

Answers to the List of issues and questions prior to the submission of the eighth periodic report of Belarus

SUBMISSION BY BELARUSIAN NGOS
CHIEF EDITOR TATIANA GLUSHKOVA

This report has been presented to the Committee on the Elimination of Discrimination against Women (hereinafter – the Committee) for examination within the consideration of the eighth periodic report of Belarus on fulfilment of the Convention on the Elimination of All Forms of Discrimination against Women (hereinafter – the Convention). It contains selected answers to the List of issues and questions prior to the submission of the eighth periodic report of Belarus.

The report has been prepared by the Belarusian Helsinki Committee (the National Human Rights Public Association "Belarusian Helsinki Committee"); the Public Institution "Belarusian Documentation Centre"; the Gomel Strategic Litigation Centre; the Barys Zvozhkau Belarusian Human Rights House; the Human Rights Impact; the Human Rights Initiative "Human Constanta"; the International Lesbian, Gay, Bisexual, Trans and Intersex Association; the Initiative Group "Identity and Law"; the Educational Institution "Legal Transformation Centre"; the Expert-Educational Partnership "Roma Integration"; and the Public Establishment "Centre of Equal Rights Expertise" in cooperation with the Helsinki Foundation for Human Rights (Poland)

Co-author and chief editor:

Tatiana Glushkova, lawyer of the Human Rights Centre "Memorial"

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1. General

In the List of issues and questions prior to the submission of the eighth periodic report of Belarus, the Committee asked to provide information on measures taken to ensure that women in the State party are aware of their rights according to the Convention and are able to invoke those rights, including through the lodging of complaints through the legal system when their rights have been violated. The Committee also asked to provide information on the efforts to give sufficient visibility to the Convention, its communication and inquiry procedures provided by the Optional Protocol and the Committee's general recommendations, in particular, general recommendation No. 33 (2015) on women's access to justice, in order to make them an integral part of the training for judges, lawyers, prosecutors, police officers and other law enforcement officials.

Unfortunately, these problems were not reflected in the answers presented by Belarus.¹ The answers contained no particular information on the number of cases concerning discrimination of women which were considered by national courts, nor about the outcomes of such considerations.²

The Republic of Belarus lacks a system for informing women about their rights in accordance with the Convention and about possibilities of filing a complaint in case of violations thereof. The State party also lacks a free-of-charge access to the database of normative legal acts of the Republic of Belarus.

What is more, Belarus conducts no trainings or seminars for judges, prosecutors, lawyers and employees of the Ministry of Internal Affairs (MIA) on the elimination of all forms of discrimination against women.

Recommendations:

- Ensure collection and publication of statistics about the cases concerning discrimination of women which were considered by national courts and about the outcomes of such proceedings.
- Ensure that judges, lawyers, prosecutors, employees of the MIA and other law enforcement bodies acquaint themselves with the provisions of the Convention and the Optional Protocol thereto, as well as with general recommendations of the Committee and considerations adopted upon individual communications.
- Ensure that girls and women are informed about their rights fixed in the Convention and about legal ways to defend them in case of violations, including the communication and inquiry procedures envisaged in the Optional Protocol to the Convention.

2. Constitutional, legislative and institutional framework

The Committee asked to provide information on steps taken to introduce a specific law on gender equality or comprehensive anti-discriminatory legislation, including a clear definition of discrimination against women, covering both direct and indirect discrimination and prohibiting intersecting forms of discrimination against women.

In its report, Belarus responded that the adoption of a specific law on gender equality was considered premature. In the opinion of the State party, it is more expedient to correct particular legislative acts

¹ CEDAW/C/BLR/8, paras. 7-25

² Ibidem

which envisage an implementation mechanism of particular rights in the context of ensuring gender balance.

At the same time, there is no information that Belarus is making efforts to amend at least individual legal acts with the aim to make the right to non-discrimination effective in practice. The 2011-2015 National Action Plan to Ensure Gender Equality in the Republic of Belarus lacked the provisions which foresee this sort of work. The similar Action Plan to Ensure Gender Equality in the Republic of Belarus for 2016 and subsequent years was not approved by the Council of Ministers of the Republic of Belarus. The only norm adopted in development of the antidiscrimination legislation of Belarus in 2011-2015 was the decision to complement Article 14 of the Labour Code with the prohibition of discrimination based on age and residence. However, no particular measures aimed at enforcement of this provision were taken.

Thus, the antidiscrimination provisions of the Belarusian legislation are still limited, declarative and not supported by efficient implementation mechanisms. In particular, the national legislation has no fixed notion of "discrimination against women" envisaged by Article 1 of the Convention. Accordingly, there is no legislative consolidation of such notions as "direct discrimination", "indirect discrimination", "intersectional discrimination" or "multiple discrimination." Harassment and failure to make reasonable accommodations are not prohibited by the legislation and are not treated as forms of discrimination. The very notions "harassment," "reasonable accommodation" and "victimization" are also absent from legislation. There are no special rules and norms concerning court consideration of civil cases on discrimination (for example, on shifting the burden of proof onto the respondent, on using statistical data as evidence, on ensuring the participation of non-governmental organizations in such trials, etc.). The norms on equality and non-discrimination envisaged by Belarusian legislation are not comprehensive and systemic in nature. Thus, the legislation of the Republic of Belarus does not allow women to efficiently enjoy their right not to be exposed to discrimination.

What is more, Belarus has failed to create an independent national human rights authority in accordance with the Paris Principles.³ Nor does it have any other special body vested with the power to consider complaints about violations of human rights lodged by women and to purposefully collect information about the practical enforcement of the principles of equality and non-discrimination in Belarus.

