied for refugee status from 1997 to 2010. Citizens of 48 countries applied for refugee status in Belarus<sup>40</sup>. There is no information on whether the issue of protection from torture with regards to those individuals was considered.

With regards to protection of migrants and refugees from torture in case of extradition (returned) one can note the following. The Law "On granting foreign nationals and stateless persons refugee status, additional and temporary protection in the Republic of Belarus", adopted in 2008, provides for the possibility of obtaining refugee status if the person is a "victim of persecution based on race, religion, nationality, and ethnic origin, membership of a particular social group or political beliefs (...)".

The decision to grant asylum is made by the President. The procedure of granting asylum in the Republic of Belarus is regulated by the "Regulations on granting asylum in the Republic of Belarus to foreign nationals and stateless persons, its loss and deprivation", also approved by the President.<sup>41</sup>

Applications for asylum are submitted by persons present in the territory and forced to leave their country of residence because of the persecution for their political or religious beliefs or ethnic origin. The applicant must present substantial evidence of persecution by the government on the aforementioned grounds.

In this regard, when the decision is being made on whether recognizing a foreign person as a refugee, the requirement of providing substantial evidence may only be considered as a formality. Therefore, a request can be sent to the asylum-seeker former place of residence. The response about the conditions, in particular persecution and torture, will be prepared with the participation of local authorities, making it unreliable evidence when the applicant is being persecuted by the above mentioned authorities.

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39 The Citizenship and Migration Department of the Ministry of Internal Affairs of Belarus, the UNHCR Office in Belarus.

[http://www.scnm.gov.ua/control/uk/publish/article?art\\_id=134359&cat\\_id=47922](http://www.scnm.gov.ua/control/uk/publish/article?art_id=134359&cat_id=47922)

40 The Citizenship and Migration Department of the Brest oblast executive committee's Department of internal affairs. Refugees in Belarus. <http://uvd.brest.by/ugim/index.php?punkt=begenec>

41 Edict by the President #204 of 5 April 2006.

At the same time, when migrants arrive in Belarus to seek asylum and file their applications, the issue of the use of torture against them or the threat thereof is not actually examined. The domestic legislation simply does not provide for such a procedure. Given the difficulty to obtain evidence of the use of torture, such circumstance for asylum may well be disregarded. And if criminal charges were brought against a migrant in his country of residence and torture was used within the framework of the criminal prosecution, only the fact of criminal charges would be taken into account, which gives grounds for refusal of refugee status.

The above conditions apply to all migrants, including those falling under special categories. For example, the procedure for the return of minors, who arrived by themselves to Belarus from the CIS countries, is in place in Belarus; based on the Agreement on cooperation between the ministries of internal affairs of CIS countries "on issues related to the return of minors to the country of their residence" of September 24, 1993. This Agreement also does not provide for refusal of extradition of minors, in case they object to the return and they claim danger of torture or ill treatment.

In Belarus, the problem of efficient protection of refugees is extremely relevant. There is an important distinction between refugees and ordinary economic migrants. As highlighted by the Head of the UNHCR Office in Belarus, Sholeh Safavi, "Refugees are not looking for economic benefits, yet for protection, there is not much of a choice they have; and in that regard they are different from economic migrants who choose the destination country in advance"<sup>42</sup>. At the same time, out of 150-160 asylum applications by foreigners in the past two or three years, only 5-10% were approved.<sup>43</sup> Despite the development of contacts with UNHCR and the UN High Commissioner<sup>44</sup>, the domestic procedure of consideration of migrants' asylum applications remains unchanged.

At the same time, there are cases of persecution of political opponents in Belarus and means of criminal persecution are being used to this end.

The above can be adduced from the persecution of Igor Koktysh, who applied for political asylum in Ukraine. "For almost three years Koktysh was kept in the pre-trial detention centre in order to be extradited to Belarus. Then, international and intergovernmental organizations, including the European Court of Human Rights stepped in, after which the activist was released. At the same time, the Amnesty International recognized Koktysh as 'prisoner of conscience'." When applying to the European Court of Human Rights, the applicant stated that in case of being extradited to Belarus he "would be in danger of being subjected to torture and unfair trial."<sup>45</sup> In 2010, the refusal to provide refugee status was appealed with the court, yet other criminal charges based on falsified evidence -this time of drug dealing- were brought against Igor Koktysh. In this regard, in 2011, the State Committee on Nationalities and Religions of Ukraine denied once again political asylum to Belarusian oppositionist Igor Koktysh. The pressure openly accompanied the process from the special services of Belarus.

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<sup>42</sup> <http://belaruspartisan.org/bp-forte/?newsPage=0&backPage=21&news=89130&page=100&locale=ru>

<sup>43</sup> "Refugees living in Belarus ask UN to help". BelaNews.ru. News from Belarus. 8 June 2011. <http://belanews.ru/2011/06/08/17774/>

<sup>44</sup> UN High Commissioner for Refugees Antonio Gutierrez visited Belarus on 28 July 2010.

<sup>45</sup> Kreydich v. Ukraine. European Court decision of 10 December 2009

This practice suggests that the authorities of Belarus cannot ensure fair consideration of applications for asylum, as well as the non-expulsion of persons in danger of being subjected to torture.<sup>46</sup>

### **Articles 5 to 7**

The Criminal Code (article 6) provides for criminal prosecution of persons committing extra-territorial crimes both for Belarusian citizens, stateless persons and foreign nationals. This procedure, as compared with other CIS countries, is sufficiently detailed.

Criminal liability for foreign nationals is permitted “in cases of particularly grave crimes against the interests”. Moreover, there is a list of crimes for which universal criminal jurisdiction is applied: 1) genocide (article 127), 2) crimes against the security of the mankind (article 128), and 3) the manufacture, stockpiling or distribution of prohibited means of warfare (article 129), 4) ecocide (article 131), 5) the use of weapons of mass destruction (article 134), 6) violation of the laws or customs of war (article 135), 7) criminal violations of international humanitarian law committed in armed conflict (article 136), 8) inaction or issuance of a criminal order in time of armed conflict (article 137), 9) human trafficking (article 181). Under article 85 of the Criminal Code of Belarus, statutes of limitations are not applied to the crimes listed above.

However, this list does not include offences, bearing the characteristics of torture, and automatically classifies them as falling within the national criminal jurisdiction

In this regard, the existing order of general jurisdiction in Belarus does not meet the principle of universal jurisdiction as accepted by the international law and defined by the Convention: the prosecution of those responsible for torture in the territory of any state. In addition, there are no adequate mechanisms for its implementation. In relation to such persons the general statute of limitations for criminal prosecution is applied. In practice, the universal jurisdiction has never been applied in the Republic of Belarus.

### **Article 8**

The Criminal Code for extradition of suspects, accused and convicted persons from Belarus regulates the procedure.

