

2013

**[REPORT ON THE RESULTS
OF MONITORING PRISON
CONDITIONS IN BELARUS]**

Minsk , 2013

Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, *Article 6*

Adopted by General Assembly resolution 53/144 of 9 December 1998

Everyone has the right, individually and in association with others:

- (a) To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems;**
- (b) As provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms;**
- (c) To study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.**

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PREFACE

Post-election events of December 19, 2010 were marked by a fierce wave of repression against political activists, human rights defenders, journalists and civil activists.

The authorities used sentencing to imprisonment and restriction of freedom, as well as short-term administrative detention, as an instrument of repression against their opponents.

The treatment of convicts and persons subjected to administrative penalties is aggravated by systemic problems of imprisonment conditions.

This report focuses on the analysis of these problems – both in terms of the current flaws of domestic penal legislation and the defects of law enforcement.

Legislation and practice are analyzed in terms of meeting the state's obligations enshrined in the Constitution of the Republic of Belarus and the binding instruments of the International Covenant on Civil and Political Rights, the UN Standard Minimum Rules for the Treatment of Prisoners, and other documents.

The report will cover the comparative analysis of the rule of law both in Belarus and in other countries that have achieved progress in the performance of the tasks of the prison system.

LEGAL ACTS REGULATING PRISON CONDITIONS

The legal status of persons held in places of detention is mainly governed by:

- for persons detained on suspicion of committing a crime – Internal Rules of temporary detention facilities of the Interior, approved by the Decree No. 234 of the Ministry of Internal Affairs of the Republic of Belarus of October 20, 2003;
- for persons held in custody pending trial – the Act of June 16, 2003 “On the Procedure and Conditions of Detention,” Internal Rules of remand prison system of the Ministry of Internal Affairs (IRRPS), approved by Decree No. 3 of the Ministry of Internal Affairs of the Republic of Belarus of January 13, 2004, and the internal regulations in pre-trial detention facilities of state security, approved by Decree No. 37 of the State Security Committee of the Republic of Belarus of August 10, 2012;
- for persons convicted of criminal offenses – the Criminal Executive Code (CEC), the Rules of Procedure of Corrections (RPC), approved by Decree No. 174 of the Ministry of Internal Affairs of the Republic of Belarus of October 20, 2000;
- for persons detained pending trial and sentenced to administrative arrest – the Procedural-Executive Code of Administrative Offences (PECAO), the internal regulations of special institutions of the Interior, performing administrative penalty in the form of administrative arrest, approved by Decree No. 194 of the Ministry of Internal Affairs of August 8, 2007;
- for persons subjected to compulsory medical treatment by the court – the Criminal Code, the Code of Civil Procedures of the Republic of Belarus, the Acts No. 2435-XII “On Health Care” of June 18, 1993; No. 349-3 “On Mental Health Care” of January 7, 2012; No. 104-3 “On the Procedures and Conditions for Sending Citizens to Medical and Labor Dispensaries and Conditions of Detention in them” of January 4, 2010;
- for minors placed in special educational and health care institutions – the Act of the Republic of Belarus No. 104-3 “On Principles of Prevention of Neglect and Juvenile Delinquency” of January 4, 2010;

Decree of the President of the Republic of Belarus No. 672 of December 23, 2010 approved the Concept of measures to improve the system of criminal responsibility and the order of their execution (the Concept).

The penal legislation of the Republic of Belarus is based on the Constitution of the Republic of Belarus, the universally recognized principles and standards of international law, international treaties of the Republic of Belarus, relating to the execution of punishment and the treatment of prisoners.

In case an international treaty of the Republic of Belarus establishes rules of the execution of punishment and the treatment of prisoners other than those provided by the penal legislation of the Republic of Belarus, it is the rules of the international treaty that shall be directly applicable, except when the international treaty suggests that the application of such rules requires the issuance of a national act.

In accordance with the Constitution of the Republic of Belarus, the principles and standards of international law, the penal laws of the Republic of Belarus and their application are based on strict compliance with safeguards against torture, violence or other cruel, inhuman or degrading treatment of prisoners (Article 3 of the Criminal Executive Code (CEC) of the Republic of Belarus).

This rule encourages considering as the documents governing the treatment of the prisoners:

- The Constitution of the Republic of Belarus
- The Universal Declaration of Human Rights
- The International Covenant on Civil and Political Rights (adopted and opened for signature, ratification and accession by the UN General Assembly resolution 2200 A (XXI) of December 16, 1966).
- The International Covenant on Economic, Social and Cultural Rights, adopted by the UN General Assembly resolution 2200 A (XXI) of December 16, 1966
- The Standard Minimum Rules for the Treatment of Prisoners (adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of July 31, 1957 and 2076 (LXII) of May 13, 1977).
- The Basic Principles for the Treatment of Prisoners. Resolution 45/111 of the UN General Assembly, December 14, 1990

- The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (adopted by the UN General Assembly resolution 43/173 of December 9, 1988).
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted by the UN General Assembly resolution 39/46 of December 10, 1984)
- The Basic Principles on the Role of Lawyers (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August - 7 September 1990).
- The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (adopted by the UN General Assembly resolution 53/144 of December 9, 1998).
- The UN Human Rights Committee. General Comment No. 21 (1992): Article 10.

The application of these rules should, no doubt, be provided with due respect for the extensive practice of the international treaty bodies –judicial and quasi-judicial agencies.

Analysis of domestic penal law and its comparison with the universally recognized standards and principles of international law and international treaties of the Republic of Belarus related to the execution of punishment and the treatment of prisoners leads to the general conclusion on the lack of their correspondence, both in the extent and in mechanisms of realization of the rights of detainees, and the lack of understanding among domestic legislators that the standards, just as the Minimum Rules, “cover a field in which thought is constantly developing. They are not intended to preclude experiment and practices, provided these are in harmony with the principles and seek to further the purposes which derive from the text of the rules as a whole.”¹

Technically, for example, penal punishment corresponds to most of the Standard Minimum Rules for the Treatment of Prisoners. However, to our deep regret, Belarus considers as sufficient a minimum set of civil, political, social and economic rights of prisoners – standards set forth in 1955 – and does not take account of trends regarded as standard in a democracy.

¹ Standard Minimum Rules for the Treatment of Prisoners

The absence of a clear and effective mechanism for the implementation of certain rights of prisoners, as well as problems with access to the mechanisms laid down by law, nullify the scope of the rights of prisoners and gives them only declarative value.

Certain peculiarities of state-building in Belarus do not contribute to the observance of the rights of prisoners at all stages and in all areas of the prison system.

A bright hallmark, possibly decisive for the main part of problems of the places of detention in Belarus, is the fact that a vast number of places of detention are run by the Ministry of the Interior. This distinguishes the Belarusian penal system from internationally recognized standards, providing for the governing of prisons by the Ministry of Justice or the existence of an independent body to manage the system.

CONTROL OVER PRISON CONDITIONS

Legislation provides for a number of forms of control over places of detention.

Internal Control

Institutional control by superior bodies over the activities of bodies, organs and institutions executing punishment and other criminal sanctions is exercised in accordance with the procedure established by the legislation of the Republic of Belarus, the Department of Corrections, the Ministry of Health Care, the military authorities, institutions of police and public security of the Interior (Article 19 of the Criminal Executive Code of the Republic of Belarus).

Prosecutor's Supervision, Investigative Committee

Prosecutorial supervision of compliance with the law of institutions executing punishment and other criminal sanctions is exercised by the Prosecutor General of the Republic of Belarus and the subordinate prosecutors (Article 20 of the Criminal Executive Code of the Republic of Belarus). After creation of the Investigative Committee (IC) and the appropriate changes in the Criminal Procedure Law, the supervising function of the Prosecutor's Office is severely limited.

Control by the IC is based on the right to decide on criminal allegations brought against personnel of prisons. Making decisions on the submitted reports or information about crimes committed by officials of the Interior in connection with their official or professional activities is within the exclusive competence of the preliminary investigation in accordance with their investigative jurisdiction (Article 174 of the Criminal Code). This order of initiating and investigating criminal cases had no significant impact on improving the quality of the preliminary investigation of crimes committed by the personnel of prisons.

The reasons for the lack of effectiveness of the investigation are primarily about the continuing conflict of interest: IC investigators investigate the bulk of common crimes for which the employees of the Interior and the KGB provide operational support. Most of the IC investigators are from the Interior Ministry. As a result, learning about an offence committed by the employee of such a body, the IC investigator has to actually investigate the case against his or her colleagues, which eliminates the objectivity and independence of the investigation.

Judicial Control

The court supervises the execution of sentences and other measures of criminal responsibility in addressing the following scope of matters: release on parole from punishment or replacement of the unserved part of the punishment with a milder punishment; replacement of the correctional institution for a convicted persons serving a sentence of imprisonment; transfer of the convict to the punishment in the form of restriction of liberty with direction to the open type institution to serve the sentence in the form of restriction of liberty without sending to the open prison; replacement for convicted minors of compulsory education measures with more severe ones; imposing additional prohibitions for a convicted minor who has been subjected to a measure of compulsory educational in the form of restrictions on the freedom of leisure; early termination of a minor's stay in a special educational or medical institution; establishment, extension, suspension, resumption, termination of preventive supervision, as well as changes in the requirements of preventive supervision; cancellation or suspension of execution of the probation. In accordance with the legislation, the court hears appeals against the administration of authorities executing the punishment and other penal sanctions (Article 18 of the Criminal Executive Code of the Republic of Belarus).

Judicial control is not an effective means of protecting the rights of inmates due to the limited access of prisoners to justice, legal protection, and the lack of genuine independence of the judiciary and its separation from the executive branch.

(See also **Right to Legal Assistance, Judicial Protection, State Fees**).

Public Control and Involvement of Public Associations in the Activities of Bodies and Agencies Executing the Punishment and Other Measures of Criminal Liability

On the basis and in the manner provided by law, associations may exercise control over the activities of agencies and institutions executing punishment and other criminal sanctions.

Public associations are involved in the correction of convicts, as well as assist to the bodies and institutions executing punishment and other criminal sanctions.

The legislation determines the system of public monitoring commissions (PMC) as an instrument of public control over the activities of the criminal-executive system.

Activities of the PMCs are governed by the Regulation on the Procedure of Control by the Republican and Local Public Associations Over the Bodies and Institutions Executing Punishment and Other Criminal Sanctions, approved by Decree No. 1220 of the Council of Ministers of September 15, 2006, and the Regulations on the Procedure for the Formation and Activities of Public Monitoring Commissions, approved by Decree No. 85 of the Ministry of Justice of the Republic of Belarus of December 15, 2006.

