

Republic of Belarus

SUMMARY of the 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 47th session of the United Nations Committee against Torture¹

Part I. Replies to the List of Issues

Art. 1.-

(Issue/question number) 1. The constitution guarantees the inadmissibility of torture and other types of cruel, inhuman or degrading treatment or punishment in Article 25, paragraph 3.

2. However, there is no definition of torture as determined in article 1 of the Convention in Belarusian law or regulations. Moreover, no cases are known where this definition of torture or other provisions of international law have been referred to by domestic courts.

Art. 2.-

3. The legislation of the Republic of Belarus does not contain specific provisions aiming to prevent acts of torture.

a) Legal assistance. People arrested following presidential elections on December 19, 2010 were in most cases denied access to lawyers or deprived of the right to speak to them privately. I.e. Alexander Otroschenkov saw his lawyer for the first time during his arraignment 2 weeks after his arrest and 2 months later when acquainted with the materials of the criminal case. Throughout more than 10 weeks following his detention, pre-trial prison investigators persisted with the interrogations without the presence of his lawyer.

b) Family. A significant number of the people detained following December 19, 2010 protest were not permitted to contact their family members. Over a month after the arrests, some families still did not know the whereabouts and faith of their relatives kept in KGB pre-trial prisons. In some cases, detainees were also transferred without notification of their families. Within the same week, Alexei Mikhalevich was transferred from KGB pre-trial prison to pre-trial prison №1 and back without notifying relatives. In addition, KGB police often misled families by accepting parcels sent to the former detainee of the respective pre-trial prison long after they had been transferred somewhere else.

c) Health. Numerous peaceful protestors beaten up by the authorities during December 19, 2010 arrests were denied adequate medical attention. For example, on December 20, the lawyer representing the candidate for presidency, Andrei Sannikau, expressed serious concern about his clients' health. After having been severely ill-treated by the KGP police, Mr Sannikau could not walk on his own, and suffered from severe headaches. He was not sent to a hospital but kept in an overcrowded cell and forced to sleep on the floor. The Central Court of Minsk dismissed his lawyer's appeal against his arrest. Poor prison conditions aggravate the bad state of health of detainees. In their first months of detention, Vladimir Kobets and Natalia Radina suffered from bronchitis as a result of the low cells' temperature. 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 he could not walk without assistance.

¹ The full NGO report was submitted in October 2011 and prepared by the following Belarusian independent non-governmental organisations: Committee Solidarity, Legal Initiative, Belarusian Helsinki Committee, Legal Transformation Centre, Platform and the Human Rights Centre Viasna, in partnership with the Penal Reform International, the Belarusian Human Rights House and the Human Rights House Foundation.

d) *Administrative detention remedies.* There is no practice of appealing against administrative detentions, due to the lack of a legally defined appeal procedure against administrative detention in the Procedural Executive Code of Administrative Offences.

5. Furthermore, there is no centralised detainees' register and no provision in law relating to such registration. In spite of the fact that all individuals held in pre-trial and temporary detention facilities should undergo primary medical examination upon admission, in practice medical assistance and even primary medical examination are lacking. Officers of temporary detention and pre-trial facilities are not held accountable for cruel or ill-treatment and courts do not accept complaints pointing at inadequate conditions of detention. I.e. On December 19, detainees at the Minsk temporary detention centre were put into cells with knowingly unacceptable conditions. Floor space was insufficient and violated sanitary norms; 3 to 4 detainees were squeezed in 2 square meters' cells and held there for up to 4 hours awaiting registration. In addition, temperatures in the cells dropped as low as 10 degrees Celsius.

6. The **Bar Association** is an independent legal institution with the aim to implement professional human rights activities. It 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. *De jure* the Law On the Bar fully guarantees independence of a lawyer. However, Article 31 of the Law on the Bar allows for the Ministry of Justice to issue regulatory legal acts in regulation of activities of the Bar. Taking advantage of this provision, the Ministry empowered itself to conduct and organise the certification of lawyers. Formerly, customary rule was that lawyers themselves conducted certification of their peers.

