Report of the Non-Governmental Organisations on Follow-up to the Concluding Observations of the Committee Against Torture (UN Doc CAT / C / BLR / CO / 5) for the Republic of Belarus Adopted at the 63rd Session

Minsk, 2019

1. The report is submitted as a follow-up to the concluding observations of the Committee against Torture (CAT / C / BLR / CO / 5) adopted at the 63rd session and provides an overview of the current situation in the Republic of Belarus on the implementation of the recommendations in p.8.p.16 and p.47 of the CAT Concluding Observations.
2. The report was prepared by the Belarusian public initiative "Human Rights Defenders Against Torture" in cooperation with the "Legal Initiative", the Advisory Center on Actual International Practices and their Implementation in the Law of "Human Constant" and Human Rights Center "Viasna".

Para 8 of the Concluding observations

a)

3. Access to legal assistance is particularly difficult for detained foreign citizens in Belarus. Within the framework of the criminal process, there is a guarantee of the provision of a lawyer by the state if a detainee cannot or does not want to choose a lawyer for himself. But in administrative process a defender is not provided by the state. Article 2.8 of the Procedural Executive Code on Administrative Offices stipulates that "an individual in respect of whom an administrative process is ongoing has the right to protection. This right can be realized both personally and with the help of a lawyer." Article 4.5 of the Procedural Executive Code on Administrative Offices provides that the powers of a lawyer are confirmed by a lawyer's certificate and by a warranty of authority drawn up in simple written form, or a warrant. At the same time, in accordance with p.4 of the Decree of the Ministry of Justice of the Republic of Belarus dated 03.02.2012 No. 37 "On approval of the Instructions on the procedure for issuing, recording and storing warrants", the ground for issuing a warrant to a lawyer is an agreement on the provision of legal assistance signed between a lawyer or a law bureau and a client.
4. Accordingly, a foreigner detained in the frames of an administrative process must call a lawyer to a place of detention in order to sign a contract for the provision of legal assistance or to issue a warrant of attorney. Only then a lawyer can defend the detainee. At the same time, without an issued warrant a lawyer will not be allowed into the place of administrative detention. In this case, a contract with a lawyer may be signed by a third party. However, foreigners often do not have friends in Belarus who could sign such an agreement.
5. In practice, we face situations when detained foreigners who do not speak Russian or Belarusian, as well as who do not have contacts in Belarus, cannot exercise their right to defense because of the complexity of the procedure of access to lawyers. Practically they are denied access to legal assistance.
6. This situation is particularly dangerous because in relation to foreigners they can issue a decision on deportation or expulsion by force. Deportation is provided for in the Code of Administrative Offenses. In fact, a person can be deported to a country where he/she is threatened with torture (despite a legislative ban). The timeframe for appealing against these decisions is short (5 days), and without legal assistance, foreigners are in a more vulnerable position. The deportation procedure is carried out extrajudicially by the decision of the authorized state bodies. The legislation establishes 1-month time limit for appealing against the decision on expulsion. But in practice the expulsion of foreigners is often carried out before the deadline of appeal. In fact, they may not even have time to seek legal assistance in Belarus.

7. In accordance with Part 3 of Art. 44 of the Criminal Procedure Code of the Republic of Belarus (hereinafter - the CPC), at the request of the accused, one of the close relatives or legal representatives of the accused may be admitted as a defender in court by court order. In practice, after the conviction of the accused, administrations of the correctional colonies denied meetings with a close relative admitted by the court as a defense counsel to provide legal assistance in appealing the sentence. The courts, when appealing against actions violating the right to defense, side with the administrations of the colonies.
8. The Investigative Committee does not provide an opportunity to get acquainted with the materials of the investigations of the facts of torture for close relatives who are representatives of convicts by warrant of authority. This makes it impossible to competently appeal against decisions to refuse to institute criminal proceedings for torture in correctional colonies.

b)