The commissions comprise representatives of registered NGOs that are usually non-human rights ones. The result of the activities of seven public monitoring commissions during the year was, as described in a report entitled “The Work of Public Monitoring Commissions in 2012” and published on the website of the Ministry of Justice of the Republic of Belarus (minjust.by), visiting ten institutions executing punishment and other criminal sanctions.

Prisoners are skeptical about the effectiveness of submitting claims to PMCs.

Prisoner M. submitted a claim to the Republican PMC on pension payments (previously corresponded with the state authorities, but their answers did not satisfy the convict). Response to the appeal is not received.

Prisoner Ihar Mikhnavev submitted a claim to Republican PMC and received a response to the appeal from the Ministry of Justice of the Republic of Belarus.

Lawyer Pavel Sapelka submitted to Brest Regional PMC a request asking to examine the requirements of the law against his former client Mikalai Autukhovich and received a reply from the chairman of the PMC L.M. Istomava, who reported that “the Commission does not have the right to verify the execution of the existing legislation by prison officials during the enforcement of sentences.”

It should be noted that the email address public monitoring commissions matches the addresses of the Ministry of Justice and its departments in the regions and in the city of Minsk.

In accordance with Article 85 of the Criminal Executive Code, correspondence received and sent by convicts is subject to censorship except for proposals, applications and complaints addressed to the bodies exercising state control and supervision over the penal institutions executing punishments in the form of arrest, imprisonment, life imprisonment and the death penalty. Thus, claims submitted to PMCs are censored on the same basis.

The correction of prisoners, as well as the implementation of public control over the authorities and institutions executing punishment and other criminal sanctions, is contributed to by the supervisory committee of the local executive and administrative bodies, and in relation to offenders – by juvenile commissions (Article 21 of the Criminal Executive Code of the Republic of Belarus).

For comparison, one may refer to the legislation of the Russian Federation. According to the law “On Public Control”, members of PMCs comprised of not less than two members may, without special permission, visit places of detention upon notifying the administration of the institution or the governing body of the corresponding territory and with respect to the internal rules. PMC members have the right to meet and talk with prisoners in detention facilities within sight and sound of personnel, and – in prisons and jails – within sight, but not sound. Prisoners’ complaints sent to the PMCs are not censored.

One of the peculiarities of Belarus is the absence of the ombudsman and the lack of related opportunities to influence the treatment of prisoners.

An effective form of public control over prison conditions is monitoring by civil society activists working beyond pro-government organizations.

CIVIL AND POLITICAL RIGHTS OF PRISONERS

Right to Life, Inviolability of Person

Article 7 of the International Covenant on Civil and Political Rights

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 10 of the International Covenant on Civil and Political Rights

All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

Article 6 of the International Covenant on Civil and Political Rights

Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

Taking into account General Comment No. 21: Article 10 (1992) of the UN Human Rights Committee, Article 10, paragraph 1, of the International Covenant on Civil and Political Rights applies to any one deprived of liberty under the laws and authority of the State who is held in prisons, hospitals - particularly psychiatric hospitals - detention camps or correctional institutions or elsewhere. States parties should ensure that the principle stipulated therein is observed in all institutions and establishments within their jurisdiction where persons are being held. Article 10, paragraph 1, imposes on States parties a positive obligation towards persons who are particularly vulnerable because of their status as persons deprived of liberty, and complements for them the ban on torture or other cruel, inhuman or degrading treatment or punishment contained in article 7 of the Covenant. Thus, not only may persons deprived of their liberty not be subjected to treatment that is contrary to article 7, including medical or scientific experimentation, but neither may they be subjected to any hardship or constraint other than that resulting from the deprivation of liberty; respect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons. Persons deprived of their liberty enjoy all the rights set forth in the Covenant, subject to the restrictions that are unavoidable in a closed environment.

The actual state of affairs in the penal system is that the letter and spirit of the law defining the conditions of detention are not observed in most prisons. The

government fails to secure the protection of rights, freedoms and legitimate interests of convicted persons.

Basing on interviews with former prisoners there emerged reported cases of unjustified use of violence by both the personnel and the inmates, acting at the direction of the administration of prisons. The main forms of violence are:

- beating of detainees by special units of the Interior Ministry, aimed at maintaining order in correctional institutions;
- violence by special forces of the KGB against prisoners of the KGB pre-trial jail;

This fact became public after the statements of former prisoners of the jail – A. Mikhalevich and others – but failed to become the subject of an unbiased and comprehensive investigation.

- The use of physical and psychological abuse by agents of the operational services of the Interior in order to induce the prisoner to perform certain actions, or take a certain stand on the criminal case under investigation;

D. was charged with a crime of a sexual nature, but pleaded not guilty. When deciding on a preventive measure, he was forced to choose – either to admit his guilt and to be released on his own recognizance awaiting trial, or to be in prison. D. did not want to incriminate himself and ended up in pre-trial prison No. 1 in Minsk. One day, he was transferred to cell No. XX, where apart from him three people with criminal records were held. “The criminals took away all the foodstuffs I had, interviewed me so that I confess to their crimes. A hard core criminal who had served 18 years, B., shouted that I was a pedophile, and so dozens of times every day crying and watching my reaction. One day police investigator Yu. took him from the cell to the corridor, told him something, then B. walked into the cell, there were also K. and a third whose name I do not remember, all had arrived from the colony Navasady [a colony for individuals who have previously served a sentence of imprisonment], and I knew something was going to happen. B. started bugging me, asking why the cell was dirty and then he hit me in the face as hard as he could, ... K. ran up and hit me hard in the frontal part of the face, the third hit the liver, hit so hard that I lost consciousness, while investigator Yu. and controllers stood quietly behind the door. The prison doctor did not record the injuries, he only mentioned a minor disorder in the certificate, as lawyers, K. and L. demanded to put an end to the torture (recorded in the minutes of the court hearing on 06.03.2010). There is a blood-stained T-shirt left after the battery. And still they continued to beat me in cell No. YY, where I had been transferred. They were just killing me, and they took me to the court at long intervals until the wounds on his face healed.”

“On May 3, 2010, but I know that on this day there was no trial, it was appointed for June 3, 2010, they took me to a cell – “a sump” – to collect prisoners from different cells to be sent to the court, an accused of about 50 ran up, who had long been in cell No. ZZ, and started screaming ... and hit me a few times, I weakened and fell down and

lay for a long time, and no one on the day was not going to take me out. They just ordered to beat me.”

- the same actions by convicted persons acting on the instructions of the prison administration, in order to induce a person to a specific behavior or action;

Former prisoners convicted to imprisonment over the events of December 19, 2010 indicate the active role of the so-called “core group” of the colonies in forcing them to write applications for pardon.

- inducement to commit suicide;

Former prisoner Andrei Sannikau said that the prison authorities left him in a solitary cell with a razor blade and a piece of rope². Mikalai Statkevich’s propensity to commit suicide was reported by the prison administration to his wife.³

- promoting by the prison administration of the existence of separate statuses of inmates in the criminal environment, and the use of vulnerability of persons with lower status to intimidate prisoners with effects relating them to this category;

Prisoner L. described the situation of this category of persons in the following way: “on my first day in the detention center the senior (“watcher”) P. put me on the “cup” (under thieves’ laws), I had to eat from a separate dish, no one should talk to me, sitting at the same table with “the guys” and eat; I was forced to eat where I slept, on the upper bunk. In Penal Colony No. 19 in Mahiliou my status was low and there they mocked me, forced to clean snow in the winter in the boxes, to take it out for 400 meters with my own hands, I ruined my stomach and I was a cleaner of large areas at 0.25, I received 3 500 rubles [just over \$ 1] a month. I got up for work early in the morning, at 5 a.m. Chief of the Operations Department R. beat me in his office. O., a psychiatrist, was on duty in the medical unit, he refused to examine me. But a month later made me take some pills, with the nurse around, I was obliged to take them, and the next morning I could not walk, my head was spinning and constantly ringing in the ears. Brigade Commander Ya. beat me on the back with his fists and shouted that I was cattle, a horse, etc. I was transferred to Penal Colony No. 22 in the town of Ivatsevichy. My position is hard. I cannot do the sports together with all the others, I cannot go to a club, and so on...”

The prison authorities of the colonies where political prisoner Zmitser Dashkevich has been held, Horki, Mazyr and Hlybokaye (special regime), regularly provoked situations that could result in attributing Dashkevich to the category of low-status prisoners;

- placement of prisoners in one cell with people with tuberculosis.

Prisoner J. describes his time in prison No. 8 in the town of Zhodzina and pre-trial prison No. 1 in Minsk: “I was held in custody in prison-8 in Zhodzina... on my

² <http://www.guardian.co.uk/world/2012/nov/23/andrei-sannikov-world-complacent-belarus>

³ <http://belsat.eu/en/wiadomosci/a,8947,prison-administration-mikalai-statkevich-is-suicidally-inclined.html>

arrival at prison-8 for three weeks I was kept in cell No. XXX, then I was sent to prison No. 1 and for about three months I was kept in cell No. XX, and then I was transferred to a penal facility. Cell 124 in prison No. 8 and cell No. 30 in prison No. 1 are diagnosing (quarantine) and are intended for short-term detention of persons suspected of having tuberculosis, in order to establish their infection and for further distribution to the cells of appropriate diagnosis. Typically, prisoners pass the tests and within 2-3 days they are distributed among the cameras. In my case... all potentially infectious inmates contacted me directly for a long time.”

In certain types of institutions the existing conditions of detention of prisoners put at them risk of contracting chronic diseases. In particular, rooms available in detention centers (prisons in Minsk, Baranavichy, punishment cells in many colonies, particularly in Navapolatsk, Ivatsevichy) are cold, raw, affected by fungi. The administrations clearly do not experience anxiety and do not consider it their duty to improve the situation of the prisoners, citing the financial position of institutions and the entire prison system. It is quite clear that the state budget can withstand the cost of elementary renovating, but bringing the premises in a sanitary condition is not a conscious priority.

So far, despite the assistance of international organizations, the problem of tuberculosis is vital among prisoners. The number of prisoners with tuberculosis in late 2011 amounted to 836 people; in 2009, 2010 and 2011, the number of TB cases increased.

It is impossible to change the situation without addressing the causes and conditions conducive to the spread of the disease: detention in rooms that do not meet health standards, overcrowding, poor nutrition, deficiencies in the tactics of treatment.

