

2015

**[REPORT ON THE RESULTS OF
MONITORING PLACES OF
DETENTION IN BELARUS]**

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GENERAL INFORMATION ABOUT PRISONERS AND PENAL FACILITIES

PRISONERS

The year of 2015 saw the end of a downward trend in crime rates: according to the Interior Ministry, 72.7 thousand crimes were documented in the country in January-September 2015, or 103.8% as compared to January-September 2014. During the same period in 2015, there were 9,480 particularly serious and serious crimes, the proportion of which in the total number of recorded crimes was 13% (in January-September 2014 – 8,114 crimes or 11.6%).

In January-September 2015, 768 crimes were documented per 100,000 persons of the population (in January-September 2014 – 740 crimes).

The number of cases of illegal trafficking in narcotic drugs and psychotropic substances with intent to sell increased by 21.3% in January-September 2015 as compared to January-September 2014.

By early 2015, the number of prisoners in Belarus began to show an upward trend. Even without taking into account the growing number of prisoners held in LTPs, this figure, though slightly, increased since the beginning of 2014.

According to the National Statistics Committee of Belarus, there were 29,776 prisoners as of the end of 2014.

However, as mentioned above, official statistics on the number of prisoners do not include those who are serving a sentence in the form of restriction of liberty and arrest, or was isolated in an LTP, sentenced to administrative arrest, and forcibly treated by a sentence or court order. Official statistics do not view minors as prisoners if they are held in special teaching and medical-educational closed schools.

Of the total number of prisoners, regular penal colonies hold 22,859 people (including 2,185 women), and juvenile penal facilities – 170 persons (in accordance with the law, persons aged under 21 may continue serving their sentence in an educational colony for juveniles), including 83 minors. Another 118 juveniles are held in pre-trial prisons.

The number of imprisoned women and minors increased, respectively, by 12 and 23 percent.

The country's prisons hold 589 persons, and 6,158 people are in pre-trial prisons. In 2012-2014, the number of prisoners in pre-trial prisons increased by 20 percent. During the same period, there was a 20-percent increase in the number of prison sentences.

There are no data on the number of prisoners held in houses of detention. A total of 3,440 people were sentenced to arrest in the first half of 2015, with 7,312 people back in 2014.

There is no information on the number of prisoners held in forced labor facilities. A total of 2,543 persons were sentenced to restriction of freedom in open-type correctional institutions in 2014, with 1,717 people in the first half of 2015.

In 2014, administrative arrest was imposed on 35,674 persons, and in the first half of 2015 – 20,303 persons.

Against a 50-percent decrease in the number of prisoners since 2007, official statistics showed an unchanged rate (with a slight increase last year) in the number of persons sentenced to imprisonment for more than three times, indicating a relative increase in recidivism.

During the implementation of the 2015 amnesty, 1,834 people were exempt from the penalty of deprivation of liberty, the sentences of 2,150 more convicts were reduced by one year.

685 people were released from open-type correctional institutions, and the sentences of 691 convicts were reduced by one year.

Among the amnestied persons, there were 66 minors; one pregnant woman; 24 women and single men with children under the age of eighteen years; 13 men over the age of sixty years and women older than fifty-five years; 25 disabled persons of group I or II, persons with active TB and referred to groups I, II, V A, V B of dispensary register, persons with cancer of the 2nd, 3rd, and 4th clinical groups, and HIV-infected patients with the 3rd or 4th stage of the disease according to the WHO clinical classification; one veteran of an armed conflict in the territory of another state; 30 citizens affected by the Chernobyl disaster and other radiation accidents.

The previous amnesty was enforced in 2014.

PENAL FACILITIES

After the enforcement of President's Decree No. 242 of 28 May 2014 "On improving the activity of the penitentiary system of the Ministry of Internal Affairs", the country's prison system included 15 penal colonies, one educational colony for minors and three correctional colonies-settlements, six pre-trial prisons and three prisons, 29 open-type correctional facilities. In addition, the Department of Corrections runs nine LTPs.

The Department of Corrections also runs twelve unitary enterprises on the basis of penal colonies (Republican Production Unitary Enterprise No. 4, Republican Production Unitary Enterprise "IK 8 – Poisk", Republican Production Unitary Enterprise No. 17, Republican Unitary Production Enterprise "Correctional colony No. 2 of Babrujsk", Republican Production Unitary Enterprise "Correctional Facility No. 5", Republican Production Unitary Enterprise "IK 9", Republican Production Unitary Enterprise No. 11, Republican Production Unitary Enterprise "IK 12 - VAL", Republican Production Unitary Enterprise "IK 13 – Bieražviečča", Republican Production Unitary Enterprise No. 14, Republican Production Unitary Enterprise No. 15, Republican Production Unitary Enterprise "IK 20"), two companies on the basis of LTPs (Republican Production Unitary Enterprise "LTP-1", and Republican Production Unitary Enterprise No. 1). In addition, business activities are carried out by the remaining seven LTPs.

As of the beginning of 2015, paid labor involves 69.1 percent of inmates in prisons.

The country's prisons hold 1,494 persons with a diagnosis of drug addiction, and 518 prisoners suffering from tuberculosis.

PUBLIC CONTROL OVER DETENTION CONDITIONS

PUBLIC MONITORING COMMISSIONS (PMCs)

The website of the Ministry of Justice provides information on a visit by members of eight PMCs paid in 2015 to three penal facilities run by the Interior Ministry's Department of Corrections: "On 24 November 2015, representatives of the Republican Public Monitoring Commission of the Ministry of Justice of the Republic of Belarus and the Minsk City Public Monitoring Commission of the Department of Justice of the Minsk City Executive Committee visited open-type penal facilities No. 36 and 51 run by the Department of Corrections' Office for Minsk and Minsk region of the Ministry of Internal Affairs of the Republic of Belarus, which is located at the address: 14 Karatkievič Street, Minsk.

During their visits to the aforementioned correctional facilities, the Public Monitoring Commissions studied the living conditions of convicts, the organization of leisure, employment, and conducted preventive conversations with the prisoners. As a result of the visits to these institutions, the Public Monitoring Commissions came to the conclusion that the conditions of serving the sentence by convicts meet all the requirements of the system of execution of punishment.

On 4 November 2015, representatives of the Republican Public Monitoring Commission of the Ministry of Justice of the Republic of Belarus and the Minsk City Public Monitoring Commission of the Department of Justice of the Minsk City Executive Committee visited penal colony No. 11 (Vaŭkavysk) run by the Interior Ministry's Hrodna regional Office in order to implement public control over the activities of bodies and institutions in charge of executing sentences and other criminal sanctions.

The commissioners visited the premises of penal colony No. 11, production shops, library, kitchen and other facilities located on the territory of the colony. Studying the work of the institution included talks with the prisoners. There were no complaints about the work of the administration of penal colony No. 11 and conditions of serving the sentence."

In 2015, the website published information about the work of public monitoring commissions responsible for supervising the activities of the bodies and institutions in charge of executing sentences and other criminal sanctions in 2014.

In 2014, representatives of the Public Monitoring Commissions of the Departments of Justice of Regional and Minsk City Executive Committees, as well as the Republican Public Monitoring Commission of the Ministry of Justice of the Republic of Belarus (eight commissions) visited a total of seven institutions in charge of executing sentences and other criminal sanctions. In 2013, the Commissions visited eight places of deprivation and restriction of freedom.

"Studying the work of the institutions included talks with the prisoners, who did not report any complaints about the work of the administrations of the detention facilities or the conditions of serving the sentence," said the commissioners.

However, extremely dubious are both the methods of inspecting prison conditions and the accuracy of the information on the results of these visits: for example, in 2013, representatives of the Republican Public Monitoring Commission of the Ministry of Justice of Belarus visited

prison No. 8, which is located in Žodzina, Minsk region. “The facility holds persons serving sentences convicted for murder and extortion, including women under investigation,” say the commissioners. “At the time of the visit to the hospital, there were 30 convicts with different stages of tuberculosis. In total there are over 60 people held in the prison.”

At the moment, there are no human rights organizations authorized to visit prisons and other institutions of the Ministry of Interior, where prisoners are held. In this regard, in mid-2015 Pavel Sapelka, lawyer of the HRC "Viasna", sent an appeal to the Department of Corrections and the Interior Ministry with a request to visit places of detention under the jurisdiction of the Ministry of Interior. The appeal stated:

“Effective civilian control over the state prison system is the key to progress in the field of human rights in this area. Today, Belarusian non-governmental institutions, which by law are entitled to exercise control over the observance of prisoners’ rights, operate only on paper, for example, in 2014 representatives of Public Monitoring Commissions of the Departments of Justice of Regional and Minsk City Executive Committees, as well as the Republican Public Monitoring Commission of the Ministry of Justice of the Republic of Belarus (8 commissions) visited seven institutions in charge of executing sentences and other criminal sanctions.

Among the achievements of Belarus in the framework of the Inter-Ministerial Plan for 2010-2014 to implement the recommendations endorsed by Belarus in the first cycle of the Universal Periodic Review (a mechanism of reviewing human rights information in the UN member states), the Ministry of Foreign Affairs mentioned permission to visit prisons granted to employees of the private cultural and educational institution “Platform Innovation”, which, unfortunately, has been dissolved.

Welcoming the informal approach in making such a decision, I think it possible to also ask for permission to visit the institutions run by the Department of Corrections – prisons, detention centers, colonies, labor and treatment profilactoria (LTPs), as well as places of detention that are beyond the Department’s jurisdiction – temporary detention centers, the Center for Isolation of Delinquents, juvenile remand houses.

During the past four years I have been taking part in researching the situation of different categories of persons held in places of unfreedom: institutions of the Department of Corrections, the Interior Ministry, the Ministry of Healthcare and the Ministry of Education.

These studies are widely used to assess the situation in places of detention in Belarus, popularizing the approach to the rights of prisoners in terms of compliance with the Constitution of the Republic of Belarus, as well as international commitments of Belarus. I also regularly assist victims of ill-treatment in places of detention in appealing to bodies of regulations in charge of criminal proceedings, and the courts; preparing complaints for former prisoners, administrative detainees and arrestees. I have criticized the shortcomings of legislation defining the status of prisoners and the practice of violations of the prison rules by employees of places of detention, as well as the existence of the system of LTPs. As an expert, I have been regularly invited by the media to participate in the discussion of the problems of the prison system. I have taken part in a number of international missions to study the rights of prisoners.

I am a lawyer. I graduated from the Faculty of Law of the Belarusian State University; later studied in the BSU's Institute of Retraining of Judges, Employees of Prosecutor's Offices, Courts and Authorities of Justice; completed a course "Implementation of the de-facto international obligations of the Republic of Belarus in the field of civil rights and freedoms" of the program "International Advocacy Law".

For a long time I worked as a lawyer; I am the winner of the Human Rights Prize of the Council of Bars and Law Societies of Europe (CCBE), which is awarded to lawyers or legal organizations that "glorify the legal profession, by maintaining the highest values of professional and personal conduct in the field of human rights."

During my visits, I intended to hold "anonymous interviewing of persons held in the facilities about the conditions of detention and treatment by the staff of these institutions, measuring premises and insulators, holding conversation with the prisoners in the presence of the prison staff." The findings were to be used in the analysis of the conditions of places of detention; following the analysis, representative and executive bodies, including the Interior Ministry, were expected to receive recommendations for improving the situation in the light of human rights.

In accordance with paragraph 2, Article 22 of the Criminal Executive Code of Belarus, representatives of the media and other persons entitled to visit the institutions executing punishment with permission of the administrations of these institutions or the relevant institutions of higher authorities in charge of executing the sentence.

The answer signed by Head of the Department of Corrections S. Daroshka was extremely brief: "I inform you that your e-mail appeal sent to the official website of the Ministry of Internal Affairs has been considered by the Department of Corrections of the Ministry of Internal Affairs of the Republic of Belarus. Visiting the specialized facilities of the Interior is currently impractical." The Minister of Internal Affairs was the last to respond to the complaint, outlining the position of the public authority:

"1. In accordance with paragraph 2, Article 22 of the Criminal Executive Code (hereinafter – CEC), citizens have the right to visit institutions executing punishment with permission of the administration of these institutions or the relevant institutions of higher authorities in charge of executing the sentence.

This provision establishes a right and not an obligation of the corresponding subjects to decide on granting permission to visit the prison.

Under Part 1, Article 73 of the CEC, security restrictions in correctional institutions are the order of executing the punishment established by the legislation of the Republic of Belarus, which provides for security and isolation of convicts, the constant supervision of them, the performance of their duties, the realization of their rights and legitimate interests, the safety of prisoners and staff etc.

Thus, decisions viewed in the study of your complaint are taken collectively on the basis of factors that are required to comply with the order and conditions of serving the sentence, security and supervision of inmates, isolating them, preventing them from committing new crimes.

We believe that the answers from the Department of 28/7/2015 and 8/12/2015 do not constitute a violation of your rights, because according to Part 1, Article 23 of the Constitution, restrictions on the rights and freedoms of the individual are possible in the interests of national security, public order, protection of morality, health, rights and freedoms of others persons.

Based on the above in conjunction, the Ministry of Internal Affairs of the Republic of Belarus confirms the previously expressed views of the Department on the impracticability of you visits to the institutions of the penitentiary system and other specialized agencies.

There are no grounds to review the decision by the Head of the Department, and no disciplinary measures are required in relation of employees.

At the same time, we inform that the comment regarding the improper examination of your statement in the preparation of a response from the Department of 12/08/2015 has been noted and will be taken into account in the further organization of work with citizens by the Department staff.

2. Bodies in charges of controlling the activities of bodies and institutions of the penitentiary system are defined in Articles 17-21 of the CEC and the list is exhaustive.

The criminal-executive legislation does not provide for exercising control and supervisory functions by citizens, either directly or individually.

We view as unfounded a statement contained in your complaint about the formal nature of the current system of civilian control over the penitentiary system.

Public control is carried out in accordance with the Regulation on the Monitoring Commissions of regional (Minsk city), district, city executive committees, local administrations, approved by Decree No. 460 of the President of the Republic of Belarus of 28 August 2001, the Regulation on monitoring by public associations of activities by the authorities and institutions carrying out sentences and other criminal sanctions, approved by the Council of Ministers' resolution No. 1220 of 15 September 2006 (reference: the conditions of membership in the public monitoring commissions are determined by paragraph 6 of the Regulation), and decision No. 85 of the Ministry of Justice of the Republic of Belarus of 15 December 2006 "On approval of the Instruction on the procedure of formation and activities of public monitoring commissions and personal sheet of the candidate as a member of the commission".

Your personal participation in the implementation of the functions of social control is only possible in the specified format subject to the requirements of the above normative legal acts.

We note your active civil position in ensuring law and order in our country.

You have the right to appeal against this answer in accordance with the procedure established by Article 20 of the Law of the Republic of Belarus of 18 July 2011 "On Appeals by Citizens and Legal Entities".

Thus, the Interior Ministry does not intend to assist in the implementation of real civilian control of places of detention.

HUMAN RIGHTS DEFENDERS AND THEIR RIGHTS: NATIONAL LEGISLATION AND INTERNATIONAL INSTRUMENTS

Article 6 of the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, which was adopted by the General Assembly's Resolution 53/144 of 9 December 1998, defines the rights of human rights defenders in the field of searching and disseminating information on human rights and fundamental freedoms:

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

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

The Belarusian legislation has failed to fully implement this provision: according to the Law “On information, informatization and information protection”, state bodies, public associations and officials are obliged to provide the citizens of the Republic of Belarus with an opportunity to have access to the information that affects their rights and legitimate interests; this provision restricts the ability to obtain information on other citizens for human rights purposes. The provision that guarantees the citizens' right to receive, store and disseminate complete, reliable and timely information on the activities of state bodies, public associations, political, economic, cultural and international life, the environment is a purely declarative one, as the procedure of providing such information is actually limited by the same law and other legislative acts of Belarus. According to the law, even publicly available information may not be available at the request, for example, in the case when obtaining the requested information requires analytical work not directly related to the protection of the rights and legitimate interests of the person who has applied for information; a request shall be submitted when asking for access to information contained in memoranda, order and other internal correspondence of government bodies, if such information is not directly related to the protection of the rights and legitimate interests of the person who has applied for public information; this list is not exhaustive. From January 2014 the law has a definition of “sensitive information of limited distribution”, which has been extensively used by the government to protect themselves from the obligation to provide information that is not related to state secrets or containing secrets.

This approach can significantly and unnecessarily restrict the provision of information for the public benefit.

In accordance with Article 8 of the Declaration, “everyone has the right, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the government of his or her country and in the conduct of public affairs. This includes, inter alia, the right, individually and in association with others, to submit to governmental bodies and

agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms.” However, in practice, such requests are, as a rule, left without proper consideration, as they are viewed as petitions without duly executed powers (power of attorney).

Article 9 of the Declaration defines the rights of human rights defenders in the field of protecting violated rights: “In the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the present Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights. To this end, everyone whose rights or freedoms are allegedly violated has the right, either in person or through legally authorized representation, to complain to and have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial or other authority established by law and to obtain from such an authority a decision, in accordance with law, providing redress, including any compensation due, where there has been a violation of that person's rights or freedoms, as well as enforcement of the eventual decision and award, all without undue delay.”

The Declaration also provides for actions to protect the violated rights of other persons. “Everyone has the right, individually and in association with others, inter alia:

- (a) To complain about the policies and actions of individual officials and governmental bodies with regard to violations of human rights and fundamental freedoms, by petition or other appropriate means, to competent domestic judicial, administrative or legislative authorities or any other competent authority provided for by the legal system of the State, which should render their decision on the complaint without undue delay;
- (b) To attend public hearings, proceedings and trials so as to form an opinion on their compliance with national law and applicable international obligations and commitments;
- (c) To offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.”

This last point does not infringe on the imposition of restrictions on legal aid without a license: human rights activities are carried out in a much narrower framework and in a limited range of issues, rather than legal assistance. The subject of the participation of a human rights defender in the process of appeal is a violation of fundamental rights and freedoms, but not all cases and disputes arising from various civil, criminal or administrative relations. Unlike a lawyer, a human rights defender carries out his or her activities without reward, which is a precondition for granting legal aid.

Meanwhile, the country's criminal, civil and administrative procedure laws contain, contrary to this norm, as well as the provision of Article 62 of the Constitution of the Republic of Belarus, a restriction, which prevents human rights defenders from being involved, either individually or as members of human rights organizations, in cases related to the violation of fundamental rights and freedoms.

This is particularly important in light of the lack of independent Bars, as well as the lack of guarantees of the independence of lawyers working on the basis of urgent licenses. Numerous

cases of deprivation of the lawyers' right to work resulting from their professional activities, which took place over the last 20 years, have paralyzed their will to be engaged in a principle struggle against violations of fundamental rights and freedoms.

This procedural law allows the participation of non-professional representatives in a number of categories of cases: representatives of trade unions and NGOs – in cases involving their members; consumer protection societies – in cases dealing with consumer protection; close relatives and spouses – in all categories of cases in courts (in criminal and administrative trials – at the discretion of the authority in charge of proceedings). Thus, the mere absence of formal recognition of the competence of a human rights defender as a lawyer is not uniquely necessary to participate in the protection of rights and freedoms.

Legislation on public associations also contains restrictions on the protection of public interest within the statutory activities.

In 2006, the United Nations Human Rights Committee considered the case *Zvozkov et al. v Belarus*. The case dealt with an individual communication by Boris Zvozkov and 23 more people submitted after they were not allowed to register the human rights public association "Helsinki XXI". As a result, the Committee concluded that the refusal to register the NGO was contrary to the requirements of the International Covenant on Civil and Political Rights, and violated the authors' right to freedom of association. The Committee noted that, "in accordance with article 22, paragraph 2, any restriction on the right to freedom of association must cumulatively meet the following conditions: (a) it must be provided by law; (b) may only be imposed for one of the purposes set out in paragraph 2; and (c) must be "necessary in a democratic society" for achieving one of these purposes. The reference to "democratic society" in the context of article 22 indicates, in the Committee's opinion, that the existence and operation of associations, including those which peacefully promote ideas not necessarily favourably viewed by the government or the majority of the population, is a cornerstone of a democratic society." The Committee also noted that "the author and the State party disagree on whether domestic law indeed prohibits the defence of the rights and freedoms of citizens who are not members of a particular association (paragraphs 2.2, 2.3, 4, 5.2 above). Secondly, it considers that even if such restrictions were indeed prescribed by law, the State party has not advanced any argument as to why it would be necessary, for purposes of article 22, paragraph 2, to condition the registration of an association on a limitation of the scope of its activities to the exclusive representation and defence of the rights of its own members. Taking into account the consequences of the refusal of registration, i.e. the unlawfulness of operation of unregistered associations on the State party's territory, the Committee concludes that the refusal of registration does not meet the requirements of article 22, paragraph 2. The authors' rights under article 22, paragraph 1, have thus been violated."

"Pursuant to article 2, paragraph 3(a), of the Covenant, the Committee considers that the authors are entitled to an appropriate remedy, including compensation and reconsideration of the authors' application for registration of their association in the light of article 22. It is also under an obligation to take steps to prevent similar violations occurring in the future."

"Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has

undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to the Committee's Views.”

Thus, the legislation of Belarus seriously suffers an incomplete compliance of undertaken obligations in terms of ensuring human rights and freedoms. These flaws are manifested, as a rule, in the areas that are most sensitive from the point of view of human rights.

COMPLAINTS FILED BY THE HRC “VIASNA” ON BEHALF OF PRISONERS

The practice of human rights protection often shows that the problems of detention places arise from insufficient respect for the interests of the prisoners in the preparation of regulations defining their rights. In particular, after officials said that in the case of a prisoner’s death in the detention center prison staff are not responsible for an immediate call for emergency medical care despite symptoms of acute illness, the Human Rights Center "Viasna" initiated an appeal to the Ministry of Internal Affairs for clarifications on this situation and suggested an improvement:

“In accordance with Decree No. 194 of the Ministry of Internal Affairs of the Republic of Belarus of 08/08/2007 “On approval of the Internal Regulations of special institutions of Internal Affairs bodies performing an administrative penalty in the form of administrative arrest”:

75. Administrative detainees and administrative arrestees, after being brought to the institutions, shall be interviewed by officers on duty about the state of their health in order to identify those in need of emergency medical care, and inspected for lice.

76. In the case of complaints from any of the administrative detainees (administrative arrestees) about poor health or with obvious signs of disease officers on duty should immediately call the ambulance.

Similar provisions are contained in Decree No. 234 of the Ministry of Internal Affairs of the Republic of Belarus of 20/10/2003 “On approval of the Internal Regulations of temporary detention isolators of Internal Affairs bodies” (para. 113, 114).