Extradition decisions fall within the authority of the Prosecutor General (as far as criminal prosecution is concerned), and also the Chairman of the Supreme Court (as far as the enforcement of a court ruling of a foreign state is concerned).<sup>47</sup> Article 475 of the Criminal Procedures Code specifies conditions under which the extradition request from another state of may be approved. These include the obligation to not prosecute a person for other offenses (except those for which the request is received), to not send a person to a third state, as well as to guarantee freedom of movement after the termination of the prosecution or punishment.

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<sup>46</sup> FoundationOpenBelarus. Ukraine refused political asylum to Igor Koktysh.[http://openbelarus-pl.ucoz.ru/news/ukraina\\_otkazala\\_igorju\\_k...](http://openbelarus-pl.ucoz.ru/news/ukraina_otkazala_igorju_k...)

<sup>47</sup> Chapters 53-54, Criminal Procedural Code of Belarus of 16 July 1999, #295-3

In case of extradition to another state to serve an imprisonment sentence, the consent should be obtained from the person in relation to whom the request is made.<sup>48</sup>

According to articles 507-508, 515 of the Criminal Procedures Code, a person that is being deported from Belarus has all procedural guarantees. These include: the right to information, protection, use of his native language and appeal to the court. In addition, to restraint in the form of detention, an alternative sanction — “house arrest” is considered for them (the Criminal Procedures Code, article 512).

In case of extradition of a person charged with a crime for which an extremely long period of detention is being provided for — up to 18 months, yet even this long period can be further extended by the Prosecutor General. At the same time, the possibility of appealing the extension of detention with the court is provided (the Criminal Procedures Code, article 127).

In addition, issues related to extradition are regulated by a number of international treaties: bilateral agreements concluded by the Republic of Belarus with various countries (China, Republic of Latvia, the Republic of Poland, Lithuania, Turkmenistan, Vietnam, etc.), multilateral conventions (the Convention on the Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, made in Minsk on 22 January 1993, the European Convention on Extradition, made in Paris on 13 December 1957, the Convention on the Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, made in Kishinev, on 7 October 2002, etc.).

However, the legal terms of extradition do not evaluate the safety of a suspect as far as the possibility of torture in the state of extradition is concerned. In fact, when the Republic of Belarus makes use of the international law, treaties without protection from torture provisions are the ones being applied.

According to the Supreme Court, in most part of extradition cases the Minsk Convention of 1993 was used (89.2% of cases). In 81.6% of those cases the Russian Federation was the requesting state.<sup>49</sup>

Analysis of court practice show the courts have never actually inquired into the possibility of torture. There were no cases when the Supreme Court assessed the risk of torture in dealing with decisions of the first instance courts. The consequences of extradition of the accused persons to other states are not being investigated, a fortiori, as in most cases (50.9%)<sup>50</sup> these states did not even inform the Republic of Belarus on the outcome of the criminal proceedings.

In practice, the extradition procedure is carried out in an extremely simplified format and is reduced to the evaluation of procedural documents and whether the alleged crime in a foreign country complies with the Criminal Code of Belarus. It is noteworthy, that the Office of the Prosecutor General, while reviewing the practice of parallel extradition of the accused persons between the Republic of Belarus and the Russian Federation, insists on simplifying the procedure

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48 Article 473, part 1, paragraph 3 of the Criminal Procedural Code of Belarus of 16 July 1999, #295-3.

49 The Supreme Court. On the practice of application in courts of the provisions of international agreements in the sphere of legal assistance in criminal cases. (Based on the c review).  
<http://www.supcourt.by/cgi-bin/index.cgi?vm=d&vr=obz...>

50 The Supreme Court. On the practice of application in courts of the provisions of international agreements in the sphere of legal assistance in criminal cases. (based on the c review).  
<http://www.supcourt.by/cgi-bin/index.cgi?vm=d&vr=obz...>

of extradition. While assessing the shortcomings of procedure, the head of the department for supervision of investigations in the public prosecutor's office of the Office of the Prosecutor General, Ivan Zuj, explained that: “under current Russian law, a defendant may appeal the extradition decision in court, and also apply for Russian citizenship”.<sup>51</sup> The Office of the Public Prosecutor expresses its concern about the duration of the decision-making procedure on extradition to Belarus.

For the time being, the inquiry into the circumstances of extradition is ignored in the simplified national procedure. In November 2010, Belarus national Alexander Trubnikov wanted for committing a crime provided for by article 446, part 1, of the Criminal Code (desertion), was detained in Murmansk (the Russian Federation). At the end of May 2010, Trubnikov abandoned his military unit. The law enforcement authorities initiated criminal proceedings against him and he was arrested in the city of Murmansk by operatives of Murmansk oblast internal affairs department.<sup>52</sup> Meanwhile, in late 2010, Trubnikov applied to a Murmansk-based human rights centre seeking help in protecting his rights. In his application he stated the reasons for the abandonment of the military unit: the threat of violence from other soldiers and officers.

There is no information about requests by States Parties to Belarus over extradition of persons with torture accusations. However, as the offence of “torture” is not criminalized, the Republic of Belarus has no serious grounds to demand the extradition of persons guilty of this crime. A State Party could refuse extradition, expressing doubt that Belarus is able to carry out justice (article 8, paragraphs 2-3, of the Convention).

## Article 9

There have been no practical actions on the part as to provide legal assistance to States Parties to the Convention in respect of any of the offences referred to in article 4 of the Convention.

Taking into account that the state in fact has no practice of effective investigation of torture cases and prosecution of offenders, it is unrealistic to expect that such practice might arise on the initiative. Furthermore, there have been no requests from other states with regard to criminal prosecution of Belarus nationals over the offence of “torture”.

## Article 10

Preparation of law enforcement officers in different specializations is provided by the Academy of the Ministry of Internal Affairs (Academy) (including Criminal-executive faculty). Special preparation of doctors is not held. However, for doctors, working in the institutions of internal affairs, there are special trainings held by Belarusian state medical university.

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51 Interfax.by Agency. “Belarus and Russia should unify laws in the sphere of extradition of accused persons – Office of the Prosecutor General” 30 March 2009  
<http://www.interfax.by/news/belarus/53328>

52 Naviny.by Belarusian deserter detained in Murmansk/  
[http://naviny.by/rubrics/auto/2010/11/01/ic\\_articles\\_124\\_171](http://naviny.by/rubrics/auto/2010/11/01/ic_articles_124_171)

According with the Fourth periodical report presented by the Republic of Belarus to the UN Committee against torture “seven doctors underwent training in international centres abroad. There are problems with the special preparation of psychologists, who work in institutions”.

At the same time, there are no special state programmes of law enforcement officers’ preparation, which would include the topic of fight against tortures and their prevention, and there is no budget prevision for this.

In practice, the Ministry of Internal Affairs holds short-term trainings for officers in the regime of broadened conferences or one or two-day courses. Such trainings, as a rule, are devoted to studying the new legislation or working out operational-investigative actions. The topics of human rights and fight against tortures are not included in such trainings.