9. The Criminal Executive Code and the internal regulations of correctional institutions do not contain a norm on medical examination and documentation of traces of torture. The rules of the internal regulations of pre-trial detention facilities of the penitentiary system of the Ministry of Internal Affairs of the Republic of Belarus contain a norm in accordance with which an act is drawn up and the head of the pre-trial detention center is informed in case of a bodily injury (Article 15). In accordance with Article 174 of the internal regulations in pre-trial detention centers of the state security bodies of the Republic of Belarus, when a person in custody receives bodily harm, he is immediately examined (by no later than one day) by a medical officer of a pre-trial detention center. The results are recorded in the medical record of the person in custody and reported to the victim. In necessary cases he receives medical assistance. The rules do not oblige KGB pre-trial prison officers to report injuries to bodies investigating criminal torture cases. The legislation of the Republic of Belarus does not establish the obligation of medical personnel to report traces of torture to the Investigative Committee, a body that is independent from the Ministry of Internal Affairs and can conduct an independent investigation. All medical workers in correctional institutions and pre-trial detention facilities are a part of the internal affairs bodies and are subordinate to the Ministry of Internal Affairs, which does not ensure their independence.

c)

10. “Legal Initiative” requested the Ministry of Internal Affairs to report: 1. whether a central register of persons deprived of their liberty has been created, in which all stages of deprivation of liberty are accurately registered starting from the time of detention; 2. whether lawyer and relatives of the detained or deprived of liberty have access to such a register; 3. is there general statistics on disciplinary sanctions against employees of internal affairs bodies, as well as other measures, for example, initiating an investigation procedure of an offense or a crime, 4. Is there general statistics on the data on complaints of torture and ill-treatment, initiated by them investigations, prosecutions, and sentences related to cases of torture and ill-treatment.
11. On September 2, 2019, the response No. 10/23975 was received from the Ministry of Internal Affairs of the Republic of Belarus, based on the answer, the central registry of persons deprived of their liberty does not exist in the system of internal affairs bodies and, accordingly, lawyers and relatives do not have information about detained or deprived of liberty.

d)

12. Based on the response of the Ministry of Internal Affairs given to “Legal Initiative” dated 02.09.2019 No. 10/23975, all disciplinary sanctions are to be recorded. Records of disciplinary

sanctions are kept in the order established by the Ministry of the Internal Affairs. The procedure for recording offenses involving employees of the internal affairs bodies relates to official information of limited distribution.

Para 16 of the Concluding Observations

a)

13. 07/14/2019 Legal initiative appealed to the Investigative Committee with a request to inform whether specialized units were created in the structure of the Investigative Committee of the Republic of Belarus where persons deprived of their liberty can safely and confidentially submit complaints of torture and ill-treatment.
14. 07/26/2019 from the Central Office of the Investigative Committee of the Republic of Belarus a response No. F-3397el.yul., was received which states that there are no special units in the system of the Investigative Committee of the Republic of Belarus and in the structure of its units where persons deprived of their liberty can safely and confidentially submit complaints of torture and ill-treatment.

b)

15. The situation has remained unchanged since the adoption of the Concluding Observations of CAT and our report submitted to the 63rd session. The activities of the Investigative Committee in many respects depend on the President of the Republic of Belarus, which may compromise its independence.[1]

c)

16. The CPC of the Republic of Belarus, as well as other legislative acts, do not provide for the suspension of the officials from the performance of their official duties during the investigation, against whom there is a statement of the use of torture. We do not know cases of suspension of such officials from the performance of their official duties. The only possibility of suspension provided by the law and relating exclusively to cases of torture during a preliminary investigation of a criminal case (i.e., prior to a court ruling) is the suspension of an official from the investigation of a case against a specific person who reported torture. However, such a suspension is only possible if the claim for withdrawal is satisfied.
17. Thus, Belarus has not established legal guarantees under which suspects are suspended from their duties for the duration of the investigation into allegations of torture.

e)