The Committee also asked the State party to provide information on whether a gender analysis was conducted to assess Article 190 of the Criminal Code, Article 14 of the Labour Code and the recently adopted legislation to mainstream gender equality in state policy and inform the Committee of the key outcomes. Unfortunately, the answers presented by Belarus contain no information on the application of gender analysis when assessing Article 190 of the Criminal Code and Article 14 of the Labour Code. At the same time, they specify that in 2011-2015 courts received and considered no cases under Articles 190 (a deliberate direct or indirect violation or restriction of one's rights and freedoms, or establishment of any direct or indirect privileges for citizens depending on their race, nationality, language, origin, property or official capacity, residence, religion, convictions, or affiliation with public associations, which have caused essential harm to a citizen's rights, freedoms and legitimate interests) and 199 (an unmotivated refusal to employ or dismissal of a woman on the motive of her pregnancy, or a knowingly illegal dismissal of a person from work) of the Criminal Code of the Republic of Belarus. However, the presented answers contain no information on the number of complaints about the above-mentioned problems lodged by women to investigative authorities of the Republic of Belarus and about the decisions made on such complaints.

³ General Assembly resolution 48/134 of 20 December 1993, annex

Recommendations:

- Change the assumption that the adoption of the Law of the Republic of Belarus "On Ensuring Equal Rights and Opportunities for Men and Women in the Republic of Belarus" is premature.
- Adopt a law on the equality of men and women or a comprehensive anti-discriminatory legislative framework, including among other things precise and clear definitions of all forms of discrimination against women. They should cover direct and indirect discrimination, intersectional discrimination and multiple discrimination, treat harassment and failure to make reasonable accommodation as forms of discrimination and contain provisions that ensure women's access to justice in line with the Committee's general recommendation No. 33.
- Set up an independent national human rights institution in line with the Paris Principles,⁴ or introduce a post of the women's rights ombudsperson, or any other specialized body with the authority to consider women's complaints, as well as issue opinions, make recommendations and collect information about the practical enforcement of the principles of equality and non-discrimination in Belarus.

3. Stereotypes

In its List of issues and questions prior to the submission of the eighth periodic report of Belarus, the Committee asked to provide information on the implementation and monitoring of measures taken since the consideration of the State party's previous report to counter stereotypical attitudes towards women and girls, including those who experience multiple forms of discrimination.

Stereotypes concerning the roles and responsibilities of women and men in the family and in society remain deeply rooted in the Belarusian society, while the measures to counter them taken by the state are not only insufficient, but in a number of cases contribute to the preservation and reproduction of patriarchal gender stereotypes.

Although in the public space of Belarus, including its legislation, such terms as "gender stereotypes", "gender roles" or "gender upbringing" etc. are rather frequently used, unfortunately, the confusion of notions takes place and these terms are used to justify the "conservation" of the gender-role segregation in social life. This trend is especially alarming when observed in the spheres which should be a sort of an intellectual carrier of the ideas of gender equality, namely, in education and sciences. Thus, in accordance with the Concept of Continuous Education of Children and Youth⁵ "the gender upbringing means a purposeful creation of the conditions which contribute to identification of personality as a representative of a certain gender, fixation of gender roles and reproduction of the respective social experience," and "the content of gender upbringing means to create in pupils the ideas about the role and life destination of men and women in the modern society... the formation of understanding, acceptance and readiness to perform their gender roles."

A study into the gender competence of teachers in Belarusian schools⁶ has shown that most of the teachers are unaware of the notion of "gender": 11% of teachers have never heard about it; 35% – heard about it, but do not know the definition; and 34% – find it difficult to give a definition of the notion. According to most of the respondents: "the gender approach in education means upbringing the "feminine" in girls and the "masculine" in boys," which corresponds with the definition of "gender upbringing" contained in the above Concept.

⁴ General Assembly resolution 48/134 of 20 December 1993, annex

⁵ Approved by Resolution of the Ministry of Education of the Republic of Belarus No. 82 of 15 July 2015.

⁶ Marina Kuznetsova, Tatiana Schurko. Gender Competence at School: Teachers. 2012. http://gender-route.org/articles/sex_gender_practice/gendernaya_kompetentnost_v_shkole_uchitelya/

The analysis of the materials of the 2nd Scientific and Practical Conference of the Republic "Through gender equality to participation in public and political life" held in Belarus on 15 June 2012⁷ has shown that many presentations demonstrated the need of gender-role upbringing which would divide the society into men and women, and the women's main function, in the opinion of many participants of the conference, is motherhood.

The analysis of textbooks for primary, secondary and high schools⁸ has demonstrated that the courses on literature reproduce traditional norms, notably sexism in relation to girls and women. They present the patriarchal division of roles between men and women in the life of the society which associates the sphere of social/public life with men (work, politics, businesses, etc.) and the sphere of the private – with women (household, family and children). Similar conclusions can be found in the study of practices of teaching Russian and literature in the ninth form of one of the general education schools in Minsk.⁹

Last but not least, the Belarusian advertising practices are dominated by sexualized and commercialized images of women.¹⁰ The Law of the Republic of Belarus "On Advertising"¹¹ prohibits the placement of unethical ads understood, among other things, as ads containing abusing words, comparisons and images in relation to citizens' race, nationality, appearance, age group, sex, language, profession, social category, religious, political and other convictions. A violation of the legislation on advertising is an administrative offence.¹² However, there is no information on any advertisements containing commercialized or sexualized images of women ever being recognized as unethical.

Recommendations:

- Amend the legislation in the sphere of education in such a way that gender education and gender upbringing are understood as a complex of measures, helping boys and girls to overcome the stereotypes about the roles and responsibilities of men and women in the family and society, in particular, in the spheres where women are in the most disadvantaged situation.
- Organize training of teachers of comprehensive schools, special secondary education institutions and higher schools on the issues relating to gender equality and gender-based discrimination. Ensure that during such training there is no confusion of notions and that gender education is not understood as reproduction of gender stereotypes.
- Ensure that ads containing sexualized and commercialized images of women are treated as unethical and, in accordance with the Law of the Republic of Belarus "On Advertising," banned from publication.

4. Exploitation of prostitution

The Committee asked to provide information on the prevalence of prostitution in the State party and the legal framework that is applied to women involved in prostitution.

⁷ Olga Burko. Through gender studies – to ideology of differences, 2012: <http://nmnby.eu/news/analytics/4866.html>

⁸ Tatiana Schurko. From policy to practice: gender analysis of Belarusian school textbooks. ДРУГІ МІЖНАРОДНЫ КАНГРЭС ДАСЛЕДЧЫКАЎ БЕЛАРУСІ (2nd International Congress of Researchers of Belarus), Working Materials, Vol. 2 (2013).