7. Alyksandr Pylchanka, the Chairman of Board, suggested that the new rules of professional conduct of lawyers set by the Ministry of Justice "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."² On the same day of his statement, on February 18, 2010, Pylchanka, was expelled from the Bar Qualification Commission, pursuant to the Order of the Minister of Justice #36 of February 18, 2011³.

8. **Lack of judicial independence** is a major concern. The selection, promotion and dismissal of judges are neither based on objective criteria nor open to the public. In practice, the Ministry of Justice and its regional bodies select the judges, while heads of local administrations approve shortlisted candidates before forwarding a final list to the staff department of the Presidential Administration. It is the President via an appointment decree who has the final decision. Furthermore, the law lacks clear criteria when it comes to the length of judges' appointment (from 5 years up to life), raising their exposure to political pressures.

9. From December 20, 2010 until March 2011, KGB carried out searches in several human rights organizations in Belarus, confiscating numerous computers, laptops, flash cards and other data carriers. Complaints against the actions of KGB officers were dismissed and no further investigations were carried out to determine whether human rights organisations were specifically targeted.

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

3 http://www.minjust.by/ru/site_menu/news?id=784a

a) *Oleg Gulak*, Chair of the Belarusian Helsinki Committee (BHC), received a first warning on December 12 from the Ministry of Justice for considering that his appeals sent to the UN Special Rapporteur on the Independence of Judges and Lawyers, contributed to the “spread of inadequate information, discrediting the law enforcement bodies and the Ministry of Justice”. Mr. Gulak was subsequently detained on December 19 after the dispersal of the peaceful Nezavisimosti Square rally and released 2 days later. On January 5, KGB officers, based on a search warrant alleging incitement and participation of/ in mass riots irrupted in the Belarusian Helsinki Committee’s office and confiscated 2 computers. Simultaneously, another search took place in Mr. Gulak’s apartment. On June 6, 2011, the Ministry of Justice gave a second written warning to BHC, arguing a sustained tax legislation violation.

b) Independent journalist, *Irina Khalip*, was detained on December 19, after attending a peaceful rally in the Nezavisimosti Square. She was kept in a KGB pre-trial prison for 10 days before being charged with the criminal offense of incitement and participation in mass riots. On January 29, 2011 the preventive measure against her was altered to house arrest. On April 4, 2011 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 Mrs. Khalip was sentenced to 2 years imprisonment.

c) On March 28, 2011 journalist *Andrei Pochobut* was charged under article 368 part 1 of the Criminal Code (Insult to the President) and sentenced to 3 years imprisonment.

12. **Violence against women and children** may result in both criminal and administrative liability. However, the Republic of Belarus lacks a law to prevent and combat gender-based violence. Since 2002, a draft law on domestic violence and violence in the family and a draft law on gender equality are pending in Parliament. Statistics are kept confidential and sex-disaggregated data is not gathered regularly.

Art. 4.-

16. Sanctions provided for by Article 394, part 1, of the Criminal Code, for **coercion of confession**, use of threats, blackmailing or other illegal acts committed by a an enquiry officer, a preliminary investigation officer or a justice officer are the withdrawal of the right to engage in certain positions and activities, restrictions to liberty of movement or imprisonment for up to 3 years, however without relating them to the gravity of the offense. Article 394, part 2, provides for imprisonment for 2 to 7 years and the removal of the right to engage in certain positions and activities if offenses involve the use of violence or torment. In case of torture, para. 3 of Article 394 of the Criminal Code provides for imprisonment for 3 to 10 years, with deprivation of the right to engage in certain positions and activities during the sentence or without such deprivation.

However, sanctions provided for by Article 394 do not apply to all officers. I.e. Officials who have used violence against individuals who are not parties to the investigation -for example torture in prisons or torture against those detained over administrative offenses- are not punishable under this article. What is more, the Criminal Code does not provide for criminal liability for torture, attempted torture or an order to commit torture by a public authority. Furthermore, acts of torture are treated as less serious crimes, they come second in four degrees of severity. In addition, Article 64 of the Criminal Code fails to recognize the use of torture in criminal proceedings as an aggravating circumstance.

