ADMINISTRATIVE DETENTIONS AND COURT PROCEDURES

analysis of the law enforcement practice in the context of freedom of assembly

Legal Transformation Center

Collection of materials

ADMINISTRATIVE DETENTIONS AND COURT PROCEDURES:

analysis of the law enforcement practice in the context of freedom of assembly

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This publication contains analytical materials on problems of procedures in administrative detention, judicial consideration of administrative violations and further appeals. The Belarusian law enforcement practice is analyzed from the aspect of complying with international standards on human rights. The publication is aimed at representatives of state authorities, scholars, practicing lawyers, legal students, human rights defenders and activists of NGOs.

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To the Reader

The issue of administrative trials and related court procedures has become extremely important lately in the Belarusian human rights discourse. The problem revealed itself most widely and acutely after the presidential elections in December 2010. We offer you a book of analytical materials which have become the result of continuing work on gathering information about administrative detentions, generalizing court practice on such cases, and analysis of the national legislation and international standards.

The first part of the book contains the Analytical note (I–1) on the results of monitoring administrative detentions during the public action on December 19, 2010 in Minsk. Human rights defenders drafted a questionnaire for the detainees in order to collect information about human rights violations at this event. The questionnaire included 18 open-type questions covering the following issues: dispersal of the peaceful protest and detention of its participants; being in the police vehicle and in the police department; being in court building; serving arrests in the center of isolation.

In February 2011 the Legal Transformation Center (Lawtrend) in cooperation with the Committee of international control over the human rights situation in Belarus finished the preliminary analysis of the collected data. The interim results were published, and recommendations based on the monitoring were sent to the state bodies. The Analytical note (I–1) is a more detailed research, it contains statistics and testimonies of witnesses.

The second part of the book is dedicated to efficiency of appeal mechanisms in administrative cases of participants of mass events in Belarus. The conclusions of the author are based on generalizing practice of court appeals against administrative decisions within the work of the Monitoring group of the Lawtrend, on studying the law on administrative procedures and international standards of the right to fair trial. Studying specific cases, the author examines gaps in legal regulations on appeals in administrative process in Belarus.

The third part of the book is dedicated to arbitrary detentions. The main goal is to find out the degree of implementation and observation of international obligations regarding personal freedom taken on by Belarus. In order to reveal the most typical problems of law enforcement, the study is built on the analysis of specific cases on administrative detentions in 2010 – 2011.

We hope that this publication will be of academic and practical use for legal students, for scientists, human rights defenders, activists of NGOs, and for officials of state bodies, including courts and prosecutor's office.

Aliaksey Kazliuk
Elena Tonkacheva

International Observation Mission of the Committee on International Control over the Situation with Human Rights Violations in Belarus

Legal Transformation Center

ANALYTICAL NOTE

on Results of Examining Testimonies of Citizens Detained during a Public Action on December 19, 2010, in Minsk

The present Analytical Note was drafted upon information from 298 persons questioned during the period of January 3 — January 21, 2011. The survey was conducted in Minsk. Data were received by means of questionnaires, filled in individually by respondents (persons detained during the public action on the night of December 19 to December 20, 2010). 290 testimonies were processed in total, along with copies of court decisions regarding particular individuals (149 documents). Though not all questionnaires can be considered duly filled in, they all contain valuable information that was taken into account. In this regard, gross number of answers given to questions of a particular section varies for different sections of the questionnaire. 49 questionnaires of the survey were filled in by female respondents and 249 — by male respondents. The age of respondents varied from 18 to 61. According to information provided by Human Rights Watch in its report "Shattering Hopes. Post-Election Crackdown in Belarus" and as confirmed by Belarusian human rights organizations, at least 725 persons[1] *were detained and further subject to administrative arrest during the given period. Sampling of the present survey amounts to 37 per cent of the total number of people detained and conforms to all criteria of formal representation; therefore, it claims to provide sufficiently complete description of events.*

1. DISPERSAL OF THE PEACEFUL DEMONSTRATION AND DETENTION OF ITS PARTICIPANTS

The present section contains information about behavior of the authorities while the peaceful demonstration was dispersed and its participants and other persons were detained.