Thus, it can be assumed that in accordance with para. 75 and 76 (para. 113, 114) of the Regulations, the duty to call an ambulance in case of complaints by administrative detainees (administrative arrestees) about poor health or with obvious signs of a disease arises at the reception and is lifted at the same time.

The Regulations do not contain any other indication of the need to immediately provide medical care to prisoners with overt signs of a disease.

This interpretation is contrary to Article 23 of the Law “On the Bodies of Internal Affairs of the Republic of Belarus” of 17/07/2007, according to which “an employee of a body of Internal Affairs must take immediate steps to provide medical and other appropriate assistance to victims of crime, administrative offenses and accidents, to persons in a helpless or dangerous

health condition.” Thus, the rules are subject to reforming, which is expected to address this flaw.”

A response from the Interior Ministry said that the existing legislation fully defined the rights and duties of police officers, instructing them to take measures to provide medical assistance, and the Regulations do not require any supplements.

In May, lawyer Pavel Sapelka wrote to the Supreme Court to clarify the procedure of access to mobile hearings on prison premises, and indicate what measures were planned to implement by the Supreme Court in order to arrange court sessions within colonies and prisons in compliance with guarantees of a fair trial and the principle of transparency.

Earlier, an employee of the Škloů-based penal colony №17, where the issue of changing the regime of imprisonment for Mikalai Statkevich was considered, refused to let the lawyer attend the hearing.

A reply from the head of the Interior Ministry’s Department of Corrections office in the Mahilioů region said that the hearing which Mr. Sapelka wanted to attend was open, but was held in the administrative building on the territory of a sensitive site, in connection with which free admittance into its territory was forbidden.

In accordance with Article 23 of the Code of Criminal Procedure, criminal proceedings in all courts shall be open. The proceedings of the criminal case in a closed court session shall be permitted only in order to ensure protection of state secrets and other secrets protected by law, as well as certain categories of cases and in the case where it is required by the interests of the security of the victim, witness or other parties to the proceedings, as well as members of their families or close relatives and other persons whom they reasonably view as their loved ones. In accordance with Part 1 of Art. 287 of the Code of Criminal Procedure, the court must ensure a public trial of criminal cases.

“Thus, I had the right to attend the public hearing in the colony, and it was the court which was to have guaranteed this right to me and all who wanted to attend the hearing. The judge who presided at the trial was certainly aware that the persons wishing to attend the court hearing would inevitably encounter obstacles in realizing their rights. However, he didn't take any efforts to create the necessary conditions for securing the principle of transparency and respect for the rights of citizens,” says Pavel Sapelka.

Among the possible actions that would facilitate the openness of the courts on the territory of the prison, the lawyer named the following:

- establishing the practice of timely preliminary announcement about the cases intended for consideration;
- establishing the persons who intend to attend the hearings, by the secretary of the court, and subsequent receipt of permits for them;
- the organization of hearings outside the court buildings with the expectation of providing free access of citizens to the corresponding institution;
- holding the trial in the court if it proves to be impossible to ensure citizens' access to the territory of sensitive sites due to security reasons.

The lawyer also asked to explain how citizens can exercise their right to an audio recording of the court session, provided by Part 6 of Art. 287 of the CCP, as it is prohibited to carry recording devices to the territory of penal colonies.

Ruslan Aniskevich, Deputy Chairman of the Supreme Court did not consider the current situation as a violation of the rights of citizens and failed to take any measures in this regard.

The high official demonstrated in the answer a complete lack of understanding of the principles of a fair trial in terms of the openness of the trial and the positive obligations of the State in this regard.

“Please note that in accordance with Art. 281 of the Code of Criminal Procedure, issues of the place and time of the trial, the organization of the court session are within the exclusive competence of the judge who is in charge of the trial. Arguments of the failure by the court to meet the provisions of Part 1, Art. 287 of the Code of Criminal Procedure are unfounded. Decisions on access to penal colony No. 17, a facility with a special access mode, are taken by the head of the institution. The hearing took place in an open trial. Persons who expressed their desire to be present at the hearing were given the opportunity to enter the territory of the correctional institution by its head upon agreement with the Court,” said he.

According to the Deputy Chairman of the Supreme Court, the question of sound recording devices during trials does not require further explanation, as it is regulated in the Code of Criminal Procedure. “Guidelines are given for the courts in ruling No. 11 of the Supreme Court of Belarus of 2013/12/20 “On ensuring transparency in the administration of justice and the dissemination of information on the activities of the courts.”

However, the judge notes that recording is not the only and exclusive way to ensure the right of citizens to document the conduct of the trial, suggesting indirectly that in such a situation the ability of recording the hearing can be ignored.

Thus, the Deputy Chairman of the Supreme Court did not intend to not only improve the situation of compliance with the principles of a fair trial, but also to recognize the existence of significant problems in the exercise of the rights of citizens.

When considering the criminal case of former political prisoner Yury Rubtsou, who was accused of evading serving a sentence of restraint of liberty, there arose a question of insufficient legislative regulation of some issues related to serving of this type of punishment.

As a result, the HRC “Viasna” wrote to Parliament to demand clarifications on separate provisions of the Code of Criminal Procedure:

“In accordance with Article 50 of the Criminal Executive Code of the Republic of Belarus, (Working conditions of persons sentenced to restriction of freedom), the labor of convicts is regulated by the legislation of the Republic of Belarus on labor and occupational safety and healthcare, with the exception of the rules of recruitment, dismissal from work, transfer to another job.

Transfer of the convict to another work, including in another district, may be carried out by the organization where the convicted person works, and the individual entrepreneur who has employed the convict, by agreement with:

- 1) the administration of the correctional institution of open type – in respect of persons sentenced to imprisonment with the direction to a correctional facility of open type;
- 2) the penal inspection – in respect of persons sentenced to restriction of liberty without sending to a correctional facility of open type.

In accordance with Article 52 of the PEC (Obligations of administration of organizations who employ persons sentenced to restriction of liberty and individual entrepreneurs who are working sentenced to restriction of freedom), the administrations of the organizations and individual entrepreneurs that employ persons sentenced to restriction of liberty are prohibited to dismiss them from work, except in the case of:

- 1) exemption from punishment on the grounds established by the Criminal Code of the Republic of Belarus;
- 2) transfer of the convicted person to work in another organization or with another individual entrepreneur;
- 21) transfer of the person convicted to imprisonment with the direction to an open type correctional facility to serve his sentence to another correctional facility of open type or punishment of restraint of liberty without sending to a correctional facility of open type;
- 3) entry into force of a court judgment by which a person serving punishment of restraint of liberty is sentenced to imprisonment;
- 4) inability to do the job for health reasons.

Thus, the Code establishes special rules for dismissal from work, transfer to another job of persons sentenced to restriction of freedom.

The Code does not establish any peculiarities of the rules of employment for such persons, which may give rise to disputes in the practice of serving this kind of punishment.

In particular, in accordance with Article 47 of the CEC (Order of execution of punishment in the form of restriction of freedom with the direction to an open type institution), convicts serving a sentence in the form of restriction of freedom with the direction to an open type institution shall be placed under supervision and must work upon placement by the administration of an open type institution.

There are no indications to the obligation of the convicted person to conclude a contract of employment, while it is the traditional way of registering the labor relations of the convict and the employer.

In this part, the Criminal Executive Code of the Republic of Belarus shows certain ambiguity.

In accordance with the Law of the Republic of Belarus of 10/01/2000 “On normative legal acts of the Republic of Belarus”, Article 70, in case of uncertainties and differences in the content of the normative legal act, as well as the contradictions in its practical application, the standard-setting body (official person), which adopted (issued) the act, or, unless otherwise provided by the Constitution of the Republic of Belarus, authorized body shall provide official interpretation of these norms through the adoption (publication) of a normative legal act. The interpretation of the normative legal act includes explanation or clarification on the content of its legal

provisions, determination of their place in the legislation, as well as functional and other ties with the other regulations governing various aspects of the same type of social relations.” The MPs were asked to give an interpretation of Article 50 of the Criminal Executive Code, in particular on what rules of employment are established for persons sentenced to restriction of freedom, in contrast to the provisions of the Labor Code.

However, the interpretation of the Code was found impossible, referring to adequate resolution of the issue: the peculiarity of employment rules, in their opinion, is the fact that the convicts are employed not by themselves, but upon placement by a body of Internal Affairs.

TORTURE AND INHUMAN TREATMENT

Torture and ill-treatment in places of detention are a systemic problem. The solution to this problem, is primarily linked to the conditions of an objective investigation of all cases of ill-treatment and bringing the perpetrators to justice. Unfortunately, in the observed cases, the bodies authorized to investigate cases of torture and ill-treatment failed to demonstrate an unbiased assessment of all circumstances.

The case of Aliaksandr Akulich

In 2013, the Human Rights Center “Viasna” received a complaint from Valiantsina Akulich, whose son Aliaksandr Akulich died in the detention center in Sviethlahorsk on May 26, 2012. The death was reportedly caused by police officers and came on the fourth day of his stay in the detention center. The mother could only see the body after it was brought home. “I saw that he was covered with bruises, all cut up, both his hands and feet, his face was black. I called 102 and said, “You, murderers! You killed my son, I will not believe that he just died. Then two police officers came to me, I asked them to take a photo of the body, but they refused. The next day I called my friend, she brought a camera and we took the pictures. The same evening I wrote a statement.” In her statement, Valiantsina Akulich requested a check on the death of her son, and about the appearance of numerous injuries on his body. In his decision not to institute criminal proceedings, investigator Piatochanka told Valiantsina Akulich that the need for the use of physical force and special means against her son was caused by the fact that he “behaved aggressively, resisted the policemen, failed to obey their legitimate demands”. “The actions of the police officers Stsiashenkau and Bachko, who were on duty, comply with the Law of Belarus “On the Bodies of Internal Affairs” and were within the limits of their powers. In this regard, there are no grounds for a criminal case,” said the investigator of the Investigative Committee.

Valiantsina Akulich said that the inquiry into the death of her son lacked thoroughness and needed to be supplemented, and the actions of police officers should receive adequate assessment.

In this connection, she repeatedly complained to the prosecuting authorities and head of the Investigative Committee about the decision of the investigator. In late 2014, the Court of Sviethlogorsk district at the second attempt (the complaint was dismissed as a result of the first examination, but the decision was eventually overturned by an order of Deputy Chairman of the Supreme Court) quashed the latest decision of the investigator and sent the case for additional investigation to the Investigative Committee.

On December 3, senior investigator Viachaslau Petachenka of the Sviethlahorsk District Department of the Investigative Committee issued another decision not to open a criminal investigation into the death of Aliaksandr Akulich in the detention center of the Sviethlahorsk police department. Despite the fact that Judge Iryna Aliseika gave a principled assessment of the shortcomings in the investigation, investigator Petachenka failed to make proper conclusions and again ignored the essence of the matter. Repeated interviews with police officers Stseshankou and Bachko revealed previously unknown information that failed to be properly assessed by the investigator.

The first absurdity about the decision of Viachaslau Petachenka, in the opinion of human rights defenders, deserves special attention. This is the question of how bruises appeared on the feet of the deceased. (Foot whipping is known as one of the most popular methods of torture and inhuman treatment: as a result prisoners cannot walk). Obviously, the investigator believed the “convincing” arguments of police officers in this regard. The decision repeatedly mentions that these injuries were received after Aliaksander Akulich bumped his bare feet against a variety of surfaces. However, both the police officers and investigator Petachenka should not have been carried away by this version: it is refuted by the case file. It features an expert opinion (of May 26, 2012), which indicates that the outer-mortem examination of Aliaksander Akulich’s body began with removing, among other things, “black leatherette shoes from his bare feet”.

Human rights activists of the HRC “Viasna”, who have been providing legal assistance to the mother of the deceased, Valiantsina Akulich, say the decision of Viachaslau Petachenka provides no answers to other questions about the actions of the police officers, which were to be clarified during the probe.

Why did not police officers Stseshankou and Bachko, contrary to the requirements of para. 76 of the Internal Regulations of Special Institutions of the Interior Performing an Administrative penalty in the Form of Arrest, call an ambulance when Akulich was still in the cell and did not interfere with the performance of their duties (meanwhile, Stseshankou did not deny that the signs of the disease were obvious and consistent with alcoholic psychosis known to them)?

Why did the police officers decide to bring Aliaksandr Akulich in the interrogation room, apparently intended for investigation, but not for medical care?

How was Akulich’s aggressive behavior manifested? According to human rights defenders, without explanation, the assertion of aggressive behavior looks like a phrasebook stamp, which can be used without sufficient reason by both the police officers and the investigator himself in order to artificially justify the validity of ill-treatment of the detainee.

How can handcuffing to a metal lattice – a hard uneven surface – prevent inflicting injuries to oneself by a person not aware of his own actions, since subsequent events clearly showed that such a decision was deeply flawed? And what instructions require such a method of immobilization of the sick person, and does the use of handcuffs intended to convoy prisoners meet these instructions?

Referring to the Law on the Bodies of Internal Affairs, human rights activists insist that “in all cases, when it is impossible to avoid the use of physical force, special means, weapons, military and special equipment, an employee of the Interior must strive to cause the least harm to the life, health, honor, dignity and property of citizens, and to take immediate measures to provide the victims with medical and other necessary assistance”.

The actions of employees Stseshankou and Bachko of the Svetlahorsk police department are clearly regarded as an act of prohibited cruel and inhuman treatment.

With assistance from the HRC “Viasna”, Valiantsina Akulich sent a complaint to the Svetlahorsk District Prosecutor against the decision of investigator Viachaslau Petachenka to refuse to institute criminal proceedings. The complaint put all of the above questions, and stated that “the investigator still did not take into account that some of investigative activities, in particular the elimination of contradictions in the testimony of witnesses, are impossible within the

framework of a probe, but are only possible as part of a criminal case, including a face-to-face interrogation". In addition, the prosecutor was asked to launch investigative experiments, which, in particular, will allow to establish whether the injuries were caused by contact with objects in the detention center.

The investigator's decision was cancelled. However, on 7 February 2015, he once again issued an order to dismiss the case.

Valiantsina Akulich filed an appeal to the Prosecutor of the Svietlahorsk district against another ruling (dated February 7, 2015) of the investigator, who refused to initiate a criminal investigation into her son's death in the temporary detention facility of the Svietlahorsk Police Department in May 2012. In this appeal she presents a detailed account of the defects of the inspections, held by the investigator of the Svietlahorsk district department of the Investigative Committee. Members of HRC "Viasna" and the mother continue restlessly pointing at these defects, but the investigator keeps evading from their elimination in his further inspections.

We should draw your attention to some circumstances, pointed at in the appeal to the district prosecutor.

According to the human rights activists, "the investigator believes, with reference to paragraphs 75 and 76 of the Internal Regulations of special institutions of the Interior, performing an administrative penalty in the form of administrative detention, approved by Decree No. 194 of the Ministry of Internal Affairs dated August 8, 2007, that the duty policemen are obliged to call the ambulance in case of complaints of any of the delivered administrative detainees about poor health or obvious signs of the disease only when accepting the detainee.

This explanation contradicts not only to common sense, but also to Article 23 of the Law "On the Internal Affairs of the Republic of Belarus" of July 17, 2007 № 263-Z, according to which "an employee of the Interior should take steps to provide immediate medical and other appropriate assistance to victims of crimes, administrative offenses and accidents, persons who are in a helpless state or in a state that is dangerous to life or health".

As it follows from the explanations of the duty policeman of the Svietlahorsk temporary detention facility R. Stseshankou, present in the materials of the inspection, he ignores his duty to call the ambulance immediately and behaves in accordance with his own understanding of his duties. "Yes he openly acknowledged that he was aware of the reasons to call medical staff – when a prisoner behaves inappropriately, shows signs of mental illness. However, in violation of these requirements, he decided to independently make sure whether the behavior of the prisoner was not a simulation of disease. What instruction is it prescribed by? What medical knowledge does this policeman possess?" asks the appeal.

According to human rights, the investigator Petachenka needs to pay a more critical attitude to the attempts of the police and particularly Stseshankou to shirk responsibility. "This employee has completely forgotten what had happened solely in the circumstances that indicate his illegal behavior. He forgot everything, even why he had put in advance a record about the use of police gear in the appropriate register, which he now states is inaccurate. Can this record be true? After all, he is an extremely professional and competent employee, if we believe to his

characteristic. He forgot how long and where he had hit the prisoner - a man who was fully in his hands.

But some small details betray his insincerity: he says he “had no time” to call the ambulance for a dying man, as he was busy not only with holding him, but also with checking the cells. Is it more important than a human life?”

The complaint emphasized that as long as the opposite is not proved and the objective evidence remains, there are all reasons to state that the beating of Aliaksandr Akulich and openly unprofessional and openly doomed attempts to fix the agonizing patient with handcuffs with a long chain on the lattice lasted from 12.30 p.m. until his death after 1 a.m. During this time, three employees of the internal affairs deliberately ignored their duty to provide medical assistance to the person with an acute health disorder – because they didn't consider it their duty according to their understanding of the legislation determining the order of detention.

The mechanism of injury to Aliaksandr Akulich's legs remained undisclosed. In the investigator's ruling it was repeatedly stated that these injuries appeared when Akulich hit his bare feet against various surfaces. Let us remind, that according to the conclusion of the forensic expert, the study of the corpse started with the removal of clothes and then – shoes. “Indeed, questioning of the nurse “removed all doubts” in this circumstance. It was her, not the forensic expert, who “reassured” the investigator by stating that the removal of the shoes was just a mistake. How many mistakes are there in the forensic conclusion then?” argues the author of the complaint against the new ruling of investigator Petachenka.

No attention was also paid to the fact that the ambulance paramedic who came to the prison saw Akulich lying on his belly with his arm behind his back. Artificial respiration and heart massage are not performed in such a position. At the same time, there was no information that the position of his body was changed after giving respiration and heart massage to him. This circumstance, insist human rights defenders, refutes the explanations of the prison guards and needs to be considered when evaluating these explanations and the legality of their actions in general. “Why hasn't this fact been investigated? Of course, it is easier for the investigator to again question the paramedic who will then change her explanations without explaining the reasons. The report of the questioning, in which the paramedic pointed at these circumstances, was quite short. It was impossible not to see that the investigator incorrectly put down the witness's testimony, misrepresented or misunderstood them,” read the complaint.

The prosecutor also said that the investigator misjudged the theoretical explanations of the psychiatrist regarding the disease of Aliaksandr Akulich, as well as that the doctor was “too fast to make conclusions”. “The doctor came to the conclusion that brain edema originated and developed in Akulich “fast” because he did not complain of pain etc., so it was impossible to help him even in the case of medical intervention.” According to the human rights defenders, it is not true, in the first place, because the conclusion is based on the incorrect information obviously given by the investigator to the doctor. “According to explanation of his cell-mate, arrestee Dzikun, dated May 22, 2012, “Akulich behaved quietly, but it was obvious that he was ill after a long drinking ... He drank a lot of water, sweating.” At 10 p.m. Akulich started hallucinating. So, maybe edema did not develop “fast”, and the prisoner's life could be saved by a timely medical assistance?”

In late May, the woman received another formal reply from the Prosecutor's Office of the Homiel region, where he appealed with the demand to cancel the decision of the Svietlahorsk District Department of the Investigative Committee, which had refused to institute criminal proceedings on July 7, 2015. Deputy Prosecutor Henadz Ramaniuk wrote that her appeal was dismissed.

"The inspection of Svietlahorsk temporary detention facility has been conducted fully, comprehensively and objectively. There are no grounds for cancellation of the process decision, taken by the investigator on July 2, 2015," writes the deputy prosecutor.

However, the fact remains clear: the duty policemen of the temporary detention facility Bachko and Stseshankou were to have immediately call an ambulance for rendering aid to the detainee Akulich, who needed it, but didn't receive it. Neither the Police Department of Homiel Regional Executive Committee nor the appropriate department of the Investigative Committee haven't established a violation of the current legislation on the part of the police officers.

The human rights defenders separately stressed that "failure to provide a person with the necessary and obviously urgent aid in a life-threatening condition, if it could be rendered by the guilty without danger to his life or health or the life or health of others, or failure to inform appropriate institutions or persons of the need to render such aid is a crime and entails criminal responsibility."

These moments were indicated in Mrs. Akulich's appeal to the Regional Prosecutor's Office.

Moreover, as indicated by human rights activists, the investigator ignored and didn't assess evidence in the case, which appear to be lost (according to the explanations of the representative of the Investigative Committee in the court): samples of a brown substance (evidently, blood) were taken from the walls of the interrogation room. During the inspection, it wasn't checked whether this blood belonged to Aliaksandr Akulich. The presence of traces of his blood on the walls of the interrogation room can affect the assessment of the testimonies of the employees of the temporary isolator. As found by the judge during the trial, hadn't been attached to the case materials.

In September 2015, the woman appealed against the decision of the investigator to the Svietlahorsk District Court. During a hearing held on October 12, the victim's mother Valiantsina Akulich and her representative said that, in accordance with the law regulating the work of the Interior, it is prohibited to detain people with symptoms of acute mental, infectious and other acute illnesses that require emergency medical care. They recalled that police officer Stseshankou failed to fulfill his duties properly, namely refused to call an ambulance. In their view, the need for this assistance was apparent for the police officer, as Aliaksandr Akulich behaved inadequately, demonstrating symptoms of a mental disorder. Instead, Stseshankou decided to see whether Akulich simulated the disease. Thus, the applicant insists that the actions of Stseshankou and other police officers (refusal to provide emergency medical assistance to a person in a life-threatening condition) constituted a crime under Art. 159 of the Criminal Code.

In addition, the victim's mother and the human rights activists said that attempts to handcuff the agonizing arrestee to a metal lattice, knocking him in the while, were an act of prohibited cruel and inhuman treatment.

The judge, after hearing the parties, said that the investigation was incomplete. Moreover, among the deficiencies requiring correction, he stressed that of the 10 people who were at the police department on the night of the accident, from 25 to 26 May 2012, the investigator interviewed only one; that the fact that of viewing video footage from surveillance cameras was not documented and only mentioned by the detention center's deputy chief in his explanations. "In these circumstances, the decision of the senior investigator of the Svietlahorsk District Department of the Investigative Committee of the Republic of Belarus of February 7, 2015 shall be canceled," concluded the judge.

Representatives of the Human Rights Center "Viasna", who have been working on this case, were not satisfied with this conclusion, because, apparently, further investigation would again be reduced to the formal execution of formal requirements. The case file was not likely to feature video footage, and the witnesses may have already forgotten the events of 2012. Meanwhile, the numerous significant flaws of the investigation that have been stubbornly set out in the human rights defenders' complaints, were still ignored by the authorities.

Despite the fact that courts keep cancelling the orders by the Svietlahorsk office of the Investigative Committee, they fundamentally support the direction in which the investigation has been developing, ignoring the irrefutable arguments of human rights defenders. As a result, the illegal actions of police officers remain without proper evaluation.