⁹ Irina Goroshko. (Re)production of gender relations in school educational practices, with the example of Russian language and literature in Minsk school. 2014. ТРЭЦІ МІЖНАРОДНЫ КАНГРЭС ДАСЛЕДЧЫКАЎ БЕЛАРУСІ (3rd International Congress of Researchers of Belarus), Working Materials, Vol. 3 (2014).

¹⁰ Sexism in Belarusian Ads. Review by the marketing.by, 5 March 2016: <http://marketing.by/analitika/razbiraem-seksizs-v-beloruskoy-reklame/>

¹¹ Part 1, Point 3, Article 26, of the Law of the Republic of Belarus "On Advertising"

¹² Article 12.15 of the Code of Administrative Offences of the Republic of Belarus

According to the data provided by the State party, as of 1 January the law enforcement bodies have registered 1,873 women-sex workers. However, according to the estimate of the sentinel surveillance, there are about 22,000 women-commercial sex workers in Belarus.

Article 17.5 of the Code of Administrative Offences of the Republic of Belarus prohibits prostitution, which is punishable with a fine in the amount of 6-20 base units or an administrative arrest for the term of up to 15 days. In case of a repeated detention within a year, the fine may be increased up to 50 base units. Additionally, if a woman is found guilty of practising prostitution, this information is sent to the place of her official employment and to the school where her children study. There is also an option of depriving her of parental rights.

The criminalization of prostitution makes women-sex workers more vulnerable to violence on the part of their clients. According to the available statistics, as many as 98.5% of interviewed women-sex workers have been exposed to such violence. The prevalence of various forms of violence (variants of answers "often" and "there were such cases") was as follows: murder attempts – 35%; group raping – 60%; robbery – 59%; enforcement of unpleasant forms of sex – 80.3%; enforcement of sex without a condom – 55%; and infliction of bodily injuries – 85.1%. Most of the women-sex workers prefer not to seek protection at the police (only 9.1% of respondents have done it), as they not only fail to get protection there, but are subjected to administrative liability, conviction or – sometimes – to violence.

Case 4.1. In 2013-2014, a series of attacks on women-sex workers were committed by an organized group consisting of 11 men who abducted, raped and robbed the women who provided sex services on highways. In total, there were 14 victims; several of them were attacked several times. A criminal case was initiated only in 2016, as the victims preferred not to turn to law enforcement bodies. As of today, all the criminals have been convicted to 7-13 years in prison.

Recommendations:

- Cancel Article 17.5 of the Code of Administrative Offences of the Republic of Belarus which criminalises exploitation of prostitution.
- Create a supervision mechanism that would allow to trace the cases of violence against women-sex workers, including the violence applied by law enforcers.
- Not to disclose information about engagement in prostitution by women-sex workers among their employers and at schools where their children study.
- Create special shelters and crisis centres and help programmes for women wishing to give up prostitution, in order to help in their reintegration in the society and to provide them with an opportunity to earn money in a different way; and to take measures to decrease the demand for prostitution.

5. Participation in political and public life

The Committee asked to provide information on measures taken to lift the ban on activities of unregistered public associations (Law on Public Associations, Article 7, Part 2) and decriminalize participation in such activities (Criminal Code, Articles 193 and 193.1), as well as to provide information on measures taken to review and amend registration procedures for public associations, including women's associations, and to create an enabling environment and ensure adequate funding opportunities for women's associations, including those advocating gender equality and promoting a women's human rights agenda.

Despite the recommendations earlier expressed by the Committee,¹³ Articles 193 and 193.1 of the Criminal Code of the Republic of Belarus are still in force. Thus, participation in unregistered public associations, including those gathering women, is a criminal offence punishable, among other penalties, with deprivation of liberty for the term of up to two years.

At the same time, the registration procedure of public associations remains extremely complicated. To register a nationwide association, one needs 50 founders living in most regions (oblasts) and the city of Minsk; prior to registration, any organization must have a legal address on non-residential premises; and the fee for registration of a nationwide public association is twice as big as the one needed to register a commercial organization.

The formulations of possible grounds to reject registration of public organisations are very vague and give a chance for the Ministry of Justice (MoJ) to reject registration based on a wrong spelling or other insignificant defects in drawing up documents. In practice, a refusal to register an association is often based on a mistake in the date of birth of one of the founders, a telephone number, or on a wrong typesetting size, etc.

Moreover, in 2016 the registration of at least two women's organizations which wanted to work in the sphere of countering gender-based discrimination (see the Cases below) was rejected under the pretext that the legislation of the Republic of Belarus forbids any gender-based discrimination. Therefore, recognition of the existence of such discrimination violates the law. Thus, state bodies are openly hampering the activities of NGOs aimed at the achievement of equality between men and women in Belarus.

Case 5.1. On 23 February 2016, documents were submitted to the Ministry of Justice of the Republic of Belarus (MoJ) on registration of the Social-Enlightenment Public Association "Gender Partnership" (hereinafter – the "Gender Partnership"). The declared aim of the Association was eradication of gender-based discrimination. On 25 March 2016, the MoJ refused to register the "Gender Partnership" on the following grounds:

1. The presented documents contained wrong home telephone numbers of 4 out of 50 founders.
2. In the opinion of the MoJ, the indication in the charter of gender-based discrimination in the Republic Belarus does not meet the requirements of the law.

The refusal was appealed against to the Supreme Court of the Republic of Belarus which on 27 May 2016 upheld the decision of the MoJ, noting that eradication of gender-based discrimination cannot be within the competence of a public association, since the guarantees of the equality of citizens' rights established by the Constitution of the Republic of Belarus are ensured by the strictly authorized state authorities.

Case 5.2. On 20 May 2016, Mogilev activists submitted an application to the Chief Department of Justice of the Mogilev Regional Executive Committee asking to register the Public Association "Ruzha Mogilev Gender Centre". The declared aim of the Association was "contributing to ensuring equal rights and equal opportunities of men and women; eradication of gender-based discrimination, as well as the promotion of the development of social and personal needs of men and women in the society."