Art. 10.-

19. On December 31, 2010, Belarusian authorities did not extend the mandate of the OSCE Office in Minsk. The resulting lack of funding led to the cancellation of the programme “Practicing Psychology

in the Law Enforcement Activities" addressed to correctional system officers of the Ministry of Internal Affairs in Minsk.

20. Health workers admit that the medical staff is not properly instructed or trained to track and report cases where prisoners were ill-treated. On the other hand, psychological traces of torture are not taken into account in medical examinations.

Art. 11

21. The rules that guide **interrogation techniques** are laid down in chapter 25 of the Criminal Code, but do not explicitly prohibit the use of torture and cruel treatment. Methodological materials used to instruct investigation proceedings are kept confidential. During the reporting period, the General Prosecutor's Office held two inspections in KGB pre-trial prison on December 31, 2010 and on January 24, 2011. Despite obvious malfunctions and violations of detainee's rights, the conclusions plainly stated that all the detainees were healthy, that they had access to their lawyers and relatives, that they were receiving their parcels timely, that qualified medical aid was available and that none of the detainees had raised any complaint during the inspection.

22.

a) 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. The decision for a representative of a public association to join the commission is made by the Ministry of Justice.

b) Regulations governing public monitoring commissions allow them to visit a facility only if there is a permit from the Head of the Department of Corrections and authorise them to talk with prisoners only in the presence of a representative of the facility's administration. 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, or to "take written requests from convicts." At the same time, the regulations emphasise that in case of violation of these rules, as well as if "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. On the other hand, commissions do not include representatives of independent non-governmental organizations, but are made up of members of pro-government organisations and in the course of their work findings are not made public by media.

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

d) Prison cells do not meet the occupancy rate standards provided for by Belarusian legislation –i. e. a minimum of 2 square meters of floor space per person. Cells are overcrowded and very often, as there are not enough beds, prisoners are forced to take turns to sleep. Cells do not have ventilation and personal hygiene is inadequate.

23. On December 19 2010, around 800 people were detained by the police after a peaceful rally in the Independence Square, in 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, denied access to water and toilets at first. Many detainees reported having been beaten during the arrest, confirmed by evidence of fractures and brain concussions. Upon arrival to the detention facilities, police officers denied the detainees access to water and toilet until completion of arrest reports, which lasted for up to 10 hours. There are credible reports that many of the detainees received threats while arrest reports were being written. After being handed

administrative arrests rulings, the detainees were taken to temporary detention centres. Preceding allocation to prison cells, many of the detainees were squeezed together in confine rooms without windows and no space to sit, and kept there for 4-5 hours. No proper checks by public prosecutors were carried out following the more than 50 complaints of ill-treatment and no criminal cases were initiated over the beatings and injuries allegedly inflicted by police officers.

Art 12 & 13

25. There is no **criminal liability for torture** and cruel, inhuman or degrading treatment. Therefore, investigations prefer to consider other illegal actions of police officers rather than torture.

a) Victims of torture may file a complaint to the Office of the Public Prosecutor, tasked with both, supervising the enforcement of law in the course of pre-trial investigation and inquiry, and supporting public prosecution. As a consequence, the prosecutor's office faces conflictive tasks, resulting in a conflict of interest.

b) The Office of the Public Prosecutor often forwards complaints of torture and ill treatment to the Ministry of Internal Affairs, i. e. the body whose officials are alleged be responsible for torture, cruel or inhuman treatment.

c) Information largely remains classified. As a consequence, only scarce alternative data on allegations is available.

d) Virtually all cases where no evidence of torture can be allocated to specific law enforcement official are permanently closed. Furthermore, courts tend to frequently dismiss complaints relating to inadequate conditions in pre-trial detention centres and temporary detention centres.

e) There is no information about officials alleged of involvement in cases of summary execution and torture having been suspended from their duties, nor have criminal charges brought against them.