Prisoner K. Was detained for the first time as a minor in 1999. In 2002, being ill with tuberculosis, he was placed in the National Tuberculosis Hospital in the Orsha-based penal colony No. 12 with a diagnosis of “pulmonary tuberculosis in the phase of destruction of the right lung.” In 2003 he was sent to outpatient treatment in the colony for the third group of dispensary register. Later, he repeatedly served arrests of 4-6 months, while under treatment. In 2007, he was sentenced to prison and in the same year due to progressive disease sent for treatment to the Republican Tuberculosis Hospital in Orsha. He stayed there for 7 months, and after claiming a set of disability, he was sent to outpatient treatment in penal colony No. 11. After his release has was registered for the first group of dispensary register in Hrodna tuberculosis dispensary. After another sentencing, he was again sent to the Republican Tuberculosis Hospital in Orsha, where in 2010 he was sent for outpatient treatment in penal colony No. 5 to the third group of dispensary register. Currently, he rightly believes that he was infected in prison, and instead of a thorough rational treatment, he keeps receiving “fake medical treatment” and, prematurely declaring

him cured within certain limits, he is once again sent back to the conditions conducive to disease development.

Torture and Other Acts of Cruel, Inhuman and Degrading Treatment and Punishment

“The term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”

“Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture (...) when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”⁴

Criminalization of torture as a crime against justice (Par. 3, Article 394 of the Criminal Code of the Republic of Belarus) does not cover the full range of purposes of torture; responsible for torture under this provision occurs in the case of its application in the field of justice. In addition, the national legislation has not provided a definition of torture, and a liability for cruel, inhuman, and degrading treatment.

Article 394 of the Criminal Code provides for punishment for forcing a suspect, accused, victim or witness to give evidence or an expert to give an opinion by the use of threats, intimidation or other unlawful acts committed by a person conducting inquiry, preliminary investigation or administering justice. Aggravating circumstances of the acts providing for increased responsibility are the use of violence or abuse, and torture.

⁴ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

There is no practice of applying this provision of the Code, while legal practice generally regards torture as abuse of power with the use of physical violence.

First of all, it should be noted that the object of the crime under Article 394 of the Criminal Code is the relationship in the administration of justice, not human rights.

Article 394 of the Code limits the scope of entities subject to liability under this article, namely a person conducting the inquiry, preliminary investigation or administering justice. Other persons, including government officials, will be liable to responsibility under other elements of the crime.

Article 426 of the Criminal Code provides for the responsibility of officials for abuse of power or authority, i.e. intentional committing by an official of actions that are clearly beyond the rights and powers granted to him or her in the service, which caused damage on a large scale or significant harm to the rights and legitimate interests of citizens or state or public interests (abuse of power or authority). Aggravating circumstances of the offence is the commission of such acts with the use violence, torture, abuse of the victim, the use of weapons or special equipment.

Responsibility for persons other than officials is provided by Chapter “Crimes Against Life and Health” of the Criminal Code, and occurs in the case of injury to the victim or, in their absence, when torture (intentional infliction of continuous pain or suffering in the ways causing extreme physical and mental suffering of the victim, or systematic beatings).

The lack of adequate criminalization of torture and cruel, inhuman, degrading treatment as an official malfeasance reduces practical ability to bring officials to justice and excludes the possibility of statistical accounting. Therefore, it is not possible to estimate in terms of judicial statistics the scale of torture and ill-treatment.

One of the characteristic vices of the national prison system is repeated and excessive use of violence.

After the brutal crackdown on the peaceful assembly of summer 2011, more than 600 of its participants were sentenced to short-term arrests (up to 15 days). The convicts noted unmotivated cruelty by the guards and the personnel of detention centers – Delinquents’ Isolation Center, Detention Center in Minsk (Detention Center of City Department of Internal Affairs of Minsk city executive committee), Investigation Prison No. 8 in Zhodzina.

Participant in those events G., who was serving his term of administrative arrest in Prison No. 8 in Zhodzina, said: "It was our turn, the engine of the police bus starts, we drove into a hangar. Yellow walls, fluorescent lighting in the ceiling, about 4 people in police uniform, 3-4 in the military, one dog (a shepherd, I guess), and the man in the uniform of riot police and a mask with holes for eyes and mouth. I looked him in the eye for a long time, for which I received a blow to the ribs... Shouting "Here, run! Down, I say! Hands behind your back!", etc. The dog barked, I heard another dog barking in the distance. We were convoyed around the car, on the other side there was a descent into the basement. I ran past the riot policeman down to the basement. We are against the wall, as if prepared for shooting. The wardens or what do they call them, tried to be as strict as possible, it was ridiculous: the first is coming – "Package on the floor, hands behind your back!" The second is coming – "Take the package in your hands!", you say something like "Choose!", for which you received another blow. Then the first comes up and in the presence of the other says again, "I said, package on the floor!" Small shuffling between us, and I realized that I would hold the package between my legs and put my hands behind my back. They asked the names one by one, start to take out into the corridor. The riot policeman has already checked us, he commands, "Move it! Faster! On the double!", people with packages started running, someone lost his slipper, another one threw up, the third slip on this. On the last corner there were two more guards handing blows to the stomach. I probably seemed very colorful to them, and got from both. Immediately after my objection, "Why?" they threw a muzzled Doberman on me. I was supposed to be scary, but the logic of "the dog in a muzzle will not do anything" let me just pay no attention. The guards ... there were a dozen of them and it seemed that if something goes wrong they will shoot to hell. I tried to remember everything, hoped it could be useful."

It should be once again emphasized that such treatment was used against persons sentenced to administrative detention, that is, those who do not pose any danger to the public and the prison staff.

More vulnerable to abuse are the persons held in pre-trial prisons, prisons and penal colonies for a long time.

The following events took place in cell No. 30, one of the cells in the hospital of prison No. 1 in Minsk for persons held in custody, with suspected tuberculosis. Opposite it is cell No. 27 for patients with mental disorders. Both cells are equipped with vent windows 10-20 centimeters high, through which with some effort you can watch part of the corridor in front of the cell. Prisoner W. says: "At the time I was in cell No. 30. I heard loud shouts one of the patients in cell No. 27, which attracted the attention of all of our inmates. Although, it should be noted, such cries can often be heard from the cell. Then there appeared a controller on duty at the hospital and medical staff. However, making sure that there was no violence used by other inmates against the patient, they requested that the patient stopped shouting and calmed down, otherwise the rest of the controllers would be called for. The duty inspector also demanded from other patients that they "influenced" the loudmouth.

After that, it was quiet for a while. But at about 5 p.m. screaming resumed, and it became even more violent. I watched the events together with other inmates through the ventilation window. Several inspectors re-entered the cell and after some minutes of fuss started "calming down" the patient with rubber truncheons. At the same time we heard loud laughter, which testified that the supervisors enjoyed battering the patient. Finally, the patient was knocked down, tied up and tied to the bed. He screamed and tried to free himself. For this he was beaten again. As a result, the patient grew silent, and the inspectors left, closing the door of the cell.

It was almost time for evening change of controllers' shift, which takes place at 6 p.m. After the shift change, we heard someone rattling at the door from inside of cell No. 27 and asking for prison staff to come. A controller named Nastya appeared, who was told that the patient had stopped breathing. Hearing the complaints the inspector left, and some 40 minutes later we heard persistent knocking again. The knocking was growing louder and louder. The controller reappeared, and the patients told her that their cellmate needed urgent help, because he had shown no signs of life for almost an hour. The controller called for help. Sasha (paramedic on duty) came (the name cannot be real), together with the building head and several supervisors. They opened the cell and untying the patient dragged him into the hallway. There the doctor began to massage his heart. After the doctor ran to the treatment room and returned indignant that there was no adrenaline there... the building head then went to the phone and saying that he was going to call for an ambulance phoned checkpoint No. 1. He then asked the paramedic what to report. The answer was: "Tell them he has stopped breathing." We, in our cell, heard the conversation of the controllers with the building head who named the patient as Semianovich, and one of those who an hour before beat him - Babko. Finally, the inspectors noticed that we were overhearing them and closed the ventilation window of our cell. We did not see anything else, but heard through the door that the patient was dead..."

Moreover, after the above-mentioned case became public, it was not followed by reaction of bodies authorized to carry out an investigation on behalf of the state.

See also "The use of physical and psychological abuse by agents of the operational services of the Interior in order to induce the prisoner to perform certain actions, or take a certain stand on the criminal case under investigation"; interview with D.

Respect for Personal Dignity

Most prisoners report rudeness by prison staff, use of foul language towards prisoners and to each other.

Former prisoners were interviewed in the Delinquents' Isolation Center – civil society activists who served administrative detention there.

Former prisoner S. “The DIC staff, who met the detainees, used foul language, behaving disrespectfully of detainees, being verbal bold with girls.”

Complaints by arrestees against such acts are not accepted.

The conditions in which prisoners are held emphasize their marginalized situation and the lack of minimum respect for the sense of personal dignity of detainees.

The design of regular cells in the detention facility, punishment cells, and prison cells is such that prisoners spend a long time in crowded conditions without the possibility of minimal isolation from other prisoners. The Standard Minimum Rules for the Treatment of Prisoners provide: “Where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself. If for special reasons, such as temporary overcrowding, it becomes necessary for the central prison administration to make an exception to this rule, it is not desirable to have two prisoners in a cell or room. (...) Where dormitories are used, they shall be occupied by prisoners carefully selected as being suitable to associate with one another in those conditions.”

In these cells the toilet is usually separated from the rest of the room with only a low wall. At a time when the cell often accommodates more people than stipulated by the standards (in Minsk pre-trial prison No. 1 – up to a few dozen), it means almost continuous use of lavatories. In general, the quality of sanitary facilities and general sanitary condition is either poor or maintained in an acceptable condition only through the efforts of the prisoners with their own cleaning products. Prisoners held in the cells of the KGB jail that do not provide sanitary facilities are often escorted to the shared toilet, where the two toilets are not separated from one another. If more than two people have been escorted to the toilet, the others are also present in the lavatory.

Eating area is located in the immediate vicinity of the lavatory. Tables in overcrowded cells lack room for all prisoners, and they have to eat sitting on a bunk. No eating area is provided in the Offenders’ Correction Center of the Department of Internal Affairs of Minsk city executive committee.

The Offenders’ Correction Center does not provide individual beds, either.

Everywhere shower facilities are designed so that the showers are not separated; the prisoners take a shower in sight of one another.

All of the above are the factors and tools used for degrading treatment of prisoners. Reforms in the area, except for the separation of prisoners, require minimum material resources.

Participation in Elections

In accordance with the Constitution and the Electoral Code of the Republic of Belarus, “citizens who are deemed incapable by a court or kept in places of confinement in accordance with a court sentence shall not take part in elections. Persons in respect of whom detention, as a measure of restraint, is selected under the procedure established by the criminal procedural legislation shall not take part in voting.” While the restriction of the rights of incapable persons looks clear and logical, the deprivation of the constitutional rights of convicted persons, and especially of suspects and accused persons, i.e. the individuals who are not considered to have committed a crime, is unfounded.