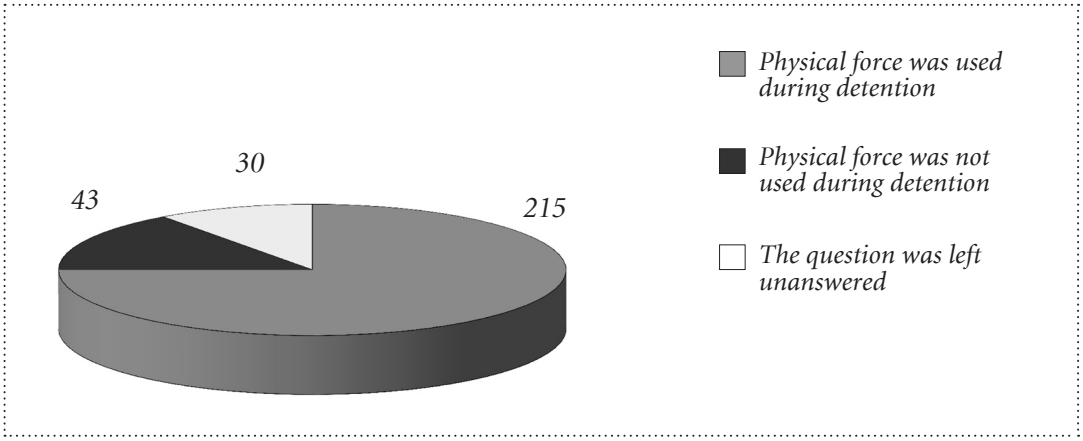
288 persons answered the questions of the present section.

1.1. Violence and other forms of cruel, inhuman or degrading treatment on behalf of law enforcement and security forces officials

30 respondents did not state whether physical violence was exercised against them, or avoided answering the question. 51 persons mentioned that physical force was not used against them personally, 8 of them claimed to have seen that violence was used against others: *"…nobody hit me, but I saw riot police hitting people, who accidentally fell onto the ground or did not have the strength to run away, with rubber truncheons and boots."* 215 persons stated that physical violence was exercised directly against them or people around.

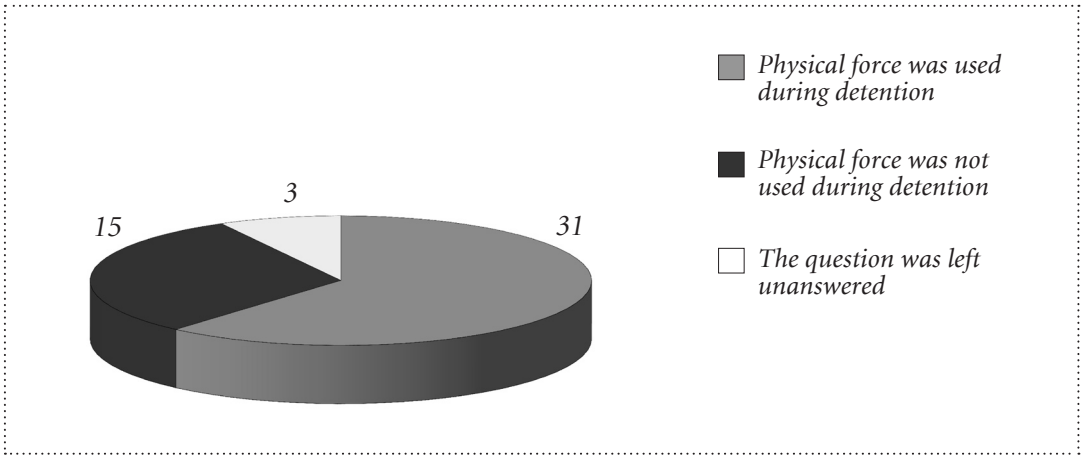
1 *http://www.hrw.org/sites/default/files/reports/belarus0311Web.pdf - in English*

Use of physical violence during detention



15 out of 49 female respondents to the survey asserted that physical force was not applied against them, 3 persons failed to answer the question; 31 women mentioned that authorities used rough physical force beating them with boots, truncheons and shields, dragging them and pulling their hair. Besides, 8 male respondents witnessed that policemen used special devices against women.