At the beginning of December 2015, after a brief additional probe, the investigator once again ordered to refuse to initiate criminal proceedings.

This, as suggested by the victim's mother and the human rights defenders, means that all possibilities of effective restoration of the victim's rights at the national level have been exhausted.

The case of Piotr Kuchura

Psychological pressure on Piotr Kuchura began after the publication on the website of the human rights organization "Platform Innovation" in June this year of an article alleging extortions in penal colony No. 15 in Mahilioŭ, the appearance of which was attributed to the prisoner and his wife.

One after another, Kuchura received punishments, for example, for "sleeping in forbidden time", which allows to deprive him of seeing his wife, so that he could not tell her how prisoners are treated in the colony.

The penalties were followed by solitary confinement and then cell-type imprisonment.

A glaring fact, which Liudmila says should result in a punishment for the administration and staff of colony No. 15, took place in the punishment cell on September 19.

Piotr Kuchura saw that the wash basin and the toilet were sprayed with chlorine. As soon the water started running, chlorine dissolved in water. As a result, the prisoner could neither see nor breathe because of a strong irritation of the eyes and the mouth; he started knocking on the door. It should be noted that in such premises have extremely poor ventilation. The plumber appeared only after the prisoner fainted. After the sewage was cleaned, the inmate

was given a cloth the size of a handkerchief and told to clean it up. Despite all this, he was transferred to another cell only when his health had deteriorated significantly.

This is how Piotr Kuchura described the poisoning in a letter to his wife: “everything was burning inside”, “for three days after September 19, I had fluid coming from my nose... after a while, this “water” was replaced by phlegm, and it’s still there [February 2014] running all the time... After all this, it was hard for me to breathe and I started having headaches.”

Piotr Kuchura is disabled, he has a heart disease, which he acquired in prison. In connection with the disease he must take daily medication, but he could not do this regularly because of the numerous penalties. There were also instances when the doctor replaced the heart medication with cough pills, but no explanation on this matter could be obtained. Delays in taking drugs can end up with a heart attack, a stroke or a sudden cardiac arrest.

All this is described in detail in a complaint about unlawful actions of the administration and staff of penal colony No. 15, which was sent on November 5 to the head of the Investigative Committee’s Mahilioŭ regional department. The prisoner’s wife demanded to open a probe in order to confirm the fact of chlorine poisoning and consequences of this poisoning and to initiate criminal proceedings against those responsible for causing harm to the health of her husband.

However, head of the IC’s office did not A. Rakusau chose not to address the matter and forwarded the complaint to the Mahilioŭ regional office of the Department of Corrections. However, the Department is not authorized to consider statements and reports on crimes. Indeed, in accordance with the Criminal Procedure Code, decisions on applications or reports of crimes committed by officials of the Interior in connection with their official or professional activities are within the exclusive competence of the preliminary investigation agencies.

In this regard, Mrs. Kuchura sent her next complaint prepared by the human rights defenders of the Human Rights Center “Viasna” to the Deputy Chairman of the Investigative Committee of the Republic of Belarus. The complaint states that the decision by Mr. Rakusau is illegal and violates the rights of both the convict and the applicant.

In his reply to the complaint, head of the board for the procedural control of the Investigative Committee of the Republic of Belarus Mikhail Alioshkin told Mrs. Kuchura that “there are no grounds for the inspection on your appeal by the Investigative Committee on the basis of criminal procedural legislation”. While taking this decision, the Investigative Committee held no inspection, despite the fact that the applicant had asked for it, and referred to the attached ruling of the Mahilioŭ Regional Prosecutor's Office from 13 November 2013 in which it is stated that “an inspection of the conditions of serving the penalty by Kuchura P.K. and the conditions of his detention in the penitentiary No. 15 was held on your appeal. There weren't found any violations including facts which confirmed the commitment of a crime against Kuchura P.K. by officers of the correctional institution.”

Simultaneously, the prisoner faced the negative effects of his struggle for justice.

On December 30, 2013, Piotr Kuchura was sentenced to three years in maximum security prison No. 4 in Mahilioŭ.

The ongoing efforts of Viasna's human rights defenders and Piotr Kuchura's wife finally brought certain results. In late May, the prisoner's wife received a notification from the Office of the Investigative Committee in the Mahilioŭ region saying that a probe had been launched to determine the fact of chlorine poisoning and the alleged consequences of this poisoning, including a forensic medical examination. Liudmila Kuchura's complaints were also expected to be investigated in accordance with Article 174 of the Criminal Procedure Code of the Republic of Belarus, as she requested to initiate criminal proceedings against those responsible for causing harm to the health of her husband.

Unfortunately, the probe was superficial and a criminal case was refused. After this, decisions not to institute criminal proceedings were repeatedly canceled as a result of appeals, but later once again taken after similar procedural decisions.

Piotr Kuchura urged Mahilioŭ Prosecutor to react to a failure to launch a timely probe into his poisoning in penal colony No. 15, which made it impossible to punish the perpetrators.

According to the prisoner's wife, Liudmila Kuchura, in late February her husband filed a complaint with the Prosecutor of Mahilioŭ, after he realized that it would be almost impossible to punish those responsible after a year of waiting for a reply from the Investigative Committee.

Ms. Kuchura told about the main points of the complaint, in which Piotr Kuchura outlined his views on the illegal actions of the prison administration.

First of all, the convict recalled that the probe was formally launched only 9 months after the accident, and only after the numerous complaints by his wife. 14 months have passed since the day of the alleged poisoning (and over a year since the first complaint), and over the time a decision of the Mahilioŭ department of the Investigative Committee to refuse to institute criminal proceedings has been canceled five times. Piotr Kuchura says all these checks were extremely formal, since he has never been examined by a doctor.

He further told the Prosecutor that he was actually barred from fully exercising his rights during the probe and appealing its results. Moreover, his wife, who acted as the claimant and won the dispute, began to be ignored by the Investigative Committee, excluding her from correspondence without any legal justification. Piotr Kuchura wrote that he can hire a lawyer, but it is, firstly, means additional costs, and, secondly, he trusts his wife in terms of persistence in defending his rights.

The prisoner was convinced that the main reason which made it almost impossible to punish the prison employees was the delay of one year. During the time, he was seeking an unbiased decision in his case. And it was this time that helped "erase" the traces of poisoning in his body. Therefore, he poses a logical question to the Prosecutor: who will be punished, if ever, for a delay in launching the probe, and whether the Prosecutor's Office will finally issue at least some order to the Investigative Committee, which had ignored his wife's letters for six months?

As it followed from the decision not to institute criminal proceedings, the few prisoners and many employees of penal colony No. 15 that were interviewed by the investigators deny the fact of the use of chlorine. It also said that that experts had refused to examine the prisoner's health, although they earlier argued that bleach could leave no traces in the body. That is, it is

now impossible to prove the use of ill-treatment, sums up the prisoner recalling that an examination was appointed but never carried out.

Calling into question the effectiveness of the actions of the Investigative Committee during the probe, Piotr Kuchura asked the Prosecutor a series of questions. Who doubted that prisoners would never give testimony incriminating someone from the prison staff? Was someone from the officers for at least a day suspended during the check? How can such a probe be regarded objective? He insists on the institution of criminal proceedings, which allows to arrange a confrontation in order to remove inconsistencies between the testimony of prisoners, prison staff and his words.

The prisoner was especially outraged by the situation with the examinations: he cannot understand what prevents studying his medical records. Do the investigators hope to force the prison doctors admit that they saw traces of chemical burns and left Mr. Kuchura in jail without treatment?

“Yes, the authorized state bodies will never be possible in such circumstances to prove the guilt of the officials who, which is obvious to me. Have at least the courage to admit the fact of ill-treatment against me, a disabled, elderly man,” quoted Liudmila Kuchura her husband’s letter to the Prosecutor.

In his complaint, Piotr Kuchura asked the Mahilioŭ Prosecutor to cancel an order to dismiss the criminal case and to take measures of prosecutorial response to the employees of the Investigative Committee responsible for the delay in opening an investigation.

In addition, the prisoner sent similar complaints about the actions of the Investigative to the Prosecutor General and the Chairman of the Investigative Committee.

According to Liudmila Kuchura, it was not until June 2015 that her husband managed, and with great difficulty, to receive formal replies to his complaints, which arrived at prison No. 4 [there Piotr Kuchura has been held after his sentence was toughened by the court in December 2013 - Ed.] back in March.

The complaints urged the Prosecutor to punish the Mahilioŭ interdistrict department of the Investigative Committee, which failed to open a timely probe into the prisoner’s poisoning with chlorine, which made it impossible to prosecute the perpetrators. But the content of the responses, unfortunately, are not worth the effort of the convicted person and his wife: these are formal replies, which devalue the essence of their numerous complaints.

“The most surprising answer is that from the Department of the Investigative Committee of the Mahilioŭ region, which said that my statement did not contain information about the indications of a crime. This response deals with a statement submitted by me on 5 November 2013. It is about my husband being tortured with bleach in a punishment cell in penal colony No. 15, about the agony he suffered after that, that he did not receive medication on time, which could lead to death considering his disease. But, oddly enough, the Investigative Committee says that, as it turns out, we did not report about the crime,” said Liudmila Kuchura.

In her first statement of 5 November 2013, she also requested a medical examination to establish the fact of poisoning her husband with chlorine and the consequences of this for his health.

“But the response from the prosecutor ignored the fact that I initially demanded a forensic medical examination. Based on this response, they started acting only when the probe had already begun on the orders of the Prosecutor General and the Investigative Committee, of which I was notified on 28 May 2014. And I think this probe was started after we sent a complaint to the United Nations Human Rights Committee. Because on 16 and 18 May 2014, I received replies from the Mahilioŭ region Investigative Committee’s office and the Prosecutor General saying that there would be no probe, as it had repeatedly been tested and no elements of a crime on the part of prison staff had been established, and suddenly there comes a message that a probe under Article 174 of the CCP was opened,” said the prisoner’s wife.

The question arises: is anyone of the representatives of the Investigative Committee and the Prosecutor's Office willing to admit the prayer of her complaint of 5 November 2013, where everything is comprehensively set out – those responsible for causing harm and the need for a forensic examination.

The Prosecutor of the city of Mahilioŭ said in his response to Piotr Kuchura: “It appears from the materials of the probe that in your body there are no changes in health status, which have a clear causal connection with the events of your stay in the punishment cell of penal colony No. 15 in September 2013, which you and your spouse are referring to in your complaints.” It is alarming that when speaking of Piotr Kuchura’s health the prosecutor avoids the word “examination”, replacing it with an abstract “probe”. Indeed, no medical examination of the victim has been conducted: the prosecutors examined medical records only, not his body.

Both the Investigative Committee and the Prosecutor’s Office said nothing about a message on the impossibility to provide opinion No. 1368A from the Mahilioŭ Regional Department of the State Committee of Forensic Examination, which once again confirmed the delay in the probe started by investigator Skavarodkin on 27 May 2014.

“Bioobjects for examination are advisable to be taken in the first hours, sometimes days after exposure to the toxic substance. To establish the fact of the chemical injury it was necessary to make timely sampling of the air in the room in order to establish the concentration of toxic substances (such as chlorine) and a medical examination of the victim,” said the expert.

“Interestingly, during this test they took my husband’s urine and blood on 8 December 2014, and the poisoning was on 19 September 2013. What can remain in the blood and urine after more than a year after the poisoning of the body? And what prevented to make the examination at a time when we asked about this in a statement on 5 November 2013?” said Liudmila Kuchura. “Then we were denied – because I believe that everyone knew it that if a forensic medical examination was carried out, traces of chlorine vapor poisoning in the body would be detected. That is why they gave us refusals to open a criminal case (because of that we had to write to the court) – just to gain time. And the subsequent probe with a forensic “examination” is I believe just fiction.”

As regards the responses received from the Mahilioŭ Prosecutor's Office and the Investigative Committee, the prisoner’s wife said: “None of the question we asked has been answered – water bewitched. I am surprised that these answers were written by lawyers.”

“Everyone wants to hide the crimes committed by employees of penal colony No. 15 in Mahilioŭ, and in this way are trying to hush up the case of torture,” said Liudmila Kuchura, arguing that she would not stop, and intended to continue seeking justice.

In July 2015, the Investigative Committee of Belarus once again quashed a decision not to institute criminal proceedings against employees of the Mahilioŭ-based penal colony No. 15, who tortured prisoner Piotr Kuchura with bleach during his confinement in the punishment cell. However, when notifying the convict, a representative of the Investigative Committee wrote about a ‘violation of sanitary norms’.

According to the prisoner’s wife, Liudmila Kuchura, she received a copy of the decision rewritten by her husband. She said that all the answers to the complaints were ‘announced’ to him, with no copies being issued, perhaps to prevent further appeals. But, as noted by his wife, given many years of her opposition to the government, she did not expect any response at all.

Siarhei Pasko, head of the Investigative Committee’s department of procedural control, wrote in his reply that “an investigation into the materials of the probe showed that it was incomplete, without performing all the investigation activities aimed at a comprehensive, complete and objective investigation.”

However, Mrs. Kuchura, who has submitted dozens appeals against decisions of the investigator, does not believe there could be some positive results: “We will wait for investigator Skavarodkin to write his reply. Because we have it this way in the country: the person against whom we complain gives us the answer. I think that now we’ll get another refusal.”

According to human rights activists of the Human Rights Center "Viasna", Mrs. Kuchura’s disbelief is not unfounded.

“The investigation into the materials of the probe showed that on 11/8/2013 the Investigative Committee received from your wife, L.M. Kuchura, a report on ‘violations of sanitary norms by placing you in the punishment cell of penal colony No. 15’ committed, in her opinion, by the administration of the penal facility, as well as on the regularity of the issuance of medicines. This report did not contain any information about the crimes committed, in connection with which it was forwarded to the Mahilioŭ regional office of the Department of Corrections of the Ministry of the Interior. As a result of the report, an audit has been conducted,” said Mr. Pasko.

This legend has been already mentioned by the Investigative Committee. In an earlier response from the Mahilioŭ regional office of the Investigative Committee the idea of inhuman and degrading treatment (which, in fact, Liudmila Kuchura described in her complaint) was substituted by ‘a violation of sanitary norms’ and (despite the fact that she required an investigation of these outrageous facts and further action in relation to administration and personnel of the colony, whose actions had evidence of a criminal offense) said that she did not report on any criminal acts.

“I am most of all surprised by the fact that this answer from the Investigative Committee once says the same thing. In my statement of November 5, 2013 I requested a check, including a forensic medical examination to identify the traces of chlorine in the body of my husband, which could help establish the fact of cruel and inhuman treatment, and we have constantly

stressed that in all of our complaints, but for some reason no one wants to read these lines,” says Liudmila.

Indeed, when answering Kuchura’s complaints, the staff of the Investigative Committee either cannot read or cherish the “esprit de corps”. But if Mikhail Alioshkin, Siarhei Pasko’s predecessor as head of the main department of procedure control, from the very beginning “saw no reason” to prosecute employees of the penal colony, then latter reports that “the study of materials has shown that it is carried out incompletely, without executing all verification activities aimed at a comprehensive, complete and objective investigation of the circumstances.”

In August 2015, the investigators once again re-issued a decision not to institute criminal proceedings; again, obtaining and copying the text of this decision took a lot of time and effort of the prisoner.

The case of Ihar Ptsichkin

On 5 May 2015, Zhanna Ptsichkina, the mother of Ihar Ptsichkin who had died in the remand prison in Valadarski Street on 4 August 2013, received a response to her appeal to the Investigation Committee of Belarus, in which she asked to report the results of the preliminary investigation into the causes of the death of her son, issue a certificate indicating the cause of death, as well as to answer the question whether the duty officials of remand prison No. 1 were dismissed from office for the time of the investigation.

The appeal was sent on January 15. Strangely enough, it came to the Investigative Committee only on February 9, and February 12 the head of the investigation of crimes against the order of execution of military duty of the Main Department of the Investigative Committee of Belarus U. Hryts prepared a response.

Zhanna Ptsichkina was told that she could receive a copy of the ruling about the termination of the preliminary investigation, if she wanted, but was reminded that “you have been warned about the inadmissibility of the disclosure of data of the preliminary investigation in conformity with the established order. However, the law does not prohibit discussing the information of the investigation, known to you, with your representative (counsel).”

Thus, the woman had almost no opportunities to receive qualified legal assistance in the preparation of complaints in the case, because it requires the disclosure of certain information of the preliminary investigation. Nor can she familiarize journalists and other interested parties with details of the investigation so as to give publicity to the case and assure a qualified and unbiased investigation.

The response also informed the applicant that the duty officials of prison No. 1 weren't dismissed from office for the time of the preliminary investigation. This actually indicates the absence of an all-sided and unbiased investigation, as far as such investigation is impossible provided the persons which were somehow involved in the death of the prisoner continued working at their positions at the remand prison.

The inspection into the death of I. Ptsichkin in the remand prison lasted since August 2013. The prisoner was to serve a three-month arrest for driving despite deprivation of the driver's license.

The paramedic of the remand prison No. 1, who was on duty of the night when Mr. Ptsichkin died, was accused of his death. A criminal case was instigated against him for improper performance of professional duties, which resulted in the death of a patient through negligence of the paramedic. Later the preliminary investigation into the actions of the medics of the remand prison was stopped.

Zhanna Ptsichkina is convinced that the investigation was focused only on proving the involvement of the deceased in drug trafficking and strongly disagrees with it the conclusions. The results of a repeated medical expertise, with whom she got acquainted, have shown that there hadn't been any narcotic, psychotropic substances or alcohol in his blood. However, neither she nor her counsel is allowed to familiarize with the materials of the completed inspection.

23-year-old Minsk resident Ihar Ptsichkin died on 4 August 2013 from cardiac arrest, the reasons for which weren't discovered during the forensic examination of his body. His relatives believe that he died from beatings by the guards and pointed at numerous injuries on his body, as can be seen in the photos.

Disagreeing with the reply received from the Main Board of the Investigative Committee of Belarus, Zhanna Ptsichkina filed a complaint to the Chairman of the Investigative Committee and the Prosecutor General of the Republic of Belarus.

“The memory of my son was denigrated thanks to the efforts of the press-service of the Investigative Committee. Then let me, his mother, have an opportunity to object to their arguments. This in no way affects the interests of the state or the rights of other citizens,” wrote the mother of the deceased man in her address to high-rank state officials.

As a result of studying the case file, a number of complaints were submitted, which were granted by the General Prosecutor's Office of Belarus. The reply stated that the decision on the termination of the criminal case of 29 December 2014 had been canceled and the case forwarded to the Investigative Committee of the Republic of Belarus for a new investigation. In addition, the Investigative Committee also received additional materials provided by Zhanna Ptsichkina. Human rights defenders of the HRC "Viasna" stressed that before his death Ihar Ptsichkin suffered from the actions of prison staff. However, the essence of these offenses is classified and the victim's mother is not allowed to disclose any details.

Actions by prison employees, persons acting in an official capacity, causing the suffering to the prisoner are, of course, an act of prohibited cruel and inhuman treatment. Each state, including Belarus, should take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction, shall undertake to prevent other acts of cruel, inhuman or degrading treatment or punishment which do not fall under the definition of torture.

At the same time, representative of the General Prosecutor's Office I. Siauruk refused to issue a copy of the decision, which cancelled the initial order to close the investigation into the death

of I. Ptsichkin. The refusal referred to the fact that the decision allegedly “affects the interests of other parties to the proceedings.”

This is contrary to the law and an abuse against the woman’s rights: In accordance with the Criminal Procedure Code of Belarus, the victim is entitled to receive from the authority conducting the criminal proceedings communications on the decisions that affect their rights and interests, and at their request also to receive free copies of these decisions. In order to define the terms: a body conducting the criminal proceedings is the body of criminal prosecution and the court; in turn, the prosecuting authority is a body of inquiry, the investigator and the prosecutor. That is, the public prosecutor is obliged to give a copy of the decision affecting the rights of the victim. The absence of a copy of such a decision deprives a citizen (the victim) of the possibility to evaluate the decision in terms of legality and validity, and completeness of the investigation of the circumstances of the case and the arguments of the complaint. The public prosecutor, as the prosecuting authority, is obliged to protect the rights and freedoms of persons involved in criminal proceedings, to create the conditions stipulated by the Criminal Procedure Code for the its implementation, take timely measures to address the legitimate demands of participants in criminal proceedings. Limitation of rights and freedoms of persons involved in criminal proceedings is permitted only on the grounds and in the manner prescribed by the Criminal Procedure Code.

By the end of the year, the investigator once again ordered to dismiss the criminal case. Meanwhile, the victim’s mother continued to study the case file.

She is still under the threat of criminal prosecution for disclosing any of her arguments resulting from the analysis of the case.

The case of Yaraslau Uliyanenkau and Viachaslau Kasinerau

On 11 August 2015, armed police officers raided the apartments of Yaraslau Uliyanenkau, Viachaslau Kasinerau, and Maksim Piakarski. They were then detained and questioned.

One of the detainees, Yaraslau Uliyanenkau, told the Human Rights Center "Viasna": “I was knocked to the floor, handcuffed and kicked on the body, on the head, and threatened. Then they dragged me all over the apartment, they dragged me into the room, forced to face the wall. They beat me on the feet, so that my legs were as far away from each other as possible, they continued mocking and beating me. After this the riot police left and there appeared regular policemen who began a search.”

Viachaslau Kasinerau was taken to hospital with a double fracture of the jaw. As a result of his complaint to the Investigative Committee about the case of ill-treatment, he received in November 2015 a message saying that a criminal investigation has been opened into the application of less severe bodily injury during the brutal detention by special police squad employees.



Viachaslau Kasinerau said that two to three weeks after he left hospital and his broken jaw was still in an immobilizing splint he was invited by investigator Y. Hramadskaya, which asked many detailed questions about the circumstances of his detention.

“She was trying to force me say that maybe they accidentally injured me when the door was opened, I could somewhere slip and break my jaw on the stairs, or I could be sitting there with a broken jaw and waiting for the raid. Of course, it was different, and I said it in detail. As it turned out, at the time of the conversation, investigators had already inspected the bus, which transported me, and there they found my blood, and they even promised to make a confrontation with the policeman who beat me. But then everything went quiet for months. And just recently it was reported that they finally opened a criminal case. For over a month I could not eat normally, and I think that it should be qualified as grave bodily injuries. I still face disability, I recently had an inflammation,” said he.

The case of prisoner J.