26. **Investigations into allegations of torture** and ill-treatment are largely ineffective. In most cases, inquiries by the prosecutor's office are limited to the review of documents and the interrogation of police officers who allegedly committed torture. Effective steps to identify, collect, investigate and preserve evidence, as well as to identify witnesses, are rarely taken.

a) *Ales Mikhalevich*. The case was dismissed on April 5, 2011.

b) *Natalia Radina*. The concerns described discouraged her from filing an official complaint.

c) There is no information available on whether any disciplinary or criminal procedures were initiated against *the officers of the Tsentralny district police department* who wounded and insulted several protesters at Kastychnitskaya Square.

d) On May 16, 2011 *Andrei Sannikau* testified in court that he had been subjected to ill treatment and torture in the course of his 5 months pre-trial detention. Since his arrest in December, he had incessantly filled complaints addressed to the Head of KGB pre-trial prison and the Prosecutor's Office but with no result. Since his May statement, there is a complaint under examination at the Military Prosecutor's Office.

e) *Guy Francois Toukam*. The Minsk City's office of the public prosecutor dismissed his complaint and failed to provide a bed and bedding. The Moscovskii district court of Minsk dismissed the case.

27.

a) *Uladzimir Nyaklyayeu*. He was summoned to undergo medical forensic examination to determine the severity of his injuries, seven months after he alleged having been beaten up by plainclothes' Special Forces. Due to the "lack of corpus delicti", the term of the investigation expired on July 4, 2011 with no response from the Minsk City's office of the public prosecutor who was investigating into the case.

b) *Indiscriminate beating by riot police of approximately 300 people in Independence Square*. To date only one criminal case was initiated, the one of Maya Abromchik, a women so severely battered by riot police officers that she suffered from a severe leg fracture. The forensic examination revealed that an object resembling a police baton could have caused her injuries; yet, the prosecutor disregarded the evidence and initiated a criminal case under Article 155 of the Criminal Code (causing grievous bodily harm by negligence "against an unidentified person").

c) *Andrei Sannikau*. None of the police officers were held accountable over inflicting severe injures.

28. The **Commission for Human Rights, Community Relations and Mass Media** has competence over 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 as well as religious organizations. Its seven members lack legal or human rights education and training; and none of them is a lawyer. The Commission lacks the skills required to investigate allegations of torture. Concerns also relate to its lack of independence.

The Public Advisory Council in the Office of the President, on the other hand, is an advisory council without competence to receive and investigate complaints of violation of human rights.

The National Public Watchdog Commission is entitled to visit correctional institutions but only after having received approval from the head of the Department of Corrections of the Ministry of Internal Affairs and prior notification of the warden of the correctional facility. It does not have competence to accept and investigate complaints over violation of human rights.

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

30. The competence of courts is limited to the consideration of complaints from individuals kept in custody, relating to detention, use of preventive measures like pre-trial detention and its extension, home arrest, as stipulated by articles 143, 144 of the Criminal Procedures Code.

Art. 14.-

31. The State denies the existence of torture in Belarus. The Criminal Code has no article explicitly related to the use of torture. Minsk City courts regularly dismiss claims seeking compensation for suffering 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 consider complaints concerning detention conditions to fall outside their jurisdiction.

Art. 16.-

34.

a) According to article 11 of the Law on "The order and **conditions of keeping detainees in custody**", detainees are placed separately taking into account their personal circumstances and psychological condition. Moreover, according to article 71 of Criminal Procedural Code, men and women, minors

and adults sentenced to imprisonment should be kept in penitentiary facilities separately. However, prison cells are constantly overcrowded, often resulting in children held with adults.

b) According to article 24 of the same law, minors kept in custody should be provided with better conditions and improved norms of nutrition, defined by the government. However, in overcrowded cells minors are often subjected to the same detention regime as adults.

