

Republic of Belarus

Follow-up to the concluding observations (UN Doc CAT/C/BLR/CO/4) of the Committee against Torture adopted at the 47th Session for the Republic of Belarus

The report was prepared by the Belarusian public initiative “Human Rights Activists Against Torture”

In partnership with the Belarusian Human Rights House and the Human Rights House Foundation

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This alternative report is provided as a follow-up to the Concluding Observations (extracts from the follow-up of CAT/C/BLR/CO/4) of the Committee against Torture adopted at the 47th session. It was prepared by the Belarusian public initiative "Human Rights Activists Against Torture" in response to additional information provided by the Republic of Belarus on October 23, 2013.

Paragraph 6 – Fundamental legal safeguard

In the formal comments on the Concluding Observations of the Committee, the State did not take into consideration and did not provide information on the questions in paragraph 6. We emphasize that, in practice, the State has failed to effectively implement all the recommendations in paragraph 6. Gaps and shortcomings that impede the realization of rights of detainees and respect for fundamental legal safeguards may still be found in legislation, including prompt access to a lawyer and physician, and the right to contact family members.

Despite the legal right of citizens to legal assistance and counsel (article 62 of the Constitution of the Republic of Belarus, article 41 of the Criminal Procedure Code of the Republic of Belarus), we have documented several cases where detainees and prisoners were denied access to lawyers.

For example, in January 2013, Andrew Gaidukov, was convicted for "high treason" under p.1 art. 356 of the Criminal Code of the Republic of Belarus (hereinafter CC) and, whilst in the KGB remand prison (the KGB detention center), was denied access several times to his lawyer.

On 10 September 2013, detainee Vladislav Baumgertner, accused of "abuse of power and official authority " under p.3 art 424 of the CC, was denied access to his lawyer.

Legislation provides for medical examination of injured detainees in pre-trial detention and remand facilities (hereinafter RF) by healthcare workers, but only by decision of the head of the facility. Any refusal of examination may be appealed, but the consideration of complaints can take more than 10 days, which gives a possibility to rectify the physical harm caused (bruises might disappear). In addition, in accordance with article 178 of the Resolution of the Ministry of Internal Affairs of the Republic of Belarus from January 13, 2004, no. 3 "on approval of the internal regulations for remand centers of the penal correction system of the Ministry of Internal Affairs of the Republic of Belarus", medical examination by workers of healthcare institutions should be paid from funds available in the account of a person taken into custody. Thus if a person in custody does not have funds in his account, the right to examination by an independent medical practitioner is very restricted.

To our knowledge, no case of examination by an independent physician of any person detained for criminal offences has ever been recorded. The State

has not taken measures to institutionalize the possible examination by an independent doctor, chosen by detainees or prisoners.

Paragraph 11 - Impunity and lack of independent investigation

In the formal comments on the Concluding Observations of the Committee, the State did not take into consideration and did not provide information on paragraph 11. Thus, the State did not implement the recommendations suggested in paragraph 11.

In the Republic of Belarus, there were no attempts to develop and establish an “independent and effective mechanism to facilitate the submission of complaints by victims of torture and ill-treatment to public authorities, including obtaining medical evidence in support of their allegations, and to ensure in practice that complainants are protected against any ill-treatment or intimidation as a consequence of their complaint or any evidence given”. Moreover, Belarus is witnessing a systematic practice of denial of complaints, even by the Court, about physical and mental violence against detainees and prisoners. The Prosecutor's Office and the Court are refusing allegations of torture on the basis of a "presumption of guilt", arguing that a person complains of torture, because he/ she wants to escape punishment.

The public initiative “Human Rights Activists Against Torture” has received information about the impossibility to submit complaints to the Prosecutor's Office from places of detention. Such complaints are withheld by the administration, and the victim is punished by solitary confinement or other measures of physical and psychological maltreatment. It is almost impossible to prevent this kind of practice, because the prison system remains closed to public scrutiny.