The Human Rights Center "Viasna" received information from the family of a life-term convict about terrible treatment he faced while serving his sentence. He writes in his letter using cryptography means: “Mom, if it is not inconvenient for you, write to the Prosecutor (General) to prosecute for regular beatings in the bathroom of Inspectors K. and P., during which they broke my finger and did not provide any medical care, and it has grown back in a curved form. Many had their ribs broken. With the arrival of [the Prosecutor], I will tell in detail all the facts.” The prisoner found it inappropriate to contact the Investigative Committee, including due to the fact that the case of beating was not repeated. However, in order to draw attention to his problems, the prisoner was forced to injure himself, since the prisoners’ complaints do not only get to the authorities, but, according to the convict, even to the warden.

The case of Pavel Rasliakou

In late December 2015, the Human Rights Center "Viasna" received a complaint from Pavel Rasliakou, a student of the Viciebsk Veterinary Academy, who was beaten by investigators of the department of the Interior of the Kastychnicki district administration in the process of questioning about a case of theft. The police officers reportedly hit him several times "on the left ear, on the chest, on the cheeks and ears, with the purpose to extort confession". An official inquiry into his complaint failed to establish the facts he outlined and dismissed his demand to open a criminal case. The violence report is backed by conclusions of a medical examination: the expert ruled that "the bodily harm – the bruises on the ear and on the chest – appeared through at least two traumatic acts inflicted within 24 hours before the medical check-up". The follow-up examination revealed that the bruises could be classified as light bodily harm; the expert thinks that such harm could not result from falling from one's own height on a flat surface.

Police investigator Hryhoryeu denies the fact of inflicting bodily harm; meantime, his explanations during the inquiry did not indicate that there had been any signs of bruises on the complainant when he was questioned about the theft.

Pavel Rasliakou added that his complaint was dismissed based on the testimony of the victim of the theft who put blame on the complainant, thus he is a person involved: "D. Mihunou drew attention to the fact that he was present during the verbal questioning – "a preliminary talk" held by the police investigator Hryhoryeu, and I behaved against the common sense, imitating fight strikes after which I reportedly fell on the floor."

"I consider that these and other testimony of Mihunou should be assessed critically, as they contradict to my statements, medical conclusions, which, in its turn, confirm my statements and deny a possibility to inflict such injuries as described by Mihunou – by means of falling on a surface. With these contradictions, the investigation officer Maryankou did not outline in his ruling any arguments, based on which he accepted some proofs and dismissed some others," said the victim.

Mihunou also claimed that other police officers repeatedly entered the room. However, only one of them, Dashenka, was questioned during the probe. Meanwhile, according to Rasliakou, there were three more police officers in the room, and they should be identified and interviewed. Their explanations should be properly evaluated, as they at least witnessed the illegal behavior of their colleagues in the performance of their duties.

The unlawful decision is currently being appealed.

The case of Andrei Bandarenka

In November, the Human Rights Center "Viasna" wrote to Siarhei Daroshka, head of the Interior Ministry's Department of Corrections, to highlight the conditions of detention of Andrei Bandarenka, former leader of the Platform Innovation NGO.

The human rights defenders stressed that human rights activist Andrei Bandarenka, who is currently serving a sentence in penal colony No. 17 in Škloŭ, is known both in Belarus and abroad. The activists had received numerous reports on possible threats to his life and health,

as a result of which he was repeatedly placed in an isolated cell. This occurred after the administration of the penal facility contributed to the establishment of informal relations among prisoners, which allow to create conditions for cruel and degrading treatment of individual convicts.

The HRC "Viasna" reminded the official that the state guarantees the protection of rights, freedoms and legitimate interests of convicts, provides legal conditions of application of penalties and other measures of criminal liability in respect of the convicts, guarantees social justice, their social, legal and other protection.

Prisoners have a right to personal security. In the event of threats to the personal security of the convict, he is entitled to extra means of personal security. In this case, officials shall take immediate steps to ensure the personal security of the convict. The head of the penal facility shall order the transfer of the convict to a safe place or application of other measures aimed at eliminating the threat.

"The HRC "Viasna" considers it possible to state that of all the possible actions prison authorities only used one measure, which does not solve the issue, but limits its degree of freedom with respect to the rules of serving the sentence of imprisonment. Instead of protecting the imprisoned human rights defender's rights, the prison administration formally and without any respect for the special conditions created by some of the prisoners towards Bandarenka and in the absence of proper monitoring harshly reacted to a formal violation of the disciplinary rules. Andrei Bandarenka received several disciplinary reprimands, including the offender status, as a result of which he was deprived of his right to amnesty. Moreover, the prison administration said they were going to toughen the conditions of his detention, namely send the activist to maximum-security prison," said Viasna's letter.

As noted in the ODIHR Guidelines on the Protection of Human Rights Defenders, "human rights defenders face specific risks and are often targets of serious abuses as a result of their human rights work. Therefore, they need specific and enhanced protection at local, national and international levels. Certain groups of human rights defenders are exposed to heightened risks due to the specific nature of their work, the issues they are working on, the context in which they operate, their geographical location or because they belong to or are associated with a particular group."

The Human Rights Center "Viasna" said the harassment of Andrei Bandarenka in prison was unacceptable and directly related to his previous human rights activities.

The Human Rights Center "Viasna" called to:

- put an end to groundless harassment of Andrei Bandarenka by the administration of the penal colony;
- investigate the detention conditions of Andrei Bandarenka;
- order the prison authorities to provide safe conditions of detention of Andrei Bandarenka, which would not humiliate his human dignity;
- allow a meeting of Andrei Bandarenka with representatives of the country's human rights organizations.

The appeal on behalf of the Human Rights Center "Viasna" was signed by its chairman Ales Bialiatski.

After the Department of Corrections questioned the right of the HRC "Viasna" and its chairman to demand the protection of other persons, the Interior Ministry was notified that Article 9 of the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, which was adopted by the General Assembly's Resolution 53/144 of 9 December 1998, provides that "in the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the present Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights. To this end, everyone whose rights or freedoms are allegedly violated has the right, either in person or through legally authorized representation, to complain to and have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial or other authority established by law and to obtain from such an authority a decision, in accordance with law, providing redress, including any compensation due, where there has been a violation of that person's rights or freedoms, as well as enforcement of the eventual decision and award, all without undue delay."

Photo of cell in jail No. 1 in Minsk, where, according to the Human Rights Center "Viasna", Andrei Bandarenka was held during the investigation.



In 2015, Leanid Kulakou, activist of the European Belarus opposition movement, has served two short jail terms in the temporary detention facilities in Smaliavičy and Minsk. The penalties were imposed on the activist for taking part in two protests, including in solidarity with political prisoner Yury Rubtsou.

According to Leanid Kulakou, detention conditions in Smaliavičy were awful:

“The conditions were terrible, no other word. There was no daylight, you could only see the day had come through a gap at the top of the window, it was impossible to sleep at night, because the iron beds were covered with iron plates and you could not lie there for more than 10 minutes. It was cold as if in winter, and the smell was terrible, because I wasn’t taken out to the toilet and I had to ease myself in a bucket. Because of the smell it was impossible to take meals, so I was sick in the first days.”

Conditions in the Minsk-based detention center were not much better. While serving the arrest, for three days the activist had to share the cell with a HIV-positive man.

Leanid Kulakou complained about the conditions of detention. On July 3, the activist was interviewed by an employee of the Prosecutor's Office. Later, he was invited to the Ministry of the Interior for conversation and consultation. In November, Leanid Kulakou finally received an official response, which said that a probe had been carried out to investigate “violations of conditions of detention, poor sanitary conditions, as well as logistical support in the temporary detention facilities of Minsk and Smaliavičy”.

“The audit found that some deficiencies in the Smaliavičy detention facility were due to objective reasons and were not the result of poor performance by the staff. The jail is regularly disinfested, as evidenced by certificates and entries in registers. Also, the conditions of detention of administrative arrestees and detainees are constantly being studied by employees of the Republican Center of Hygiene and Epidemiology of the Ministry of Interior. In 2015, the detention center was renovated. The cells will soon be equipped with tables and benches, as well as tables for storing toiletries. Simultaneously, the detention center in Minsk is also being renovated,” said the official letter.

However, earlier the Office of supervisory and enforcement activity of the Ministry of Internal Affairs wrote to Kulakou: “a special inspection has been carried out as a result of your complaint about violations of conditions of detention, poor sanitary conditions, as well as logistical management in the temporary detention facilities of Minsk and Smaliavičy police departments and disagreement with the decision by the Department of Internal Affairs of the Minsk Regional Executive Committee. The inspection found that some deficiencies in logistics at the Smaliavičy police department were due to objective reasons and were not the result of careless attitude by employees of the temporary detention facility... In 2015, the detention center was renovated, including the replacement of internal sewerage, water supply and hot water supply, interior decoration and sanitary inspection of food premises (plaster, painting the walls and ceilings, wall tiles, laying of floor tiles).

Currently, the works have been completed on the installation of tables and benches with the number of seats corresponding to the number of people in the cell, as well as tables for storing toiletries.”

Here's how L. Kulakou described the conditions of detention in the Minsk district detention center located:

"The rights and duties of the administrative detainee were not explained to me, I signed something without reading, since I had no glasses. Personal hygiene products was not given to me. There was not even a towel.

In the cell where I was held there was no necessary equipment and inventory: no drinking water tank, no bedside tables to store toiletries, no radio, no ventilation, no TV or board games. The bed was metal, made of metal strips that hurt you when you lie on it and you could not fully relax; the mattress was thin and dirty. Artificial lighting was missing: the bulb was broken, and it was never changed; there was almost no natural light at all.

The cell did not have enough fresh air, it was dark. The floor was concrete.

The bathroom was equipped in such a way that it impossible to relieve oneself properly. There was no wash basin in the cell, we used a hose hanging over the toilet instead, which tuned the process of washing into a nightmare.

I was not given the opportunity to use the shower.

I was once taken out for a walk for 15-20 minutes only.

The meals that I was given was inadequate and of low quality. For breakfast, I was given plain tea without sugar or bread. The plates and cutlery had traces of food.

All the above is a violation of the rules that define the conditions of detention of administrative detainees, it caused me physical pain, humiliated my honor and dignity."

Opposition activist Zmitser Fedaruk, who was one of the football fans detained by the police during a match on October 12 in Barysaŭ and held almost 24 hours in the district police department, complained about the conditions in the local temporary detention facility. The answer received by the activist from the Interior Ministry's National Epidemiology Center confirmed his words about the terrible conditions in which people are forced to be awaiting trial or be held under arrest.

"The sanitary conditions in the cells are poor," said the officials. "There are traces of water at the junction of the wall and the ceiling near the windows, the sanitary equipment is extremely worn out. The washbasin is out of order. There is no glass in one of the two windows. Natural lighting is insufficient. The renovation is scheduled for 2015, but has been postponed to a later date due to lack of funding".

Zmitser Fedaruk told journalists after the trial that the fans were held without drinking water for almost 24 hours, since the water in the cell was terrible. One of the windows was broken, so it was very cold, and they could not sleep properly.

PRISONERS' RIGHTS AND BELARUS'S INTERNATIONAL OBLIGATIONS IN THE SPHERE OF HUMAN RIGHTS PROTECTION

The National Report for the Universal Periodic Review (second cycle), prepared by the Ministry of Foreign Affairs, was published in early 2015.

The Universal Periodic Review (UPR) is a mechanism of the UN Council on Human Rights seeking to review the human rights situation in all countries of the world. Belarus passed the first cycle of the UPR in the UN Council on Human Rights in 2010. Belarus accepted 74 out of the 94 received recommendations; in 2012 Belarus submitted to the Office of the UN High Commissioner for Human Rights an interim report on the implementation of the recommendations of the first cycle of the UPR. This report was analyzed in the framework of the monitoring of the situation of prisoners. In September 2014 the Belarusian human rights activists sent to the Council their own materials for UPR.

Their report contains several paragraphs related to the questions which were studied during the monitoring of conditions in penitentiary institutions, conducted by HRC "Viasna". It is very important to assess objectively the verity of the information, presented in the official report, as well as the coverage of the issue by the state, represented by the Ministry of Foreign Affairs.

INVESTIGATION OF TORTURE AND FACTS OF CRUEL, INHUMAN AND DEGRADING TREATMENT

As stated in paragraph 165 of the report, "In Belarus there is a clear mechanism for identifying and responding to all cases of cruel and inhuman treatment of detainees and persons under custody. Existing procedural rules allow supervisory and other bodies to ensure an immediate objective and comprehensive consideration of such complaints by conducting additional investigation and official inspections, which can result in instigation of criminal proceedings under sufficient reasons." In fact, there is no system of passing written appeals by detainees, accused or convicted persons directly to an independent body empowered to investigate cases of torture and cruel, inhuman and degrading treatment. The provision in the law that such appeals shall not be subject to censorship is violated on a regular basis: there is ample evidence of the prison practice of delaying complaints of convicts about violations of their rights; the practice of submitting such appeals in unsealed envelopes is tacitly supported, too. The law prohibits passing such appeals to other persons, in particular, through lawyers and relatives, under the threat of penalty.

As a rule, appeals of the prisoners' relatives to the prosecutor's office with complaints of ill-treatment by prison staff are sent to the territorial divisions of the Department of Corrections of the Ministry of the Interior. This practice has evolved under the influence of Presidential Decree № 498 "On additional measures of work with citizens and legal entities" dated October 15, 2007, according to which the complaints of citizens need to be considered by the bodies which are responsible for considering such appeals on their merits in specific spheres of social activity, irrespective of the original addressee of the complaint. In particular, the issues of execution of criminal sanctions are referred to the competence of the Department of Corrections of the Ministry of Internal Affairs in the regions of Belarus, Minsk and Minsk region.

The procedure of appealing the actions of MIA officers against prisoners was studied by the HRC "Viasna".

For instance, the wife of the convicted P. Kuchura filed an appeal with the Investigative Committee of the Republic of Belarus due to his poisoning with fumes of chlorine in September 2014 in the penal colony No. 15 in Mahilioŭ. Inspection on the application was started by Mahilioŭ inter-district department of the Investigative Committee of the Republic of Belarus on May 27, 2014, whereas the statement had been submitted back on November 5, 2013. The head of the Mahilioŭ region department of the Investigative Committee of the Republic of Belarus forwarded the first appeal, dated November 11, 2013, to the Department of Corrections Ministry of Internal Affairs of the Republic of Belarus for consideration on its merits in conformity with the competence of the latter. The actions of the head of the Mahilioŭ region department of the Investigative Committee of the Republic of Belarus were appealed to the Investigative Committee of the Republic of Belarus, which found no violations in the actions of the official and dismissed the appeal by its reply dated April 12, 2014. P. Kuchura's wife also appealed to the court against the actions of officials of the Investigative Committee, but the complaint was left without consideration. After she sent numerous complaints to various authorities, including repeated complaints to the Prosecutor General, the latter eventually saw the basis for holding an inspection, which was formally started nine months after the incident. The refusals of the investigator to instigate criminal proceedings on the fact have been abolished five times already, with reference to the incompleteness of the inspection. Contrary to the practice established by the Istanbul Protocol, Piotr Kuchura hasn't been examined by an expert yet. Without examining the victim, the experts point to excessively long period of time since the poisoning as a circumstance that prevents the establishment of the fact of poisoning.

An inspection on the fact of the death of A. Akulich (who had been serving an administrative arrest) was started on appeal of his mother at the end of May 2012. As a result of the inspection, the investigator issued rulings to refuse from instituting criminal proceedings, which were repeatedly canceled on the applicant's complaints. As a result of the repeated consideration of her appeal by court in September 2014 there were discovered numerous shortcomings of the inspections. In February 2015 the investigator again refused to instigate a criminal case. The investigation found no violations of the law in the actions of the police officers who beat the agonizing prisoner, handcuffed to an iron lattice door.

An inspection on the fact of the death of prisoner I. Ptsichkin in the remand prison in Minsk lasted since August 2013. The investigation of the criminal case against the prison medics, whose incompetence in execution of their duties resulted in the prisoner's death, was suspended. The mother of the deceased states that the investigation concentrated on proving his relation to drug trafficking. She strongly disagrees with the conclusions of the investigation and plans to appeal this decision. The results of the examination, studied by her, indicate that there were no traits of drugs or alcohol in her son's blood. However, neither she nor her lawyer has been allowed to familiarize with the materials of the completed inspection so far. Instead, the mother was informed about the inadmissibility of disclosure of information obtained by her in the course of the investigation, under threat of criminal penalties.

These cases allow for making a statement about an unsatisfactory level of the investigation of cases of torture, cruel, inhuman and degrading treatment of prisoners, including in terms of the principle of immediate inspection.

In none of these cases the officers working in the penitentiary institutions were removed from their duty positions during the inspections, which raises doubts that the investigative bodies really created conditions for objective and all-sided investigation of the circumstances of the case, excluding conditions for exercising pressure on witnesses and victims for this period.

PROCEDURAL PROTECTION OF THE RIGHTS OF DETAINEES IN CUSTODY

As noted in paragraphs 166 and 167 of the National Report to the Universal Periodic Review (second cycle), "to ensure the rule of law and respect for the rights of the detainee, the inquiry agency or investigator must inform the prosecutor of a detention within 24 hours. When considering the appropriateness of keeping a person in custody the prosecutor is obliged to examine all materials containing grounds for the application of such preventive measures, and in some cases personally interview the suspect or the accused. Moreover, prosecutors are required to verify the legitimacy and validity of the detention of citizens, conditions and procedures for their temporary detention on a quarterly basis.

In accordance with Article 108 of the Code of Criminal Procedure, a person suspected of committing a crime may be detained by the prosecuting authority acting within its competence. Detention can take place before instituting criminal proceedings. According to the general rule, the detention may not exceed 72 hours. However, a person may be detained for up to ten days on suspicion of committing a number of very serious crimes.

In accordance with the International Covenant on Civil and Political Rights [further referred to as Covenant] (Article 9), everyone who is arrested shall be informed at the arrest of the reasons for his arrest and shall be promptly informed of any charges against him. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.

As a rule, detention on suspicion for more than 48 hours is recognized as an infringement of Article 9 of the Covenant. Thus, in response to a personal communication by Zhanna Koush, (Abramava) from Belarus, United Nations Human Rights Committee noted that in the context of examining the reports of the States party submitted under article 40 of the Covenant, it had repeatedly recommended that the period of detention of a person by the police prior to delivery of such person to Judges should not exceed 48 hours. To comply with the provisions of paragraph 3 of Article 9 of the Covenant, any excess of that period shall require special justification, which, however, would not distort the sense of this guarantee. Such rules are implemented and contained in the Criminal Procedure Law of the majority of Belarus's neighboring countries. Thus, in accordance with the Code of Criminal Procedure after 48 hours from the moment of arrest the suspect must be released, unless a preventive measure in the form of detention was chosen for him or the court extended the period of detention. In Poland, Lithuania, Latvia, detention can last up to 48 hours.

In some countries these rules are even tougher: in the UK the police can detain an individual on their initiative for up to 36 hours, after which the detainee must be brought before the court. In France, the detention lasts 24 hours and can be extended for 24 hours by the public prosecutor. In Germany, the rules of detention are reduced to the fact that the detainee must be brought before a judge after the detention, but not later than the following day.

Unfortunately, Belarus has not taken measures (and sees no need for this, obviously) to ensure the use of the preventive measure in the form of detention (arrest) on decision of the judge. The prosecutor is not the person that has the right to exercise judicial power according to the sense of Article 9 of the Covenant. That is why the Human Rights Committee of the UN has found a violation of Article 9 of the Covenant in a number of cases (Smantser against Belarus, Bialiatski against Belarus, et al.), which in itself is an objective assessment of the state of legislation in this regard.

We believe that in Belarus the law has not improved in Belarus in this respect. On the contrary, a degradation of these rights can be observed: since the beginning of 2010 a preventive measure in the form of detention (arrest) can be ordered not only by the prosecutor or his deputy, or the body of inquiry or investigator on a warrant of a prosecutor or his deputy, but also by the Chairman of the Investigative Committee of the Republic of Belarus, Chairman of the State Security Committee of the Republic of Belarus (KGB) or persons performing their duties.

In accordance with part 4 of Art. 9 of the Covenant, "Everyone who is deprived of liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful." The report states that the detainees in custody and convicts have the right to seek judicial review of detention, incarceration, house arrest or confinement in psychiatric institution, actions and decisions of the body conducting the criminal proceedings. Complaints are immediately passed to court by the administration of the detention facility: within one day for detainees and within three days for prisoners.

It needs to be commented. Indeed, the Criminal Procedure Code of Belarus provides for the possibility of challenging the legality, and since January 2010 – the reasonableness of the use of arrest, detention, house arrest or extension of detention or house arrest.

Complaints of persons held in custody are passed to court through the administration of the place of pre-trial detention facility. The administration of the pre-trial detention facility is obliged to file an appeal to the body which conducts criminal proceedings, within 24 hours after its receipt. The latter shall pass the appeal to court within 24 hours if it has been filed by a detainee, and within 72 hours if filed by a prisoner, with attaching the materials of the criminal case confirming the legality and validity of detention, the use of remand in custody, house arrest or extension of detention or house arrest.

Judicial inspection of the legality and validity of detention shall be conducted within 24 hours; inspection of detention, house arrest or extension of detention or house arrest – within 72 hours since its receipt by court, by a single judge.

Thus, the minimum period after which the complaint will be considered, taking into account the time of delivery of documents to the body conducting the criminal proceedings, is at least three days in the case of detention, after which the complaint makes no sense at all. The law will not be violated if an appeal against detention is considered 8-10 days after it was filed.

Consideration of the complaint in court takes place in a closed court hearing, usually without personal involvement of the detainee, which is permitted by the law. Thus, we can definitely state a violation of fair trial standards when considering the legality and validity of the

detention or arrest. Review of the judgment is carried out without the participation of the interested person.

The wording of the law does not allow filing a repeated complaint against the choice of a preventive measure in the form of detention (this, in particular, was stated by the judge in 2011 when considering the repeated complaint about the detention of presidential candidate Andrei Sannikau; the complaint was filed again, as in the course of the proceedings there were discovered new circumstances affecting the keeping the accused person in custody). This provision of the law also does not protect prisoners in the sense of Article 9 of the International Covenant on Civil and Political Rights.

PROHIBITION OF TORTURE

According to the authors of the Report (p. 173), the Criminal Procedure Code prohibits torture, cruel, inhuman or degrading treatment or punishment, medical or other experimentation without consent. This is not quite right: in accordance with Part 3 of Article 11 of the Criminal Procedure Code, no one involved in the criminal proceedings shall be subjected to violence or other cruel or degrading treatment, and without his consent to medical and other tests. Thus, the concept of torture is not described in this act.

The concept of torture has been introduced to the Criminal Code, but, in contrast to the legislation of other countries, no individual responsibility is provided for acts of torture.

For example, Article 127 of the Ukrainian Criminal Code provides for liability for torture, i.e. “the intentional infliction of severe physical pain or physical or mental suffering by beatings, torture or other acts of violence in order to induce the victim or another person to commit acts contrary to their will”.