On 21 June 2016, the above Department of Justice reported that the registration of the "Ruzha Mogilev Gender Centre" was rejected on the following grounds:

1. There were inaccuracies and misprints in personal data of certain founders.

¹³ CEDAW/C/BLR/CO/7

2. In the opinion of the Department of Justice, "the recognition of the presence of gender-based discrimination in the Republic of Belarus is not in line with the equality norms of men and women fixed at the legislative level."

On 16 August 2016, the Mogilev Regional Court found the decision of the Department of Justice legitimate.

The state resorts also to other forms of pressure on women's rights defenders.

Case 5.3. On 30 October 2014, Elena Tonkacheva, a Belarusian rights defender and the Chair of the Board of the Centre of Legal Transformation, was notified about the annulment of her permanent residence permit in the Republic of Belarus. On 5 November 2014, it was decided that Elena Tonkacheva would be expelled out of Belarus "in the interests of public order." The pretext for her expulsion was an insignificant exceeding of the speed limit while driving a car, fixed on a video camera. Such violation is not qualified as an offence even by the Belarusian legislation. The decision also bans her entry to Belarus for three years. The decision to expel Elena Tonkacheva has obviously to do with her public activities. Since 1996, Ms Tonkacheva has been engaged in defence of human rights and promotion of public interests in the Republic of Belarus. The authorities had twice closed the human rights organization founded by her. She has also experienced pressure in connection with her work to collect and estimate information about arrests and trials of the participants of the public action held on 19 December 2010 in Minsk. Above all, the expulsion decision is disproportionate. Elena Tonkacheva has a citizenship of the Russian Federation and has been permanently living in Belarus since 1985; her daughter is a citizen of the Republic of Belarus by birth. Elena Tonkacheva received her education in Belarus; and her professional activities were connected with this country. Apart from all that, she has real estate in Belarus and at the moment of her expulsion, she had a permanent source of revenues.

Recommendations:

- Remove criminal responsibility for taking part in the activities of unregistered public associations, including those of women.
- Revise and amend the registration procedures for public associations, including women's organizations. In particular, cancel the requirement to have the legal address, as it was recommended by the Committee of the International Labour Organization (ILO) on the Freedom of Association. Ensure that minor technical drawbacks in the documents submitted for registration do not cause refusals to register a public association.
- Ensure that the recognition by a public association of the existence of gender-based discrimination in the Republic of Belarus does not, under any circumstances, cause a refusal to register such public association.
- Cancel the decision to expel Elena Tonkacheva out of the Republic of Belarus.

6. Disadvantaged groups of women

The Committee asked to provide updated information and data on the human rights situation of older women, widows, migrant women, Roma women, women with disabilities, women belonging to minorities and lesbians with respect to education, employment, health-related issues and access to health services, as well as protection from violence.

In its answers, Belarus concentrated on the description of material support provided to women-pensioners, women with low-income, women with children and some other vulnerable groups of women. However, a whole range of disadvantaged groups of women not mentioned in the report of the State party, are systematically exposed to various forms of discrimination, both at the legislative

level and at the level of law-enforcement practice. These groups include Muslim women, Roma women, women kept at temporary isolation facilities (known as IVSs) and pre-trial prisons (known as SIZOs), lesbians, bisexuals and transgender women, and elderly women.

6.1. Muslim women

According to the data of the National Statistics Committee of the Republic of Belarus, based on the 2009 census,¹⁴ 22,000 Muslims live in Belarus.

According to Belarusian legislation,¹⁵ in order to receive or change the passport of a citizen of Belarus, a person shall present photographs, depicting him/her without any headgear. This normative and legal requirement contains no exceptions for persons who cannot appear, due to their religious convictions, in public without headgear. This norm covers all citizens of Belarus, but disproportionately affects Muslim women who cannot appear, due to their religious convictions, in public without hijabs – traditional Islamic headscarves. For this reason, Muslim women either refuse to get passports and, accordingly, are unable to enjoy their rights connected therewith, or have to get photographed without a hijab, which brings moral suffering to them. Additionally, it is difficult to identify Muslim women who had been photographed for their passports without hijabs, but who wear those headscarves in their everyday life.

Recommendation:

- Amend Resolution of the Ministry of Internal Affairs of the Republic of Belarus of 28 June 2000, No. 200, by including a possibility of taking a passport photograph in headgear which does not hide the oval of the face for those persons who cannot, due to their religious convictions, appear in public without headscarves, etc.

6.2. Roma women

According to the 2009 census, the Roma population of Belarus amounts to 7,079 persons: 48.2% of men and 51.8% of women.¹⁶ According to Roma organizations and the network of public Roma mediators, the population of the Roma living in Belarus amounts to 60,000 persons. The difference in figures is explained by the absence of documents (passports and birth certificates) among many Roma people, mainly in the older age bracket (over 45 years).

The education level of Roma women is extremely low as compared with the general level of women's education in Belarus. Thus, in the age bracket of 25-35 years, about 50% of Roma women only have primary education; about 50% have general basic education (9 school grades); in the age bracket of 35-45 years, as many as 90% have only received primary education.¹⁷

¹⁴ Data can be found at:

http://web.archive.org/web/20110722232346/http://belstat.gov.by/homep/ru/perepic/2009/publications/national_structure_rb.rar

¹⁵ Resolution of the Ministry of Internal Affairs (MIA) of the Republic of Belarus of 28.06.2000, No. 200

¹⁶ Data can be found at:

http://web.archive.org/web/20110722232346/http://belstat.gov.by/homep/ru/perepic/2009/publications/national_structure_rb.rar

¹⁷ Strategy of education, professional employment, social welfare and preservation of cultural identity of the Roma population of Belarus as a precondition for overcoming social isolation and discrimination (report on the 2014 study): <https://goo.gl/B9mnoZ>

The major obstacle in education of Roma girls is the tradition of early marriages. Thus, in 2014-2015, in 7 regions with concentrated Roma communities, 56 early marriages were fixed,¹⁸ which made a little less than 50% of all the marriages (both registered at Civil Registry Offices and factual) that occurred in these communities. The average marriage age of Roma girls is 16-17; and two cases are known, when girls got married at the age of 14. In 70% of early marriages, girls quit school. Further still, 95% of young families have no permanent employment and funds to maintain their families. About 47% of families formed by early marriages live in *de facto* unions which, in its turn, entails the impossibility of benefiting from programmes of social support for young families in Belarus.