Use of physical violence against women during detention



61 persons stated in their questionnaires that special devices (rubber truncheons) were applied: "*…they put me face down into the snow and hit me on the head with a truncheon several times*";1 respondent described that "*rubber sticks with metal inserts*" were used; 23 respondents claimed to have been beaten with boots: "*…I did not resist, neither did people standing next to me, we were trying to hide from truncheon hits; when climbing into a police truck (prisoner transport vehicle), I stumbled, fell into the snow and was immediately hit on the back of my head with a riot policeman's boot*"; 6 respondents stated that they were hit with plastic shields: "*…I begged them not to use violence against me, but they hit me once with a plastic shield onto my forehead; I tried to protect my son covering him with my body*"; 2 respondents evidenced being beaten with an arm. The hits described in 21 cases were targeting people's torso, but most of them were meant to reach a person's back. There

were 2 testimonies describing that handcuffs were put onto people's wrists when they were detained; 6 cases were mentioned when policemen grabbed the detained by the hair and either held them in this position or dragged to special vehicles of the Interior; 1 case of strangling was mentioned: *"…they were strangling my wife in front of me".*

Respondents described that they were hit onto the area of head and back, as well as legs: *"…detention was done very cruelly and with use of physical force: they kicked me down to the snow and started hitting my back and legs with boots. They hit me 4 or 5 times and then dragged me to a minibus pulling the hood of my coat off."* 33 respondents stated they were hit onto their legs and arms when trying to cover their heads: *"Officers surrounded a part of the crowd and beat people with truncheons and boots. I was trying to cover my head with my arms. Most of the hits reached my arms, my back and my legs."* Respondents also mentioned cases when violence was used against persons in a helpless situation who were not showing any kind of resistance: *"I stood still, my arms up in the air, but this did not prevent a special mission unit officer from smashing me on the head. Hardly any medical assistance was given to me"; "My severely disabled friend — who had no arms and one leg — was knocked off to the ground."*

Respondents mentioned in 30 cases that they were hit onto the head and injured. One respondent stated that his eyebrow was dissected because of a truncheon hit. Main injuries caused during detention were: "bruises", "swelling", "injury", "dissection", "abrasion", "brain concussion", "damage to the collarbone", "contusion", "head injury", "ligament injury". Most descriptions covered cases when soft tissues of head and face were dissected. Here is a description of what one respondent saw after detention: *"…I saw with my own eyes that people with head injuries were brought back to their cells after stitches had been put in. 4 out of 11 persons put into cell #11 had head injuries."* Respondents mentioned 2 cases of extremities fractures when the public action was dispersed: *"Physical force was used against us during detention: riot policemen broke Mayia's leg when they were beating her"; "…truncheons were used during the detention, my arm was broken and a head injury was caused."*

58 respondents stated that violent actions were connected to the process of placing people into special vehicles of the Interior. 15 persons described that police "encircled" participants of the public action leaving a narrow corridor towards the special vehicles of the Interior, and people were severely beaten when they walked through this "corridor". Below is a description of this process by respondents: *"People were taken to police trucks (prisoner transport vehicles) through a corridor of shields. Riot policemen, seeing that people were suppressed by their number and cruelty, continued beating the crowd up. My head was damaged exactly in this corridor of shields"; "Riot police surrounded people. A corridor was made between the doors of the House of Government and the memorial, people were taken to MAZ trucks through this corridor"; "All people were brought together. Somebody yelled: 'Into a column of two!' and riot policemen formed a corridor. People were brought into police trucks through this corridor."*

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1.2. Humiliation, insults and failure to render assistance to persons injured during detention