18. The Ministry of Internal Affairs, by its response dated 02.09.2019 No. 10/23975, ignored the request of the "Legal Initiative" to report whether general statistics is kept with data on complaints filed about cases of torture and ill-treatment, investigations, prosecutions and sentences initiated by them, related to cases of torture and ill-treatment.
19. The Supreme Court of the Republic of Belarus stated that it was not entitled to collect statistical information on allegations of torture and ill-treatment and initiated by them investigations.[2]

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[1] For example, the President provides overall guidance of the Investigative Committee and controls its activities; appoints, removes, dismisses the Chairman of the Committee, his deputies, heads of departments of the Investigative Committee in the regions and the city of Minsk; makes decisions on issues of legal and social protection of employees of the Committee, citizens of the Republic of Belarus who have been discharged from service in the Investigative Committee as a reserve (resignation), members of their families, civilian personnel of the Investigative Committee, as well as family members of the deceased (deceased) employees of the Committee.

[2] Reply from 08/14/2019 of the Supreme Court of the Republic of Belarus No. 01-01-30 / 5833.

20. Currently, statistical records in the system of courts of general jurisdiction are kept for persons convicted of specific offenses of the Criminal Code of the Republic of Belarus. At the same time, qualifying features that constitute a crime (torture or ill-treatment) are not put to a separate record.

Para 47 of the Concluding Observations

a)

21. In accordance with the Law of the Republic of Belarus "On Amendments to some Codes of the Republic of Belarus" dated 01.01.2019, No. 171-3, Article 193.1 of the Criminal Code, which criminalized the performance of activities (organization or participation) on behalf of unregistered public, religious organizations, political parties and foundations has lost force. However, the Code on Administrative Offenses was supplemented by Art. 23.88 similar to Art. 193.1 of the Criminal Code.
22. Thus, instead of criminal liability for activities on behalf of unregistered organizations and parties, administrative liability is imposed in the form of a fine of up to 50 basic units, which as of July 2019 is approximately 550 euros. Moreover, bringing to administrative responsibility under this article will be executed exrajudicially, by the internal affairs bodies and the Ministry of Justice.
23. It should be noted that the country's human rights community insists on the lifting of the general ban on the activities of unregistered organizations written in Art. 7 of the Law "On Public Associations", as well as the inadmissibility of any kind of punishment by the state for carrying out such activities.

b)

24. Over the period since the last report was submitted, the country's authorities were not able to fully abandon the use of repressive practices against human rights defenders in connection with their human rights activities.
25. On November 8, 2018, a member of "Viasna", Alexander Burakov, was summoned by Pavel Kot, senior lieutenant of the Oktyabrsky district militia department of Mogilev. The reason was the opened investigation within the framework of the criminal process under Art. 193-1 of the Criminal Code (illegal organization of the activities of a public association, religious organization or foundation or participation in their activities). The investigation was initiated on October 8, "regarding the possible administration and content creation on the internet portal mspring.online, which is a regional structure of the unregistered organization "Viasna". "Viasna" and the Observatory for the Protection of Human Rights Defenders adopted a statement condemning the actions of the authorities in relation to a member of the "Viasna" Alexander Burakov, and demanding the immediate termination of proceedings initiated in relation to his actions in the framework of the criminal process.[3]
26. During 2018, we recorded a number of cases of bringing to administrative responsibility under Art. 23.34 (for violation of the organization and conduct of mass events) of human rights defenders who monitored the meetings. So, on September 15, 2018, a human rights activist, activist of "Viasna" from Svetlogorsk, Elena Maslyukova, was issued a written prosecutor's warning about responsibility for violating legislation on public events, they considered her to be the organizer of an unauthorized public event. In Svetlogorsk on September 15, 2018, it was planned to hold a rally against the work of the bleached pulp plant, but the authorities

[3] http://spring96.org/be/news/91366

planned another event for this day. However, people still gathered in the square and held a flash mob against the emissions of the plant. On October 9, 2018, Elena Maslyukova was fined 25 basic units (612.50 rubles).[4]