The State has not pursued any campaign aimed at a public and unequivocal condemnation of the use of all forms of torture, and representatives of the authorities keep stating that “there is no torture in the country.”

Legislation does not provide for suspension of police officers from their duties while they are under investigation on allegations of committing torture. Thus they continue to work and have the possibility to put pressure on the victims.

For example, in August 2009, police officers of the Internal Affairs Division of the Pervomaisky District in the Vitebsk region detained two minors, A. Logvinov and A. Napayuk on suspicion of murder. The police officers tortured the detainees during interrogation (putting a gas mask and not allowing to breath, beating them, pushing a screwdriver in the anus and thrusting the pistol into the mouth). The Prosecutor's Office of the Vitebsk region was inactive, despite complaints from the detainees. On 29 November 2010, A. Logvinov and A. Napayuk were acquitted by the Mogilev District Court and were immediately released from the courtroom. On 18 February 2011, the Supreme Court confirmed the verdict of the Mogilev District Court. In May 2011, a criminal case based on allegations of torture of A. Logvinov and

A.Napayuk was opened, but the accused police officers were not suspended from their duties. A.Logvinov and A.Napayuk were held as witnesses. At the end of 2013, the Investigative Committee of the Vitebsk region suspended the investigations due to "lack of crime" in the actions of the police officers. Moreover, those police officers were promoted.

Paragraph 14 – Monitoring and inspections of places of deprivation of liberty

The State failed to comply with the recommendation in paragraph 14 and did not grant access to independent governmental and non-governmental organizations to all detention facilities in the country, including police cells, detention centers, security service premises, administrative detention areas, detention units of medical and psychiatric institutions and prisons.

The country has public monitoring commissions, but they operate under the authority and control of the Ministry of Justice of the Republic of Belarus. Therefore, any detention facility remains closed to human rights defenders and independent organizations.

Public monitoring commissions were established under the Ministry of Justice of the Republic of Belarus by resolution No 1220 of the Council of Ministers of 15 September 2006 "on approval of the resolution on the public associations control over the bodies and institutions executing punishment and other sanctions." There are eight commissions in total. The decision to include an NGO representative in the commission is taken by the Ministry of Justice. However, resolution Nr 1220 does not specify either on what basis a representative can be refused inclusion or the appeals procedure against such refusal. The impossibility of appealing a refusal of inclusion in the commission casts doubt on their independence from the State.

Paragraphs 7,8,9 that contain additional information received by Belarus on the follow-up to the Concluding Observations of 23.10.2013 (CA T/C/BLR/CO/4/Add.3) do not mention the effectiveness of public monitoring commissions under the Ministry of Justice of the Republic of Belarus and do not reflect the reality on the implementation of the Convention in prisons.

Human rights defenders are regularly informed of the violations of human rights and legislation in various prisons in Belarus:

For example, Nikolai Avtukhovich , who has been in Prison Nr. 1 of Grodno since February 2012 on politically motivated charges, spoke of inhuman and degrading treatment towards him and other prisoners.

Nikolai Avtukhovich reported that, upon arrival at the prison, he was placed in solitary confinement for 255 days. According to his testimony, the cell was damp, cold, without table and benches, everything, even things in the bags, was covered in mold because of the humidity, and the mattress had decayed

because of humidity. During winter, the lattice was covered in frost inside the cell, and in the summer he had to wear a hat due to the cold.

N. Avtukhovich asked for medical assistance 40 times during the year, and had only 6 visits, as the medical staff had no medication to offer. According to N. Avtukhovich, food standards were not met, and there were almost no vegetables available in the prison shop. N. Avtukhovich also reported beatings, provocations and other maltreatment on the part of the facility's administration.

Another prisoner, Igor Ptichkin, died on 04 August 2013 in Remand Prison Nr 1 of the Penitentiary Department of the Ministry of Internal Affairs of the Republic of Belarus (hereinafter PD MIA). Relatives noticed multiple bruises and abrasions on the corpse, indicating that it had been a violent death. However, the Remand Prison Nr.1 of PD MIA had already been visited by representatives of the Republican Public Monitoring Commission, which operates under the authority and control of the Ministry of Justice of the Republic of Belarus.