The Criminal Code of Kazakhstan (Article 347-1) also criminalizes torture. Torture is “the intentional infliction of physical and mental suffering committed by an investigator, a person conducting an investigation, or any other official in order to obtain from the tortured or a third person information or a confession or punishing him for an act he or she has committed or is suspected of commission, or intimidating or coercing him or her or a third person, or for any reason based on discrimination of any kind.”

Article 166-1 of the Criminal Code of Moldova criminalizes the intentional infliction of pain or physical or mental suffering that amounted to inhuman or degrading treatment, which was committed by a public person or a person who actually performs the functions of a public institution or any other person acting in an official capacity, or with the consent or acquiescence of such persons, as well as torture, that is any intentional act of inflicting any person severe pain or physical or mental torment for the purpose of obtaining from him or a third person information or a confession, punishing him for an act committed by him or by a third person, or is suspected of having committed, intimidating or coercing him or a third person, or for any other reason based on discrimination of any kind, when such pain or suffering is inflicted by a public official or a person who actually performs the functions of a public institution or any other person acting in an official capacity or with the consent or acquiescence of said persons.

Thus, even a cursory analysis convinces us that the problem of criminalization of torture is much broader than it is seen by the Belarusian legislator, while no real measures to criminalize torture and cruel, inhuman, degrading treatment have been yet taken by the state.

The Belarusian Criminal Code punishes “torture or acts of violence committed in connection with racial, ethnic, ethnicity, religion and political beliefs of the civilian population” (Article 128 of the Criminal Code) and “forcing a suspect, victim or witness to testify or expert to present his conclusions by means of threats, blackmail or other unlawful acts committed by a person conducting the inquiry, preliminary investigation or administering justice”, including associated with violence or intimidation, as well as torture (Art. 394 of the CC).

Accordingly, for torture or atrocities committed on other grounds than those specified in Article 128 of the Criminal Code (e.g. in relation to a prisoner who defies requirements of the prison administration, in relation to patients in closed hospitals), or persons who are not listed in Art. 394 of the Criminal Code (e.g., employees of the internal affairs, which are officially not involved in inquiry or investigation, or some agent), there is no responsibility, or it may result in liability under the articles that do not correspond to the nature of the crime. This does not correspond to the spirit of international commitments undertaken by the Republic of Belarus; the wording of this part of the Report suggests that the problem under analysis is considered as a solved issue, and no further progress in this direction is expected in the sphere of legislation.

OPPORTUNITIES TO APPEAL AGAINST VIOLATIONS

The authors’ statement on the possibility for prisoners in Belarus to challenge the illegal actions of prison staff deserves a full quote, as the mentioned statistics characterize the effectiveness of this procedure. According to the government, “all applications and complaints about misconduct committed against citizens are carefully considered and investigated. In case of violations alleged perpetrators are brought to justice in accordance with the law. For example, in 2014 the Department of Corrections of the Ministry of Internal Affairs of the Republic of Belarus registered and reviewed 96 complaints of citizens against unlawful actions of the authorities and institutions of the correctional system, medical-labor dispensaries of the Interior Ministry. In 2011-2014, prosecution authorities examined 158 complaints about measures against convicts and persons in custody (67 in 2011, 35 in 2012, 37 in 2013, 19 in 2014). Complaints were not satisfied. In 2012-2014, courts examined 15 cases of complaints by persons sentenced to arrest, imprisonment, life imprisonment of persons held in custody against penalties and complaints by administrative arrestees against the use of disciplinary sanctions. Complaints were found groundless.”

In its Report on the results of monitoring places of detention in Belarus, the Human Rights Center "Viasna" emphasized the problem of appealing actions and decisions affecting the rights of prisoners. Typically, inmates appeal against actions of the administration to the Department of Corrections and its regional areas and to the Prosecutor’s Office. The number of such complaints (96 to the Department of Corrections; they were received from more than 30,000 prisoners; and 19 to the Prosecutor's Office) causes suspicion. Although, in fact, their number mentioned in the Foreign Ministry’s report, is not so important. What is important is the result: none of the complaints was found well-justified.

One can cite court statistics with great confidence. The procedure is such that a normal prisoner knows little about it, being unable to make use of it: the complaint is filed and

considered by the rules of civil procedure, which provides for the observation of various kinds of requirements related to the form and involvement in the proceedings. The budget offers no legal aid to prisoners; filing a complaint requires a fee in the amount, which is apparently high for the prisoner. The possibility of exemption from the registration fee is provided only formally. And the results of going to court are, in fact, the same: complaint found groundless.

RESOCIALIZATION OF PRISONERS

Basic Principles for the Treatment of Prisoners*, Principle 10:

With the participation and help of the community and social institutions, and with due regard to the interests of victims, favorable conditions shall be created for the reintegration of the ex-prisoner into society under the best possible conditions.

Standard Minimum Rules for the Treatment of Prisoners*, Rule 80:

From the beginning of a prisoner's sentence consideration shall be given to his future after release and he shall be encouraged and assisted to maintain or establish such relations with persons or agencies outside the institution as may promote the best interests of his family and his own social rehabilitation.

With minor exceptions, after serving a sentence of imprisonment a prisoner returns to the society he has left for a longer or shorter period. The possibilities of reintegrating former prisoners depend on changes in their attitudes and habits, and, conversely, on how many positive features of character and relationships they have preserved. However, yesterday's prisoner will surely have fewer opportunities, and therefore needs a special status, which he can take advantage of, if necessary, and which could protect him from the danger of a return to the criminal environment.

Preparing prisoners for release and re-socialization must begin with the first days of sentence and include, at least the following aspects:

- The prisoner must recognize the superiority of honest labor as a source of social benefits;
- The prisoner must preserve and increase his/her professional skills and intellectual abilities;
- Those who did not have a profession, should get it while serving their sentences;
- The final period of the sentence should be devoted to active employment and search of housing, if necessary;
- Participation of public institutions in addressing social and domestic problems should be complemented by the widespread promotion by the state of assistance to prisoners by non-governmental institutions;
- Work with a former prisoner should preferably be carried by non-police structures and be based on a legislated reintegration program.

Of course, not all the important aspects have been mentioned, but it provides an opportunity to dwell on these ones in detail.

Prisoners' awareness of the benefits of honest work can be real in an environment where the work functions as a means of correction and complies with the essential criteria. In particular, this is indicated in international documents:

International Covenant on Civil and Political Rights*, Article 8:

3. (a) No one shall be required to perform forced or compulsory labor;

(b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labor may be imposed as a punishment for a crime, the performance of hard labor in pursuance of a sentence to such punishment by a competent court;

(c) For the purpose of this paragraph the term "forced or compulsory labor" shall not include:

(i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

Basic Principles for the Treatment of Prisoners*, Principle 8:

Conditions shall be created enabling prisoners to undertake meaningful remunerated employment which will facilitate their reintegration into the country's labor market and permit them to contribute to their own financial support and to that of their families.

Standard Minimum Rules for the Treatment of Prisoners*, Rule 71:

(1) Prison labor must not be of an afflictive nature.

(2) All prisoners under sentence shall be required to work, subject to their physical and mental fitness as determined by the medical officer.

(3) Sufficient work of a useful nature shall be provided to keep prisoners actively employed for a normal working day.

(4) So far as possible the work provided shall be such as will maintain or increase the prisoners, ability to earn an honest living after release.

(5) Vocational training in useful trades shall be provided for prisoners able to profit thereby and especially for young prisoners.

(6) Within the limits compatible with proper vocational selection and with the requirements of institutional administration and discipline, the prisoners shall be able to choose the type of work they wish to perform.

Standard Minimum Rules for the Treatment of Prisoners, Rule 72:

(1) The organization and methods of work in the institutions shall resemble as closely as possible those of similar work outside institutions, so as to prepare prisoners for the conditions of normal occupational life.

(2) The interests of the prisoners and of their vocational training, however, must not be subordinated to the purpose of making a financial profit from an industry in the institution.

Standard Minimum Rules for the Treatment of Prisoners, Rule 73:

(1) Preferably institutional industries and farms should be operated directly by the administration and not by private contractors.

(2) Where prisoners are employed in work not controlled by the administration, they shall always be under the supervision of the institution's personnel. Unless the work is for other departments of the government the full normal wages for such work shall be paid to the

administration by the persons to whom the labor is supplied, account being taken of the output of the prisoners.

Standard Minimum Rules for the Treatment of Prisoners, Rule 74:

- (1) The precautions laid down to protect the safety and health of free workmen shall be equally observed in institutions.
- (2) Provision shall be made to indemnify prisoners against industrial injury, including occupational disease, on terms not less favorable than those extended by law to free workmen.

Standard Minimum Rules for the Treatment of Prisoners, Rule 75:

- (1) The maximum daily and weekly working hours of the prisoners shall be fixed by law or by administrative regulation, taking into account local rules or custom in regard to the employment of free workmen.
- (2) The hours so fixed shall leave one rest day a week and sufficient time for education and other activities required as part of the treatment and rehabilitation of the prisoners.

Standard Minimum Rules for the Treatment of Prisoners, Rule 76:

- (1) There shall be a system of equitable remuneration of the work of prisoners.
- (2) Under the system prisoners shall be allowed to spend at least a part of their earnings on approved articles for their own use and to send a part of their earnings to their family.
- (3) The system should also provide that a part of the earnings should be set aside by the administration so as to constitute a savings fund to be handed over to the prisoner on his release.

Thus, there is a total prohibition of forced or slave labor. However, the international instruments listed above quite clearly show that the work being done by prisoners does not automatically fall under these categories. As held by scientists-criminologists, "Sentenced prisoners can be obliged to work provided certain safeguards are observed. These are:

- that the work should have a purpose;
- that the work should help them to acquire skills which will be useful to them after they are released;
- that prisoners should be paid for the work which they do;
- that the conditions of work should be broadly similar to those in any civilian workplace, particularly in respect of health and safety requirements;
- that the hours of work are not excessive and leave time for other activities."**

Many prisoners, particularly among the young ones, start working only in correctional institutions. It is therefore very important to ensure that the work does not lose its appeal for them. On the other hand, a large number of convicted persons who are held in correctional facilities have good skills and intend to resume their earlier activities upon release.

"Prison work can have two main aims. The first is the simple one of encouraging prisoners to become involved in a regular routine which involves getting up, going to a place of work and

spending several hours each day working alongside other people in an organized manner. However, this is not sufficient in itself. There is little point in forcing prisoners to go each day to a workshop where the work is monotonous and not likely to be of any use to other people. The worst example of this was the system in the 19th century, called the crank or the treadmill, in which prisoners were required to turn great cylinders of sand for many hours each day for no purpose at all. There are many modern equivalents of this type of meaningless work.

The other aim of work is to give prisoners confidence and skills to carry out work which has a purpose, where they feel that they are learning in a way that will make it much more likely that they will find employment after their sentence has been completed. This means that prison work should be linked to training aimed at providing prisoners with work skills which will enable them to gain qualifications to work in traditional employment such as building, engineering, administration or farming. It may also be possible to include training in new skills such as computer work. This vocational training is especially important for younger prisoners. In designing these programs it is particularly important to be aware of the type of employment opportunities which may be available in the local community to which the prisoner will return."**

The importance of providing women with access to the full range of possible work in prison is emphasized as well. They should not be limited only to such works as sewing and needlework.

In order to maintain the attractiveness for prisoners, work should be fairly paid. In world experience, there are two systems of remuneration of prisoners: the first provides for payment of a nominal fee, but does not impose obligations on the prisoners to pay the costs of their incarceration. Second, recognized more progressive, provides for the payment remuneration to prisoners on a par with the "free" workers and imposes the duty of prisoners to participate in the payment of the costs of incarceration, and compensate the harm to victims.

Surely, the second model of payment is implemented in Belarusian prisons with significant defects; in a way that overrides its benefits.

An eloquent argument is the appeal of the former convict Ales Bialiatski to the Department of Corrections, in which the human rights activist, notes the following:

"Over the specified time, I worked full time full week in the clothing industry, fully implementing the assigned tasks.

In accordance with the payslips, issued to me at the penal colony No. 2 in Babrujsk, I received the following wages:

636,492 roubles for 5 months (the period from 01.04.2012 till 31.08.2012);

622,298 roubles for 5 months (the period from 01.09.2012 till 31.01.2013);

586,647 roubles for 8 months (the period from 02.01.2013 till 30.09.2013).

At the same periods of time the minimum wage in the country was set at:

April – August 2012 – from 1,000,000 to 1,104,640 roubles per month;

September 2012 – January 2013 – from 1,104,640 to 1,395,000 roubles per month;

February 2013 – September 2013 – from 1,395,000 to 1,464,790 roubles per month.

In accordance with Article 8 of the Criminal Executive Code of the Republic of Belarus, the State guarantees the protection of the rights, freedoms and legitimate interests of convicts, provides the statutory conditions for the imposition of application of penalties and other measures of criminal liability in respect of the convicts, guarantees social justice, their social, legal and other protection. During the execution of penalties and other measures of criminal liability the rights and freedoms of citizens of the Republic of Belarus must be observed with the limitations, provided by the criminal, criminal-executive and other legislation of the Republic of Belarus.

In accordance with Article 100 of the PEC, those who are sentenced to imprisonment are entitled to remuneration in accordance with the legislation of the Republic of Belarus. The wages of the convicts who have implemented the monthly norm of working time, keeping to the assigned production rates, cannot be lower than the wages for the implementation of the relevant works established by the legislation of the Republic of Belarus. Remuneration to the convicted under part-time work or part-time working week is assigned proportionally to the time they have spent working and the production rate."

At the end of his appeal, the former political prisoner asks for an inspection with the aim to register a violation of the law of the Republic of Belarus in the sphere of payment of wages by the administration of PC №2 in Babrujsk to him. He also demands to be provided with data about the established workload standards for clothing manufacture at PC №2 of Babrujsk, the percentage of its implementation by him for the period from 01.04.2012 till 06.21.2014 and information about working off the monthly norm of working time in the form of excerpts from the timesheets of the working hours during the same period.

As a rule, such information is not given to prisoners while they are working, since the issuance of these documents is not provided for directly by the applicable law. This is wrong, as it groundlessly limits the labor rights of prisoners. Given the vulnerable situation of prisoners they should be, without additional reminders, provided with complete information on hours worked, the percentage of completion of the work assignment, the percentage of defects, the payment rates for piecework, the amount of the hourly wage, so that they would have no reasons to doubt in receiving a fair wage.

By the way, earlier research on discrimination of prisoners' rights in the labor sphere noted that, unlike other workers, prisoners have no benefits and compensations when combining work and study.

Meanwhile, it is study in correctional institutions which can be a powerful factor in the preparation of a convict to life after prison. However, Belarus has organized only the system of vocational education of prisoners, while getting a higher education degree or high quality teaching of foreign languages there remains impossible.

The order of assistance to the released in their employment and housing is enshrined in the Criminal Code of the Republic of Belarus. A more detailed description of these rules is contained in the resolution of the Ministry of Internal Affairs of the Republic of Belarus of 15.01.2014 № 15 "On approval of the order of assistance in housing and employment of persons sentenced to restriction of freedom with the direction to a correctional facility of open type or imprisonment, by the administration of an institution of the penal system of the Ministry of Internal Affairs of the Republic of Belarus".

In accordance with the PEC, no later than three months before the expiry of the term of conviction, the administration of the institution of the correctional system takes measures for providing the employment and housing of the prisoner through the territorial bodies of internal affairs, the Committee on Labor, Employment and Social Protection of Minsk City Executive Committee and the Division on labor, employment and social protection of a city or a district executive committee. With regard to persons obliged to reimburse the expenses spent by the state for the maintenance of their children in public care, in the case of necessity of their employment the administration of the institution of the correctional system, not later than three months prior to the upcoming release, informs the court, local territorial bodies of the Internal Affairs and the Committee on Labor, Employment and social Protection of Minsk City Executive Committee, the Division on labor, employment and social protection of a city or a district executive committee in the place of residence of such persons. The order of assistance of the administration of the institution of the correctional system to convicted prisoners, referred to in this part, in employment and housing, is established by the Ministry of Internal Affairs of the Republic of Belarus.

Starting from the date of actual completion of the punishment, the service of social adaptation of the institutions of the correctional system carries out educational work in order to prepare the prisoners for release, explaining their rights and obligations after release.

In the case of necessity and with their consent, persons with disabilities of groups I and II, as well as men over the age of 60 years and women over the age of 55 years, can be directed to nursing homes for the elderly and people with disabilities, by the Committee on Labor, Employment and social protection of a regional or Minsk city executive committee. Minors who have no parents can, if necessary, be passed to the guardianship authorities at the place of their residence for giving them the status of orphans or children left without parental care, and for their further housing

Those who are released after the completion of the penalty in the form of arrest or imprisonment are provided with free travel to their place of residence or work, as well as with food or money for the travel, according to the established norms.

In the absence of the necessary seasonable clothing, shoes and money to purchase them those released after completion of the punishment are provided with free clothing and footwear and are issued with a one-time cash assistance.

The persons who are released after the completion of the penalty in the form of arrest or imprisonment have the right to be provided with a job and accommodation and receive other kinds of social assistance in accordance with the legislation of the Republic of Belarus.

Until recently, the latter provision had been largely declarative and was substantiated only after the adoption in 2006 of the Law "On Employment in the Republic of Belarus" and the Resolution of the Council of Ministers of the Republic of Belarus of 29.11.2006 № 1595 "On approval of the procedure for reserving jobs for the employment of citizens in need of social protection who are unable to compete equally at the labor market", by which former prisoners are classified as those who are particularly in need of social protection and are unable to compete equally at the labor market, and are provided with additional safeguards in the field of employment promotion.

From now on, local executive and administrative bodies shall reserve vacancies for employment of the citizens in need of social protection, who are unable to compete equally at the labor market, among employers regardless of the form of property.

Obviously, a new impetus to the work with former prisoners was to have been given by the Resolution of the Council of Ministers of the Republic of Belarus of 14.04.2014 № 347 "On approval of the Regulation on the order of organizing and funding the employment of citizens, released from correctional facilities, including partial reimbursement of the expenses for the payment for the work of such persons".

In accordance with the Regulation, employment of citizens, released from correctional institutions, is carried out in accordance with the legislation in the form of:

reserving an employment quota for this category of citizens by the employer;

assistance in finding suitable employment;

provision of vocational guidance services;

direction for training, retraining and advanced training;

assistance in the organization of business or services in the field of rural tourism, craft activities;

financing employers - organizations of any form of property, as well as individual entrepreneurs, providing jobs for this category of citizens, through partial reimbursement of wages for citizens released from correctional facilities.

Radically new is the last position. The expenses of the employers for the payment of wages to citizens, released from correctional facilities and employed on the initiative of labor, employment and social protection bodies, are partially reimbursed by the State Fund of Social Protection of the Republic of Belarus, in case the employed citizens:

served a prison sentence imposed by a court, at least three consecutive years;

registered with agencies for labor, employment and social protection as unemployed within six months from the date of their release;

could not find a suitable job for reasons independent of them within three months from the date of their registration as unemployed, or registered as unemployed after training, retraining and advanced training to which they had been directed by the agencies for labor, employment and social protection.

Nevertheless, a prisoner cannot attain a sustainable financial position thanks to the norm regarding compensation of the employer's expenditures: the budget of the fund is used for reimbursing only the expenses of employers for paying wages which don't exceed the minimum wage at the time of the payment, as well as the amount of compulsory insurance contributions to the state non-budget fund of social protection of the population of the Republic of Belarus, calculated for the minimum wage.

If there are some citizens released from correctional facilities, who match the requirements of the Regulation, the agency for labor, employment and social protection holds negotiations with the employers who, in compliance with the legally established order have presented information about the availability of jobs (vacancies) that are suitable for employment of such

citizens, about their employment on the terms of the Regulation. With the consent of the employer, the agency for labor, employment and social protection sends to him the citizens, whose professional qualities meet the requirements of the employer, for employment.

It is difficult to assess the efficiency and sufficiency of the measures aimed at re-socialization of prisoners in such a relatively short period of time of action of the Regulation. The statistics witness a decline in recidivism in 2014 compared with the previous year by 6.8%. Nevertheless, out of the 49,943 offenders in 2014, 19,714 had criminal records, 30,056 were neither working nor studying. At the end of 2013 Belarus had 10,052 persons sentenced to imprisonment three or more times. To understand the actual extent of recidivism it should be born in mind that the statistics do not include the persons who committed repeated crimes after the removal or expiry of their criminal record.

These figures indicate the persistence of the problem of an effective resocialization of former prisoners and the need to change the approach to this process, so that ideally every prisoner would be released from jail with certain guarantees of employment in a particular workplace and, if necessary, obtain housing.

Implementation of these ideas should help to secure the right of convicted persons to go out of the colony to find work and housing, to adapt to life in freedom, restoring family and social ties.

It would be useful to introduce these rules into the Criminal-Executive Code with conditions similar to those which let prisoners to travel to and from work without escort, to travel outside the colony in exceptional cases, or allowing women with children to live outside the colony.

* Basic Principles for the Treatment of Prisoners. Adopted by resolution 45/111 of the UN General Assembly on December 14, 1990.

Standard Minimum Rules for the Treatment of Prisoners. Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Geneva in 1955, and approved by the Economic and Social Council in their resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of May 13, 1977.

International Covenant on Civil and Political Rights. Adopted by resolution 2200A (XXI) of the General Assembly of the United Nations on 16 December 1966.

** A Human Rights Approach to Prison Management. Handbook for prison staff. Andrew Coyle. Publication of the International Centre for Prison Studies (MTSTD).

WOMEN IN PRISONS

Andrew Coyle, the author of a book entitled “A Human Rights Approach to Prison Management: Handbook for Prison Staff” (published by the International Centre for Prison Studies), argues that the rate of female prisoners in all prisons of the world varies between 2% and 8% of the total number of inmates. The situation of women prisoners is very different from that of men and so it should receive a separate analysis. Jailed women are often victims of physical or sexual violence, they have various health problems. The consequences of imprisonment and its impact on women’s lives may be quite different.

As of the end of 2014, the two penal colonies of Belarus that were designed exclusively for women held 2,185 prisoners, i.e. 7.3% of the total number of prisoners, which is close to the upper limit of the general rate of female inmates.

The rules governing the legal status of convicts, as a rule, do not take into account the prisoner’s sex, but do have some peculiarities for women serving sentences in penal colonies.

Women sentenced to deprivation of liberty in Belarus serve their sentences in a penal settlement (IKP-21 in Vetka district) and in two penal colonies (IK-4 in Homieĺ, and IK-24 in Rečyca district) under minimum and maximum-security conditions; women can also be theoretically sent to prison.