c) According to article 432 of the Criminal Procedural Code, deprivation of liberty for children is supposed to constitute a measure of last resort and the placing of minors under somebody's supervision should be considered on an individual basis. Preventive measures, such as detention, custody and home arrest, can apply irrespective of the gravity of the alleged offense. Parents or legal representatives should be immediately informed about the grounds of detention, the custody decision or the extension of the term of detention. However, legislation does not limit the term of custody for minors. For example, following their arrest on February 18, 2011, two minors, Alexander Loginov and Alexander Napaiuk, spent 17 months in pre-trial prison before being acquitted.

d) Men and women are kept in different cells and sometimes in different floors, but within the same facilities. In the majority of pre-trial prisons women are guarded by both men and women guards. In KGB pre-trial prisons though there are no women; men guards escort women detainees to walks, shower and cells' searches, in compliance with the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)", UN-Doc A/C.3/65/L.5, adopted by the UN General Assembly on 21 December 2010 (A/RES/65/229).

39. Human rights defenders are particularly concerned about credible reports of torture of persons **sentenced to death**. Furthermore, relatives are not informed of the date of the execution and the burial site. While referring to the official request of the UN Committee on Human Rights on the death penalty, the Minister for the Interior, 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"⁴.

Other concerns

40. In its fourth periodic report in 2009, the government acknowledged the competence of the Human Rights Committee to consider individual communications (complaints) about violations of the right set forth in the Covenant, including those concerning the implementation of the Convention. Moreover, Belarus announced to be considering the possibility of making declarations under articles 21 and 22 of the Convention. However, so far the government did not commit to consider any claim.

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

42. No legislation is in place or even under consideration 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, or to execute the death penalty.

Part II. Other Issues

Art. 1, 2 & 4.-

43. 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 the Republic of Belarus are part of the existing legislation applicable in its territory. (See paragraphs 1

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

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 complaints of citizens of Belarus has been implemented.

Art. 5 to 7.-

44 No information is available about requests by states to Belarus regarding the extradition of persons against who allegations of torture have been raised. Vice versa, as the offence of "torture" is not criminalized in line with international standards, extradition requests by Belarus would likely be refused, arguing that Belarus is not able to carry out prosecution (article 8, paragraphs 2-3, of the Convention).

Art. 8.-

45. According to articles 507-508, 515 of the Criminal Procedures Code, *in theory* a person deported from Belarus has all procedural guarantees. These include: the right to information, protection, use of their native language and the right appeal to the court. In addition, the person extradited can be subjected to house arrest (the Criminal Procedures Code, article 512). However, the legal terms of extradition do not evaluate the risk for a suspect to be subjected to torture in the state of extradition.

46. The Russian Federation is the State that made almost all existing extradition requests under the Minsk Convention.⁵ Analysis of court practice shows that courts do not inquire into the risk of torture upon extradition. The consequences of extradition of the accused persons to other states are in most cases not being investigated.

47. In practice, the extradition procedures are carried out in an extremely simplified format and are reduced to the evaluation of procedural documents and whether the alleged crime in a foreign country complies with the Criminal Code of Belarus.

Art. 9.-

48. There have been no practical actions from Belarus 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.

Art. 10.-

49. The Academy of the Ministry of Internal Affairs provides **training for law enforcement officers**. Moreover, doctors working for the Ministry for Internal Affairs receive special trainings by the Belarusian state medical university. Nevertheless, none of the state programmes adequately include information and training regarding the prohibition of torture. Progress in the reporting period was limited to short-term trainings initiated by international organizations. For example, in 2007-2008, Penal Reform International realised a special human rights programme for staff of penitentiary institutions; however such programmes have practically disappeared since 2010, especially since the closure of OSCE office on December 31, 2010.