According to the study conducted in 2014,¹⁹ on average about 30% of Roma women in the age group of 25-45 years are officially employed. Most Roma women are employed for seasonal works; they are housewives, but also engage in illegal entrepreneurial activities (trade and various "magical" services). The absence of legal employment is caused by: 1) the absence of necessary education and qualifications; 2) hindered access to training programmes and absence of motivation to study; 3) discrimination in employment. According to public Roma mediators, 100% of Roma women of all age brackets complain about the absence of educational programmes for adults and mass discrimination in employment. This discrimination is expressed through refusals to hire Roma women, even if there are vacancies suitable from their viewpoint. There are no written complaints against such discrimination because of poor literacy among Roma women and due the absence of proper anti-discrimination legislation which could allow to efficiently defend their rights in such cases.

The so-called "ethnic profiling" by employees of the MIA is expressed through arbitrary detentions and fingerprinting of Roma women. The MIA employees explain such actions by the need to prevent offences, the presence of "a special Decree of the President" or by orders of their bosses. In February-August of 2016, about 50 Roma women addressed their complaints against such actions of MIA employees to Roma mediators; some of them were repeatedly detained and fingerprinted. Arbitrary detentions are most frequent in the area of the Minsk Railway Station; Roma women activists and public mediators from Tolochin, Gomel and Nesvizh were subjected to such detentions, the republic's coordinator of the Roma women's network among them. The women were detained for more than three hours and subject to fingerprinting. In general, public Roma mediators note a certain decrease in the number of detentions in the country's regions; however, in Minsk, the number of such cases is on the rise. The practice of arbitrary detentions and forced fingerprinting makes Roma women give up travel outside the places of residence of Roma communities, intensifying the fear of MIA employees.

Apart from that, law enforcement bodies use their official resources to spread hate speech against Roma women. Such publications use a set of notions which have negative connotations in public consciousness (in particular, they frequently use the word "Gypsies" instead of "Roma women"), disseminate negative stereotypes about the ethnic group as a whole, and make generalizations when mentioning the ethnicity of an offending woman in connection with an offence committed by her.

Case 6.2.1. The website of the Pukhovichi District Executive Committee of the Minsk Region has posted an article from the newspaper "Pukhavistkiya Naviny"²⁰ entitled "An Elderly Woman from Pukhovichi Was Robbed by Gypsy Traders", reading: "*... Not without a reason, a stereotype exists that where there is a Gypsy one should expect tricks and deceit... If you are not alone at home, or if there is somebody able to resist, Gypsies will for sure abandon their intention to steal something.*"

¹⁸ Prevention of child, early and forced marriages among the Roma population of Belarus. Analytical report (2016): http://romaintegration.by/wp-content/uploads/2016/03/Roma_early_marriages.pdf

¹⁹ Strategy of education, professional employment, social welfare and preservation of cultural identity of the Roma population of Belarus as a precondition for overcoming social isolation and discrimination (report on the 2014 study): <https://goo.gl/B9nnoZ>

²⁰ www.gorka.by/?p=31758#more-31758

Case 6.2.2. The website of the Administration of the Leninsky District of Mogilev²¹ contains an article entitled "Prophylactics of Theft from Elderly People Committed by Persons of Gypsy Nationality" reading: "...It should be mentioned that an essential share of such offences is committed, as a rule, by members of the Gypsy Diaspora. They act in groups of 2-3 persons... Most frequently, Gypsy women aged 25-55 years present themselves as social workers." The author of the article advises: "In case of an appearance in your dwelling of persons of the Gypsy ethnicity, try to remember and write down the state number plate of the car in which they arrived."

Case 6.2.3. The website of the Administration of the Leninsky District of Mogilev²² contains an article entitled "She Was Selling Methadone" reading: "On 11 January, the Mogilev Inter-District Division of the Investigatory Committee of the Republic of Belarus initiated a criminal case under Part 3, Article 328, of the Criminal Code of the Republic of Belarus – illegal circulation of drugs and psychotropic substances, precursors and analogues – against a 27-year-old woman from Mogilev. A jobless resident of Mogilev without prior criminal record, a member of the Gypsy Diaspora, was illegally selling a powdered substance containing methadone – an especially dangerous drug."

Recommendations:

- Adopt a complex nationwide programme of social integration of Roma women to envisage measures aimed at achieving the following goals:
 - collection of reliable and disaggregated statistical data about the situation of Roma women;
 - receipt by all Roma girls of at least general, basic education;
 - launching programmes of professional training for Roma women;
 - raising awareness against child marriage in Roma communities;
 - increasing the level of awareness among Roma women as to the available programmes of social support for the population of Belarus and the ways of using these programmes;
 - ensuring complete access of Roma women to the labour market and opportunities to run individual labour activities without discrimination.
- Take measures towards non-admission of both formal and informal ethnic profiling by employees of the MIA in relation to Roma women.
- Not to allow for dissemination of hate speech in relation to Roma women in information materials disseminated by law enforcement bodies.