Like all prisoners, women are obliged to work in correctional colonies. The rules of labor law apply to them, as well as to other prisoners, only to a certain extent, namely in regulations relating to the duration of the working day and occupational safety requirements. Wages of convicts who have worked the monthly minimum amount of working time and performed the assigned production rates cannot be lower than those set by the legislation of the Republic of Belarus for the performance of corresponding work, but no additional payments to the minimum wage are provided. In addition, wages of convicts for incomplete workdays or workweeks are calculated pro rata of time worked or according to productivity. No minimum monthly payment in this case is provided, even in the case of downtime due to the fault of the enterprise. In practice, this means the prospect of symbolic wages, especially after deductions for food and utilities.

The penal facilities that hold women with children have child care centers. The law requires the administration to create in these centers the conditions necessary for normal life and development of children. Convicted women may send their children to child care centers in case they are aged up to three years, and to communicate with them in their free time without limitations. They may be permitted to live with their children in the child care centers. However, this does not mean that these women are released from their duties, including participating in the cleaning work without payment.

With the consent of the women, their children may be adopted by their relatives or by decision of the guardianship authorities by other persons, or on reaching the age of three sent to the appropriate institutions. When the child, who is held in the child care center of the correctional institution, reaches the age of three years, and the remaining term of punishment for the mother does not exceed one year, the administration of the correctional institution under the

law may extend the stay of the child in the center until the expiry of the mother's sentence. However, the adoption of such a decision is a right, not a duty of the prison administration.

"Pregnant women should only be held in prison in the most extreme circumstances. If this is necessary, they should be provided with the same level of health care as is provided in civil society. When the time comes to give birth, such women should whenever possible be transferred to a civilian hospital. This should ensure that professional medical care is available. For the baby this will avoid the stigma of having the prison recorded as the place of birth. In any case the birth certificate should give a non-prison address as the place of birth. Any security restrictions which are necessary during this period should be as discreet as possible. Where pregnant women are held in prison the administration should ensure that full consideration is given to any cultural issues surrounding childbirth. The matter of mothers in prison who have small infants is a very sensitive one. In a number of jurisdictions mothers are allowed to keep new born babies with them in prison. When this happens the mother and baby should be in a unit where they can live together on a continuous basis. Such units should have all the facilities which a nursing mother would normally require. This is preferable to keeping the baby in a separate nursery unit which the mother is only able to visit at certain times. The right age at which infants should be taken away from their imprisoned mothers is difficult to determine. Since the link between mother and child is all-important it is argued that the child should be able to stay with his or her mother as long as possible, perhaps the whole length of the sentence. A contrary argument is that prison is an abnormal environment which is bound to affect a child's development from a very early age. For that reason a child should not be allowed to remain in prison with his or her mother much beyond the age of a few months. In practice, some prison administrations allow mothers in prison to keep their babies with them until the age of 9 months, 18 months, up to four years or longer if the child has nowhere else to go," believes Andrew Coyle.

The commentary to the UN Rules for the Treatment of Female Prisoners and Non-Custodial Measures for Women Offenders (the 'Bangkok Rules') emphasizes that the Standard Minimum Rules "provide very little guidance on meeting the special needs of pregnant women, breastfeeding mothers and women with children in prison. There is no guidance provided on the treatment of the children themselves. In view of the number of women in prison who are pregnant or who have dependent children living with them, it has become essential to provide more detailed guidance and rules as regards their treatment, in order to ensure that both the women's and the children's psycho-social and health-care requirements are provided for to the maximum possible extent, in line with the provisions of international instruments. Viewpoints as to whether children of imprisoned mothers should stay with them in prison, and for how long, vary among specialists, with no consensus. Countries worldwide have very different laws as to how long children can stay with their mothers in prison. Nevertheless, there is general consensus that, in trying to resolve the difficult question of whether to separate a mother from her child during imprisonment, and at what age, the best interests of the child should be the primary consideration, in line with the Convention on the Rights of the Child, Article 3. Issues to take into account should include the conditions in prison and the quality of care children can expect to receive outside prison, if they do not stay with their mothers. This principle would imply that prison authorities should demonstrate flexibility and take decisions on an individual basis, depending on the circumstances of the child and family, and on the availability of alternative care options in the community. These rules recognize that applying rigid policy in all

cases, where circumstances vary immensely, is all too often not an appropriate course of action. They emphasize that, in order to prevent any physical or psychological harm to children who do remain with their mothers in prison, the environment in which they are brought up in prison should be as close as possible to a normal environment outside prison and that the healthcare of children, which would include their regular vaccinations, should be provided for. They also emphasize the need for continued communication between the mother and the child following separation to prevent as far as possible the psychological damage caused by separation.”

The Belarusian legislation provide but for minor concessions to the detention requirements for pregnant and lactating women. Convicted pregnant women and nursing mothers may, in accordance with a medical report, receive additional food parcels in the amount and range necessary to maintain good health of both the mother and the child. In accordance with the Code for Criminal Procedure, convicted pregnant women, nursing mothers, along with minors, sick and disabled persons, are entitled to improved living conditions and better nutrition. Nutrition of children staying with their mothers in correctional colonies, detention centers and prisons, as well as children living in the child care centers of correctional facilities, should meet the standards set for children staying in orphanages run by the Ministry of Healthcare.

Along with convicts released from work due to illness, convicted pregnant women and nursing mothers not working due to reasons beyond their control are entitled to free-of-charge meals for the period of release from work. However, clothing and utilities are provided to them on a reimbursable basis.

In penal facilities, except for penal settlements, convicts, including women, should receive on the account, regardless of all deductions, at least 25 percent of accrued wages or other income, and in the case of female prisoners of over 55 years, pregnant women and women with children staying in the child care centers of the correctional institution, — at least 50 percent of their accrued wages or other income.



Imprisoned women showing diligent attitude to work and obedience to the prison rules are entitled, by a reasoned decision of the head of the penal colony, agreed with the supervisory commission, to living outside the penal colony at the time of release from work for pregnancy and childbirth, as well as the for the period until the child reaches the age of three. Convicted women who are allowed to live outside the penal colony should settle near the territory of the penal colony in premises belonging to the penal colony, and are under the constant supervision of the prison administration; they can wear clothing appropriate to regular life, have money

and spend them without restrictions; in the waking hours, such prisoners enjoy the right of free movement within the boundaries determined by the head of the penal colony; unlike ordinary prisoners, they are entitled to sending and receiving parcels and packages; they can also receive visitors without any restrictions.

In the case of systematic or malicious violations of prison rules, the right to live outside the territory of the penal colony may be canceled by a decision of the head of the penal colony.

After the expiry of the period of leave from work for pregnancy and childbirth, convicted women are involved in the work at the direction of the administration of the penal colony. This means that the right to parental leave until the child reaches the age of three years old is not enjoyed by a woman who gave birth to a child in prison. Women prisoners are released from work starting from the twenty-seventh week of pregnancy for the period of 146 days, and after this period are required to work again.

As a general rule, prisoners may be assigned to perform work without pay only for the collective self-care, including cleaning and improvement of correctional facilities and adjacent territories. At the same time, imprisoned women of over 55 years old and pregnant women are required to work without pay only if they so wish. As already mentioned, women with children in the child care centers are not exempt from such work. Convicts are involved in this work in the order of priority in their free time. The duration of this work may not exceed fourteen hours a week. This means that in addition to the 7-8 hours of paid work a day during a 6-7-day working week, the prisoners, including women, can work without payment and without days off for an average of two additional hours a day.

The legislation establishes that persons serving sentences in correctional institutions are provided with necessary living conditions corresponding to the rules of sanitation and hygiene. The rate of living space per convict in correctional colonies and prisons cannot be less than two square meters. These standards do not differ for pregnant and lactating women. Such standards are unacceptable for any category of convicts, and have been repeatedly condemned by the European Court of Human Rights as insufficient. In this regard, the European standard for prisoners is an area of 4 square meters per person.

According to the Penal Code, convicted women with children staying in the child care centers of correctional facilities may be entitled, for leaving children with the relatives or in orphanages, to a short-term leave outside the correctional facility for up to seven days, not counting the time needed to travel to and back, while convicted women with children with disabilities outside the penal colony – to one short-term leave of the same period a year in order to meet them.

These leaves are not allowed for prisoners who have committed especially dangerous repeated offences; convicted of serious crimes to a sentence exceeding five years, and especially grave crimes, except for convicts serving sentences in correctional settlements; sentenced to life imprisonment; convicts whose death penalty was commuted to life imprisonment; prisoners with active tuberculosis; convicts who have not completed treatment for alcoholism, substance abuse, drug addiction, persons suffering from mental disorders (diseases). In practice, no reports have been received on the possibility to take advantage of this right.

Pregnant women and nursing mothers can enjoy certain benefits in the case of misconduct: these women cannot be placed in a punishment cell or cell-type premises, and cannot be transferred to maximum-security penal facilities. However, they may be subjected to other sanctions, including deprivation of visits. This falls short of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, which prohibit a ban on contacts with the family, especially with children as a form of disciplinary action against female prisoners. With respect to Rule 28 (“Visits involving children shall take place in an environment that is conducive to a positive visiting experience, including with regard to staff attitudes, and shall allow open contact between mother and child. Visits involving extended contact with children should be encouraged, where possible.”), a special procedure for women’s meetings with children should be introduced in the national laws.

In accordance with the Criminal Executive Code, non-lethal weapons means and firearms cannot be used against women with visible signs of pregnancy, except in cases of armed resistance, a group or armed attack on the prison staff and military personnel, or other actions that threaten the lives and health of citizens. Such a rule denies the protection for the category of pregnant women in prisons – those whose pregnancy cannot be determined visually, but whose pregnancy is a fact known by police officers. Rule 24 of the Bangkok Rules has not been directly implemented in the domestic law: “instruments of restraint shall never be used on women during labour, during birth and immediately after birth.”

Rule 48 also needs legal enforcement: “pregnant or breastfeeding women prisoners shall receive advice on their health and diet under a programme to be drawn up and monitored by a qualified health practitioner. Adequate and timely food, a healthy environment and regular exercise opportunities shall be provided free of charge for pregnant women, babies, children and breastfeeding mothers.”

As noted in the Commentary to the Rules, “Prisons are not designed for pregnant women and women with small children. Every effort needs to be made to keep such women out of prison, where possible and appropriate, while taking into account the gravity of the offence committed and the risk posed by the offender to the public. Recognizing this reality, the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders determined that “the use of imprisonment for certain categories of offenders, such as pregnant women or mothers with infants or small children, should be restricted and a special effort made to avoid the extended use of imprisonment as a sanction for these categories.” The Council of Europe, Parliamentary Assembly Recommendation 1469 (2000), on Mothers and babies in prison, adopted on 30 June 2000, also recommended the development and use of community-based penalties for mothers of young children and the avoidance of the use of prison custody.

The Belarusian law provides and operates in practice such a form of probation as postponement of punishment for convicted pregnant women and women with children aged up to three years. In accordance with the Code, the court may allow convicted pregnant women and women with children under three years old a deferment of serving the sentence for the period when they can be released from work due to pregnancy, childbirth and until the child’s third birthday. One should not assume that such a provision could allow escape punishment for serious crimes: the postponement of serving the sentence is not applicable to women sentenced to imprisonment for more than five years for serious or particularly serious crime.

To summarize, the following should be noted:

social and labor rights of women in detention are unjustifiably discriminated against;

the government needs to change the law for the sake of real protection of the rights of pregnant women and nursing mothers;

criminal justice against women should be carried out according to the most humane standards;

imprisonment of women, especially pregnant women and those with little children, should be used in the very limited cases where there is confidence that other punishments will not reach their goal.

POLITICAL RIGHTS OF PRISONERS. RIGHT TO VOTE AND BE ELECTED

In accordance with the Constitution and the Electoral Code of the Republic of Belarus, persons imprisoned under a court sentence cannot participate in the elections. Persons subjected to a preventive measure of custody under a procedure established by the criminal procedure law are not eligible to vote. The deprivation of the constitutional right of all persons sentenced to imprisonment, and especially suspects and defendants, is unreasonable in relation to convicts, and illegal for those in custody prior to sentencing.

Persons held in custody awaiting trial are, by definition, citizens having full rights, only limited in personal freedom. People held in custody awaiting trial are, due to the presumption of innocence, not guilty, and they, in accordance with both the national laws and international agreements, should be treated respectively.

In particular, Principle 36 of the Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment (adopted by the UN General Assembly resolution 43/173 on 9 December 1988), says:

“1. A detained person suspected of or charged with a criminal offence shall be presumed innocent and shall be treated as such until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

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

The eligibility of convicted prisoners appears to be a more complicated issue, but the question has already received a well-defined answer:

The Guidelines on Elections adopted by the Venice Commission at its 51st Plenary Session (Venice, 5-6 July 2002) provides for certain grounds for the suspension of political rights. However, such grounds must comply with the usual conditions which can result in the limitation of fundamental rights. In other words, they must:

be provided for by law;

comply with the proportionality principle;

be based on mental incapacity or a criminal conviction for a serious offence.

The terms and conditions of deprivation of individuals' right to be elected may be less severe than the deprivation of their right to vote, as in this case we are talking about the occupation of public office and to deprive this or that person, whose actions in this position could lead to a breach of a weighty public interest, of the right to be elected to these positions could be absolutely legitimate.

The most important of what is enshrined on the matter under the Guidelines is that the deprivation of a person's political rights is permitted only by the direct decision of the court. For example, this rule is provided for in the Polish law: the Act "On Elections to the Sejm of the Polish Republic and the Senate of the Polish Republic" of 12 April 2001 establishes that the active suffrage, i.e. the right to vote, is possessed by each citizen of Poland, who on the voting day has reached 18 years of age, except for people who: have been disenfranchised by a final court decision; disenfranchised by a final decision of the Supreme Court; declared mentally insane by a final court decision.

Meanwhile, an individual, his rights, freedoms and guarantees for their implementation are the supreme goal and value of society and the state. Belarus recognizes the priority of universally accepted principles of international law, and ensures compliance with them in its domestic law (Constitution of the Republic of Belarus). In particular, Article 2 of the International Covenant on Civil and Political Rights states that "each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." In accordance with Article 25 of the Covenant, "every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors."

The United Nations Human Rights Committee notes in its General Comment No. 21 (1992) "Article 10" that "persons deprived of their liberty enjoy all the rights set forth in the Covenant, subject to the restrictions that are unavoidable in a closed environment."

In order to understand the unfounded nature of restrictions imposed on the electoral rights of convicted persons, it is essential to mention the provisions of the United Nations Standard Minimum Rules for the Treatment of Prisoners. The Preliminary Observations indicate that the Rules "seek only, on the basis of the general consensus of contemporary thought and the essential elements of the most adequate systems of today, to set out what is generally accepted as being good principle and practice in the treatment of prisoners and the management of institutions." The Rules specify that "imprisonment and other measures which result in cutting off an offender from the outside world are afflictive by the very fact of taking from the person the right of self-determination by depriving him of his liberty. Therefore the prison system shall not, except as incidental to justifiable segregation or the maintenance of discipline, aggravate the suffering inherent in such a situation. The treatment of prisoners should emphasize not their exclusion from the community, but their continuing part in it. Steps should be taken to safeguard, to the maximum extent compatible with the law and the sentence, the rights relating to civil interests, social security rights and other social benefits of prisoners."

The final report of the OSCE/ODIHR Election Observation Mission (following the parliamentary elections in Belarus, 2012) says that the "denial of rights of those in pre-trial detention is contrary to the principle of presumption of innocence, while the blanket denial of voting rights for those serving prison sentences lacks proportionality." According to the OSCE/ODIHR experts, these restrictions are contrary to paragraphs 7.3 and 24 of the 1990 OSCE Copenhagen

Document, as well as Article 26 of the Constitution of the Republic of Belarus. One of the priority recommendations said that the “withdrawal of voter and candidate rights of citizens in prison or pre-trial detention, irrespective of the gravity of the crime committed, should be removed from the law. Any restrictions on voter and candidate rights should be proportional and clearly outlined in the law.”

Considering all the above, it is essential to immediately remove from the Constitution and the Electoral Code provisions restricting the right to vote of persons held in custody prior to sentencing, and to take steps to eliminate unjustified discrimination against those who are serving a sentence in prison under a court sentence. The limitation of electoral rights are only possible in case of serious crimes against the state, which should be provided for as a separate criminal law rule.

The procedure for making such a decision is not of great complexity for the Belarusian Parliament: the amendments to the Constitution may be adopted after two readings and approval by the National Assembly with an interval of at least three months by a majority of at least 2/3 of the votes of the full composition of both chambers of the National Assembly. After amending the Constitution, nothing will prevent lawmakers make appropriate changes in the Electoral Code.

RELEASE FROM SERVING PUNISHMENT DUE TO DISEASE

In accordance with paragraph 2 of Article 92 of the Criminal Code, a person suffering from a heavy illness that prevents the imprisonment (except mental), can be exempt from punishment by court, or the punishment can be mitigated. This takes into account the severity of the crime, the personality of the convicted person, the nature of the disease and other conditions. In order to properly understand and assess the significance of such a rule, one needs to see the list of diseases granting the right to this kind of judgment.

The diseases that prevent imprisonment are listed in the annex to the ruling of the Ministry of Internal Affairs and the Ministry of Health of the Republic of Belarus of February 16, 2011 № 54/15 «On Approval of the order of medical examination of convicts and the establishment of the list of diseases that prevent further serving punishment". These include, in particular, heavy, conjugated or progressive forms of tuberculosis; all malignancies of the 4th clinical group; acute leukemia; system atrophy, inflammatory diseases of central nervous system; acute and chronic radiation sickness of the 4th degree and dozens of severe or progressive diseases of incurable nature.

The Regulations on the procedure of medical examination, approved by the ruling, determines the details of sending the convicted persons for medical examination and their examination for illnesses. As stipulated in the Regulations, the decision that a convicted person has a disease from the aforementioned list is adopted by the medical commission after a thorough examination of the convicted in inpatient medical units of the correctional facilities of the penal system or in stationary conditions in public health institutions, taking into account the results of previous treatment and the established diagnosis. The diagnosis should be confirmed by the conclusion of a qualified medical specialist of the state health organization or by employees of departments of the state institutions providing higher medical education and (or) further training and retraining of medical personnel. This means that there is almost no chance that a prisoner can simulate a disease which allows him to avoid serving his penalty.

According to the results of medical examination of the convicts a medical conclusion of the prescribed form is issued, where it is stated that the convicted person has illnesses that prevent him from continuing to serve his punishment.

However, this is only the first step to the release. The Criminal Code only entitles the court to decide on the release of the convicted person, without imposing such a duty on it. Grounds for refusal of exemption may be the severity of the offense, the identity of the convicted person, the nature of the disease and other conditions. With reference to the same circumstances a court verdict for the release of the convicted person may be appealed by the prosecutor or the chairman of the superior court.

This provision of the law is highly controversial in terms of law and justice.

Exemption from punishment in such cases, on the one hand, is an act of mercy, which corresponds to the principles of humanism of the criminal law, differentiation and individualization of punishment, stated in Article 6 of the Criminal Executive Code of the Republic of Belarus.

On the other hand, the release in connection with a serious illness is objectively justified by the fact that the prisoners are not able to perform their duties and serve the punishment of imprisonment or arrest. In this case, the punishment will cause them additional suffering, not caused by the fact of incarceration, which violates the civil rights of prisoners, enshrined in the Constitution and international treaties ratified by Belarus.

Certain measures of disciplinary punishment cannot be used towards such prisoners.

In terms of implementation of the principles of differentiation and individualization of punishment it is undeniable that the same punishment is much more difficult for an ill person than for a healthy one, as abnormal state of health is not presumed by the court when issuing a penalty.

It should be noted that the prisoners who are exempt from serving the penalty in the case of serious illness are exempt from serving the penalty, not from criminal liability. The person has been publicly condemned and called the offender; conviction entails consequences – a criminal record.

The likelihood of committing a new crime by a liberated person with a serious illness is negligible. According to a study conducted in Russia in 1999, out of 78,000 kept in correctional facilities there were only 22 people who had been exempt from serving the previous penalty because of an illness.

The criteria which, according to the law, are to be taken into account while deciding the question of exemption from punishment, are excessively vague, which unduly expands the boundaries of the court's opinion when making a decision. Only the following limitations of the possibility of one's exemption from punishment due to a disease seem to be objectively justified: the cases when the prisoners intentionally acquire or exacerbate severe illnesses and shy away from effective treatment while serving their sentences.

Court verdicts on exemption from punishment due to illness are non-appealable: only supervisory appeals can be filed, which is not an effective means of protecting violated rights. Together with the practical violation of the right to a fair trial, prisoners are deprived of many rights and possibilities which are standard for a democratic society.

In particular, the rights of prisoners to receive legal assistance, to gather and present to the court evidence of their position on their cases are not guaranteed. Therefore, the position of the prison administration and law-enforcement bodies that form the court conviction, depending on their own interests, becomes the determining factor.

The latter circumstance does not allow to fully compare the legislation of various countries in this field: legal provisions, which have similar wording can lead to different results when cases are considered in accordance with the standards of a fair trial.

There are also statistics from the Russian court (there is no publicly accessible court statistics in Belarus on this matter): in the Volgograd region, 19 out of 143 prisoners who had applied for exemption from punishment because of illnesses, died during the year, while their requests were pending.

Information on the quality of healthcare suggest that the majority of prisoners do not receive adequate medical care. The national hospital for prisoners is still under construction. The degree of its readiness does not indicate a speedy solution to the problem.



VISITS TO PRISONERS

“I do not think that two-hour visits can have a significant impact on the rights and freedoms of persons held in detention. Besides, as you know, we have a liberalization of the opportunities that they have. It’s about parcels, the weight of parcels. We approach this issue comprehensively. But two hours or three hours... Maybe for someone it is essential, yes. Well, probably not essential for you and me,” said Interior Minister Ihar Shunevich.

Is it a matter of principle for the minister? Certainly, not. Together with numerous violations of prisoners’ rights at the legislative and law enforcement levels. Pre-trial prisoners who have not even been declared criminals are not entitled to vote in elections; inmates of penal colonies face discrimination of their labor rights; there are regular reports of cruel, inhuman, degrading treatment of prisoners; the death penalty is still used; against this background two or three hours does not matter to us, especially if two or three hours is only the maximum duration of a visit. And who asked the prisoners and their families, which often go to the colony from afar: is an extra hour essential to them, although under the supervision of prison staff? To many, such visits are the last thread linking them with the family.

Has anyone thought about another aspect of prison visits: they are not only the right of the prisoner, but also the right of his family?

Prison rules in Belarus in terms of visits are excessively cruel as compared with the neighboring countries. The text will analyze visits to prisoners of penal colonies (for adults) and prisons.