5 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...>

Art. 11.-

50. The absence of legal definition of “torture” and the inadequate framework regarding proportionate use of force in law enforcement in line with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the UN Code of Conduct for Law Enforcement Officials result in excessive use of various forms of violence. Furthermore, measures of restraint in detention do not comply with Rules 33 and 34 of the UN Standard Minimum Rules for the Treatment of Prisoners. The practice of intervention by law enforcement’s special forces, even in the absence of armed violence or threat, has especially negative consequences. In addition, as Special Forces act without identification marks (personal identification numbers), it is impossible to identify them - and subsequently to hold them to account. Belarus implemented a programme between 2006 and 2010 aimed at improving the framework for law enforcement of the Ministry of Internal Affairs. Unfortunately, it did not solve the problems related to torture acts mentioned in the present report.

51. On the other hand, the Ministry of Internal Affairs tends to **assess the performance of officials** with regard to criminal investigations based on the percentage of criminal cases they “solved”. This practice favours the use of torture in the course of interrogations in order for the officer to rapidly increase the percentage of solved cases.

52. The attitude of authorities towards public control and human rights organisations, monitoring and investigating into alleged acts of torture, is traditionally hostile. Human rights organizations have are not entitled to visit prisons, pre-trial prisons or temporary detention centres.

Art. 14.-

53. Due to the lack of a provision explicitly prohibiting acts of torture, victims are deprived of their right to redress, including compensation. Courts do not consider complaints or claims for compensation relating to inadequate prison conditions in temporary detention centres or pre-trial prisons.

Art. 15

54. Accordance to article 27 of the Constitution no one shall be compelled to give testimony or statements against themselves, theirs 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 and paragraph 1, of the Criminal Procedural Code. However, at the same time, the code states that all evidence obtained during investigation will be heard by the court, and courts fail to assess and recognise the inadmissibility of evidence to this end. The right to claim inadmissibility of evidence due to coercion to testify can only be exercised by a legal action issued by the Public Prosecutor's Office - who is at the same time representing the prosecution. As a consequence, such cases are *de facto* ruled out.

55. In practice, however, cases of defendants retracting previous testimony or confession due to coercion by torture or ill-treatment are frequent. Since the law does not restrict the probative value of testimony given during preliminary investigation, convictions are frequently based - solely or predominantly - on such testimony. In court, statements by defendants alleging they confessed under torture during preliminary investigation are considered by the court as an attempt to avoid liability.

Art. 16.-

56. In accordance with article 26, part 1, of the Law on “Bodies of Internal Affairs ” #263-3 of 17 July 2007, a police officers, while carrying out their duty to protect the life, health, honour, dignity, rights, freedoms, 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 these tasks could not be preformed in other ways.

Practice shows that in practice, police officers are not guided by the provisions of this article when using physical force and special means. The mere fact of arresting a person suspected of committing a crime or administrative violation appears to be perceived as sufficient ground for the use of physical force and special means without warning.

Position of certain groups of prisoners

57. Belarusian legislation includes 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 regard to travels without escort and travels outside correctional facilities.
2. Limitations in article 90 of the Criminal Enforcement Code with regard 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 regard 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”.

Death penalty

58. Problematic procedures connected to the execution of death sentences, which are currently applied in the Republic of Belarus, have not yet been abolished. In 2003, the UN Human Rights Committee denounced the way Anton Bondarenko and Igor Liashkevich, both sentenced to death, were executed without notification of their families and return of their bodies. Until this date, the burial place has not been revealed.

59. Furthermore, in 2010, death sentences against Andrei Zhuk and Vasiliy Iazepchuk were executed without informing their families; their bodies were not returned and authorities did not inform the families of the burial place. The mother of Andrei Zhuk appealed to the court against the denial to give her access to the body of her executed son and against the decision not to inform her about the burial place, but her claims were rejected arguing that the court was not competent to consider civil suits.

60. In July 2011, another two individuals were executed – Andrei Burduko and Oleg Grishkovets. The UN Human Rights Committee was reviewing their complaints referring to torture during investigation and unfair trial. The men were executed despite preliminary measures issued by the Committee requesting Belarus not to execute the men before its decision. This represented the second case within the last two years in which Belarus executed death sentences of persons whose complaints were being considered by the Committee.