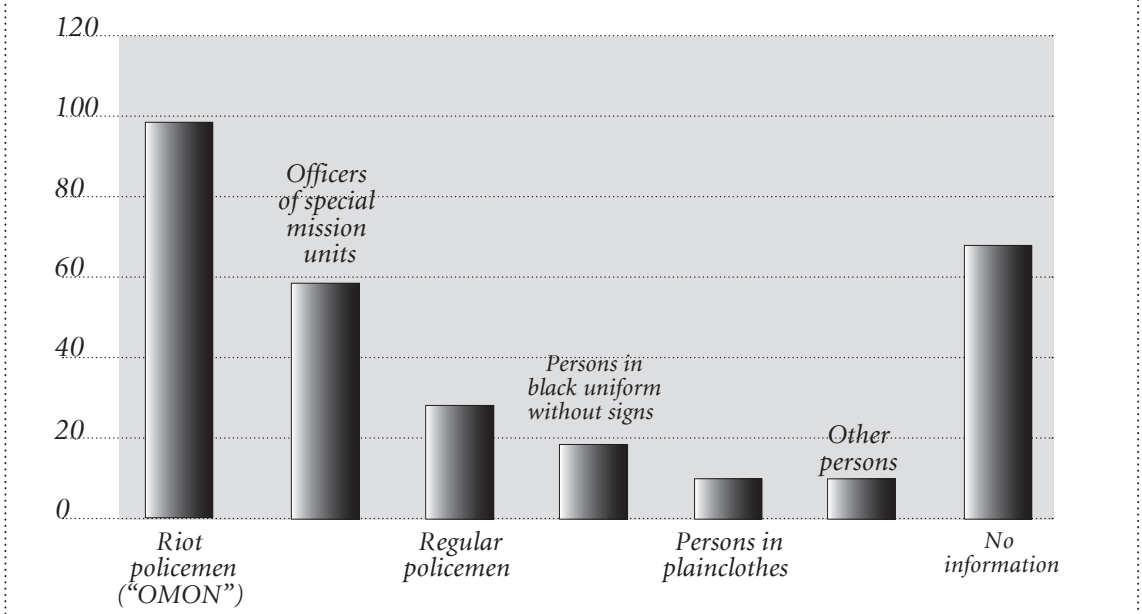
22 respondents mentioned that state officials, when exercising violence against persons during detention, accompanied it with obscene language, cursing and threatening with physical revenge or even murder. 7 female respondents stated that policemen specifically targeted women with this form of humiliation.

Respondents described facts of humiliation on behalf of policemen, as well as of failure to provide assistance to those injured during detention: *"I was detained in a very rough way. They took me into a UAZ [vehicle] and later transferred me into a bus. They literally dropped me off to the floor of the bus and periodically hit to me on the head. One of the riot policemen tried to put his legs over me, but when I did not allow him to do this, he hit me"; "My requests to explain what was going, to show an official document or to call ambulance were left unnoticed, [we saw] from the window of the bus that an unconscious man was lying in the snow, but the police did not render any aid to him"; "Me, my Dad and some girl were still surrounded while the rest of people were already in the police truck. The girl that was with us suddenly fainted. We asked for a doctor or a person in charge. The answer was cursing and outrageous insults."*

1.3.
Identification of state officials in charge of detention

Respondents gave different identifications of those who detained them. 99 persons stated that they were detained by the riot police, 58 individuals stated that they were detained by officers of special mission units, 27 respondents mentioned that they were detained by regular police. 18 persons indicated that they were detained by some "men in black" without any special signs on their uniform. 9 persons stated they were detained by people in plainclothes who did not introduce themselves, 3 persons mentioned that these were KGB officials who deprived them of freedom, 2 persons stated they were detained by road police, 2 persons were detained by representatives of the Interior of the Republic of Belarus. 1 person stated he was detained by Interior forces. 1 person stated that people from the "Berkut" unit were in charge of his detention, 1 more respondent said he was detained by some kind of special services.

Identification of persons in charge of detention



This situation was caused most probably due to the fact that several types of special services of the Republic of Belarus were in charge of detaining participants of the public action on the night of December 19 to December 20, 2010. According to words of the respondents, they saw "Special Mission" ("SPETSNAZ") patches on black clothing of those who were detaining them, as well as "Special Mission", "Police" and "Riot Police" ("OMON") patches on their coats; words "Special Mission" and "Riot Police" were written on the shields. Meanwhile, some state representatives really had no vivid patches or bright symbols on their uniform that could inform people who was in charge of the detention. Apart from that, plain-clothed representatives of special services were active at the Square, hampering the possibility to identify state officials in charge of detention. Respondents stated that some officers of special services worked at the Square in helmets, masks and scarves that covered their faces, thus, the possibility to identify them was minimal.