All the achievements in topical preparation of officers were limited by short-term trainings, initiated by international organizations. Therefore, in 2007-2008 Penal Reform International realised a special programme aimed at further training of the workers of penitentiary institutions, connected with the topic of providing human rights. However, during the last year such programmes have practically disappeared. Particularly, with the closure of OSCE office on December 31, 2010 and the cancellation of its programme: “Practical psychologist in the sphere of law enforcement activity”.

On the basis of the Academy of management under the aegis of the President, there are periodical courses of further training for prosecutors and judges. Nevertheless, in the programme of the courses there are no seminars on the topic of fight against torture.

There are also no special state programmes of preparation and further training for lawyers.

Moreover, on April 15, 2011, by the order №96 issued by the Minister of Justice Viktor Golovanov “On the participation of lawyer in educational programs abroad” new rules and limitations (licensing system) of the participation of lawyers in training programs held abroad were introduced.

## **Article 11**

The absence of legal definition of “torture” and, as a consequence, the inadequate understanding of the principles of limitation of violence in enforcement policy lead to excessive usage of different forms of violent treatment. In addition, in departmental normative acts there are no definition and limitations for the usage of cruel, inhuman or humiliating treatment of prisoners. In contradiction with the rule 34 of UN Standard Minimum Rules there are no limitation (including temporarily) for the usage of special means.

The practice of wide usage of law enforcement’s special forces has especially negative consequences. Special forces have to deal with major crimes in extreme conditions. For example, when the usage of force and firearms is not limited in the prevention of terroristic attacks.

However, in Belarus, Special Forces are widely used in conditions when there is no any armed threat. Practically, such Special Forces are used for suppression of peaceful meetings.

In compliance with departmental instructions, during the holding of special operations by special force of the Ministry of Internal Affairs, they act without identification marks (personal

identification numbers). That is why after they use excessive force it is impossible to identify them as suspects of a crime. This circumstance can be used in all the cases of criminal pursuit for closing the criminal case against law enforcement officers.

According to part 3 article 11 of the Criminal Procedural Code, no participants of the criminal procedure should be the subject of cruel, inhuman and humiliating treatment, and undergo without his or her agreement medical or other experiments. The rules of interrogation in criminal procedure are regulated by part 25 of Criminal Procedural Code in which there is no direct prohibition of tortures and cruel treatment.

Militia's work evaluation is a prevailing method used by the Ministry of Internal Affairs; the percentage of criminal cases solved is the main indicators. These methods contribute to spread torture practices as officers of field services are aimed not at solving cases but at increasing the percentage of solved cases for better statistics. However, several objective (poor equipment of militia by necessary technical means) and subjective factors (low professional level of officers, their inability to use legal means of operational-search activities and others) prevent from real rise of the number of solved cases. As a result, the admission of guilt by a suspect becomes the main evidence of committing a crime, and tortures are the main means of getting the admission.

The use of torture by investigators during the interrogations for getting the admission of guilt (putting plastic bag on the suspect's head, tightening the handcuffs in order to stop the blood circulation in hands, beating with plastic bottles and other) is common. As the persons under investigation are usually held in pre-trial prisons and temporary detention centres, it is very difficult for them to ask for examination of their injuries resulting from torture acts, especially since the adoption in January 13, 2004, №3 (Rule №3) of the procedures set by "The rules of internal order of pre-trial prisons of the Ministry of Internal Affairs "; "The rules of internal order of temporary detention centres of the bodies of internal affairs" approved by the resolution of the Ministry of Internal Affairs on October 20, 2003 №234 (Rule №234); "The rules of internal order in pre-trial prisons of the bodies of state security ", approved by the resolution of the Committee of State Security on October 17, 2003 №20 (Rule №20).

In compliance with part 1, article 2 of the law "On the order and conditions of keeping persons in custody" from June 16, 2003 № 215-3 (Law), keeping persons in custody should be done on principles of legality, humanity, equality of all the citizens before the law, respecting human dignity in accordance with the Constitution, universally recognized principles and norms of international law as well as international treaties signed by the Republic of Belarus. Additionally, it should not be accompanied by cruel, inhuman and humiliating treatment, which can do any harm to physical or psychical health of a person in custody. But there is no direct ban on torture in any of normative legal act.

Rule № 3, 234, 20, defines regulations on medical examination of a person kept in custody, who sustained injury, by a medical worker on his request or initiative of pre-trial prison's or detention centre's authorities immediately and not later than in twenty-four hours term.

The possibility of medical examination of injuries by the workers of state health organizations is provided only in the following cases:

- By decision of the head of pre-trial prison or detention centre
- In case of absence in the staff of pre-trial prison or detention centre of a doctor (medical assistant)

- By decision of the body conducting criminal proceedings
- On appeal of a person in custody
- On a person's in custody lawyer's or legal representative's appeal

In order to be examined by medical workers of health authorities' medical institution the person who sustained injury, or his lawyer or legal representative should file an appeal to pre-trial prison's or detention centre's head. The appeal has to be considered during twenty-four hours.

Examination by medical workers of health authorities' medical institution is paid from the means available on personal account of person in custody, which can constitute a very serious obstacle.

A medical worker of the penitentiary institution holds medical examination, contradicting the principle of objectivity of the investigation. What is more, all pre-trial prisons and temporary detention centres are subordinate to the Department of Execution of Punishment of the Ministry of Internal Affairs, meaning that investigators and workers of penitentiary institutions work in the structure of the same body – the Ministry of Internal Affairs. In order to be examined by medical workers of health authorities' medical institution the person who sustained injury, or his lawyer or legal representative should file an appeal to pre-trial prison's or detention centre's head who has the right to refuse the examination.

Appealing against the rejection of medical examination leads to prolonging of investigation terms and disappearing of the evidence of torture.

In compliance with the rules №3, 234, 20 it is impossible to be examined by a legal medical expert. This constitutes a grave impediment for recording the evidence of torture.

From the time of the adoption of part 25 of Criminal Procedural Code and rules 3, 234, 20 normative has practically not changed, despite the adjustments in the names of some state bodies; this can be seen as a non compliance with the resolutions of article 11 of the Convention.

Belarus implemented from 2006 to 2010 a State programme aimed to improve the legal-executive framework of the Ministry of Internal Affairs. Unfortunately, it did not solve the problems related to torture acts mentioned in the present report, which was elaborated with reliable information provided by human rights defence organisations in September 2011.

The attitude of the authorities to public control and to human rights defence organizations, investigating the facts of alleged acts of torture in particular, is traditionally hostile. Nowadays, the representatives of human rights defence organizations have no legal right to visit prisons, pre-trial prisons and temporary detention centres.