The neighboring states treat the exception to the universal suffrage differently:

Article 2 of the Ukrainian Law of “On the Election of People’s Deputies of Ukraine” provides for the only restriction: “No citizen who is deemed incapable by a court has a right to vote.”

Act of April 12, 2001 “On elections to the Sejm of the Polish Republic and the Senate of the Polish Republic” establishes that the active electoral right, that is, the right to vote is vested in “every citizen of Poland who has reached the age at least 18 years on the day of the poll”, except for persons who are: “deprived of public rights by a final ruling of the court; deprived of electoral rights by a final ruling of the Tribunal of State; and deprived of legal capacity by a final ruling of the court.”

In accordance with Article 34 of the Constitution of the Republic of Lithuania, “citizens who are recognized incapable by court shall not participate in elections.”

In the Russian Federation and Kazakhstan suffrage is restricted to convicted prisoners.

In Luxembourg, active suffrage is denied to bankrupts, keepers of brothels, in Ecuador – drunkards, vagabonds and fraudsters; a candidate to Pakistan’s National Assembly must have “a good moral reputation”.

As can be seen, electoral rights are usually denied to a person serving a sentence of imprisonment under a sentence of the court. In particular, according to Par. 1 of Art. 3 of the British *Representation of the People Act 1983*, “a convicted

person during the time that he is detained in a penal institution in pursuance of his sentence [or unlawfully at large when he would otherwise be so detained] is legally incapable of voting at any parliamentary or local government election.” In addition, a person may be deprived of one’s public rights (including voting), or the enforcement of these rights may be suspended without deprivation of liberty by a court ruling (<http://isfic.info>).

However, there is a tendency to preserve the constitutional right of criminally pursued citizens to elect and be elected, or to establish the deprivation of this right only by a ruling of the court. In particular, Article 38 of the Constitution of Germany establishes that “anyone who has attained the age of eighteen years is entitled to vote.”

The electoral law of Cuba of July 7, 1976 states the following: “Citizens cannot exercise their right [to vote] in case they are insane, recognized as such by a court order, and condemned to deprivation of rights for a crime.”

According to Art. 38 of the Constitution of the United Mexican States of 1917, “citizenship rights and prerogatives (including voting rights) shall be suspended, in particular, for those who have been legally declared as either vagrants or drunkards” or “are sentenced to have their citizenship rights suspended.” (<http://isfic.info>)

Meanwhile, a human being, his rights, freedoms and guarantees for their attainment, constitute the supreme goal and value of society and state. The Republic of Belarus recognizes the priority of generally recognized principles of international law and ensures compliance of the national law (Constitution of the Republic of Belarus). In particular, Article 2 of the International Covenant on Civil and Political Rights (adopted by the General Assembly’s Resolution 2200 A (XXI) of 16 December 1966) states that “each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” In accordance with Article 25 of the Covenant, “ Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (b) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.”

It seems that the restriction of electoral rights in connection with conviction, and even more so with the detention cannot be considered valid.

Principle 36 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment any form (adopted by General Assembly resolution 43/173 on December 9, 1988) states that “a detained person suspected of or charged with a criminal offence shall be presumed innocent and shall be treated as such until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.”

“The arrest or detention of such a person pending investigation and trial shall be carried out only for the purposes of the administration of justice on grounds and under conditions and procedures specified by law. The imposition of restrictions upon such a person which are not strictly required for the purpose of the detention or to prevent hindrance to the process of investigation or the administration of justice, or for the maintenance of security and good order in the place of detention shall be forbidden,” says the Treaty.

In its General Comment No. 21: Article 10 (1992), the UN Human Rights Committee stated that “persons deprived of their liberty enjoy all the rights set forth in the Covenant, subject to the restrictions that are unavoidable in a closed environment.”

To understand the unreasonable restrictions to the electoral rights of convicted persons it is important to adhere to the Standard Minimum Rules for the Treatment of Prisoners. Its preliminary observations indicate that the Rules are intended (...) “on the basis of the general consensus of contemporary thought and the essential elements of the most adequate systems of today, to set out what is generally accepted as being good principle and practice in the treatment of prisoners.” The Rules also specify that “imprisonment and other measures which result in cutting off an offender from the outside world are afflictive by the very fact of taking from the person the right of self-determination by depriving him of his liberty. Therefore the prison system shall not, except as incidental to justifiable segregation or the maintenance of discipline, aggravate the suffering inherent in such a situation. The treatment of prisoners should emphasize not their exclusion from the community, but their continuing part in it. Steps should be taken to safeguard, to the maximum extent compatible with the law and the sentence, the rights relating to civil interests.”

Considering the above-mentioned facts, it is necessary to immediately exclude from the Constitution of the Republic of Belarus and the Electoral Code

the provisions restricting the right to vote of persons held in custody until sentencing, as well as to take steps to eliminate unfair discrimination of those serving sentences in prison upon conviction.

Freedom of Association

Article 22 of the International Covenant on Civil and Political Rights

Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

In accordance with Article 108 of the Criminal Executive Code of the Republic of Belarus, in order to develop useful initiatives and self-government among prisoners, prison authorities shall organize amateur organizations that operate under the control of the administration. Participation of convicts in amateur organizations is voluntary and shall be considered in determining the degree of correction. Convicts' amateur organizations are involved in improving the conditions of labor, learning, life and leisure of prisoners, contribute to the protection of the rights and legitimate interests of prisoners, providing social assistance to convicts and their families, contribute to the formation of moral relations between prisoners, assist the administration in maintaining order and discipline, and may carry out other activities that are not contrary to the purposes and terms and conditions of imprisonment. Members of convicts' amateur organizations do not enjoy additional privileges and do not have the authority of the prison administration. Thus, the law declares the voluntary nature of the entry and participation in convicts' amateur organizations condemned.

The CEC provides that the degree of correction of persons sentenced to imprisonment shall be determined by the prison administration as a result of certification of convicts on the basis of a comprehensive study to assess the behavior of the individual while serving the sentence in terms of compliance with the criteria of Par. 3-5 of Article 118 of the Code. A convict may be considered as corrected, reformed, or the person who has proved his correction, if he, in particular, exhibits useful initiative in other socially useful activity. In practice, this means that the membership in amateur organizations is a prerequisite for a parole, commutation, or conditional release. Thus, the declared principle of voluntary participation is violated, which suggests, besides freedom to join amateur organizations, the freedom not to join them.

Of special concern is the practice of creating sections of law enforcement in prisons (sometimes having other similar names), which are prohibited, for

example, in Russia. These organizations have, in essence, the functions of the prison administration.

In April 2012 the Federal Penitentiary Service of the Russian Federation submitted to the Ministry of Justice a draft law “On Amendments to the Criminal Code of the Russian Federation, the Penal Code of the Russian Federation and other legislative acts of the Russian Federation”, which, in particular, provided for the dissolution of amateur organizations of persons sentenced to imprisonment.

Judicial Protection, State Fees

Article 2 of the International Covenant on Civil and Political Rights

Each State Party to the present Covenant undertakes:

1. To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; to ensure that any person claiming such a remedy shall have his rights thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
2. To ensure that the competent authorities shall enforce such remedies when granted.

Article 26 of the International Covenant on Civil and Political Rights

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The rights of prisoners to appeal a sentence under which they are deprived of liberty and illegal actions of the administration of jails are generally secured at the legislative level (after the intervention of the Constitutional Court of the Republic of Belarus). However, some circumstances debased the value of opportunities for prisoners assigned by the law.

In the process of appealing a verdict in a criminal case, the prisoner is unable to personally participate in the hearing and present his arguments in person. The law does not contain any guarantees to meet the reasonable demands for the participation of the accused in a court of appeal.

Prisoners using supervisory procedure for appealing convictions are deprived of an opportunity to personally report the complaint to an officer authorized to enter protests against enforced court sentences.

Prisoners who are parties in civil cases do not participate personally in the trial, but only examine documents and express their position in writing.

Hearings on convicts' complaints are held in closed judicial sessions, as they take place in prisons, where the public, family members and representatives of the media are not allowed. The lack of transparency and openness of the proceedings affects the quality of the court decisions.

Convicts' complaints are, except for cassation appeals and appeals against the decision of the court on a civil action in the criminal proceedings, subject to payment of the state fee of 100 000 rubles when filing a complaint. Convicts' complaints that relate to a court decision regarding material requirements, including in a criminal case, are subject to the state fee that shall be paid at the rate of 2.5% of the disputed amount.

Prisoners also pay a state fee when submitting claims and statements to the courts on the same basis.

The payment of the state fee for a large number of prisoners is difficult, and for some it is impossible. It is, first of all, attributed to the lack of paid work, nominal payment for work, the inability of the family and friends to provide material assistance to the convict.

Prisoner M. filed a complaint against a disciplinary action imposed by the prison administration. The prisoner attached information about the absence of paid work and the application to relive him on these grounds from paying the state fee. A ruling of the court rejected the complaint. The order of the Regional Court reversed the ruling of the court of first instance, after which the prisoner was again denied the right to consider the appeal, but the decision was reversed again by the judicial board of the Regional Court. At the time when the prisoner sought to appeal against the imposed penalty, on the basis of these penalties, a judge of the same district court established preventive supervision over the convict upon completion of the sentence for gross violations of the established procedure of serving the sentence. Preventive supervision will significantly limit the rights of the said person after his release and will impose on him a number of additional responsibilities.

Thus, the ability of prisoners to actively use the legal tools to protect their rights is severely limited. These limitations are linked to the imperfect definition by the law of prisoners' rights to participate in court proceedings and to initiate them without obstacles related to the financial situation of prisoners.

Right to Legal Assistance

Governments shall ensure that efficient procedures and responsive mechanisms for effective and equal access to lawyers are provided for all persons within their territory and subject to their jurisdiction, without distinction of any kind, such as discrimination based on race, colour, ethnic origin, sex, language, religion, political or other opinion, national or social origin, property, birth, economic or other status. Governments shall ensure the provision of sufficient funding and other resources for legal services to the poor and, as necessary, to

other disadvantaged persons. Professional associations of lawyers shall cooperate in the organization and provision of services, facilities and other resources.⁵

The Belarusian Constitution secures (Article 62): “Everyone shall have the right to legal assistance to exercise and protect his rights and freedoms, including the right to make use, at any time, of assistance of lawyers and his other representatives in court, other state bodies, bodies of local government, enterprises, institutions, organizations and public associations, and also in relations with officials and citizens. In the instances specified by law, legal assistance shall be rendered at the expense of state funding.

Obstruction to rendering legal assistance shall be prohibited in the Republic of Belarus.

The significance of this rule has been devalued by the absence of mechanisms for its implementation; the lack of accountability for violations of this principle gives rise to its unpunished disregard by the staff and administrations of jails.