A vivid example of difficulties in identifying state officials may be seen in the following abstracts from questionnaires: "*[I was] detained by riot policemen wearing black clothes with a sign 'Police'*"; "*[I was] detained by people in black uniform (riot policemen). They simply grabbed my jacket and dragged me to a police truck. People in charge of detention did not give any explanations*"; "*[I was] detained near an underground passage by people in plainclothes, their faces were covered with scarves. They took my phone and transported me to Maskouski District Department of the Interior*"; "*People in black uniform and masks ran by, no identification marks on their clothing. They hit me on my legs, put me with my face down to the snow and gave out several hits by a truncheon into the area of my face*"; "*In fact, [I was] detained by Khvasko A. A., Deputy Head of Criminal Investigation Department of Maskouski District Department of the Interior.*"

1.4.
Observance of main detention procedures by state officials in order to avoid excessive violence

Respondents mentioned that state officials did not introduce themselves during detention and did not explain the purpose of detention. Not a single respondent testified that clear explanations were given regarding his/her detention. The only explanation that one of respondents received was that policemen were acting in pursuance of the order. Several cases when citizens wanted to know the causes of detention ended up in violence from state officials: "...they grabbed everybody they could; a guy who asked 'What for and why?' was beaten in front of my eyes and later pushed into a bus". 8 respondents indicated clearly that no explanations were given to them regarding the detention at all.

None of those detained in Nezalezhnastsi Square during the rally stated that they were warned of the readiness of the authorities to use force, or were told to go away. 7 respondents insisted that they heard no warnings at all and that the authorities' actions on detaining participants of the rally were completely unexpected.

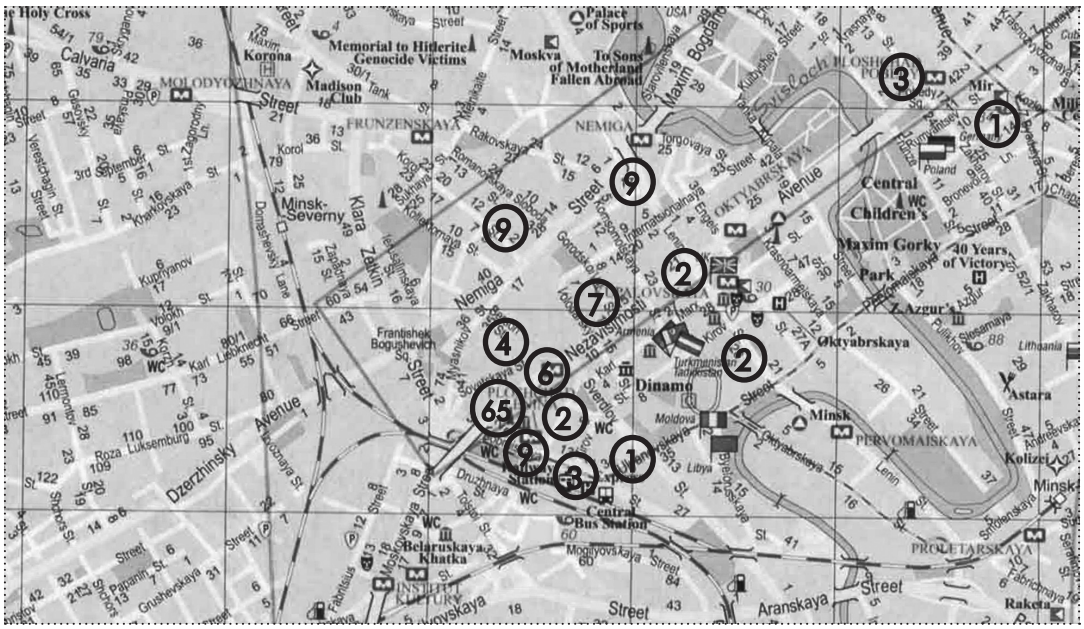
1.5.
Place of detention

125 persons mentioned location of the place of their detention. 65 of them acknowledged that they were detained directly in Nezalezhnastsi Square during or immediately after the meeting.

The rest were detained in other parts of Minsk: 9 persons in Niamiha Str., 9 persons in Svabody Square, 7 persons in Valadarskaha Str., 9 persons at the "Nezalezhnastsi Square" public transport stop or near the entry to the "Nezalezhnastsi Square" metro station; 6 per-

sons in the area of the Central Post Office (crossing of Sviardlova Str. and Nezalezhnastsi Ave.); 4 persons near the Minsk Hotel; 3 persons in Peramohi Square, 3 persons near the Central Railroad Station; 2 persons by a McDonald's canteen not far from the State Department Store; 2 persons in Leninhradskaya Str.; 2 persons in Lenina Str.; 1 person near the prison in Akrestsina Str.; 1 person in Yanki Brylya Str.; 1 person at the editorial office of "Charter-97"; 1 person on the premises of the Belarusian State University.