In compliance with the resolution of the Council of Ministers from September 15, 2006 №1220 "On approval of resolution on the order of realization by republican and local NGOs of control of penitentiary bodies and institutions activity" (Resolution №1220) only the members of public supervisory commissions created by the state bodies have the right to maintain public control for penitentiary bodies and institutions. NGOs' control is realised by membership in such commission – the commission can consist of 3 to 11 members. Applicant to the commission must be a Belarus citizen and a member of a registered organization, which purpose is to protect human rights. The Ministry of Justice decides whether to accept the NGO's representative to the commission, but it is not written in the Resolution №1220 on what basis they can refuse and how to



appeal against such denials. Impossibility to appeal against the rejection to be included in such commission challenges their independence from the state. In order to visit the correctional institution or pre-trial prison, the commission files a request to the head of the Department of Execution of Punishments and, after being granted with the permission, it confirms the time of visit with the prison's authorities. In Resolution №1220 only the following rights of the commission appear in written: to visit correctional institutions only after they get the permission, to talk to officers of the prison, responsible for the rights of prisoners and to talk to prisoners only in the presence of the administration of the institution. The members of the commission are not allowed to get acquainted with the materials of investigation, personal files of prisoners, other documents related to the execution of punishment, to make photo-video and audio records, accept written statements from prisoners, including appeals against the violation of human rights. The members of commission have no rights to accept and investigate appeals against the violation of human rights and to monitor the violation of human rights in penitentiary institutions. It is specially stated, that in case of violation of these rules, and also in case of "giving a foreign state, foreign or international organization, mass-media deliberately false information about the activity of state bodies and institutions executing punishment" the member of the commission can be excluded from it, the possibility to appeal against exclusion is not provided. The resolution provides the participation of NGOs only in social and financial directions – participation in organising labour, rendering help to prisoners in preparation for release etc. There are no possibilities for defence of the rights of prisoners and solving problems in the Resolution. It should be mentioned that the commission does not include any representative from independent NGOs; the commission consists of members of pro-state organizations that have not highlighted throughout their existence a single prisoners' problem.

There are traditional guarantees in Belarusian legislation for a detainee: the right to be informed about the reasons of detention, right for lawyer, right to inform relatives about the detention, right for an interpreter, right not to give evidence against him/herself, and the right for compensation for damages. These rules are applied to suspects, as well as to convicts in a criminal offence<sup>53</sup>, and to persons who are subjects of administrative case<sup>54</sup>.

In the Criminal Procedural Code<sup>55</sup> it is written that the time of detention (for 72 hours) is counted from the moment of actual detention. However, there is a conflict with the registration of the time of detention, which is written in the protocol of detention. Usually time of detention differs from the time registered in protocol.

One of the essential shortcomings is the absence in Criminal Enforcement Code of Belarus of administration's obligation to immediately inform the family members of the detained about the detention (transfer to another facility)<sup>56</sup>. In article 155 of Criminal Procedural Code of Belarus the term in which the family has to be informed is 12 hours.

The information should be provided by the "investigative body, which detained the suspect, prosecutor or his deputy". In compliance with article 115 of Criminal Procedural Code of Belarus "In 12 hour term after the detention the body leading criminal procedure and responsible for the detention has to inform about the detention any adult member of the family of the detained or give such opportunity to the detained".

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53 Article 41-42 of Criminal Procedural Code of Belarus from July 16, 1999 №295-3

54 Article 4.1 of PEC of Belarus on administrative offences from December 20, 2006 № 194-3

55 p/p 3. p. 2 of article 108 of the Criminal Procedural Code of Belarus from July 16, 1999 №295-3

56 In contraversion of the rule № 44-3 MSR and principle № 16-1 "Body of principles...").

The body leading criminal procedure and responsible for the detention of foreign citizen or person without citizenship should inform on his demand the Ministry of Foreign Affairs not later than 24 hours after the detention, for them to inform diplomatic mission or consulate of the state of citizenship of the detained or usual place of living of the detained foreign citizen or person without citizenship”.

Nevertheless, in practice the detained get the right to be informed about his/her rights only after the creation of a detention protocol. Foreign citizens are an exception to the rule. In compliance with article 7 of the Law from 03.06.1993 № 2339-XII “On legal status of foreign citizens and persons without citizenship in the Republic of Belarus”, - “Detained or arrested foreign citizens have to be immediately inform in their own language about the reasons of detention or arrest and their rights, they have in accordance with the legislation ”.

The above clarifies why procedural rights of the detained foreign citizens are more legally protected.

It is significant that Belarusian legislation guarantees the right for lawyer not from the moment of detention, but only after the creation of protocol. In particular, - for suspects in committing criminal offence - article 41 of Criminal Procedural Code of Belarus: “in case of detention or using arrest as the measure of restraint, to get before the first interrogation as the suspect free legal consultation of a lawyer”<sup>57</sup>.

For detained for administrative offence: “to have lawyer from the beginning of administrative procedure, and in case of administrative detention – from the moment of informing him/her about administrative detention”<sup>58</sup>.

In practice, there is direct dependence of protection of the rights of the detained from the provision of information. Practically, family members get information about the detention after a significant amount of time, when they start to look for their relative. Such delay in receiving information is very important, taking into account the fact that only relatives and friends can provide the detained with legal help from an independent lawyer. To force the detained to give evidence, the militia officers can use a longer delay. Therefore, the detained can get the assistance of a lawyer: 1) from the time when the relatives have been informed (taking into account the time the lawyer needs to get the permission, it takes an average of 24 hours); 2) after presentation of the decision to open a criminal case against the detained – 72 hours after the detention. In this case the lawyer must be appointed in 24-hour term (before the first interrogation)<sup>59</sup>. Only in rare cases lawyer can get the access to their client in the first couple of hours after the detention, it can happen for instance if relatives and friends quickly got the information from the witnesses of the detention and signed an agreement with the lawyer.

In reference to foreign citizens, although the legislation of Belarus provides guarantees of immediately informing the relatives about the reason of detention – such information process is happening with some delays. Very often the officers try to not make international phone calls and let the detained call from his/her own cell phone.

In practice, militia officers inform relatives of the detained based from the circumstances and the motives of detention.

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57 p/p5 p.1 of article 41 of CPC of Belarus from July 16, 1999 №295-3

58 p/p 5 part 1 article 41 of PEC on administrative offences from December 20, 2006 № 194-3

59 P. 5, 6, 8, part 2, article 41 Criminal Enforcement Code of Belarus

During the detentions on political grounds, militia very often delays the call to the relatives for several hours, alleging their identity had to be proven, before releasing detainees without any charges. They very often use this tactics to detain the members of opposition and participants of meetings, to prevent the distribution of leaflets and newspapers, or as the means of preventing public meetings.

Informing the accused about the content of charges is provided by the procedure of charging itself. Article 43 of Criminal Procedural Code of Belarus guarantees the right of the detained “to know what he/she is charged with, that is why during the charging the accused have the right to get from the body leading the criminal procedure the copy of the accusatory resolution, and in cases of private accusation – the copy of the complaint, written by the person who suffered from criminal offence”. The accused must get acquainted with the text of accusatory resolution; both him/her and his/her lawyer should sign for it and get the copy. The way of presenting the charges is not defined by the legislation.