6.3. Women kept at temporary isolation facilities (known as IVSs) and pre-trial prisons (known as SIZOs)

Despite the adoption by the Committee on 25 July 2011 of opinions on the communication of Inga Abramova (communication No. 23/2009) about the discriminatory treatment applied to her during her stay at the temporary detention facility (hereinafter – the IVS) of the Leninsky ROVD (Interior Division) of the city of Brest, and despite the fact that in these opinions the Committee recommended that Belarus guarantees the protection of women-inmates against of all forms of humiliation, including gender-based abuses and ensures that the search of women-inmates and supervision over them were performed by duly trained women-employees, until now, most of the IVSs have no female personnel. As a result, women kept in IVSs (detained and arrested on criminal charges, detained under

²¹<http://lenadm-mogilev.gov.by/pravo/newsrovd/9422-profilaktika-krazh-u-prestarelykh-i-lits-pozhilogo-vozrasta-litsami-tsyganskoj-natsionalnosti>

²²<http://lenadm-mogilev.gov.by/pravo/newsrovd/8554-torgovala-metadonom>

administrative charges, and women serving their administrative arrest) are exposed to tougher and more humiliating treatment than men-inmates. The IVS cells (including toilets) are viewed through peepholes in cell doors and with the help of hidden video cameras. Women cannot change clothes and use the toilet without being watched by the male personnel of IVSs.

What is more, even those few IVSs (in the cities of Brest and Bobruisk) which have female personnel fail to observe Rule 53 of the Minimum Standard Rules of Treating Inmates of 1955 according to which women's sections should be supervised by authorised female employees who should possess the keys to this section, while male employees may be admitted to the women's section only when accompanied by a female employee. Often the functions of the IVS female personnel are limited to searching women placed in the IVS and handing out beddings to male and female inmates.

Moreover, after adoption by the Committee of its opinions on communication No. 23/2009, the MIA assigned data on the availability or absence of female personnel at IVSs to the category "classified (for official use only)", i.e. is made it hidden for the public. This information was received by Inga Abramova and her advocate Roman Kislyak from ROVDs in response to their requests about the presence and number of female employees at the IVSs.

The custody conditions of women at the pre-trial prisons (hereinafter – the SIZOs) of the MIA and the Committee of State Security (KGB) have somewhat improved. In particular, the female SIZO personnel at the MIA is allowed to convoy inmates (before 2012, it was explicitly prohibited by MIA regulations). At the same time, Rule 53 of the Minimum Standard Rules of Treating Inmates of 1955 has still not been implemented in full at SIZOs.

Recommendation:

- Ensure that the search of women-inmates and supervision over them is conducted by duly trained women-employees. Ensure that male-employees are admitted to women-inmates only with accompaniment of female-employees.

6.4. Transgender women

The CEDAW has repeatedly addressed the problem of ensuring the rights of transgender people in the context of the procedures of legal gender recognition.²³ In the Republic of Belarus, the procedure of legal gender recognition has a clear formulation: transgender people may change their names and gender markers as written in their passports. If necessary, they also have access to hormonal therapy and surgical operations. A permit to change the gender marker is issued by a special commission after a lengthy medical monitoring and establishment of the diagnosis of "transsexualism."

Nevertheless, the legislation of Belarus has a number of drawbacks which often lead to an undesirable disclosure of gender transition and, as a consequence, to discrimination and violence. Transgender women are especially vulnerable in such situations, since in Belarus, as in other countries where patriarchal stereotypes are still dominant in the society, the people who dare to make a MtF-transition are permanent objects for abuse, mocking, harassment and other forms of aggression.

a. Gender digital codes

²³ See, for example: CEDAW, Concluding observations, Belgium, CEDAW/C/BEL/CO/7, paras. 44-45; CEDAW, Concluding observations, Finland, CEDAW/C/FIN/CO/7, paras. 28-29; CEDAW, Concluding observations, Georgia, CEDAW/C/GEO/CO/4-5, paras. 34-35; CEDAW, Concluding observations, Kyrgyzstan, CEDAW/C/KGZ/CO/4, paras. 33-34; CEDAW, Concluding observations, Slovakia, CEDAW/C/SVK/CO/5-6, paras. 36-37.

The main threat to the privacy of transgender women is in the rules of awarding a personal ID-number.²⁴ According to the legislation in force,²⁵ this number cannot be changed. It creates the following problems:

- 1) The numbers generated before 2013 (most of adults have these numbers) have a clear gender indicator: the first digit is odd in men and even in women. Thus, even a superficial look at the passport of a transgender woman discloses to any person the fact that she earlier had a male gender marker.
- 2) The numbers awarded after 2013 have no gender identifiers; however, databases of many institutions (banks, social protection fund, etc.) contain information about ID-numbers, correlated with other passport data. Thus, when addressing this information, employees see at once that, for example, a woman who has turned to the bank was figuring earlier in the database under a male name and surname.

See below excerpts from interviews²⁶ with anonymous respondents, illustrating the above-noted problem.

Case 6.4.1. *"For a long time after receiving a new passport, I couldn't find a job. I was refused employment under any pretext; often I was not even invited for an interview to the office. I think it was because I had to indicate in the questionnaire for the personnel service the ID-number of my passport."*

Case 6.4.2. *"I addressed the Fund of Social Protection of Population, intending to receive a new Insurance Certificate; and as soon I stated my ID-number to the employee, he immediately told me that it was a male number. I had to explain that I'm a transsexual and was changing my sex. A lot of uneasy questions followed, not related to the situation, and by the end of the conversation I wanted only one thing – to get out of there as quickly as possible and never appear there again."*

Case 6.4.3. *"An awful story happened to me when I got employed to earn additional money at one trade centre in Minsk. I worked there for almost two months, and my work satisfied the employer, and I had good relations with my colleagues. But one day, the hostess of the trading office where I worked called me and ordered me not to appear at work any longer, because I had deceived her, and in fact I was not a woman, but nobody knows what! She said that I had defamed her in the eyes of the whole shopping centre; and now all the people were mocking her and asking uneasy questions! She reacted negatively to all my attempts to explain the case, and said that her acquaintance, a former militiaman, saw a copy of my passport, 'explained to her, thank God, what a person I was!' Of course, I never go to that trading centre, as my appearance there may end in a scandal; however, I'd like to have a chance to come there from time to time and buy clothes and other things, but not to be the hero of a show, like a monkey in the zoo. I didn't try to get employed at some other centre, since the hostess has a wide business and trading network in other places."*

b. Indication of the "Change of sexual identity" in databases

In the database "Passport", run by the MIA, "Change of sexual identity" is indicated as the ground for issuing a new passport after changing the gender marker. This information is accessible to any militiaman who addresses the database, for example during a routine personal identity check. This, in

²⁴ When describing the problems faced by transgender people because of non-compliance of documents with their appearance or identity, the international organization "Transgender Europe" notes: "For many trans people, the gendered information in these documents, including such data as name, gender marker **or a gendered digital code**, is a constant source of discomfort and trouble. Whenever having to show ID, presenting these documents means having to come out as transgender, even in very inappropriate situations, which can spark humiliation, discrimination and violence." See Legal Gender Recognition in Europe: A Toolkit, p. 8. Available at: http://www.tgeu.org/sites/default/files/Toolkit_web.pdf.