27. On November 23, 2018, the court of the Svisloch district issued a decision on bringing to administrative responsibility for participating in an unauthorized mass event in the form of a fine of 15 basic units (367.5 rubles) to Victor Sazonov, a member of the "Viasna" from Grodno. Viktor Sazonov notes that he attended the meeting of citizens in Svisloch held on October 27, 2018 as an observer and human rights activist, in order to carry out his monitoring, since the participants in this action were regularly harassed.
28. "Viasna" activist Vladimir Velichkin, as well as a number of environmental activists, were detained on April 12 and 14, 2019 in the frames of protests against the construction of a battery plant in Brest. Vladimir Velichkin was detained in the Leninsky District Department of Internal Affairs in Brest after he had been summoned to the militia along with nine other environmental activists as witnesses in an administrative case. Two activists were released after a few hours. Others, including Vladimir Velichkin, spent three days in a temporary detention center and were fined.
29. The situation with Mikhail Zhemchuzhny, who was recognized as a political prisoner by the Belarusian human rights community has not changed significantly since the last report was submitted. As before, Mikhail Zhemchuzhny continues to serve his sentence in a penal colony in the city of Gorki, Mogilev region.
30. On July 17, 2018, representatives of "Viasna" and 10 other human rights organizations applied for pardon of Mikhail Zhemchuzhny to the head of the state A.G. Lukashenko. The Presidential Administration indicated that the question of pardon of convict M. Zhemchuzhny can only be considered on his personal request. Given the existing legal practice of releasing political prisoners by pardoning them by the president of the country without any personal appeals, this answer indicates the unwillingness of the Presidential Administration to release the political prisoner.
31. Mikhail Zhemchuzhny continues to experience constant difficulties in serving his sentence; he is regularly isolated in pre-trial prison and solitary confinement due to his refusal to comply with the requirements of the administration, which threatens the life and health of the prisoner.
32. On October 24, 2018, after serving the sentence in penal colony No. 2 in Bobruisk, Dmitry Palienko was released. However, immediately after his release, D. Palienko faced pressure from the Ministry of Internal Affairs, which carried out disproportionately stringent control measures (mandatory daily appearance at militia department). Five months after his release from the colony, Dmitry Palienko was again detained and since March 20, 2019, was kept in a pre-trial detention center without any charges for 16 days.
33. On April 5, 2019, it became known that he was charged with new crimes: especially malicious hooliganism (part 3 of article 339 of the Criminal Code), desecration of buildings and property damage (article 341 of the Criminal Code) and incitement of social hatred (p.1 article 130 of the Criminal Code), as well as insulting a representative of authorities (Art. 369 of the Criminal Code). The accusation was caused by a conflict with a citizen, during which a gas spray was used, which Palienko himself explains was done in the interests of self-defense. A video posted on the Internet that severely criticized the activities of the Ministry of Internal Affairs was

[4] The Observatory for the Protection of Human Rights Defenders issued an urgent appeal, which called for the removal of all charges against activists from Svetlogorsk.

qualified by the investigating authorities as inciting other social enmity, that is, enmity against a social group of militia officers, as well as insulting an official (at that time acting Minister of the Internal Affairs Shunevich). According to the human rights community, this type of qualification of Palienko's actions is a violation of freedom of expression, since the state's protection from propaganda and incitement to hatred primarily applies to representatives of vulnerable groups of society, which do not include representatives of state authorities, government officials, including representatives of law enforcement agencies in general.

34. On October 17, during the first trial, which was held behind closed doors, a representative of the prosecutor's office, who supported the state prosecution in court, dropped charges under three articles of the prosecution - art. 341, part 1, art. 130, art. 369 of the Criminal Code. The process went on openly and considered the charge only under part 3 of article 339 of the Criminal Code. On October 25, the court found Palienko guilty of especially malicious hooliganism and sentenced him to three years of restraint of liberty without being sent to open-type institutions, having removed one year under the amnesty law and counting the time spent in pre-trial prison during the investigation. Palienko was released in the courtroom.