In violation of the existing rules, practice persists when the administrations of detention centers and pre-trial prisons force lawyers to provide written permission from the court or the investigating authorities for a meeting with his client. There are numerous reports on violations of prisoners’ rights to have access to legal representation and communication in an environment that allows members of the administration to see the convict and his counsel, but not hear the content of their conversation. Lawyers’ access to certain prisoners is deliberately hampered by the administrations of prisons. In accordance with Par. 6 of Article 83 of the Criminal Executive Code of the Republic of Belarus, convicts can have access to legal assistance (on their application) by meeting with lawyers or other persons who are entitled to rendering legal aid. The wording of the Code, on the one hand, limits the counsel’s opportunities to apply for meetings and, on the other hand, the administrations of penal facilities arbitrarily usurped the right to meet the said applications submitted by prisoners or dismiss them.

In practice, there were cases of unlawful refusals to authorize meetings on grounds not provided for by law, or instances when counsels are forced to wait for meetings with their clients for several hours. An issue of particular concern is legal assistance to prisoners who have been subjected to violence in places of detention.

One of the factors that significantly restrict prisoners in obtaining legal aid is a gap in the procedural relations between the convicts and his lawyer after the entry of the verdict into legal force and departure of a prisoner to serve his

⁵ Basic Principles on the Role of Lawyers, Art. 2, 3

sentence in a colony or prison. In this situation, the prisoner does not enjoy the state guarantees of legal assistance similar to that provided to the accused. For those prisoners who are able to pay for the work of a counsel, the cost increases due to the need to travel, usually to another city. To some extent, the problem could be solved by giving the prisoner and his counsel the right to maintain correspondence without censorship.

However, in accordance with Article 85 of the CEC, correspondence received and sent by convicts is censored, except for proposals, applications and complaints addressed to the bodies exercising state control and supervision over penal institutions executing punishment in the form of arrest, imprisonment, life imprisonment and the death penalty.

Unlawful extension of the period of detention and unreasonable increasing of security level

Article 411 of the Criminal Code of the Republic of Belarus

“Deliberate disobedience to the legitimate requirements of prison administration, that executes a sentence of imprisonment or other opposition to the administration in carrying out its functions by a person serving a sentence in prison, that executes a sentence of imprisonment, in case the person has within a year been subjected to disciplinary actions by placement to cell-type rooms, specialized chambers, solitary confinement or transfer to prison for violation of the sentence execution (deliberate disobedience to the correctional institution administration that executes the sentence of imprisonment) shall be punishable with imprisonment for a term of up to one year.

Deliberate disobedience to the correctional institution administration that executes the sentence of imprisonment committed by a person convicted of a grave or especially grave crime, or who has committed especially dangerous relapse is punished by imprisonment for a term not exceeding two years.”

This is the wording of a unique article of the Criminal Code, even in the criminal law of the Russian Federation, with which Belarus intends to unify legislation and shares first place in Europe in the number of prisoners per capita. Meanwhile, the criminal code of the states, who have chosen the democratic path of development, provide for punishment only for actions that disrupt the functioning of an institution as expressed in terrorizing prisoners, attacks on prison administration, or in the creation of an organized criminal group with the aim of terrorizing the convicts or attacking the administrations of correctional institutions.

In Belarus, Article 411 of the Criminal Code condemns, basically, prisoners who are not ready, owing to their beliefs and the sense of personal dignity, to execute the orders of the administration of an institution aimed at humiliating the imprisoned person and degrading of his status. Many of them did not confess to the crime and consider their imprisonment illegal.

Dzmitry S., 24: "I was sentenced to 5 years and 6 months of imprisonment in 2004. I have been three times convicted under Article 411; as a result of the partial addition of punishments the finally determined sentence is 10 years and 7 months."

Requiring strict compliance with detention security rules, prison administrations generally do not for some reason implement their duties towards prisoners, and often deliberately violate their rights. Article 411 of the Criminal Code is a kind of "heritage" of the legal system of the Soviet Union. Meanwhile, the Plenum of the Supreme Court of the Soviet Union said in 1989: "The courts do not always take into account that, in accordance with the law, committing a new crime is a circumstance which burdens the responsibility. At the same time, in many cases courts do not take into account the negative impact of the environment, improper conduct of the prison administration, and other circumstances which in the aggregate often lead to the commission of new offenses. Court hearings are usually held in the colonies, with no access to the public. Thus, the principle of public justice is violated, and adverse events in these facilities remain beyond the control of the public. Exposing specific facts of abuse and inaction by prison administrations, poor working and living conditions of convicts, the courts rarely react to this by special rulings demanding appropriate action by heads of the supreme bodies of internal affairs, prosecutors and supervisory committees." Meanwhile, it is crucial to understand and explain what particular actions by prisoners should be criminalized, says the lawyer. The inclination of Article 411 of the Criminal Code allows various interpretations of vague terms. While the disciplinary prejudice looks more or less clear, the undefined phrase "other resistance to the administration in carrying out its functions" leaves room for any kind of arbitrary expansive interpretation of the rule. The term "deliberate disobedience" is also absent in the regulations that define the rights and obligations of prisoners. All this leaves room for discriminative approach by prison administrations in deciding whether to prosecute a prisoner who is formally subject to Article 411 of the Criminal Code. Therefore, legislators should clarify the circumstances under which prisoners are subject to actions of the prosecution, and when they only should be followed by the application of disciplinary measures. As yet, the lack of necessary clarifications

leads to the sentencing of prisoners for actually committing minor disciplinary offences.

“Convict Uladzimir Nezhavorau, upon arrival in penal colony No. 1, was placed in a cell-type room for refusing to work on the improvement of correctional institution, when during a walk a controller of the colony offered to take a broom and clean the yard. According to Uladzimir Nezhavorau, the yard was perfectly clean. In his reply to this argument, the controller explained that the prisoner would not have to clean it up, but to just take a broom and walk with it around the yard. As a result, for refusing to carry out these absurd demands Nezhavorau was sentenced to one year's imprisonment under 411 of the Criminal Code. Later the same article was used to sentence him to two more years of imprisonment.”

“Dzmitry K., when serving a sentence, was sentenced to two years' imprisonment under Article 411 of the Criminal Code, after he refused to comply with the requirement of the detachment chief to clean the room, talked after lights out, committed other minor violations; for each of those violations he was punished with a disciplinary action, and eventually was sentenced for two years' imprisonment under Article 411 of the Criminal Code. As a result, he had to serve seven years in prison, instead of three and a half years handed down by the court.”

Resolution of the Plenum of the USSR's Supreme Court of June 21, 1985 No. 10 “On judicial practice in cases of criminal liability for actions that disrupt the functioning of corrective labor institutions” stresses: “The courts should not allow conviction (...) for an act constituting willful disobedience to the administration of a corrective labor institution, or other crime, as well as for minor actions, which only formally subject to the elements of a crime, and in fact constitute a violation of the requirements of the regime, which is punishable only on the disciplinary level.”

The criminal prosecution of political prisoner Zmitser Dashkevich is the logical continuation of the sad practice of application of Article 411 of the Criminal Code. The youth leader had less than six months before his release, and his sentencing was carried out under a well-designed pattern of suppressing the protest behavior of prisoners. Moreover, the court, which was held in the walls of the colony, was closed to public scrutiny.

A number of political prisoners (Zmitser Dashkevich, Mikalai Statkevich, Mikalai Autukhovich, Yauhen Vaskovich, Mikalai Dziadok) have been subjected to extremely strict disciplinary measures – transfer to prison for further serving of the sentence for minor violations of prison security restrictions. Leaving no comment on the legality of the imposed sanctions, one should make a clear

conclusion that the use of extreme disciplinary measures against them was dictated by a purely politically motivated nature of conviction.

For example Mikalai Autukhovich, convicted to prison by the Supreme Court on trumped-up charges, did not get during his detention in prison and in the colony proper medical, including dental, care. By agreement with the prison authorities, he ate self-cooked and pre-chopped food. While in prison, he was disciplined between December 2011 and January 2012: once for absence from the club for an educational event, 5 times – for failure to appear in the dining room together with his detachment, 2 times – for violation of the daily routine. In January 2012, he was placed in cell-type premises for 1 month after a protest against the tyranny of the prison administration. A court decision sent him to prison for further serving of the sentence. It should be emphasized that the possibility of being subjected to alternative softer measures provided by law (for example, transfer to a colony of special security) was not even considered. The court session was held behind closed doors on the territory of the penal colony.

Apart from the flaws of law-enforcement practice, there exist numerous deficiencies of legislation allowing arbitrarily differentiated approach to correctional process with respect to different persons, depending on the will of the administration of the prison or other body. The disciplinary system is fixed in Art. 112 of the Criminal Executive Code of Belarus. For violation of the order of serving the punishment convicts may be subjected to the following sanctions: reprimand; extraordinary duty of cleaning the rooms or territory of the detention facility; denial of the right to receive another parcel; deprivation of next long-term or short-term visit; placement of convicts held in correctional facilities and prisons in solitary confinement with or without labor or education obligations for up to ten days; transfer of convicts, found guilty of a repeated violation of the established order of punishment in correctional colonies, to cell-type rooms for up to six months; transfer of convicts held in to cell-type rooms of correctional colonies of special security to solitary confinement for up to six months, and in prison – to the maximum security imprisonment for a period of two to six months.

In addition, the convicts who persistently violate the established order of serving the punishment can also be subjected to measures under Par. 5 of Article 69 of the CEC of the Republic of Belarus. Persons sentenced to deprivation of liberty, grossly violating the established order of punishment, may be transferred from colony to prison for up to three years to serve the remainder of his sentence in a penal colony under the security level determined by a court. Changing the type of prison conditions and security level is ordered by the court upon application from

the prison administration, approved by the supervisory commission at the local executive and administrative body.

It is worth noting that, in accordance with Article 57 of the Criminal Code, deprivation of liberty in prison can be ordered by the court for part of the period of imprisonment, but no more than five years, to: a particularly dangerous repeated criminal (when a person has committed a grave or especially grave crime, if earlier he or she was at least twice convicted and served a sentence of imprisonment for especially grave crimes); adult perpetrators of especially grave crimes (premeditated crime for which the law prescribes a penalty of imprisonment for a term exceeding twelve years, life imprisonment or the death penalty), sentenced for them to imprisonment for a term exceeding five years. This definition, together with the above example of the behavior of the convicted person, can help assess the environment in which political prisoners are held.

Thus, it can be argued that the penal legislation fails to clearly and specifically define the conditions for the transfer of prisoners to serve their sentences in prison.

SOCIAL AND ECONOMIC RIGHTS OF PRISONERS

Belarus occupies a leading place in prison population rate, both in Europe and in the world. As of the end of 2011, Belarus held 405 prisoners per 100,000 of the national population.