²⁵ Law of the Republic of Belarus "On Population Register" of 28 July 2008, No. 418-Z

²⁶ The data was obtained by the Initiative Group "Identity and Law" in May 2015 in the city of Minsk.

its turn, may result in a discriminatory refusal to help and further dissemination of information about the transgender fact. See below an excerpt from an anonymous interview,²⁷ illustrating the problem.

Case 6.4.4. *"In late July 2014, I was forced to call a militia unit to a drunken father who was making a scandal. When the militiamen arrived, and I signed the protocol, I accidentally saw a printout of my personal data; the number of my old birth certificate was indicated there, as well as the fact of change in the name, and added in big letters: CHANGE OF SEX. Ten days later, I went to the militia station to sign again the protocol on this case, as they told me. As a result, I got into a terrible situation: I was sitting in the room and all employees were coming in to look at me, as at an exotic animal. I felt just awful!"*

c. Inefficiency of the existing protection mechanisms against undesirable disclosure of information about the transgender status

Article 179 of the Criminal Code of the Republic of Belarus envisions responsibility for any illegal collection and dissemination of data about a person's private life which makes his/her personal or family secret, without his/her permit, which has caused any damage to the victim's rights, freedoms and legitimate interests. This article may be used to protect the privacy of transgender women. However, Part 1 of Article 179 (dissemination of data about a person's private life without using someone's official position or special means) is a case for private prosecution, which means that a victim should herself act at court as a prosecutor and collect proof of the infringer's guilt. However, for a person who is not a lawyer this is a practically impossible task, which leaves transgender women in fact defenceless against a possibility of dissemination of information about their transition.

Case 6.4.5.²⁸ In May 2016, a transgender woman who worked at a store was noticed by one of her former colleagues who had known her earlier as a man. This former colleague then, secretly from the victim, reported the information about her transition to her new colleagues. This led to a conflict as a result of which the transgender woman was transferred to another job with a lower salary. Then, she turned to the militia, but the superficial inquiry failed to identify the person who had disclosed the data.

Recommendations:

- Amend the legislation to envisage a change of the ID-number with the change of the gender marker.
- Exclude from the list of grounds for changing a passport of a citizen of Belarus such grounds as "Change of surname, name or patronymic" and "Change of sexual identity", by replacing them by one single ground "Change of personal data".
- Change the prosecution of cases under Part 1, Article 179, of the Criminal Code to private-public prosecution. Create an efficient system of prevention and treatment of consequences of unwanted disclosure of information on the transgender status by state agents as well as by non-state agents.
- Organize training for employees of the MIA and other law enforcement bodies on the issues relating to transgenderism, including inadmissibility of discrimination on the grounds of gender identity, and the need for correct treatment of transgender women.

6.5. Lesbians, bisexuals and transgender women

²⁷ The data was obtained by the Initiative Group "Identity and Law" in May 2015 in the city of Minsk.

²⁸ The data was obtained by the Initiative Group "Identity and Law" in June 2016 in the city of Minsk.

The concern is caused by the Law of the Republic of Belarus No. 362-Z²⁹ adopted on 11 May 2016 which envisages amending a number of normative acts aimed at protection of children from the information which may cause damage to their health and development. According to these amendments, the information which "discredits the family and marriage-family relations" is now referred to as the information causing harm to the health and development of children.³⁰

The sense of this notion should be disclosed in the Resolution of the Council of Ministers to be adopted not later than on 1 July 2017. There are fears that a well-oiled formulation may hide the plans to restrict the freedom of dissemination of information concerning lesbians, bisexual and transgender women or "endangering" the traditional tenets on the women's role in society as, basically, of a wife and mother.

The CEDAW has already drawn attention to the fact that the laws on prohibition of the so-called "propaganda of homosexuality" adopted in some countries may cause harm to LBT-women.³¹ If the Council of Ministers of the Republic of Belarus extends the definition of "information discrediting the family and marriage-family relations" onto information concerning the issues of sexual orientation and gender identity, this may "encourage the stigmatization of and discrimination against LGBTI persons," and result in "targeting and ongoing persecution of the country's LGBTI community, including through abuse and violence."³²

Recommendation:

- Not to impose any restrictions on the dissemination of information about the sexual orientation and gender identity (SOGI) when drafting the Resolution of the Council of Ministers intended to determine the notions used in the Law of the Republic of Belarus No. 362-Z.

6.6. Elderly women

In 2013-2015, the pension legislation of Belarus was amended,³³ so that the minimum pensionable service (that is the service, during which the employer paid the insurance fees for the employee) required to receive the labour age pension was radically increased from 5 to 15.5 years. In the future, the pensionable service required for receiving such pension will be increased to 20 years (every year, the minimum pensionable service will be increased by half a year). These provisions cover not only young people, but also elderly ones who are currently retiring.

The pensionable service does not include the time of the childcare leave nor the time during which the person was taking care of his/her disabled relative. Since in Belarus children are brought up and disabled persons are taken care of mainly by women, this norm disproportionately affects women. The women who have, for many years, performed these socially important functions and rightfully hoped for a labour pension upon reaching the age of 55 (the general retirement age for women in Belarus), are left without subsistence: they cannot receive pensions because they have not reached the sufficient labour service. They, as a rule, cannot get employed because employers would not hire elderly staff. Nor can they get the unemployment allowances, since they are officially regarded as incapable. Only at the age of 60 will they be eligible to receive unconditional social pension, which is three times smaller than the average labour age pension.