Number of people detained at various locations in Minsk



2. PERIOD OF STAY INSIDE SPECIAL VEHICLES OF THE INTERIOR AND AT POLICE DEPARTMENTS

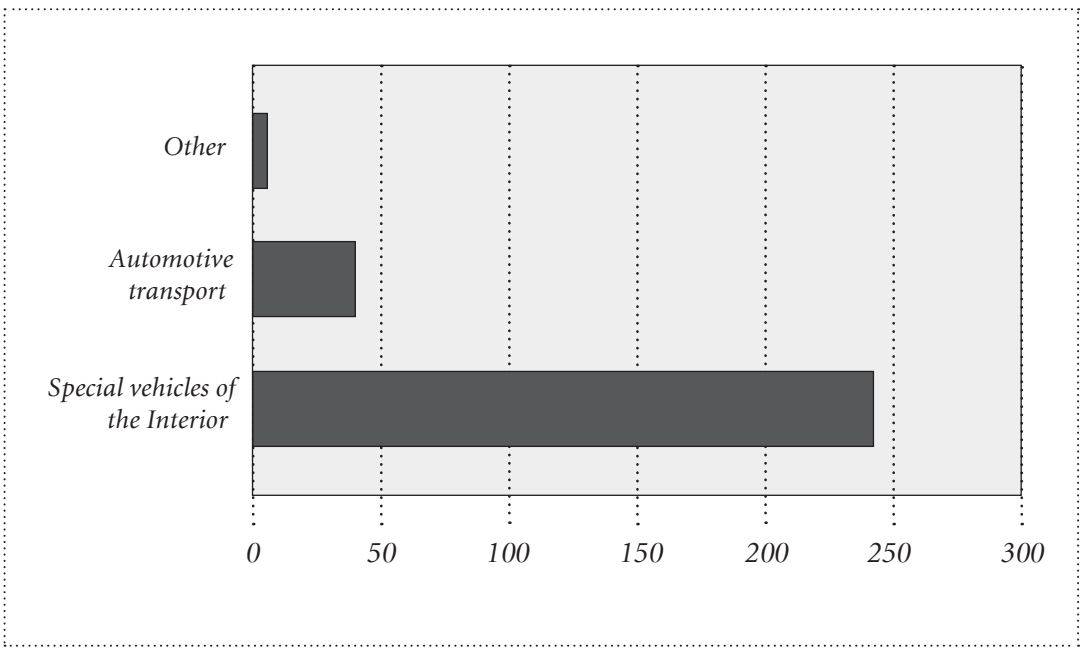
Information about behavior of state officials during transportation of the detainees in special vehicles of the Interior Department (to location where protocols were filed, to court and to detention facilities), about their behavior directly at location where protocols were filed, including observance of procedures, as well as about behavior during transportation of the detainees to court and detention facilities was collected and analyzed for this section.

282 persons answered the questions of the present section related to transportation inside special vehicles. 276 persons answered questions about the way protocols were filed and about the procedure as such.

2.1.
Period of stay inside special vehicles and transportation in it

Various types of vehicles were used to transport the detainees. In the first place, transportation was organized with the use of specially equipped vehicles of the Interior Department. Most respondents (240 persons) stated that they were placed into the so-called "prisoners transport vehicles" ("avtozaki", other persons also mentioned them as "dushegubki") — buses, minibuses or covered trucks especially equipped to transport detained persons. Respondents mentioned MAZ, ZIL, GAZelle and other vehicle models. Some vehicles, including the minibuses, were equipped with metal cells meant either for one or two persons: *"…personal isolation, a 1x1 meter boxroom, very dark"*. 3 other persons were transported by road police vehicles. The rest of the respondents were transported in non-specialized vehicles: 29 persons in passenger buses, 5 persons in regular minibuses. 5 cases were filed when the detainees were transported in private or service automobiles.