In practice, the main problem remains the possibility of arbitrary change of the grounds for detention and accusation by militia and investigation bodies. This circumstance is used as a manipulation tool by authority during detention and custody in cases of pursuit of civic activists on political grounds. For example, on January 7, 2011 militia arrested Sergei Kovalenko because he hung unregistered white-red-white flag of opposition on the top of Christmas tree in Vitebsk. On January 10, the prosecutor’s office continued the term of his detention for two more months, but on January 12 he was suddenly released with the ban to leave the country. On May 14 was found guilty in violating public order and resistance to militia. The court sentenced him to 3 years of imprisonment with probation for resisting militia.

### **Treating prisoners**

The problem of protection of the rights of prisoners is very important for Belarus. Many cases of cruel, humiliating treatment of prisoners, unjustified use of punishment, use of force and special means were reported. In 2006 Valeriy Levonevskiy<sup>60</sup> filed a suit against the administration of pre-trial prison №1 of Grodno, Mogilev penal colony №19 and Ivatsevichi penal colony №22, where he had served time from 2004, to prosecutor’s office. In his statement it was written that he had repeatedly been punished on the base of formal and sometimes even falsified documents (put to disciplinary cell, deprived of parcels, meetings with his relatives, the ability to buy products in prison shop). The administration of the colony refused Levonevskiy and his lawyer in their right to get acquainted with accusatory document. He made public statements, claiming having been under investigation, arrested and placed in different prisons and colonies. He faced a large number of violations of his rights by the bodies of investigation and the administration of pre-trial prison. This is an example on how much spread are violations of the rights of detained and arrested in Belarus and on the serious difficulties in getting legal assistance in pre-trial prisons and colonies.

It is almost impossible to file a complaint against the workers of detention facilities; complaints do not exit the walls of the institution and complainers face retaliation. In many of the penitentiary institutions convicts are put into disciplinary cells for writing complaints. The total control by the administration and the threats of new punishment practically exclude appealing for help by inmates. We know a considerable amount of cases of punishment of prisoners for “un-

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<sup>60</sup> Valeriy Levonevskiy was sentenced to two years of imprisonment in penal colony for insult of the President.

grounded complaints against administration”, and the administration of the institution is the one that evaluates the reasonableness of such complaints

Therefore, in criminal-executive law there are no guarantees of protection of victims of administration’s unlawful actions and those who dare to complain are frequently subjects to persecution.

Departmental normative acts in the sphere of execution of punishments and does not contain measures of guarantee. Additionally, neither criminal legislation nor corresponding norms of administrative law and disciplinary resolutions provide punishment for the cases of torture, violence and other cruel and humiliating treatment of convicts. These factors explain numerous torture acts and other forms of cruel and inhuman treatment in the criminal-executive system.

The Government made some efforts trying to review the normative base, regulating the conditions of keeping persons in custody. In August 2010, the lowered norms of nutrition for persons placed in disciplinary cells for violating the regime of the facility were abolished.

Nevertheless, the vast majority of recommendations by international organizations and Belarusian human rights defenders are being ignored by the authorities, including recommendations made after the consideration of the last periodic report on Convention fulfilment.

In particular, until now no effective measures have been adopted to allow the persons who are serving sentences in prisons and colonies to file complaints to court against the punishments for violating the regime of serving the sentence. Although in 2003 such right was included in Criminal Enforcement Code (part 11 article 113), this norm is not applicable, as courts refuse to consider such complaints, referring to the absence of special procedures of considering such category of complaints.

Procedures connected with the execution of death sentence, which are currently applied in the Republic of Belarus, have not yet been abolished. In 2003, UN Committee on Human Rights having considered the complaints of the relatives of Anton Bondarenko and Igor Liashkevich, who were sentenced to death penalty and later executed, decided that the full secrecy of the date of execution and the place of burial, as well as the denial to give the bodies to the relatives, are equal to threatening and punishment of the families. These are indeed left in the state of distressful uncertainty and psychic suffering. The Committee considers, that the refusal of the authorities to tell the author of the complaint the day of her son’s execution and latter refuse to let her know the burial place, to be inhuman treatment of the author and violating article 7 of the Covenant”<sup>61</sup>.

The Committee considers, that the state-participant has to give the authors of the complaints all the information about the burial place of Anton Bondarenko and Igor Liashkevich and compensate for there suffers. The authors of the complaint have until this date received no information about the burial place of their sons.

The procedures of death sentence execution have not been changed taking into account the demands of the decision of the Committee on Human Rights.

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61 <http://www.unhchr.ch/tbs/doc.nsf/0/399cc6c62d92bbcec1256d33004d5600?OpenDocument>

In 2010, death sentences of Andrei Zhuk and Vasiliy Iazepchuk were executed. Their relatives had not been informed about the date of execution, their bodies were not given to them for burying and they got no information about their burial places. Mother of Andrei Zhuk appealed to the court with a complaint against the denial to give the body of her executed son and against the decision of not informing her about the burial place, but her demands were rejected claiming that civil suit was not in the competence sphere of the court.

In July 2011, two more persons were executed – Andrei Burduko and Oleg Grishkovets. The UN Committee on Human Rights was reviewing their complaints referring to tortures during investigation and unfair trial. In compliance with the p. 92 of the rules of the procedure of the UN Committee on Human Rights, the Committee asked Belarus to take preliminary measures in order to avoid fatal damage to victims and to not execute those men before it can submit its decisions. This is the second similar case within the last two years when Belarus executed death sentences of persons whose complaints were being considered by the Committee.

### **Articles 12 and 13**

There is no criminal punishment in Belarusian legislation for using torture, cruel and inhuman treatment; that is why such cases are investigated not as alleged torture but as the results of unlawful actions of militia officers or abuse of force or misconduct in office. Persons who were the subjects of torture have the right to file a complaint to the prosecutor's office, which is the only body, which can handle such complaints. Ineffectiveness of handling such complaints is connected with the problem of prosecutor's office's partiality. In compliance with p. 4 article 4 of the Law "On prosecutor's office", from May 8, 2007 №220-3 (Law on prosecutor's office), the tasks of prosecutor's office are: supervision of law execution during pre-trial procedures, during preliminary investigation and inquest, support of public prosecution. Therefore the prosecutor's office has to handle during the investigation of such cases two manifestly controversial tasks: the supervision and the prosecution.

In practice, almost in all cases of citizens' complaints against alleged torture acts, prosecutor's office refuses to open a criminal case, or if they allow it, it will soon be closed. Prosecutor's office is trying by all the possible means to avoid the duty to hold quick, fair and effective investigation of the complaints against the facts of alleged torture. In most cases prosecutor's office instead of opening the criminal case and holding investigation of such complaints restricts to preliminary inspection. This inspection usually consists of getting from militia bodies the report on internal inspection on the allegations. Because militia officers and their authorities are not interested in investigation of the case, such inspection, in the majority of cases, consists of getting explanations from the officers accused of alleged acts of torture. They will naturally claim their innocence. Positive characteristics of these officers are attached to the explanations. On the basis of these documents, prosecutor's office usually rules to refuse opening of the criminal case. Measures aimed at finding, gathering, investigating and preserving the evidence, finding witnesses are almost never taken. The practice shows that the task to prove the involvement of officials to the alleged acts of torture is the responsibility of the victim from the torture. Practically all the criminal cases, when there are no obvious proofs of torture, committed by concrete militia officers, are dismissed or promptly closed.