Falling behind the Russian Federation, Belarus is ahead of its neighboring countries with similar socio-economic situation; Poland – 218, Latvia – 297 Lithuania – 314, Ukraine – 325 people per 100,000 of national population. Rates of other post-Soviet countries: Kazakhstan – 316, Moldova – 189 people per 100,000 of national population.

In European countries, the figures are as follows: Greece – 111, Italy – 108, France – 100, Germany – 80, Spain – 60 prisoners per 100,000 of national population.⁶

One of the most blatant violations of prisoners' rights in Belarus, recognized even by state regulatory authorities, is the overcrowding of prisons.

The penal law provides that persons serving sentences in correctional facilities shall be provided with housing and living conditions consistent with the rules of sanitation and hygiene. The living space per convict in penal colonies and prisons cannot be less than two square meters, for juvenile offenders – three and a half square meters, in medical prisons – three square meters (Par. 1 of Art. 94 of the Criminal Executive Code of the Republic of Belarus). Accordingly, most prisoners are held in more constrained conditions than those indicated.

According to the press service of the Prosecutor General of the Republic of Belarus, "... an inspection was carried out in March 2011 to verify the compliance with legal requirements on material, social and health service of persons sentenced to imprisonment and detention. The inspection found that some correctional facilities and detention centers do not meet the standards of living space per one person. The limit of the number of convicts established by the Ministry of Internal Affairs is exceeded in some prisons. Prosecutor General of the Republic of Belarus submitted a proposal to the Department of Corrections of the Ministry of Internal Affairs of the Republic of Belarus to eliminate violations of legislation. Upon its consideration, a number of officials of the penitentiary system were disciplined. Subsequently, in September 2011, the Prosecutor General of the Republic of Belarus conducted a safety check, which showed that the penal system failed to fully remedy the violations of the law. In this regard, the Prosecutor General of the Republic of Belarus sent letters to subordinate prosecutors, demanding to essentially respond to facts of

⁶ <http://www.prisonstudies.org>

connivance on the part of the administrations of correctional institutions, to achieve the complete elimination of violations of the law. The matter remains in control of the Prosecutor General's Office."

It is obvious that the established penal provisions on living standards are declarative, since the law does not provide a mechanism of implementing them in practice. Such a mechanism could be a standard which allowed prison administrations to reject convicts (prisoners) in excess of the limit of filling institutions and established liability for violation of the rules by penal officials.

According to the administrations of penal institutions, this kind of liability is currently excluded when overcrowding is the result of general overcrowding, and not due to shortcomings of the administration in accommodating prisoners (arrestees).

In April 2012, the Federal Penitentiary Service of the Russian Federation sent to the Ministry of Justice a draft law "On amendments to the Criminal Code of the Russian Federation, the Penal Code and other legislative acts of the Russian Federation", which, in particular, provides binding rules of living space per person sentenced to imprisonment in accordance with international requirements (in prisons and colonies – at least four square meters; in educational centers – six square meters, in medical prisons – three square meters, in the hospitals of the correctional system – five square meters).

Such rules are in conformity with European standards; their adoption can indicate the government's true will to actually change the situation of human rights in the penal system.

In accordance with Article 2 of the International Covenant on Economic, Social and Cultural Rights, "each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures." The Belarusian authorities declare a sufficiently stable economic situation of the state and their commitment to the development of socio-economic sphere, which imposes a duty to use their resources and capabilities, including creating humane conditions in prisons.

Medical care of prisoners

Medical care of prisoners is carried out, according to their categories, by health care institutions of the Ministry of Health Care and the Ministry of the Interior. The above problem deserves attention due to lack of proper understanding by the state of its responsibility for the health of prisoners. The States Parties to the Covenant on Economic, Social and Cultural Rights recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (Article 12).

In 2011, the authorities closed the Republican Hospital for prisoners in Minsk, located in the territory of colony No. 1. The in-patient medical services were shared between medical units in prisons and the hospital in the detention center in Minsk. It is worth noting that the closure of the hospital was the result of a decision to allot the territory of the former penal colony No. 1 for the construction of an administrative and residential complex. The hospital was closed long before the completion of the construction of a succeeding medical institution.

The poor quality of health care in the prison system is reported by most prisoners. The biggest problem is the treatment of complex diseases that require highly qualified medical staff and equipment. In this respect, the position of the Department of Corrections not to use or to minimize the opportunities of civil medicine looks rather strange.

In early August 2011, political prisoner Dzmitry Bandarenka was operated on for a spine hernia, which paralyzed his right leg. He could only receive medical care in June 2011, despite numerous requests since February. Two weeks after the operation, on August 17, he was discharged from the hospital No. 5 in Minsk and sent back to the detention center in Minsk, without providing the necessary post-operative rehabilitation. After the surgery, he developed a complication – an abscess on his leg; despite this, on August 31, 2011 he was transferred to penal colony No. 15 in Mahiliou.

Political prisoner Mikalai Autukhovich has not received adequate dental prosthetics since winter 2010, which deprives him of proper nutrition.

SEPARATE TYPES OF PRISON FACILITIES

As of the end of 2011, Belarus, according to the National Statistics Committee⁷, had 41 places of detention. Of these: 20 penal colonies (for adults), including 7 colonies for persons serving their first sentence of imprisonment, and 7 for individuals who have previously served a sentence of imprisonment, 3 corrective labor colonies, 1 high-security penal colony, and 2 female colonies. There are 2 educational colonies for minors, 3 prisons, 10 detention homes, and 6 pre-trial prisons.

The number of persons held in detention by the end of 2011 was 38,410. Of these: 29,983 persons (2,630 women and 27,353 men) are held in penal colonies for adults, 385 persons in juvenile correctional facilities, and 674 persons in prisons. In pre-trial prisons and detention homes there are 7,368 people, including 82 minors.

Delinquents' Isolation Center, Detention Center (as a place of detention of administrative arrestees)

Administrative detainees are currently held in pre-trial prisons, after the delinquents' isolation center in Minsk was closed for reconstruction. Prisoners report inhumane conditions in these prisons.

Administrative arrestee A., who served administrative detention in the detention center (DC) and the delinquents' isolation center (DIC): "The number of people in the chamber is more than the number of beds: the night of July 6: 8 prisoners per 5 beds (cell on the 4th floor), the night of July 7: 8 people per 6 beds (cell number 30, 3rd floor, DC), the night of July 6: 12 people per 7 beds (cell № 31, DC), the night of July 7: 8 people per 7 beds (cell № 31, DC), the night of July 8: 5 persons per one bed 1.8 m x 2.5 m (cell № 14, 7-8 m², DIC), the night of July 10: 7 people per one bed, 0.8 x 2.5 m (cell number 18, 9 m², DIC).

Unsanitary conditions in the cells, the walls of the toilet are smeared with excrements from floor to ceiling. However, requests for cleaners were ignored by the prison employees. Mattresses and pillows in cell number 30 (DC) are very dirty and old, some crumbled into dust, all spattered, stained and have spots of unknown origin. Toilets in cell number 14 and number 18 in the DIC are two feet away from the bed and are "fenced off" from the bed with only a waist-high partition. Little natural light. The cells in the DC are dirty; the windows are thick, allowing almost no daylight into the cell. In cells № 14 and № 18 of the DIC original window openings were laid with

⁷ Fact Book "Offences in the Republic of Belarus" (Minsk, 2012) – Russian version only

bricks by half. The remaining window opening has a size meter by half a meter and is located near the ceiling. Artificial lighting is sunk into the wall – all day long the cell is in semi-darkness. It is possible to read only with great difficulty and for a very short time, as eyes grow quickly tired. It is very hot, there was practically no access to fresh air. Moreover, for 5 nights we were never taken out for a walk. Cell № 18 in the DIC is located at the corner of the building, lit by the sun all day, not ventilated, the air is stuffy and stale. During the five nights of detention in both the DC and the DIC we were not taken for a walk. There was no drinking water (water from the sink, which was in the cell, is not suitable for drinking). . During the five days we were never taken to the shower.”

Arrestee B. “During five days I was placed in three different cells; my request for an opportunity to wash was rejected by the employees who told that this cell had already washed so I was not entitled to washing. Heat and stuffiness in the cells is not a good reason for more frequent showering for the personnel of the DC and the DIC.” When arriving, I received a negligible amount of laundry soap and a piece of toilet paper of about 10 cm long. This was absolutely not enough. Moreover, my requests to take the necessary hygiene products from my personal belongings seized during the arrest were either rejected or ignored. Thus, more than a day there were no hygiene products. They appeared only on the second day of my stay in the DC, when first parcels arrived (i.e. in the afternoon of July 8, while we were brought to the detention center on the night of the 6th). No parcels were allowed before the trial and on the day of the trial. We were not told the rights and obligations of detainees and later arrestees. On the first day we only received breakfast. There was no lunch, no dinner. That is, for 40 hours after the arrest there was just one meal. On all the other days the break between the daytime and the evening meal was only 2-3 hours (lunch was given between 3 and 5 p.m., dinner – between 6 and 7 p.m.).

Several people held in the DIC and the DC lodged complaints to the Prosecutor’s Office against the conditions of detention and the treatment by the prison staff. The Prosecutor’s Office evaded the assessment of conditions of detention and forwarded the complaints to the Chief Department of Internal Affairs of Minsk city executive committee. Minsk police did not deny the existence of substantial violations of the rights of persons held under arrest, but referring to the objective circumstances that did not permit a timely reconstruction of the Delinquents’ Isolation Center, said the situation could not be corrected. Complaints of violations by the prison administration and the staff were ignored.

Detention Center

Temporary detention facilities (detention centers) are used primarily for the detention of persons suspected of committing a crime. In small district towns where there are no pre-trial prisons, temporary detention facilities are also used to hold persons arrested for conducting investigative activities or participating in court hearings.

In accordance with the criminal procedure law, detention cannot last for more than 72 hours from the moment of detention, the detention of a person suspected of having committed certain especially grave crimes cannot last more than ten days from the moment of detention. In case preventive measure have been used against a detainee, charges must be brought within ten days from the moment of detention, and for persons suspected of having committed an especially grave crime – no later than twenty days from the moment of detention. Detention may be made without the approval of the prosecutor or the court.

Temporary detention facilities are not currently governed by the Department of Corrections, and are directly controlled by public security police, which gives access to detainees for the police without securing the rights of the detainee.