²⁹ www.pravo.by/main.aspx?guid=12551&p0=H11600362&p1=1

³⁰ The Law "On the Rights of the Child" is complemented with Article 37¹.

³¹ See CEDAW, Concluding observations, Kyrgyzstan, CEDAW/C/KGZ/CO/4, paras. 9-10; CEDAW, Concluding observations, Russian Federation, CEDAW/C/RUS/CO/8, para. 41.

³² See Committee on the Rights of the Child, Concluding observations, Russian Federation, CRC/C/RUC/CO/4-5, para. 24.

³³ Decree of President of the Republic of Belarus of 31.12.2015, No. 534 "On Issues of Social Welfare"

Case 6.6.1. Ms P., born in 1961, in 1998-2009 took care of her minor children, and in 2009-2016 (for about six years with a small break), she took care of a Category I invalid and received a respective allowance for that. In February 2016, she applied for a labour age pension. By the decision of the Pension Commission, she was refused as the pensionable service performed by her before 1998 amounted to only 13 years. The 17 years during which she brought up her children and took care of a disabled relative is not included in the pensionable service.

Case 6.6.2. Ms L., born in 1960, in 2007-2015 took care of her disabled father, Category I invalid, and received the respective allowance. Her pensionable service, gained before 2007, was 10 years and one month. In November 2015, she applied for her labour age pension; however, she was refused for the absence of the required insured service.

Recommendation:

- Change the Decree of the President of the Republic of Belarus of 31 December 2015, No. 534 "On Issues of Social Welfare" in such a way as to include the periods during which a woman took care of her minor children or disabled relatives into the pensionable service necessary for granting the labour age pension.

7. Marriage and family relations

The Committee asked to provide information on the legislative measures taken or envisaged to protect the rights of women upon the dissolution of de facto unions. Unfortunately, Belarus failed to provide the respective information.

In Belarus, the number of couples in *de facto* unions is permanently growing. While in 1999, according to the census, such unions made 5% of the total number of families in Belarus, by 2011, the number went up to 8%.³⁴ However, the family legislation of Belarus fails to regulate the existence of such unions and, respectively, fails to protect women-members of such unions.

The right of joint ownership of the property and a possibility to divide it in accordance with the norms of the family law is granted to spouses only after the official registration of a marriage at the Civil Registry Office. In the case of the lack of such registration, all the property is the ownership of that person who had purchased it, most often, of the man. The owner of the property may dispose of it at his/her discretion, without asking the opinion of his/her factual spouse. In case of concluding an official marriage, only the property acquired after this marriage is considered to be joint property, irrespective of the number of years the spouses had live in a *de facto* union before marriage.

In case of dissolution of a *de facto* union, the division of property acquired within such union is possible only through the judicial order; and at the consideration of the case, the norms of the civil and not family law will be applied. In relation to the division of real estate, the Supreme Court of the Republic of Belarus has directly stated that, if in the process of erection and purchase of the house the persons were not in a registered marriage, their dispute on the ownership right and division of the house shall be settled in accordance with the norms of the Civil Code.³⁵

In order to solve the case concerning recognition of property jointly acquired by the *de facto* union and division thereof, it is necessary to prove the existence of factual family relations, the running of a

³⁴ Belarusians increasingly prefer civil marriage than the official one, 15.05.2011: http://naviny.by/rubrics/society/2011/05/15/ic_articles_116_173613

³⁵ Resolution of the Plenum of the Supreme Court of the Republic of Belarus of 26 March 2003, No. 2 "On Application by Courts of Legislation when Considering Disputes Related to Ownership of Dwelling Premises" (with amendments and additions)

joint household and existence of a joint budget, the presence of property considered by the spouses as joint property, the presence in *de facto* spouses of the aim to purchase the property into joint ownership, and the fact of contributing by each of the partners with monetary assets into the purchase of the disputed property. It is extremely difficult to prove all these circumstances in the absence of confirming documents which, in its turn, makes women highly disadvantaged, since they often have no money to pay the state duty and lawyer's fees, while the need to bring up children does not allow them to take part in lengthy litigations.

The second problem related to the absence of the legislative recognition of *de facto* unions is inheritance. In case of death of one of the *de facto* spouses, the other one may inherit the property of the deceased only if there is a notarized testament. For lack of such testament, the survivor has no right to inherit from his/her partner; and this disadvantages women, since the jointly acquired property, as a rule, is legally ascribed to the man. In case of death of the *de facto* spouse without a testament, it is practically impossible to prove the survivor's right to property, even in court.

Recommendation:

- Amend family legislation with provisions which ensure the protection of women's economic rights when they are in *de facto* unions, in line with the general recommendation under Article 16 of the Convention (general recommendation No. 29, 2013).

8. Additional information

The Ordinance of the President of the Republic of Belarus of 2 April 2015, No. 3 "On the Prevention of Social Parasitism" has introduced a new national tax, intended to fund government expenditures. In accordance with the Ordinance, all the capable citizens, foreign citizens and stateless persons who have received permits for permanent residence in the Republic of Belarus and who are not involved in labour activities are recognised to be social parasites (persons dependent on taxpayers). They must pay an annual tax in the amount of 20 base units.³⁶ A non-payment or incomplete payment of the tax entail imposition of a fine in the amount of two-four base units³⁷ or administrative arrest for up to 15 days during which persons are assigned to public works. A citizen, who has served his/her administrative arrest is recognized as the one who has paid the tax.

The tax is also imposed on non-working parents taking care of one or two children aged 7-18 years, even if one of the parents is employed. This norm disproportionately affects women who are often engaged in housekeeping and rearing children when their husbands are at work. The treatment of women's labour related to housekeeping and rearing children aged over 7 as "social parasitism" is discriminating and humiliating to their human dignity.

Recommendation:

- Abolish Ordinance of the President of the Republic of Belarus of 2 April 2015, No. 3 "On the Prevention of Social Parasitism".

³⁶ About 200 euro as of 3 October 2016

³⁷ Some 20-40 euro as of 3 October 2016