Vehicles used for transportation of the detainees
(Number of cases on record)



39 persons evidenced that density in special vehicles of the Interior was over 70 persons to approximately 30 seats: *"…we were packed into a green MAZ vehicle like fish in a can"; "…they transported us as if we were animals, one man sat on another"; "…we drove alright at first when there were 30 of us in a box of the vehicle, but when they started violently packing people from two boxes into one, i.e., 30+30=60 persons, it got harder"; "…I sat with another man in a prisoners transport vehicle, in a one-seater box, from 11.30 PM to 5 AM"; "…instead of 5-6 people per box of the prisoners transport vehicle, we were 15 or 16, it was hard to breathe"; "…people fainted because of lack of oxygen"*. Many people mentioned that they had to stand up because of over-crowding during transportation: *"…the cell of the vehicle was completely full: many people sat on their friends' laps or stood up"; "…there were over 70 persons in a truck, it was so packed that it was hardly possible to stand normally."* Respondents claimed that special automotive vehicles were also overcrowded when the detained were transported into and from court: *"…they took us into a bus. 7 persons sat in a cell meant for 2"; "…it got even worse after the court hearing. We were literally stuffed by feet into a prisoners transport vehicle and stayed there for another day without food or water. We were literally on top of each other, in two layers."*

Respondents stated that duration of their stay inside special transport vehicles from the moment of detention to the moment of arrival to the place where protocols were filed amounted from 20 minutes to 9 hours (from 30 minutes to 3 hours in most cases, depending on the place they were taken to).

117 respondents stated that the detained were denied possibility to use a toilet: *"…it took me 8 hours to make it to the bathroom after detention"; "…they only took us to the toilet once [from the moment of detention to the moment of arriving to the correctional facility]"; "…nobody was allowed to the toilet. Those who could not sustain any longer were given a bottle and put into a corner of the prisoners transport vehicle."*

Nearly all respondents mention that they were denied access to drinking water during their stay inside special transport.

45 respondents stated that it was forbidden to use mobile phones to inform relatives about the detention during their stay inside special transport vehicles. Mobile phones were confiscated in several cases. There were situations when punishment was applied for an attempt to call the family. One respondent mentioned that he *"…sat in handcuffs for 3 hours as a punishment for a phone call he made"*. The respondents mentioned in their questionnaires that the detained were not allowed to communicate with one another. Some respondents mentioned that people, including themselves, were in handcuffs: *"...our arms were locked with handcuffs behind our backs"*.

92 respondents evidenced facts of violence (truncheon hits), humiliation and threats from state officials towards the detained during their stay inside special transport vehicles, or directly assessed their behavior as aggressive, rough and degrading treatment. Thus, respondents testified that *"Riot policemen said that the detained should be brought to a forest and shot there, whereas another authorities representative called the detained persons 'unpeople' and 'enemies of the state'"; "…I was forced to lie down on the floor during transportation with my hands crossed behind my head and was beaten for each attempt to get up"; "...guards were beating a man without any particular reason"; "…riot policemen cursed, threatened and beat people up"; "…riot policemen yelled: 'Face down to the floor and don't move!'"; "…one policeman (a sergeant) used bad language and repeated that we should be killed"; "…they were rude but did not hit us. We heard all the time on their portable radio: 'Work technically! No hard beating! No traces!'"*

Several respondents stated that the authorities did not render medical assistance to people inside special transport who were severely beaten during the detention. One respond*ent stated: "…a policeman did not pay attention to my request that medical assistance was*

needed for a detained man whose leg had been broken"; "…people were wounded, but no aid was provided to them. Riot policemen were beating people who requested assistance."

On the contrary, respondents mentioned particular cases when decent attitude of state authorities towards the detained was observed and conditions of transportation at least corresponded to norms: *"…attitude of the guards was calm"; "…the number of people in the vehicle equaled the number of seats"; "…riot policemen were rude at first, but a superior officer came inside later, and they calmed down at his presence: they started letting us out to the toilet (round the corner) and gave drinking water to us"; "…we were driving for 1.5 hours, without cruelty on behalf of people in the uniform, we could use our phones and talk"; "…a young riot policeman was among others, he was normal and helped me find my hearing device that fell down in a dark bus during the detention".*

14 respondents stated that they spent a long time (from 30 minutes to 2 hours) in the street when taken out of the special vehicles. The temperature outside was below 0 degrees centigrade on the night to December 20, 2010.