Pre-Trial Prison

In accordance with the Code of Criminal Procedure, preventive measures can be applied by the body conducting criminal proceedings only when the evidence collected in a criminal case provides a reasonable basis to believe that the suspect or the accused may escape from the body of criminal investigation or the court; prevent the preliminary investigation of a criminal case or its consideration by the court, including through the provision of illegal influence on those involved in the criminal process, concealment or falsification of materials relevant to the case, failure to appear without good cause upon summons by the agency conducting the criminal process; commit a socially dangerous act as provided by the criminal law; oppose execution of the sentence. When deciding on the need for preventive measures to be used against the suspect or the accused the nature of the suspicion or accusation, identity of the suspect or the accused, their age and health status, occupation, marital status, wealth, permanent place of residence and other circumstances must be taken into account. The custody as a preventive measure applies only to a person suspected or accused of committing a crime for which the law prescribes a penalty of imprisonment for a term exceeding two years. Persons suspected or accused of committing a grave or especially grave crime can be

subjected to a measure of restraint in the form of imprisonment based on the severity of the crime alone.

Under a general rule, at the stage of preliminary investigation a preventive measure in the form of imprisonment can be applied by the prosecutor or his deputy, or the Chairman of the Investigative Committee of Belarus, Chairman of the State Security Committee of Belarus, or persons performing their duties, or the body of inquiry or an investigator upon approval by the prosecutor or his deputy, and at the trial stage – by the court.

A measure of restraint in the form of imprisonment during the preliminary investigation of the criminal case may not exceed two months.

The period of custody of more than two months applied to the accused during the preliminary investigation may be extended to six months, and in respect of persons accused of committing a grave or especially grave crime, as well as persons who have committed an offence in the territory of the Republic of Belarus and having no permanent residence in the Belarus, provided there are reasons to believe that they can flee the investigation and trial beyond the territory of the Republic of Belarus, as well as to persons held in custody in a foreign country in connection with their extradition to the Republic of Belarus for prosecution – to a period of eighteen months.

The period of custody of more than eighteen months applied to the detainee to be extradited to the Republic of Belarus for prosecution may be extended by the time required for the extradition to the Republic of Belarus, for the completion of the preliminary investigation of the criminal case after the extradition of the person to the Republic of Belarus, but no more than by six months.

When the accused and his defense counsel cannot study the criminal case before the expiry of the period of detention, a judge of the Supreme Court may extend the period of detention for a period not exceeding six months.

Thus, the person may be held in pre-trial prison for up to two years.

Upon the submission to the court of a criminal case by the public prosecutor the period of detention of the accused is extended by the court in charge of the case. The accused cannot be detained in a criminal case investigated by any court for more than six months from the date of submission of the case to the court and to the pronouncement of the sentence, and in cases against persons accused of committing grave and especially grave crimes – for more than twelve months. The period of detention of the accused between the pronouncement of the sentence and

its entry into force may not exceed three months, and in cases against persons accused of committing grave and especially grave crimes – six months.

In a criminal case against a person accused of a grave and especially grave crime, when the consideration of the criminal case before the expiry of the period of detention is impossible, but the circumstances of the criminal case cannot result in the amendment of the measure of restraint, the President of the Supreme Court may extend the period of custody of the accused for a period not exceeding six months.

Thus, the time of detention during the trial could last up to two years. In total, the defendant may be held in pre-trial detention for up to four years prior to the entry into force of the sentence.

In its Report “Trial Monitoring in Belarus (March - July 2011)”, the OSCE Office for Democratic Institutions and Human Rights notes that Belarus violates the provisions of Article 9 (3) of the International Covenant on Civil and Political Rights: “The ICCPR is clear that detention decisions must be taken by “a judge or other officer authorized by law to exercise judicial power.”

“The right to liberty of the person is a fundamental human right that is contingent on the right to a fair trial as a safeguard against its unlawful and arbitrary curtailment. It is of utmost importance that the entity making detention decisions be independent, both from the prosecution and investigation bodies on one hand, and from interference from the executive branch on the other. The court is obliged to take into account the factual evidence related to the specific defendant. Detention should never be considered as a default option whenever someone allegedly commits a criminal offence, and should only be resorted to if there exists a real threat of absconding, tampering with evidence, or reoffending,” says the Report.

The OSCE ODIHR further recommends to: remove any influence from the executive branch on detention decisions; amend the Criminal Procedure Code so that judges, and not prosecutors, render detention decisions in the first instance; amend the CPC to ensure that detention decisions are founded on a reasonable suspicion that the individual has committed a crime, and subsequently, are based on an individualized assessment of the threat that the detainee will abscond, tamper with evidence or witnesses or re-offend. The decision to detain someone should articulate specifically the basis for the findings; remove provisions in the CPC that permit detention based solely on the gravity of the charge.

The use of alternative measures of restraint, such as bail, release on one's own recognizance and proper conduct, guarantee, and house arrest will help bring the conditions of detention in pre-trial prisons to an acceptable quality level.

Prisoner L.: "all in all, in the cell [pre-trial prison No. 1 in Minsk, where he was held awaiting trial] there were 10 beds, with 22-25 people, so we slept in turns. I myself am a non-smoker and they smoke all around 24 hours without a break, I was lying flat on the upper berth, I could not stand up, the passage was full of people, only at night I could go to the open toilet and it was for 6 months like that, my eyes shaded and hurt – the light was dull, severe headache spasms from slamming the doors. I could not understand what was going on, I was dying sprawled dozens of times, my ears sore from a particular resonance from talking in the cell, about 10-11 square meters, I started hallucinating. What probably saved me was that I grew up in the orphanage..."

Remand prisoners are required to comply with the established security restrictions; violations may result in placement in a punishment cell. This form of maintaining order among the prisoners awaiting trial is quite controversial, as detention centers hold persons whose guilt has usually not been proven by the court. In accordance with the Internal Rules of remand prison system of the Ministry of Internal Affairs (IRRPS), p.143, detainees cannot take to the punishment cell any food and personal items, with the exception of towels and toiletries. Thus, the ban affects the documents that help prepare for the trial, and writing utensils.

Prisoner M., held in pre-trial prison No. 9 in Zhodzina, was disciplined for failing to tidy up the camera and was placed in solitary confinement for 10 days. For 10 days due to lack of writing materials and records in the criminal case the person was not able to prepare for the court hearing and appeal the sanction. Further appeals to the authorities supervising the observance of the rights of prisoners were unsuccessful.

In Belarus, the detention facility does not perform the function of the barrier between the body of prosecution and the detainee. The penal facility is subordinate to the same agency as the criminal police, namely the Ministry of the Interior. This provision does not protect a prisoner from the possibility of exposure to the benefit of the body of criminal prosecution.

In the KGB pre-trial prison persons arrested on charges of rioting, including opposition leaders and active participants in the protest against the rigged election results, were subjected to a combination of physical and psychological pressure by the investigation body, agency operatives, the administration and staff of the prison and officers of the special anti-terrorist unit.

It is difficult to conduct a full investigation of violations in these conditions, even with the will of the authorized body, owing to the specific situation, when the staff of the facility belongs to the same department as the initiators of committed lawlessness.

This can be avoided only through the transfer of the prison under the supervision of another department.

As already mentioned, the PMCs' control over pre-trial prisons is formal. According to a report "The work of Public Monitoring Commissions in 2012", posted on the website of the Ministry of Justice of the Republic of Belarus (www.minjust.by): "In November 2012, members of the Commission visited pre-trial prison No. 1 in Minsk, where they examined the conditions of detention of persons under investigation, visited the visiting rooms and the rooms equipped as temporary wards. As a result of the visits, it was established that the conditions of accommodation, nutrition and treatment meet the requirements for these institutions."

Penal Colony

Persons sentenced to imprisonment in penal colonies for first-time serving of a sentence of imprisonment and correctional facilities for individuals who have previously served a sentence of imprisonment, are held in ordinary living premises and in accordance with the internal regulations of correctional institutions may move within the colony. The living rooms in the colonies are, as a rule, provided for the large amounts of people. There is not a single colony that would provide the opportunity of living in an ordinary living room of one or 2-3 prisoners.

Transfer of prisoners to isolated detention is an extraordinary measure and is used by the administration upon a motivated request of the convicted person.

Persons sentenced to imprisonment can once a month buy food and other essential items through non-cash payment with the money available on their personal accounts in the amounts that are set depending on the security restrictions (from 3 to 6 base units per month (300,000 – 600,000 rubles). These amounts may be increased as a means of incentive. Convicts obliged to reimburse the cost of maintaining children in public care, as well as prisoners failing to repair the damage caused by a crime, can buy food for up to one base unit and other essential items for up to one base unit per month. Convicts reprimanded for repeated violations of the prison security requirements are allowed to spend money on food and other basic necessities on a monthly basis in the amount of up to one base unit.

Persons sentenced to imprisonment are entitled to the receipt of parcels and small packets in an amount established according to the security level.

Deductions are made from the wages and similar income (including pensions) of convicts to reimburse the cost of food, clothing and footwear, household services (Article 102 of the Criminal Executive Code of the Republic of Belarus). The cost of food and household services that has not been retained from persons held in correctional facilities in the reporting month in case of insufficiency of their wages and similar income does not result in a debt, nor is it retained in the following months. The reimbursement by the convicts of the cost of their detention is performed after deduction of income tax, mandatory insurance contributions to the Social Security Fund of the Ministry of Labor and Social Protection of the Republic of Belarus.

Almost all interviewed prisoners of colonies, working at local manufacturing enterprises, say that after the deduction of the cost of detention the payment owed to them constitutes a small amount.

The form of detention of prisoners, when they have to pay for their own imprisonment, including living and meals, may only be reasonable, when the prisoners receive for their work an adequate payment, comparable to earnings in outside life.

Despite the partial reimbursement of the cost of prisoners' detention, the state is not doing enough to ensure that the quality of food and the living conditions is acceptable and does not cause additional suffering to prisoners.

All the interviewed prisoners and former prisoners mention the poor quality and insufficient amounts of food, poor quality of issued clothing that quickly loses its form, and does not protect from moisture and cold. The use of clothing other than a standard form is not allowed by the prison administration.

Premises of penal colonies, in particular, living rooms, are redecorated; however, the repairs is not always the merit of the prison administration, but is made at the cost of the prisoners or their relatives. These "voluntary" contributions are indispensable for parole.

BELARUS AND THE UNITED NATIONS

On September 23, 2010 the UN Human Rights Council unanimously adopted at its 15th session a report on the Universal Periodic Review of Belarus. In November 2012 Belarus submitted an Interim Report on the implementation of the recommendations adopted under the Universal Periodic Review in May 2010.

According to Belarus, Recommendation A-3 (Harmonize national legislation with international human rights norms (Djibouti); continue its efforts to harmonize its national legislation with international standards (Sudan)) has been implemented by the country: “In accordance with its Constitution, Belarus recognizes the priority of universally acknowledged principles of international law and ensures that its legislation conforms to its norms.