Therefore, in the course of investigation of a torture fact reported by Pavel Levshin from Minsk, the prosecutor's office of Sovetsky region of the city of Minsk ignored forensic medical expert's report that confirmed the existence of bruises and ruled out a possibility that the injuries could

have been caused by a fall on a plain surface. The prosecutor's office personnel did not questioned the witnesses, who had been held in the same cell as Pavel Levshin. **(Annex 1)**. As a result, his complaint did not allow opening a criminal case. He filed an appeal against this decision to Minsk City Prosecutor's Office, which reversed the decision and sent the appeal for a new revision. After the second investigation the opening of a criminal case was again denied. Only on June 14, 2010, Minsk City Prosecutor's Office opened criminal case on the facts of the crime falling under p. 3 article 426 of the Criminal Code, on the facts of abuse of force involving violence.

In compliance with article 173 of Criminal Procedural Code, the decision on whether to open or not the criminal case on citizen's statement about a crime should be taken in term not longer than 72 hours, in case of necessity of revision of the presence or absence of grounds for opening the case – not longer than 10 days. In case of impossibility to take the decision on opening the case this term can be prolonged by the prosecutor's resolution up to 1 month; in necessary cases this term can be prolonged up to 3 months. As the Criminal Procedural Code of Belarus does not oblige prosecutor's office to immediately open criminal case on the fact of acts of alleged torture, holding of inspections are sometimes prolonged up to 3 month even with the presence of apparent marks of torture. Person who suffered from torture is sent to forensic medical examination of physical injuries after several days, sometimes weeks after he/she had filed a complaint, which complicates the collection of proofs. On occasions, the authorities do not send persons who suffered from torture to forensic medical examination at all.

There are some cases registered when despite the irrefutable facts of use of torture (fractured wrist, bruises and scratches caused by solid blunt object) the public prosecutor's office refuses to open a criminal action and confined itself to questioning militia personnel, those who arrested and interrogated the victim, i.e. those who allegedly committed the torture. **(Annex 2** contains materials on the fact of torture used against minor Andrei Dubovik from Soligorsk: complaint addressed to the prosecutor's office of Frunsensky region of Minsk, forensic medical experts' report, prosecutor's office of Frunsensky region of Minsk regulation to dismiss institution of a criminal proceeding).

There are cases when in response to complaints against acts of alleged torture, cruel and humiliating treatment used by militia officers, criminal cases were opened against the victims who filed complaints under articles 363, 364 of the CC "Resistance to law enforcement officer or other person, protecting public order", "Violence or the threat of violence against law enforcement officer". It was done in order to justify torture and inhuman treatment. When compliant is accused under these articles it is impossible to prove torture.

On July 21, 1999, Oleg Volchek, a human rights defender from Minsk, was subject to assault and battery by three militiamen at the militia station of Moscovsky region of Minsk. The militiamen kicked and punched Oleg Volchek's head, neck, spine and other parts of his body until he loss consciousness. They demanded him to quit his human rights activities. Volchek was then placed in a cell and kept there for 18 hours without food, water or medical help. The high presence of chloride of lime in the cell disturbed his sight. In response to torture complaints, criminal procedures were instituted against Oleg Volchek for attacking militia personnel. For about one year Volchek had been filing complaints in order to institute criminal procedures against militiamen offenders, however, nor regional prosecutor's office, neither Minsk prosecutors' office instituted a criminal case on the fact of torture. **(Annex 3)**

On January 21, 2008, militia personnel of the Minsk Detention Centre beat Sergei Parsiukevich. After he filed a complaint about torture, criminal proceeding in respect of Sergei Parsiukevich was instituted according to article 364 of the CC "Use of violence or threat of violence in respect

of militia personnel” (Sergey Parsiukevich’s sentence is attached as **Annex 4**). Criminal proceeding under article 400, part 2 “knowingly false denunciation” was instituted against Yana Poliakova, a human rights defender, who was hit by official of Soligorsk regional militia department. Yana Poliakova could not endure moral suffering resulting from the false accusation and committed a suicide after the verdict had been announced by court.

On November 9, 2009, in Svetlogorsk Lilia Lagutina was detained by militia officers with the use of physical force, her arm was broken as a result. For a long time she could not get medical assistance in the militia department. Once in the hospital she wrote a complaint against the use of torture to the prosecutor’s office of Svetlogorsk district. However the prosecutor’s office opened the criminal case against her under the p. 2 article 263 of the Criminal Code “Resistance to law enforcement officers during execution by them of their duties of public order protection, involving the use of violence.” On February 24, 2011 the judge found her guilty.

Complaints against cruel and humiliating treatment filed by human rights defenders to prosecutor’s office are being ignored and returned without consideration, it is explained by the fact that human rights defenders are not the victims’ legal representatives. Therefore it is virtually impossible to hold independent investigation and submit its results to prosecutor’s office.

#### **Article 14**

Since the absence in the Criminal Code or Criminal Procedural Code of the article concerning the use of torture, the victim has no possibility to apply for compensation for having been the subject of torture.

Courts do not consider complaints against the improper prison conditions or appeals for compensation for staying in inhuman prison conditions in temporary detention centres or pre-trial prisons. On February 11, 2011, Moskovkiy district court of Minsk refused to consider the case of Igor Cheping, who filed a complaint to get compensation for moral damages caused by cruel and inhuman treatment in temporary detention centre in Minsk, Okrestina 36a. He had spent there 9 days from September 8, 2010 until September 17, 2010. On March 3, 2011, Moskovkiy district court of Minsk refused to consider the case of Pavel Barkovskiy who filed a complaint to get compensation for moral damages caused by cruel and inhuman treatment in temporary detention centre in Minsk, Okrestina 36a. He had stayed there from December 22, 2010 until January 3, 2011. On March 25, 2011 Moskovkiy district court of Minsk refused to consider the case of Timofei Otroschenkov who filed a complaint to get compensation for moral damages caused by cruel and inhuman treatment in temporary detention centre in Minsk, Okrestina 36a, not taking into account medical document evidencing the deterioration of his health after he had stayed in the detention centre from January 28, 2011 until February 6, 2011. The complaints filed to prosecutor’s office are considered formally. Hence, Pavel Barkovskiy who filed a complaint against the prison conditions in temporary detention centre was not given the possibility to get acquainted with the result of the inspection; a second complaint for not receiving the materials of the inspection was left without answer.

Thereby, the victims of torture or cruel and inhuman treatment have no possibility to get compensation.