The duration of visits and the number of persons who can attend these visits are determined by the penal legislation. In accordance with the Criminal Executive Code, persons sentenced to imprisonment are provided with short visits of up to four hours and extended visits lasting up to three days in a specially equipped room located in the territory of the detention facility.

Such a wording condemns prisoners to be completely dependent on the discretion of prison administration. There are no criteria to be used by prison staff when choosing the duration of visits.

The scope of persons who can visit prisoners in Belarus is also defined in the Code: short visits with relatives or other persons take place in the presence of an employee of the prison administration. Persons who are not relatives of prisoners can only visit them at the discretion of the administration. Extended visits are granted to close relatives.

The number of visits is determined by the regime of detention:

- persons sentenced to imprisonment in a minimum security penal colony are entitled to have three short and three long visits during the year; persons transferred to serve their sentence under improved conditions of detention are allowed to have two extra short and two long visits during the year;
- persons sentenced to imprisonment in a medium security penal colony are entitled to have three short and two long visits during the year; persons transferred to serve their sentence under improved conditions of detention are allowed to have two extra short and two long visits during the year;

- persons sentenced to imprisonment in a maximum security penal colony are entitled to have two short and two long visits during the year; persons transferred to serve their sentence under improved conditions of detention are allowed to have one extra short and one long visit during the year;

- persons sentenced to imprisonment in a special security penal colony are entitled to have two short and one long visit during the year; persons transferred to serve their sentence under improved conditions of detention are allowed to have one extra short and one long visit during the year;

- convicts serving a sentence in a minimum security prison are allowed to have two short visits during the year; convicts serving a sentence in a medium security prison are allowed to have one short visit during the year.

Contrary to the prevailing international practice, violations of prison rules can be punished by a deprivation of long or short visits. In imposing the penalty, the type of visit is determined by an official in charge of imposing this penalty. The convict may be deprived of his next visit to which he was entitled at the time of imposition of the penalty.

The same rules apply, with certain differences, to female prisoners (convicted women are only held in penal colonies of minimum and maximum security, they cannot be held in prison).

The Standard Minimum Rules for the Treatment of Prisoners lay down the following rules for the treatment of prisoners:

- Discipline and order shall be maintained with firmness, but with no more restriction than is necessary for safe custody and well-ordered community life;
- Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits;
- Special attention shall be paid to the maintenance and improvement of such relations between a prisoner and his family as are desirable in the best interests of both;
- From the beginning of a prisoner's sentence consideration shall be given to his future after release and he shall be encouraged and assisted to maintain or establish such relations with persons or agencies outside the institution as may promote the best interests of his family and his own social rehabilitation.

The penitentiary laws of states similar to Belarus in terms of development and promotion of legal values reflect the spirit of respect for these standards.

The Penal Code of the Russian Federation establishes the duration of visits in accordance with these principles: persons sentenced to imprisonment are provided with short visits lasting four hours and extended visits lasting three days on the territory of the correctional institution. Short visits by relatives or other persons are supervised by a representative of prison administration. Extended visits are granted to a spouse, parents, children, foster parents, adopted children, siblings, grandparents, grandchildren, and with the permission of the correctional institution – with other persons. This means that the range of persons who can meet with prisoners is much broader than that provided in the Belarusian law: prisoners can be visited by people who are not their relatives without the permission of prison administration,

and with the permission such a person may have a long meeting with the prisoner. The duration of such visits is clearly established and does not depend on the discretion of prison staff.

Prisoners in Russia can enjoy a much greater number of visits. Prisoners cannot be deprived of visits as a disciplinary measure.

In accordance with the Executive Code of the Republic of Moldova, regardless of the gravity of the offense and the type of penal institution, the convict is entitled to one short visit a month and one long visit during three months. Long visits are not available in the following cases: if the prisoner faces a suspension of the right to extended visits; if the prisoner has been transferred to the initial level of security as a disciplinary measure; to persons sentenced to life imprisonment and serving the sentence under the initial security.

Under a general rule, short visits with the spouse and relatives up to the fourth degree of kinship, inclusive, and in cases stipulated by the charter of the penal institution with other persons at the option of the convict may range between one to four hours with the written permission of the prison staff. These visits are conducted in specially equipped premises, under visual supervision or video surveillance by representatives of the prison administration.

Long visits with his the spouse, parents, children, brothers and sisters, grandparents and grandchildren of the convict, and in cases stipulated by the charter of the penal institution with other persons at the option of the convict may range between 12 hours to three days with the written permission of the prison staff.

Head of the penitentiary should allow meetings of prisoners in case the convicts are held in the same prison, if they are married, which is certified by a copy of the marriage certificate.

As a disciplinary action, the Code provides for a suspension of the right to short and long visits for up to three months; at the time of disciplinary isolation the prisoner is deprived of visits, except for visits with the counsel.

As an incentive, prison authorities provide no more than four short visits and two long visits per year. Prisoners with uncleared disciplinary penalties cannot enjoy the right to a visit as an incentive. Visits as an incentive are only provided to the spouse and relatives and are not available to others.

In exceptional cases, prisoners may receive other persons: for example, short visits in the absence of a spouse and other relatives if they have not visited the prisoner for more than one year. Long visits in this case are provided only with those with whom they are in a relationship of cohabitation or have children together.

In all cases of visits with other persons, they can be granted by the administrator institution only when that will not have a negative impact on the prisoner, and if there is no doubt that the visit will not be used for the preparation or commission of crimes, destruction of evidence, intimidation and influencing witnesses, victims or other persons, and in other illegal purposes.

According to the Penal Code of the Republic of Kazakhstan, prisoners may receive visitors: short two-hour visits and two-day long visits on the territory of the institution.

Short visits are provided to relatives or other persons in the presence of a representative of prison administration. Extended visits are granted to the spouse, close relatives (parents, children, foster parents, adopted children, brothers, sisters, grandparents, grandchildren), in exceptional cases with the permission of the head of the correctional institution - with other persons. The number of visits depends on the level of security. Convicts held under concessional terms of imprisonment, even in maximum security institutions, can have unlimited number of short visits. As a form of disciplinary action, prisoners in Kazakhstan cannot be deprived of visits.

Even the Penal Code of Turkmenistan establishes a more favorable duration of visits as compared with Belarus: short visits – lasting four hours, long visits – lasting up to three days. Short visits by relatives or other persons take place in the presence of a representative of prison administration. Persons who are not relatives of the convict can visit the prisoner only at the discretion of the correctional institution. Extended visits are granted only to close relatives (spouse, parents, children, foster parents, adopted children, siblings, grandparents, grandchildren), and in exceptional cases, with the permission of the head of the correctional institution – to other persons.

Persons sentenced to imprisonment can be deprived of long or short visits for violation of the established order of serving the punishment, as well as a ban on telephone conversations for up to one month.

At the same time, in Turkmen penal colonies prisoners are allowed to have twelve short and eight long visits per year; convicts serving a sentence in a maximum security penal colony may have ten short and six long visits during the year; convicts serving a sentence in a special security penal colony may have eight short and four long visits during the year. Turkmen prisons of minimum security allow convicts to have six short visits during the year; maximum security prisoners have the right to receive four short visits during the year.

Thus, the comparison of prison rules is clearly not in favor of Belarusian prisoners. Meetings with family and friends, which can and should be a means of re-socialization of prisoners, have become for Belarusian prisoners one of the means of restraint. It is the adoption of new standards and reducing the time for contacts with relatives of prisoners, despite the opinion of the Minister of Internal Affairs, that inevitably “levels the educational function of these institutions”.

EXTRAJUDICIAL ARREST

The list of restrictions on the rights of so-called “obliged persons” – those who are obliged to reimburse the costs of upbringing of their children in certain cases (if the children are taken from them on decision of the Commission on Juvenile Affairs without deprivation of parental rights; deprivation of parental rights; their placement in activity-therapy centers, remand prisons) is quite extensive.

The obliged persons are prohibited to sell their real estate and vehicles. Unemployed and employed obliged persons are required to reimburse the costs associated with the upbringing their children on a voluntary basis on their own application. If they are unable to do so, they must be subject to forced recruitment. They can be evicted from their own premises for lending them. The appropriate seal is put in the passport of the obliged person.

Administrative punishment for the persons who evade from employment under court ruling, was established back in 2010: evasion from such employment by the parents who are obliged to reimburse the expenses spent by the state for the upbringing of their children, which resulted in the full or partial failure to fulfill the monthly obligations for reimbursement of such expenses, or evasion from work – entailed a no alternative penalty, administrative arrest. Evasion from employment under a court ruling included evading from appearance in the agencies for employment and social protection or other organization for employment, undergoing a medical examination, receiving the documents, necessary for employment, as well as other faulty action (inaction), resulting in the failure to comply with the court ruling for the employment.

This article of the Code of Administrative Violations was virtually inactive in this edition, and was amended in January 2015, as a result of which people started being punished for absence at work during the working hours without a valid reason. For the first seven months of 2015 there were registered 8,495 cases of punishment under this article, which was 2221% compared to the previous year.

The HRC "Viasna" and the International Federation for Human Rights (FIDH) have repeatedly noted in their reports the illegality of forced labor of the obliged persons, and it would be difficult to say something new about it, except for comparing the degree of protection of the economic interests of the state, which carries the costs for the upbringing of the children, and the interests of the private persons who bring up their children and don't timely receive the alimonies for it.

Here, one can also focus on something else:

Under Article 9.27 of the Code of Administrative Offenses, administrative penalty in the form of administrative arrest can be applied by internal affairs bodies. This means that the general rule, according to which imprisonment is possible only under a court sentence, is not applied to obliged persons. "All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law", reads Article 14 of the International Covenant on Civil and Political Rights.

Pitifully enough, the Constitutional Court of Belarus does not see any violations here, which is also strange in relation to its position on the rules of consideration of cases of disorderly conduct: the Code of Administrative Offenses provides for the imposition of penalties under Art. 17.1 by the body of internal affairs, except for imprisonment, and in cases where the person against whom the administrative proceedings has been launched pleads innocent, or if the body of the interior believes that arrest can be used as a result of the consideration of the case, - by court. Here, the Constitutional Court analyzes this practice and fairly recognizes it constitutional, noting that "the constitutional guarantee of the right of everyone to the protection of rights and freedoms by a competent, independent and impartial tribunal (Article 60 of the Constitution) is ensured by the provision of the Law, according to which cases of administrative offenses particularly provided for by Article 10.5 of the CAO (petty theft) and Article 17.1 (disorderly conduct), are to be directed to the court in all cases when persons plead innocent of the administrative offense".

At the same time, the Constitutional Court fails to notice that the provision of Art. 6.2 of the CAO, according to which administrative penalties for committing an administrative offense under Article 9.27 are imposed by internal affairs bodies, deprives persons in respect of whom the administrative proceedings of this category are conducted, of the right to judicial protection.

Discriminatory is also the provision that those who are sentenced to administrative arrest for committing an administrative offense under Article 9.27 of the CAO are necessarily drawn to public works while serving the arrest. In comparison, those who are sentenced to administrative arrest for other offenses can be drawn to public works only with their own consent.

The state-run newspaper "Sovetskaya Belorussiya" eloquently described the way such works are organized:

"In the Valožyn district, those who are serving arrest under Art. 9.27 are working at the dump in any weather, picking out secondary raw materials from the waste. The reporters noted with satisfaction that the temperature was 31 degrees Celsius above zero and the dump had a specific smell. As explained to them by an officer of the district police department, "only such place would be ideal for the work while serving arrest under Art. 9.27 of the CAO. Look yourself, it is less expedient to give them brooms. Firstly, in such a case each of them needs to be watched by a policeman, as the persons who are used to evade from working, can't be trusted. Secondly, there are certain difficulties with the assessment of the quality of their work – whether one has swept the ground well or bad, whether the conditions are equal for everyone, etc., whereas in the dump everything is the same for everyone, and everyone is always in sight! At the same time, it eliminates the need for a medical certificate, one doesn't need any special education, plus the factor of remoteness from the city: one cannot flee anywhere."

This means that the standard of protection from degrading treatment does not apply to obliged persons.



ФОТО SB.BY

There is also another side to this problem: of course, one can exact the material expenses for the upbringing of the children from the obliged persons. But, as stated by many officials, due to the low wages of the obliged persons, especially in the regions, this sum (currently - about 2,000,000 rubles per child), multiplied by the number of children, becomes an unsupportable burden for obligated persons, accumulated in the form of multi-million debts and deprives the debtor (who gets just 30% of the wage in this case) from any stimulus to work. If we return to the situation of the debtors who pay the alimonies, the minimal amount of alimonies is less than 800,000 rubles per child.

Today, Belarus has 21,305 obliged persons.

CLOSED HEALTHCARE FACILITIES

In accordance with Article 46 of the Law "On Health Care" of 18 June 1993 (version of 11 January 2002), persons with diseases that pose a risk to public health can be, in the case of evading treatment, subjected to forced hospitalization and treatment in public health institutions by the court order on terms and conditions stipulated by the legislation of the Republic of Belarus.

According to the Supreme Court of the Republic of Belarus, Belarusian courts hear annually about 700 cases of forced treatment of citizens.

According to the list of diseases that pose a threat to public health confirmed by decision No. 31 of the Ministry of Health Care of the Republic of Belarus of 13 June 2002 (hereinafter, the list of diseases of 13 June 2002), such diseases include: active microbiologically proven pulmonary tuberculosis (hereinafter, TB) and sexually transmitted diseases (syphilis, gonorrhea).

Law No. 345-Z of 7 January 2012 "On prevention of the spread of diseases that pose a danger to public health, human immunodeficiency virus" defines some rules and definitions with respect to compulsory examination and treatment. Compulsory medical examination of a person, in case there are reasonable grounds to believe that he or she suffers from a socially dangerous disease or HIV, shall be carried out by public health organizations based on the results of a medical examination by a government health care institution and a prosecutor's warrant. The conclusion about the necessity of compulsory medical examination shall be made in the presence of all of the following conditions: there are reasonable grounds to believe that the person suffers from a socially dangerous disease or reasonable grounds to believe that the person has HIV; the person evades compulsory medical examination.

The following grounds are considered reasonable when deciding on the presence of a socially dangerous disease:

direct indication by a person with a socially dangerous diseases to a person as a possible source of his or her infection by a socially dangerous disease, or to the person who was with him in close household and (or) sexual contact;

results of clinical-instrumental and (or) laboratory tests indicating the presence of signs of a socially dangerous disease.

The following grounds are considered reasonable when deciding on the presence of HIV:

direct indication by a person having HIV to the person as a possible source of his or her HIV infection, or to the person who was with him or her in sexual intercourse, or to the person who abused narcotic drugs, psychotropic substances intravenously sharing the same injecting equipment;

results of clinical-instrumental and (or) laboratory tests indicating the presence of HIV symptoms.

The following instances are considered as facts of evading compulsory examination:

failure to appear without good reason in the public health organizations to undergo a mandatory medical examination of the person who received from the organization a written formal notice within three days from the date specified in the notice. Refusal by the person to receive the notice is equated with failure to appear without good reason in the public health organizations to undergo a mandatory medical examination. If unable to locate a person at the place of residence, law-enforcement bodies shall take measures to establish the whereabouts of the person to serve the notice;

refusal by the person to undergo a medical examination, clinical and instrumental, laboratory tests.

The following facts are considered as good reasons for failure to appear in public health organizations to undergo a mandatory medical examination: the presence of a disease, which prevented the person to appear in a public health organization to undergo a mandatory medical examination; the presence of a disease requiring care of any of his or her close relatives or spouse; the death of these persons; extraordinary circumstances or other circumstances beyond control of the person, which deprived him or her of the opportunity to appear in public health organizations to undergo a mandatory medical examination.

The conclusion about the necessity of a compulsory medical examination shall be within three days after its issuance sent by the public health organization to the Prosecutor's Office's local department.

The prosecutor shall authorize the compulsory medical examination or denies permission in the manner prescribed by legislation. The prosecutor's warrant for a compulsory medical examination is sent to the public health organization, whose medical commission has concluded about the necessity of forced medical examination, and the local body of Internal Affairs. The body of Internal Affairs delivers the person to a public health organization.

Forced hospitalization and treatment of a person with a socially dangerous disease is carried out in an inpatient state public health organization and by a court decision following a request from a public health care organization.

The request for forced hospitalization and treatment with an attached conclusion of a medical commission is considered by the court in the manner prescribed by the Civil Procedure Code of the Republic of Belarus.

The conclusion about the need of forced hospitalization and treatment of a person with a socially dangerous disease is taken by the medical commission in the presence of all of the following conditions:

availability of results of clinical and instrumental and (or) laboratory tests confirming a socially dangerous disease; evading treatment by the person who has a socially dangerous disease.

Evasion of treatment by a person having a socially dangerous disease is:

failure to appear without a good reason in the public health organization for treatment within three days from the date specified in a notice to appear for treatment. The refusal of a person having a socially dangerous disease to receive the notice is equivalent to a failure to appear without a good reason. When it is impossible to locate the person with a socially dangerous

disease, local law-enforcement bodies take measures to establish the whereabouts of the person to serve the notice;

refusal of treatment in the public health organization or unauthorized leave from a reception by a medical specialist after a warning of the presence of a socially dangerous disease and the possibility of contamination of other persons;

failure to comply with the doctors' prescriptions and (or) internal rules for patients;

failure to appear without good cause in a public health organization within the period specified for surveillance and (or) treatment;

failure to appear without good reason in a public health organization of a person released from prison, who, in accordance with the legislation, was notified by the administration of the detention facility of the need to appear in the public health organization.

Good reasons for failure to appear by a person having a socially dangerous disease in a public health organization for control and surveillance (or) treatment are the same as those listed for the medical examination.

The fact of evasion of treatment by a person having a socially dangerous disease should be followed by an entry in the medical records.

Within three days after the issuance by the medical commission of conclusions about the need for forced hospitalization and treatment, the state health organization sends to the court an application with an attached conclusion on the need for forced hospitalization and treatment.

In court, almost a fifth of such requests are considered without the citizens themselves, because such a right is given to the court by the Civil Procedure Code. Almost all (90%) cases are considered with the participation of the prosecutor. Participation of a lawyer in the hearing may take place if the corresponding agreement is concluded with him by the citizen having the disease, or on the basis of power of attorney – by another person. All of this calls into question the guarantees of a fair trial.

A copy of the court decision is sent to the state health organization.

Immediately after receipt of a copy of the court decision, the state health organization forwards it to the local body of internal affairs.

The local body of internal affairs secures, under the procedure established by the Ministry of Internal Affairs of the Republic of Belarus and the Ministry of Health Care of the Republic of Belarus, the delivery of such a person in a public health organization.

In case of unauthorized departure of a person having a dangerous social disease from the public health organization, the organization informs the local authority of the Interior, which shall take steps to establish the whereabouts of the person and assist medical professionals in his or her delivery in a public health organization.

Forced hospitalization and treatment of a person with a socially dangerous disease shall be carried out in the presence of the above conditions (presence of a disease and evading treatment) and continues as long as they are in place. In practice, however, no assurances of an

intention to voluntarily continue treatment are essential to change the decision on forced hospitalization.

Within six months from the date of hospitalization, a court shall order a medical examination for a person who has a socially dangerous disease, at least once a month, in order to decide on the need to continue forced hospitalization and treatment. As a result of the medical examination, a medical commission shall issue a conclusion on the need to extend the period of forced hospitalization and treatment, which is the basis for the extension of forced hospitalization and treatment and further sending a person with a socially dangerous disease to a public health organization.

Extension of forced hospitalization and treatment for more than six months from the date of admission of a person having a socially dangerous disease shall be ordered by the court. A state health organization, not later than ten days before the expiry of six months from the date of admission of a person having a socially dangerous disease, shall submit to the court an application for an extension of forced hospitalization and treatment, which shall include a conclusion of the medical commission on the need to extend the period of forced hospitalization and treatment. The court shall consider the application in the manner prescribed by the Civil Procedure Code of the Republic of Belarus.

In order to extend forced hospitalization and treatment for the period exceeding twelve months from the date of admission of a person having a socially dangerous disease, a public health organization shall apply to the court at least once a year in the manner prescribed by the third part of this article.

Thus, the said persons may be detained for compulsory treatment for an indefinite period; moreover, review of each case by the court takes place only once a year.

According to the law, the application of special measures of medical assistance, they should be provided in its least restrictive for the patient form, which should ensure their safety and the safety of others, provided the medical workers' do not violate the rights and freedoms of the patient. The law provides for measures of physical restraint and (or) isolation in the application of special measures to provide medical care, which are used in accordance with the law only in cases, forms, and only at that time when other measures cannot prevent actions of the patient posing an immediate threat to him or her and (or) other persons. Measures of physical restraint and (or) isolation are applied under the constant supervision of medical staff. Forms and timing of the use of physical restraint and (or) isolation shall be recorded in the medical records.

The scope of participation of the bodies of the Interior in compulsory treatment is limited: they ensure the protection of public health organizations in charge of forced hospitalization and treatment; prevent the actions of the patient threatening the lives and health of others, as well as establish the whereabouts of the person subject to compulsory examination or forced hospitalization and treatment.

Patients' rights are defined by the law and provide for respectful and humane treatment precluding cruelty, brutality and humiliation of human dignity.

The patient held in the organization of health has the right to receive visitors. This right may be restricted on the recommendation of physician in charge, head of the department or the head of the organization of health care in cases where the exercise of this right poses an immediate

danger to the patient and (or) other persons. In addition, the patient has the right to receive parcels, packets, the contents of which may be limited by the internal rules. The rule suggests that the parcels are subject to inspection by the personnel of the health care organization.

A patient having a socially dangerous disease is obliged to inform the persons with whom he was in close household and (or) sexual contact of the possibility of infection. A patient with HIV is also obliged to inform his or her sexual partners of their possible exposure.

In Belarus, there are no mechanisms that allow public associations, including human rights group, to directly observe the implementation of rights of persons held in closed hospitals. Meanwhile, human rights activists keep receiving information about the violations of fundamental rights and freedoms of patients held in closed institutions, including the right not to be subjected to ill-treatment.

In April 2008, 83 patients of the Voŭkavičy Republican Tuberculosis Hospital, which is located in Džiaržynsk district of the Minsk region, wrote an open letter to the Ministry of Health Care of Belarus. The patients held in the closed institution complained of bad food, restrictions on visits, forced labor to clean up the territory of the hospital, absence of TV sets, libraries and a shopping kiosk in the territory of the institution, as well as inhumane treatment of the staff.

In January 2008, about a hundred patients of a closed tuberculosis hospital in the village of Navajełnia, Džiatlava district, Hrodna region declared a hunger strike to protest against the conditions of detention in the clinic. The patients complained about the dampness and cold in the wards, the opportunity to attend a shower only twice a week, as well as the ban on leaving the hospital territory.