In November 2013, Lyudmila Kuchura contacted Viktor Sidorenko, the head of the Mogilev Regional Public Monitoring Commission requesting to visit Penal Colony № 15 in Mogilev (hereinafter PC Nr 15) , where her husband, Peter Kuchura, had been subjected to pressure and torture by the facility's administration. On 10 December 2013, representatives of the Commission visited Peter Kuchura, and subsequently he wrote in his letter that the representatives of the Commission had urged him to pursue reconciliation with the head of PC Nr 15, and that they had not been interested in the acts of torture. After visiting PC Nr 15, the representatives of the Commission called Lyudmila Kuchura and reported that during the conversation with the head of PC Nr 15, he had confirmed that the reason for the pressure exerted on Peter Kuchura was an article published on the Internet about extortions in prison.

At the same time, no monitoring reports on visits to prisons were published during the many years of the existence of the public monitoring commissions. From 2011 to 2013, the monitoring commissions generally concluded (regarding the establishments visited), that the conditions of accommodation and food met all the requirements of the prison system and complied with the requisite standards. No comments or complaints about the work of the administration were reported during a survey of prisoners. Meanwhile, considering the information available to human rights defenders on violations in prisons, one can speak of an unwillingness on the part of monitoring commissions to address human rights violations, or their concealment, by the administrations of the establishments visited, or assume that the prisoners survey was carried out in the presence of the administration, or that the prisoners were intimidated before the survey.

Moreover, in accordance with paragraph 9 of the Resolution of the Council of Ministers of the Republic of Belarus Nr. 1220 of 15 September 2006 " on approval of the public associations control over the bodies and institutions executing punishment and other sanctions" a public monitoring commission has to make a written request addressed to the head of the Penitentiary

Department of the Ministry of Interior on any prison visit. After receiving permission to visit the institution, the commission has to inform the head of the institution on the date and time of the visit. The possibility of a visit without the consent of the Penitentiary Department and without notifying the head of the institution on the date and time of the visit is not provided for in the law, and, therefore, such a visit cannot be carried out.

Given the public monitoring commissions' strong dependence on the Ministry of Justice of the Republic of Belarus, the Department of the Ministry of Internal Affairs and heads of the institutions visited, the commissions cannot be objective and impartial, and thus their activities cannot be considered effective.

Concerning paragraph 11 of Additional Information received by Belarus on the follow-up to the Concluding Observations of 23.10.2013, we note that the General Prosecutor's Office of the Republic of Belarus, in accordance with the law "on the Prosecutor's Office of the Republic of Belarus" and Resolution Nr. 1220 of the Council of Ministers of the Republic of Belarus of September 15, 2006 "on approval of the public associations control over the bodies and institutions executing punishment and other criminal sanctions", is neither empowered to make decisions on the access of non-governmental monitoring mechanisms to places of detention nor to make any checks.

Legislation does not provide for visits and public scrutiny of other closed institutions (psychiatric hospitals, etc.).

We are also concerned with regards to the uncertainty in the legislation related to the provision of mental healthcare and its practical application. This area is regulated by Law № 349-3 of the Republic of Belarus "on the provision of mental health care" (hereinafter, Law № 349-3), and other statutory acts. However, in practice, there are cases of very broad and arbitrary interpretation of the rules and regulations contained in the aforementioned Law and other statutory acts leading to violations of human rights and freedoms. The impossibility of conducting public scrutiny of psychiatric institutions exacerbates the situation.

There are cases of referral to psychiatric examination on the basis of belonging to social movements. For example, in the case of an activist of the youth movement "Young Front" Alexander Latyshov, being a conscript, was sent for examination to the Gomel Regional Clinical Psychiatric Hospital with the wording "sent for examination in connection with his activities in the Young Front."

A serious monitoring of respect for human rights in psychiatric institutions with the participation of independent human rights organizations is highly required.