## Article 15

In accordance with article 27 of the Constitution no one shall be compelled to give testimony or explanations against him/herself, his/her family members, and close relatives. Evidence obtained in violation of the law shall have no legal force. This provision is contained in article 60, part 3, paragraph 1, of the Criminal Procedural Code. At the same time, the mentioned code states that all evidence obtained during the investigation will be heard at the court. The Court may not recognize on its own that the testimony is inadmissible. For such testimony to be recognized inadmissible a legal action should be initiated over the fact of coercion to testify. Since this right is delegated to the Public Prosecutor's Office (also representing the prosecution at the trial), such cases are in fact ruled out.

In practice, however, cases when the defendant retracts his previous testimony of a confession obtained through torture are frequent. Since the law does not restrict the probative value of testimony given during the preliminary investigation, guilty verdicts are in practice frequently based on such testimony and without sufficient justification by other evidence. In court, statements by the defendant alleging confession made under torture during the preliminary investigation are considered by the court as an attempt to avoid responsibility.

In some cases, courts refer to the results of the inquiry carried out by the office of the Public Prosecutor over the fact of unlawful actions of police officers, according to which actions of the officers lacked corpus delicti. In other cases, courts refer to the absence of evidence that the defendant has been subjected to torture or violence.

For example, in a criminal case against Andrei Burdyko, the Supreme Court turned down his cassation appeal that he had been subjected to torture to make a false confession over the lack of evidence supporting this fact.

*"...When I was taken to the oblast department of internal affairs, operatives immediately ask me to confess murder. I told them that I would not make any statements without the presence of my lawyer and the police officers started to beat me. I was on the floor in a prone position, face downwards. My hands were handcuffed behind my back. They put a gas mask over my face, kicked me and beat me with blunt objects. Then they began to pinch the tube of the gas mask while pressing on my back and chest; I soon lost consciousness. When I recovered my senses, I told the operatives that I was ready to speak and to confess everything. Their attitude immediately changed. As I was writing my statement, the police officers repeatedly poured alcohol and forced me to drink as reward for my confession". [A fragment of Andrei Burdyko's cassation appeal].*

The confession made during the pre-trial investigation became the basis of the conviction of Andrei Burdyko.

## Article 16

In accordance with article 26, part 1, of the Law on "Bodies of Internal Affairs " #263-3 of 17 July 2007, a police officer, while carrying out tasks to protect the life, health, honour, dignity, rights, freedoms and lawful interests of citizens and interests of society and the state from criminal and other unlawful encroachments, shall use physical force, special means, weapons, military and special equipment, if performing these tasks in other ways is not possible.



Practice shows that while using physical force and special means police officers are not guided by the provisions of this article. The very fact of detaining a person suspected of committing a crime or administrative violation may give grounds to the use of physical force and special means without warning. While dispersing peaceful assemblies, despite their peaceful nature and non-resistance of participants, the police officers resort to disproportionate and unjustified use of physical force (beating) and special means (beating with rubber batons). When transporting detainees to police stations in prison buses and vehicles, police officers continue beating and insulting them. While doing so the police officers never identify themselves, do not have any insignia, many police officers are working without uniforms, which complicates the identification of those involved in the beatings of the detainees. There have been cases of citizens being beaten by police officers at police stations during administrative detentions.

While considering complaints about cruel treatment, the office of the Public Prosecutor never analyzes the proportionality of the use of force in each specific case, and only quotes article 26 of the Law on "Bodies of Internal Affairs".

### **Conditions in pre-trial detention centres and correctional facilities**

In late 2007, early 2008, over 48 thousand people were incarcerated in 37 correctional institutions in Belarus.<sup>62</sup> As of 1 April 2011, there were 31,750 prisoners in Belarus.<sup>63</sup>

On July 1, 2009, 1,069 HIV-infected individuals with no access to antiretroviral treatment were kept in detention facilities; they roughly represent 14% of the total number of registered HIV carriers in Belarus.<sup>64</sup>

On December 31, 2009, 2,304 people were serving their prison sentences at the institutions of the Department of Corrections for crimes related to drug trafficking, including 343 women and 14 juvenile offenders. Compulsory drug treatment is administered in relation to 902 inmates (including 77 women).<sup>65</sup>

Despite the continuing reduction of the prison population, Belarus is until this date among the top 10 countries with the highest number of prisoners per capita.

According to the office of the General Prosecutor, accommodation standards as to minimum floor space per inmate are not met in penal colonies and pre-trial detention centres. "The capacity limit of certain correctional facilities, established by the Ministry of Internal Affairs, is overrated and does not reflect the real capacity of the premises. Most problematic are penal colonies #8 (in Orsha), #9 (Gorki) and #11 (Volkovysk). According to the standards, every inmate should be provided with at least 2 square meters of living space in correctional facilities; 2.5 square meters in pre-trial detention centres; 3.5 square meters in juvenile colonies; 4.5

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62 Trudovoj Put newspaper of 7 February 2007: "45,000 prisoners in Belarus are kept in correctional facilities, pre-trial detention centres and detention houses. Almost 3,000 offenders are isolated in treatment-through-labour detention centres. 126 inmates are serving life sentences. In addition, nearly 8,000 people are under the supervision of open correctional facilities, almost 60,000 people are registered with correctional inspectorates. "See who'll be affected by future amnesty? 24 October 2007 "The Law on Amnesty to be adopted soon", [www.ourbelarus.org](http://www.ourbelarus.org),

63 "Belarusian prison is hell, prosecutors agree"  
[http://naviny.by/rubrics/society/2011/04/20/ic\\_articles\\_116\\_173327](http://naviny.by/rubrics/society/2011/04/20/ic_articles_116_173327)

64 The Fourth periodic report to the UN Committee against Torture, December 21.

65 Ministry of Interior Affairs statistics on narcotic drugs and related crimes. [www.antimak.info](http://www.antimak.info)

square meters for pregnant women and women with children. At the same time, in the three-abovementioned colonies the floor space index was 1.2-1.9 square meters per inmate, while the standard prescribes at least 2 square meters. In colony #8, the prison population exceeded the capacity by 485 people. In violation of standards in correctional facilities beds were installed in three tiers".<sup>66</sup>

Conditions are especially severe at pre-trial detention centres and temporary detention centres, where most of cells are extremely overpopulated and do not meet minimum accommodation requirements while lacking ventilation and lighting. In many cases, detainees must choose between sleeping and having their walk in the fresh air, as it might be the only moment to find enough space to lie down. Overcrowding also leads to the easy propagation of diseases as sick prisoners are kept together with healthy ones. On the other hand, there is often no induced ventilation and natural lighting; and there are no separate toilets to ensure a minimum of privacy. In some of the temporary detention facilities or pre-trial detention centres, inmates are not granted walks in the fresh air (f. i. Offenders' incarceration centre in Minsk, Pervyj pereulok Akrestina, 36). Such conditions do not meet the minimum requirements of the UN Standard Minimum Rules for the Treatment of Prisoners.