On 24 June 2010, 18 patients of the Voŭkavičy Republican Tuberculosis Hospital went on hunger strike in protest against the conditions of detention. One of the patients, Anatol Šavialchynski, told about the incident to the news agency BelaPAN.

According to him, the hunger strike was declared after six patients were beaten by police officers on June 23. A police patrol was called due to the fact that patients “drank a little and quarreled”. Two patients, including Šavialchynski, were handcuffed and placed in a detention center where they were kept without food or water, according to the patient. Šavialchynski said that the hospital patients were outraged by what had happened. They went on a hunger strike and wrote a statement to the prosecutor of Minsk region, where they demanded to investigate the incident and inspect the conditions of detention in the hospital.

“We are totally deprived of any rights and are living here like animals,” says the patient. He argues that the hospital has many unnecessary restrictions: on cigarettes, sugar, tea, watching TV, using the phone. There is no shop at the hospital, so patients cannot get the basic necessities: toilet paper and soap. The patients cannot receive their pension, or even deprived of visits and necessary treatment. For example, many people cannot receive treatment for their teeth or do the necessary tests. The patients are visited by doctors only once a week, said Šavialchynski. “We are like prisoners in a camp,” he said. “The hospital is surrounded by barbed wire and armed guards, which is not found even in prison. Cases of beatings patients are not uncommon.”

In July 2012, the regional tuberculosis hospital, situated in the town of Bahušeŭsk, Sianno district, Viciebsk region, a disabled patient declared a hunger strike. According to one of the

patients, “the department, where people undergo forced treatment, has wards for two, five and seven people. 40 people have only one women's and men's toilet. One shower. The wards do not even have a washbasin. Four washbasins are located in a separate room. Hot water, which... has a specific swamp smell, and it is not always available. The patients can go for a walk only twice a day in summer for an hour and a half in the morning and evening. The meals are poor, despite statements by the administration that it meets the standards defined by Ministry of Health Care. The menu does not have fruits, few vegetables. We are treated like criminals.”

The case of A. Rachkouski

In the summer of 2015, the HRC "Viasna" received a complaint from a patient of the Voŭkavičy Republican Tuberculosis Hospital, A. Rachkouski. According to him, he was forced to, because he is a foreign national, to agree to treatment in a closed institution, as other treatment options were not free-of-charge. Here are excerpts from his address to the prosecutor sent in August 2015:

“Having given my consent to treatment in such a specific institution, I realized that I was not ready to many things and could not foresee all, to put it mildly, surprises that literally rob me of my elementary human rights. A copy of the court decision was somehow sent to me only two months later. This institution mostly holds people with a criminal past, the so-called ‘controlled persons’, which affects their way of thinking and behavior. Being sick and being on treatment, they continue, they say, act like prisoners. I would not give an assessment of their moral and ethical level and even more highlight my ‘exclusivity’, but this requires an objective assessment of the situation. On a fairly small area, in close proximity to each other there are more than thirty people, most of whom are mentally unbalanced, their behavior barriers are blurred, and the priority of interpersonal relationships is a position of strength. Rudeness, cynicism and impudence towards others reign here. But the most important thing is that all this is compounded by a general regular drunkenness, which contributed to, however absurd it may seem, by the staff, starting with the head of the department and ending with nurses.

With the consent of the department head Ch., the staff gives the patients antiseptic solution for the work they do around the hospital, which they in turn drink.

Also, some of the nurses receive orders and sneak vodka to the protected area where they sell it. I won't tell about home brew, which, if desired (all patients produce it in large amounts), can always be found and seized.

But the staff, along with the police officers who are always here, do not deal with this. They perform a protection of the perimeter, thereby ensuring no personal safety of the patients. It is not difficult to imagine what a sober person feels next to a drunk one, especially when there are many of them, when all this is happening in a confined space, when by itself tuberculosis therapy is aggressive in nature, adversely affecting the nervous system.

Trying to find an understanding, I told about the problems to the staff, and, in particular, head of the department Ch., but my personal conversations with him were immediately retold to the patients. The latter, in turn, became extremely aggressive towards me. One thing led to another. It began with threats of injuries, then there was beating. I am constantly exposed to

moral pressure in the form of coarse, degrading insults, threatened with death in my sleep, a few times I was beaten.”

“My writing to your office (prosecutor) is not accidental, because my complaint to the Ministry of Health Care was not met... After I sent the above complaint, the following day, chief doctor H. arranged an explanatory conversation, during which, he convinced me of the futility of any complaints, making it clear that he and the Ministry of Health Care are one thing. I really hope for your immediate intervention and ask to send your authorized representative, to whom I could explain everything in detail and provide footage of this situation.”

The Prosecutor's Office did not find in the patient's complaint any reasons to intervene. Moreover, it did not even interview the applicant. Then A. Rachkouski told the HRC "Viasna" and tut.by that on September 11 he was attacked by hospital patients: he was beaten, and then three of the patients tried to commit sexual abuse. Rachkouski called for help, and a nurse came in, after which the violence ceased.

Rachkouski was placed in a room for visits, since the hospital had no other safe place. Subsequently, he was placed in psychiatric hospital to undergo an examination; the hospital administration said it was necessary in order to hide Rachkouski from potential retaliation by other patients, because by the time the Investigative Committee had started a probe into Rachkouski's violence report. Rachkouski himself is convinced that one of the causes of aggression from other patients was that they learned from the hospital administration about his complaints to the Prosecutor's Office.

Rachkouski's case clearly illustrates the problem of insufficient level of legislative regulation and practical state of affairs in closed hospitals.



PHOTO BY ZAMOK.GRODNO.BY

The Republican Psychiatric Hospital “Hajciuniški” executed courts decisions on compulsory treatment of mentally ill persons who have committed dangerous acts and representing, according to their mental state and the nature of the offense, particular danger to the public, who are in need of hospital treatment under strict surveillance.

The hospital has three departments: department No. 1 has 100 beds, covering Brest, Hrodna, Minsk and Mahilioŭ regions, including the city of Brest and the city of Mahilioŭ. Department No. 2 has 100 beds, covering Homieĺ and Viciebsk region, as well as the cities of Hrodna and Minsk. Department No. 4 has 50 beds.

The hospital usually holds about 250 people at a time.

The patients are held in a separate building. “It’s like a small prison, surrounded by a high fence with razor wire. There are cameras, panic buttons, and double bars on the windows. And at night there are watchdogs between the building and the fence... This is a guarded building, there are isolated schizophrenics, psychopaths, and epileptics, who, if they were not suffering from mental diseases, probably would have received the maximum sentences. The perimeter is guarded by the police; they can enter the department only as a last resort. Such is the position of the head of the institution: it is not a prison anyway,” this is how the institution is [described](#) by the Sovetskaya Belorussia newspaper.



PHOTO BY ORTHOS.ORG

The state institution “Republican Scientific-Practical Center of Mental Health” has two psychiatric units (33rd and 34th) designed for forced (as defined by the court) treatment of men, and unit No. 38 – for women with increased surveillance.



PHOTO BY SB.BY

The Department of forensic psychiatric examination is located on the territory of the Republican Scientific-Practical Center of Mental Health, but is not included in its structure. The unit is run by the management of forensic psychiatric examination of the State Service of Medical Forensic Examinations.

VIOLATION OF PRISONERS' LABOR RIGHTS

According to the Criminal Executive Code, the main means of achieving the goals of criminal responsibility in the process of its application are the established procedure for the enforcement and serving of sentences and other measures of criminal responsibility, educational work, community service, education, and social impact.

Every person sentenced to imprisonment is obliged to work in places and jobs determined by the administrations of correctional institutions. The prison administration is obliged to involve convicts in socially useful labor, taking into account their sex, age, disability, health and specialty features. Prisoners are assigned to work in the factories or production workshops of correctional institutions, as well as other businesses regardless of their ownership while ensuring adequate protection and isolation of prisoners. When assigning convicts to work, no employment contract is concluded with them (Article 98 of the CEC).

As noted earlier in the monitoring report of the HRC "Viasna" for 2014, legislation on labor and prison labor only sets the duration of working time, safety regulations and remuneration. Other issues are regulated by the normative acts in the field of penal law, in which the labor rights of prisoners are severely limited. One can argue about the existence of discrimination of labor rights of prisoners compared to conventional employees. These restrictions are often not dictated by the interests of national security, public order, protection of morality, health, rights and freedoms of others, i.e. legitimate restrictions under the Constitution and the international obligations of Belarus, which are not proportionate and necessary to achieve the criminal responsibility purposes and lead to discrimination of prisoners as compared to other citizens.

Employee's right to protection of labor implies a wide range of workers' rights and guarantees of their implementation.

Thus, each employee, including the prisoner, has the right to:

- 1) workplace corresponding to safety regulations;
- 2) training in safe working methods and techniques, briefing on labor protection;
- 3) providing the necessary personal protective equipment, means of collective protection, sanitary facilities, equipped with the necessary equipment and facilities;
- 4) receiving from the employer of reliable information on the state of environment and safety in the workplace, as well as the means of protection against harmful and (or) hazardous working environments;
- 5) personal involvement or participation through one's representative in dealing with issues related to ensuring safe working conditions, performing of checks of compliance with legislation on the protection of labor at one's workplace by the bodies authorized to exercise control (supervision) in the prescribed manner, the investigation of an accident that happened in the working place and (or) its occupational disease;
- 6) refusal to perform assigned work in the event of immediate danger to life and health, and other people unless this danger is eliminated, as well as failure to provide with personal protection means that directly provide for labor safety. A list of personal protective equipment

directly providing for labor safety is approved by the central governmental authority, which is carrying out state policy in the field of labor. Upon refusal to perform the assigned work on these grounds, the employee shall immediately notify in writing the employer or the authorized official of the employer of the reasons for such refusal, obey the rules of the internal labor regulations, except for the implementation of the above work.

To implement the employee's right to health and safety state carries out state administration in the field of occupational safety and health, control (supervision) over observance of legislation on labor protection and establishes the responsibility for violation of labor protection legislation.

When employee refuses to perform assigned work in the event of immediate danger to life and health, and his associates; failure to provide him personal protective equipment, directly providing work safety; suspension and prohibition of work by the bodies authorized to exercise control (supervision), the worker to eliminate violations or to create a new job another job corresponding to his qualifications must be provided, or, with his consent, work with pay not less than the average wage for the previous work for up to one month. If necessary, the employer is obliged to provide the direction of the employee retraining, vocational training while maintaining the period of education the average earnings.

Meanwhile, the penal law does not expressly provide for the possibility to refuse to work in these cases, moreover, provides for liability for refusing to work.

In order to implement the right of workers to labor safety, the state carries out government administration in the field of occupational safety, control (supervision) over observance of legislation on labor protection and establishes liability for violation of labor protection legislation.

In case of refusal of the employee to perform the assigned work in the event of immediate danger to one's life and health, as well as other persons; failure to provide him with protective equipment that directly guarantees labor safety; suspension and prohibition of work by bodies authorized to exercise control (supervision), the employee pending correction of violations or unless a new job is created should be provided with other work corresponding to his qualifications, or, with his consent, work with payment not less than the average earnings for the previous work for up to one month. If necessary, the employer must provide the worker with a retraining course, with the preservation of average earnings during the period of studies.

Meanwhile, the penal law does not expressly provide for the possibility to refuse to work in these cases.



PENAL COLONY NO. 14. PHOTO BY SB.BY

Information about financial achievements of businesses operating in penal facilities and LTPs refutes a popular myth of the State providing for the living of prisoners: the major government-run newspaper “Sovetskaya Belorussia” tells the story of the Republican Unitary Enterprise “Fourteen”: “This company is one of the most successful businesses in the prison system. It is located in penal colony No. 14, a high security facility. 1,200 convicts in three shifts produce a monthly production of 10.5 billion rubles! The prison administration says it is not the limit. Last year, when the economic situation was slightly more favorable, the volume reached 20 billion. MAZ, BelAZ, Minsk Tractor Works, Smarhoń Aggregate Plant, Mazyr Machine-Building Plant, Minsk Wheeled Tractor Plant and Minsk Engine Plant, “Mahilioŭtransmaš” and many others are place their orders to produce certain products. A month later, the plants receive at their warehouses goods coming from the colonies: pads, brake cylinders, radiators, heat exchangers and silencers.” The main customer is BelAZ. About 40% of the total products are shipped there. They make radiators and brake pads. Recently, the company has mastered the production of fuel tanks for MTZ. “Experimental batches have already arrived at the factory and were approved, and now the management has a contract on 1,000 pieces of components for new products.”

This is how the journalist describes production in the colony: “Half an hour is left before they take their places in front of the machines. Some, unable to fulfill the norm during their shift, is still at work. Here and there the lights of welding are flashing. Suddenly, I hear metal ringing on the stone floor. I turn around. A forged structure rises behind me. “Here's what our barbecues look like. They have enormous success! We produce about 300 pieces a month, there are advance orders for a month,” says proudly foreman Shedzko. Behind him, in a semicircle are convicts, talking and smiling: “No, Mikhalych, we cannot make more than 300 pieces a month.” But Mikhalych has his own tasks. The colony is self-sufficient today, but it can do more.”

Earnings vary, but “the administration of the colony is sure: the main thing for the prisoner is not salary but so-called therapeutic effect of occupational therapy. When the hands and head are busy with necessary and useful work, there are no bad thoughts, no time to think about how to cheat, to trick or fool.”

Another publication was prepared by the same newspaper on the basis of an interview with the chief engineer of the Department of Corrections Yury Lauryienka. Mr. Lauryienka said: “Today, the penal system of the Ministry of Interior includes 14 companies, 3 branches and 10 off-budget production workshops, having their own production base. The main directions of their activity became woodworking and metal-processing industries, as well as the clothing industry. Only woodworking enterprises produce more than 830 kinds of products! Living room and bedroom sets, sofas, chairs, beds, sets for the kitchen, office furniture and more. Metal companies specialize in spare parts for automotive and agricultural machinery, as well as metal structures. Clothing and footwear production has been issuing more than 250 titles. Today, we can manufacture almost any piece of metal, wood, ready to consider various forms of mutually beneficial cooperation. In the first quarter of 2015, the turnover of our products reached 165 billion rubles in current prices.”

“Today, all of our businesses, not colonies, but the republican unitary enterprises, are self-sufficient. Each has a staff, which is composed of technical services, accountants, economists, lawyers, marketers, and many others. In fact, we are the same companies as BelAZ, MAZ, and so on. Only the workers here are prisoners. However, the working conditions are different. We cannot adjust the number of employees on the basis of our needs, as at an ordinary enterprise, recruiting as many experts as necessary at the moment. We must ensure that the work involved all the convicts who came to serve their sentences. Including those who have and do not have education. For this purpose, low-skilled labor areas are created, where they sort metal scrap, tires, dismantled masks, etc. It should be noted that this work is economically disadvantageous for the enterprise and its volume is each year lower with the replacement of manual labor by automated lines.”

“You have to understand that the salary of the convict is not only spent to repay the debt. Of this amount, he also pays for his stay in prison, and other items of expenditure connected with the stay in prison. (...) If convicted welder makes tanks for BelAZ and mufflers for MTZ, he has a brand and receives a salary of 4 million, 2 of which are spent on debt repayment, 1 – for the maintenance and 1 remains for the shop. In underpaid types of work, the average salary is much lower.”

On 29 May 2015, Yu. Haroshka, head of the Department for supervision over the legality of the execution of criminal penalties of the Prosecutor General's Office, told BelTA at a briefing that

the average earnings of convicts in correctional colonies were about 800,000, in open institutions – 3.8 mln rubles. According to him, the colonies can accommodate 29,210 people.

He also said that the country's penal facilities held at the moment a total of nearly 23,000 convicts.

Products manufactured by prisoners travel outside Belarus: "In general, we deliver our products anywhere. For example, we sell antique-style furniture to China and France, and wooden stakes to the UK. This is one of the new products. The stakes are made in the form of a two-meter stick, used for fencing grazing areas for animals."

The case of Andrei Kniazkou

In January 2011, prisoner Andrei Kniazkou was injured while working in the Mahilioŭ colony, where he was serving a sentence of imprisonment. When working on a lathe, a heavy detail hit the prisoner's head. Mahilioŭ city hospital doctors diagnosed an open head injury – depressed fracture of the frontal bone with displacement of fragments, brain damage.

After that, he spent several years seeking for the right to financial compensation. A year before his release, he appealed to the Human Rights Center "Viasna", describing his situation, and during this time he received legal support.

After almost five years, there was a court hearing, which only partially granted the prisoner's claim.

Andrei Kniazkou was released more than a month ago. He continues his fight to restore the violated rights, and is now able to tell his story.

On the injury in the colony

"We were working in the metal-processing shop, making parts for the Mahilioŭ Automobile Plant. We had a good team of workers, there was a good order, and we executed it for about a year and a half. Then the administration wanted to expand this production to another year, they brought new equipment, new details under a new order. But it turned out that there were no machines and related accessories for the new equipment. The administration brought a lathe, but of the wrong class, which was rebuilt by the repair brigade of the colony, which adjusted the machine to the desired size.

However, the converted device fell apart several times. I told the foreman that it was impossible to work on such equipment, but he left the question unanswered. When for the third time the machine fell apart, there flew out a part that hit me on the head, I was thrown back a few meters, there was a lot of blood. The incident occurred on the night shift, I was helped and immediately taken to the medical unit. After that I was taken to hospital where I was operated on, and then returned to the medical unit of the colony.

During the time I was in the medical unit, I was visited by an inspector, who said that this work injury had severe outcome, and promised that the inspection would be conducted by a commission. I cannot imagine how the check was conducted and what was done, since at that time I was in hospital. Then the inspector came again, asking more questions.

As a result, they adjusted my previous answers to what they needed, asked additional questions and left. At the same time, they did not say that I had the right to take part in the inspection. I learned this later, when I started reading the materials of the check.

Later, the guys I worked with said that immediately after the incident the equipment was promptly returned to the factory, they said that out of the six bolts there were only two, the others had overturned threads, and it was because of this that the machine was destroyed, and therefore, my injury happened. Besides, the machine was improperly installed.

Under the guidance of the prison administration and the chief inspector, our workshop was visited by a team of repairmen who were instructed to eliminate these shortcomings: set the machine on a pillow, weld protection, which was to be initially installed on this machine, take new pictures. But immediately after the accident, photographs were taken by an operative worker. And as a result in the case file cover had a photo taken later, where shortcomings had been eliminated, and the album itself – the photos that were taken immediately. They show that there is no protection, no information defining the job, i.e. gross violations, with which the machine was put into operation 15 days before.

I was not given access check to the case file, and I started writing complaints, although I had no idea how to do it. In the colony the necessary information can be obtained through the application, but only if you know what kind of document you need. Having studied the documents, I requested a report on the inspection, which I was able to get almost 8 months after the injury.

But you can complain only you are listened to, and when you are ignored – they send formal replies.

As a result, the fact of occupational injury has been established, and they did not try to blame me, because they did not have the nerve, but they did not establish anyone's guilt for what happened at all.

The trial was held on December 7, one day before my release, although I had requested to postpone the trial to a later date in order to attend the meeting. Apparently, they ignored my request and did not even notify me about it.

The court decision was in my favor, but my claim – compensation for moral damages of 200 mln Belarusian rubles – was not met in full. The amount was reduced by the court to 40 mln. Now I plan to file an appeal, even though the employer is already ahead of me and ordered to review the reasoning part, because he considered the amount claimed to be too high and decided to appeal against the court's decision.

In its appeal, the employer – Penal colony No. 2 in Babrujsk – indicates that I allegedly failed to comply with the instructions of labor protection and that is what caused the injury. They also asked the court to consider my criminal record, with a personal file from the place of serving the sentence, which states that I did not reform, and to reduce the amount of from 40 million to 10 million rubles.”

About the salary and pension

“Previously, working in prison was optional. You could work for two hours under the guise of cleaning the territory of the colony. And the prisoners often went to work voluntarily, because

if there is no help from the outside, it is very hard to live. Now, all the convicts in the colony have been forcibly transferred to an 8-hour working day.

At the time of my work in the metalworking shop in 2011, I got about a 100,000 Belarusian rudders. But the other prisoners received 20-30 thousand, or even less.

After the injury I was given the third group of disability with restrictions on working. The chief medical officer helped me, he issued an opinion about an incomplete labor day. For two more years, I worked in a sewing workshop.

I just did not have enough time to arrange my pension. When I applied for a pension, it was found that out of almost 5 years I had only 4 months of working experience. It turns out that under the legislation, work experience depends on the minimum wage. That is once a person earns the minimum wage – he scored one month of employment. The funny thing is that the people in the colonies do not even know that, and when you tell them they do not believe you.

In September, I insisted that I received a social pension, which is not paid in places of detention. The administration said that I would not receive anything, asking me to withdraw the application. However, I arranged my social pension in September 2014.

Later I managed to collect all the documents, I sent them, and a year later, in March 2015, I was able to prove to them that I was entitled to retirement pension. They assigned it and offered to apply for recalculation, because earlier I received social pension. I asked for this recalculation, but I never received it. I just started receiving my pension in March. Then I was very angry, gathered all the documents and sent them to the Mahilioŭ Regional Executive Committee, which, together with the Department of Corrections conducted an inspection and found that the colony was to blame for not assigning my pension in due time and that it was financially liable for that. And I could place my claim, and then go to court. Now I'm waiting for the reaction from the administration of the colony, but do not plan to retreat.”

On release and resocialization

When I was in prison I was entitled to three parcels a year and an additional parcel with clothes. And one more parcel with clothes one month before the release. This is what I read in the Penal Code. I saved money from my pension and transferred them to a friend of mine who bought me things before my release. But the friend sent the package sooner than I had expected. In order to receive it, I wrote a special statement, warning the head of the unit and asking him to call the mail station. When he called, the package had already been sent back. Although I did not get any parcels during a year, I still had to go to Minsk in prison clothes.

After their release, ex-prisoners do not receive any help. I do not have registration, but still I was lucky to move into the house of overnight stay for persons of no fixed abode. Although the living conditions there were not the best, but I could not choose. I am currently in the process of obtaining registration, only after that I can be registered at the employment center.

In addition, I am having difficulty with medical care and medicines at a discount. You cannot receive anything without registration.

Also, I want to cancel restrictions on working because I'm sure that with such restrictions, no employer will take me. But the injury is too serious, and the disability may not be removed and therefore restrictions cannot be removed, either. I do not know if I can find a job.

Previously, it was difficult in terms of money, but now it is even more difficult.”

Andrei Kniazkou has appealed against the decision of the court of the Kastychnicki district of Minsk and is awaiting a re-trial.

He has not received any help from government agencies in finding a job: during his imprisonment, he has lost registration in Minsk, and is now temporarily registered in the house of night stay, and, according to the employment center staff, may not receive any benefits and privileges in employment.