The country continues the implementation of measures for the harmonization of the national legislation with international legal norms. All draft legislation prior to their adoption by the Parliament is pre-verified for compliance with constitutional norms and principles of international law.”

Meanwhile, the above-mentioned problems of the legislative regulation of prison rules and conditions suggest an idea of the need for their prompt revision. In the absence of international treaty judicial bodies recognized by the government, the government finds it difficult to make a sober view of the scope of problems it faces in improving the law, as well as to go beyond the national understanding and assessment of these issues. An alternative could be the position of the government and the legislature formed with the invaluable experience of assessment of facts in terms of human rights accumulated by the UN and European treaty bodies.

As for Recommendation A-21 (Introduce the definition of torture reflecting that in article 1 of CAT into its national legislation (Czech Republic)), Belarus is currently “addressing the issue of introducing in the criminal legislation the definition of “torture” as provided by the Convention.”

Introducing the definition of torture and the responsibility for these acts seems simple both from the point of view of legal techniques and in terms of justification of public need and usefulness of such a measure.

According to the Constitution of Belarus, the country recognizes the priority of universally acknowledged principles of international law and ensures that its legislation conforms to its norms. The provisions of the International Covenant on Civil and Political Rights and the Convention Against Torture should be implemented and enforced. In accordance with the Constitution and the Criminal Procedure Code, no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. However, the law does not define these

concepts. Torture, cruel, inhuman or degrading treatment or punishment requires definition, criminalization and should certainly result in severe punishment.

Finally, in accordance with Article 11 of the Criminal Code of the Republic of Belarus, the crime is a “perpetrated socially dangerous action (omission) which is prohibited by this Code.” Therefore, the absence of responsibility for torture and cruel, inhuman or degrading treatment precludes criminal liability for torture committed outside the disposition of the Criminal Code.

(See also *Torture and Other Acts of Cruel, Inhuman and Degrading Treatment and Punishment*)

According to the Belarusian government, Recommendation A-22 (Ensure prompt, impartial and comprehensive investigations of all complaints of torture or cruel, inhuman or degrading treatment or punishment of persons subjected to any form of arrest, detention or imprisonment (Italy)) has been implemented:

“The accused and detained have the right to seek judicial review of the detention, imprisonment, house arrest or involuntary placement in a psychiatric facility, the actions and decisions of the body conducting the criminal proceedings and the judgment or other final court decision.

Complaints are immediately (by detainees – within 24 hours, prisoners – 3 days) submitted to the court through the administration of detention centers. The ruling on the complaint may be appealed within 24 hours.”

Such information does not describe the actual situation in the field in Belarus.

For a long time prisoners had the right to appeal against a detention or unlawful detention as a preventive measure, which meant that the court checked only the formal compliance of procedures of arrest or detention. Prisoners had not received the right to challenge the justifiability of detention or custody until the beginning of 2010. Complaints are heard in a closed session in the absence of the detained or arrested person. The prisoner may be represented by a lawyer. The prosecuting agency submits to the court a limited number of documents pertaining to the case. The question of proof of suspicions brought against the arrested person or the charges against the prisoner in custody is not considered by the court.

No statistics of review of these claims are published.

The Criminal Procedure Code, which regulates the submission of a complaint, formulates the rule so that a preventive measure in the form of detention can be appealed only once. At a later stage it is only the extension of detention that can be appealed.

Apart from that, according to the state, “prisoners have the right to complain to the administration of the prison, court, prosecutor’s office, and other state bodies and public organizations. Appeals and complaints are dealt with in accordance with the Law “On Public Appeals.”

It is surprising that the government has no idea that complaints are addressed by the court under the Civil Procedure Code of the Republic of Belarus, which establishes a procedure for filing complaints and considering them. It should be noted that in contrast to the Law “On Public Appeals”, which does not provide for the collection of the state fee for filing complaints, the civil procedure law imposes an obligation to pay the state fee for submitting a complaint.

“In 2010, more than 300 appeals in cases of administrative violations were reviewed; no complaints of unwarranted imposition of a penalty in the form of arrest have been submitted.”

These claims by the state are questionable. In any case, such complaints were filed in the following years. Meanwhile, the Procedural-Executive Code of Administrative Offences (PECAO) does not stimulate the submission of this type of complaints. An order on an administrative sanction in the form of arrest or deportation is to be executed immediately (Article 11.12 of the PECAO). This means that regardless of the fact of filing the complaint the person is sent to serve his administrative arrest. The procedure for submitting these complaints is that the complaint is not an effective means of redress: filing an appeal does not suspend the execution of a penalty; moreover, the law requires pay the state fee when submitting a complaint. Meanwhile, no mechanism is provided for the payment of the state fee by administrative detainees, even those having during detention on them cash or money in a bank account. No effective procedure for exemption from the payment of state fees or deferred payment is provided.

“In 2011, the Belarusian Parliament passed the Law “On amendments and additions to certain laws on the formation of the Investigative Committee of the Republic of Belarus”, which provides, among other things, the reduction of the list of law enforcement officials who are entitled to use preventive measures against suspects and defendants, and expanding the scope of officers who can accept a complaint.”

The above changes in the law failed not lead to a fundamental reform in the situation, but, on the contrary, emphasized the absence of the will of the legislator to provide for an exceptional judicial procedure of authorizing detention pending trial, as repeatedly stated by international agencies in respect to Belarus.

The state also argues it has implemented Recommendation A-31 (Ensure that all prisoners or detainees have access to legal counsel and relatives (Austria)), saying that:

“In accordance with international law, in case of arrest or detention before the first interrogation a suspect has the right to obtain free legal advice from a lawyer; from the moment of recognition of him as a suspect, beginning of the administrative process, detention, legal action, pronouncing of a ruling on the application of preventive measures – the right to have one or more defenders. The suspect has the right to communicate freely with his lawyer in private and in confidence, without limiting the number and duration of conversations.

Family members, close relatives of the detained are informed of the detention and the whereabouts of the detainee within 12 hours, in case of committing an administrative offense – within 3 hours from the moment of detention, at the request of the detainee. The notification of parents of a detained minor is obligatory.

Short-term (up to 3 hours) meetings of relatives and family members with a person under detention, house arrest are granted with the consent of the investigator.

Convicts serving sentences are provided with short-term (up to 4 hours) and long-term (up to 3 days) visits in a specially equipped room in the prison.

To receive legal assistance, convicts may be provided with an interview with a lawyer upon their application.”

The issue of receiving legal assistance by prisoners was addressed above (See **Right to Legal Assistance**).

As for visits to prisoners, including detainees awaiting trial, it is necessary to point out the excessive rigidity of rules and unduly heavy reliance of decisions granting meetings on the discretion of officials of the investigating body, penitentiary institutions and judges.

In particular, meetings with the accused person in custody are fully attributed to the discretion of the investigator or the judge dealing with the case. The law does not call for them to motivate the denial of visits, as well as does not provide an effective form of appeal against such refusals.

Visits with prisoners held in a colony of general security are provided at a rate of three short and three long meetings during the year; maximum security

prisoners are entitled to two short and two long meetings during the year, inmates of prisons may have two short visits during the year.

Visits, including by relatives and spouses may be canceled as a disciplinary sanction. The duration of a long meeting is also set within the limits (up to three days) arbitrarily ordered by the administration of the prison.

No meetings with prisoners sentenced to arrest are provided.

Thus, the law does not consider the role of meetings with relatives and spouses in efforts to maintain and strengthen the social bonds of convict, their preparation for life outside prison.

The state names Recommendation A-30 (Further improve the living conditions in prisons and pre-trial detention centers (Austria); review compliance of conditions in prison and detention facilities, in particular pre-trial detention facilities, with international standards (Czech Republic)) as currently being implemented: “Every year, measures are taken aimed at improving the living conditions in prisons.

2010 saw the enforcement of a technical code of practice “Buildings and facilities of Internal Affairs of the Republic of Belarus, design rules”, which, in particular, provides requirements to the premises for detainees.

14 facilities have been put into operation, 21 objects underwent reconstruction, design activities have been carried out on 7 objects. Two new detention centers (temporary detention facilities) have been opened, four underwent major repairs, the construction of a new detention center is currently underway.

The construction of the Republican general hospital for prisoners in the industrial zone “Kaliadzichy” has been launched; the object design takes into account modern requirements and international standards.

It should be noted that all activities related to improving conditions in prisons and detention centers are carried out by the government solely with the use of the state budget, without the involvement of international technical assistance.”

In this field the government has not engaged in really deep and structural reforms: in addition to the introduction of detention facilities that are truly close to the international standards of detention (e.g. detention house in Vaukavysk), the government continues to ignore the very obvious, abatable violations of prisoners’ rights in existing penal facilities.

CONCLUSIONS

The state retains the law that does not fully meet the objectives of protecting human rights.

Civil and political, as well as social and economic rights of the prisoners can be violated with impunity because of the lack of mechanisms for their protection. The national authorities empowered to protect the rights of individuals do not fulfill their tasks and do not understand their responsibility for reforming the situation. Access to international treaty bodies is hampered; their opinion and practice are ignored by the state.

The economic situation of the state provides the opportunity to create conditions for prisoners that would not cause additional suffering, in addition to the fact of imprisonment. In many cases, changing the situation cannot depend on additional budget expenditures.

Additional difficulties have been created for prisoners being held on the grounds of their political or social activities.

Imprisonment in many penal facilities of Belarus is a form of cruel, inhuman and degrading treatment.

PROPOSALS TO NATIONAL AGENCIES AND INSTITUTES

To the legislative power:

- To conduct a systemic analysis of penal law and to immediately exclude all the provisions that are contrary to the Constitution and the country's international obligations.
- In a matter of priority to decide on the withdrawal of the prison system from the departmental subordination of the Ministry of Interior and the State Security Committee and to delegate control to the Ministry of Justice or a specially established authority.
- To consistently reform penal legislation in the spirit of harmonization with the European approach to the definition of the rights and responsibilities of the state, prisoners and prison staff.
- To provide sufficient government funding to implement measures to address violations of prisoners' rights.

To the executive power:

- To conduct a survey of places of detention and to take immediate measures aimed at their reconstruction or closing.
- To instruct prison personnel on strict compliance with national and international standards of detention.
- To arrange the education of prison staff on human rights issues.
- To regularly publish statistics on the number and composition of prisoners.

To prosecuting authorities:

- To arrange regular monitoring of conditions in places of detention.
- To fundamentally respond to prisoners' reports on violations of their rights and to organize and objective investigation into each appeal.
- To achieve strict compliance with orders to eliminate violations of the law.

To public monitoring commissions:

- To understand their responsibility for independent control over correctional institutions.
- To strengthen efforts to monitor places of detention.
- To apply binding international law to assess the situation of prisoners.