Legislation provides no guarantees and acceptable standards to ensure the conditions of detention. In particular, there are no laws or regulations that determine accommodation standards as to mandatory provision of certain minimum floor space for premises where inmates are kept. And the sanitary standards of at least 2 square meters are themselves extremely understated. There is no monitoring of individual cells as to whether these requirements are met; in pre-trial detention centres different categories of inmates are kept separately<sup>67</sup>. In this regard, the generalized data on whether living space limits are observed in a specific institution do not reflect the actual state of the over-crowdedness of cells.

On the other hand, there is no control over the climatic conditions in the cells (lighting, ventilation, humidity) and whether conditions exist for open air walks. In fact, there are no limitations and responsibilities for officers putting inmates into cells and rooms that are not suitable for accommodation.

Interference of supervising bodies is extremely rare and one-off; the system of measures to control overcrowding and conditions of accommodation has not yet been put in place.

The use of "prolonged solitary confinement" procedure needs to be restricted<sup>68</sup>. Solitary confinement might be used as a means of punishment "for up to one year", as provided for in article 112, part 1, paragraph 7, of the Criminal Enforcement Code. This period of time is deemed to be excessive.

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66 "Belarusian prison is hell, prosecutors agree" Viacheslav Budkevich, BelaPAN, 20 April 2011 [http://naviny.by/rubrics/society/2011/04/20/ic\\_articles\\_116\\_173327](http://naviny.by/rubrics/society/2011/04/20/ic_articles_116_173327)

67 According to regime requirements, 40 types of accommodation are being used, depending on the category of inmates. All of these categories must be placed separately. Under a sequenced-flow system of cell-by-cell placement, inmates are being put into separate cells. And in case there are many inmates of the same category, cells quickly get overcrowded. On the other hand, there are inmates who (mostly on regime considerations) may be placed in separate (solitary) cells. This order of prisoners' placement increases the real level of overcrowding for individual cells for up to ¼.

68 UN Human Rights Committee, General Comment 20/44, 3. April 1992; Larrosa v. Uruguay (881/1981).

Tuberculosis, pneumonia and other infectious diseases are widespread in correctional facilities. Tuberculosis incidence in Belarusian prisons is 6.7 times higher than the national average. In 2008, the TB incidence among prisoners was 303.6 per 100,000 people, as compared to 45.3 cases per 100,000 people in general.<sup>69</sup>

Tuberculosis mortality rate among prisoners is 1.3 times higher than the national average. In September 2009, the United Nations Development Program reported that all of the country's prisons failed to fully comply with the World Health Organization guidelines on tuberculosis infection control and expressed concern over sexual and other types of harassment and violence in prisons.<sup>70</sup>

### **Prisoner transportation conditions**

Sanitary standards as to the amount of floor space per person and induced ventilation in the summer and heating in the winter are not met when detainees or convicts are being transported in specialized vehicles to trials or correctional facilities, which violates human dignity of those transported. Specialized rules for transportation of prisoners are not provided for.

The Belarusian legislation does not provide for sanitary requirements and standards as to the conditions of transportation (equipment of prison vehicles, railway prison cars).<sup>71</sup> Transportation conditions result from the availability of vehicles and fuel. In practice, exceeding prisoners' transportation limits is offsetting the lack of vehicles. Internal regulations and rules (including the possibility of stopping for a rest) do not provide for such situations. The problem of overcrowded prison vehicles and railway prison cars is further aggravated by regime requirements that order to divide the transportation of different categories of prisoners. In such conditions it is impossible to ensure uniformed distribution of convicts during the transportation.

Transportation restrictions are unacceptable conditions for prisoners awaiting trial and transferred to courts. As a rule, the transfer starts at 5 am - 6 am and the prisoners are returned back to their cells after 9 pm-10 pm. In this regard, prisoners awaiting trial are not only deprived of normal (hot) food, yet also of rest. According to healthcare authorities, "violations of rules for transportation of prisoners on various types of transport", is one of the main causes of injuries and poisonings. Doctors conducting examinations before the transfer of prisoners are held responsible for "poor examination".<sup>72</sup> At the same time, the responsibility of the prisoner's escort officers over the violation of sanitary norms during transfer is not considered.

While the batch of prisoners is being manned, prisoners can be kept in unsuitable premises: in transit cells with very limited floor space. And after that they are placed into cramped cubicles of prison vehicles and railway prison cars. As a rule, there is no lighting inside. Air quality control is not administered in these premises.

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69 [http://naviny.by/rubrics/zdorovie/2009/09/09/ic\\_articles\\_292\\_164411/](http://naviny.by/rubrics/zdorovie/2009/09/09/ic_articles_292_164411/)

70 2010 Country Reports on Human Rights Practices. Belarus. Report by the United States Department of State. <http://www.state.gov/g/drl/rls/hrrpt/2010/index.htm>

71 Which does not comply with rules 10-13 of the UN Standard Minimum Rules.

72 Instructions for medical support of persons kept in correctional institutions of the Ministry of Internal Affairs, approved by the Regulation of the Ministry of Internal Affairs and the Ministry of Health on 27 August 2003, #202/39.

According to prisoners' complaints, during the transfer the escort service does not allow prisoners to use toilet.

Transportation conditions are not suitable for people with disabilities and women with infants. The transfer procedure eliminates the possibility of assisting the disabled while they are being put into prison vehicles and railway prison cars. According to rules and regulations, escort officers may not approach prisoners and give hands while the latter are going up or down the stairs. The stairs in prison vehicles and railway prison cars do not have handrails.

### **Position of certain groups of prisoners**

Belarusian legislation has individual provisions that are discriminatory against certain categories of prisoners. In particular:

1. Limitations considered in articles 90, 92 of the Criminal Enforcement Code for HIV-infected prisoners with regards to travels without escort and travels outside correctional facilities.
2. Limitations in article 90 of the Criminal Enforcement Code with regards to permitting "to travel without an escort" for convicts, "who did not have permanent residence; convicted foreigners and stateless persons".
3. Discriminatory restriction set by article 64 of the Constitution of Belarus with regards to restricting suffrage to persons "in respect of whom detention was chosen as a measure of restraint in compliance with the procedure established by the criminal procedures law".

Penal enforcement legislation of Belarus lacks the definition of a disciplinary offence-- contrary to rule 29 of the Standard Minimum Rules for the Treatment of Prisoners, as well as grades of the severity of violations. According to article 98, paragraph 6, of the Criminal Enforcement Code the convict is recognized to be a "malicious violator" for "refusing to work or unauthorized suspension of work".<sup>73</sup>

Lowering of nutrition allowances for convicts punished for disciplinary offences can also be regarded as discriminatory (article 114, paragraph 4, Criminal Enforcement Code).<sup>74</sup>

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73 Contrary to rule 71 of the UN SMR

74 Contrary to rule 57 of the UN SMR.