Respondents mentioned facts of violence, humiliation and insults on behalf of state authorities when the detained were taken out of the court building and into special vehicles to be transferred to temporary detention facilities and when taken out of the transport on the territory of detention facilities. Witnesses mentioned that violence was tougher and more humiliating on the territory of the Temporary Detention Facility in Zhodzina. One of the arrested stated that he saw policemen cruelly beating a detained person who was later forced to sing a song that "Sasha will stay with us".

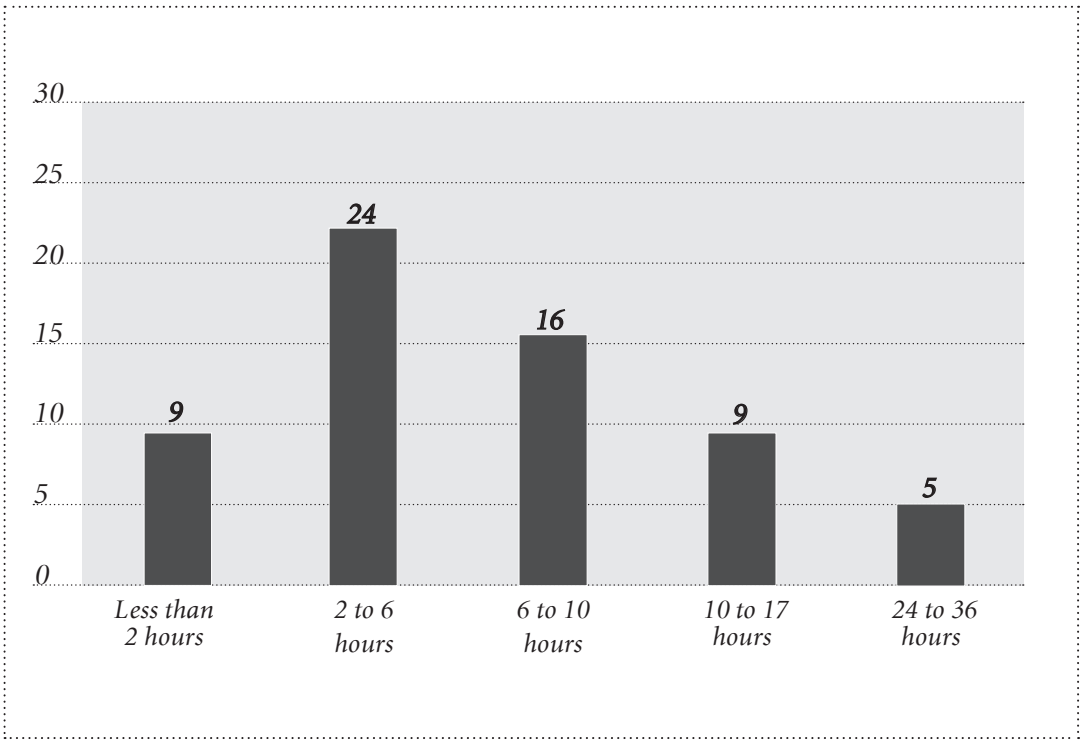
2.2.
Period of stay at location where protocols were filed

When the detained were brought to Departments of the Interior where protocols were to be filed, they faced with the fact that these institutions were unprepared to accept so many people. The detained persons waited in the corridor for the protocols to be filed (most of the testimonies), less frequently — in the assembly hall (3 direct testimonies): *"...there were about 50 people in the assembly hall of Maskouski District Department of the Interior"; "…I waited over 4 hours for the protocol to be filed, we sat in the assembly hall, 90 persons altogether. There were no windows and not enough air, it was very hot"; or in the overcrowded cells (7 direct testimonies): "…they kept 4 of us in a room 0,8x1 meters, we could not sit down there"; "…I was in a cell 2x2,5 meters together with10 other people".* Some respondents stated that they waited for their turn inside special vehicles of the Interior (12 direct testimonies): *"…I stayed in the prisoner transport vehicle for 6 hours and waited outside for 30 minutes"; "…there was no place for us and we 'wandered' in the police truck"* and transportation of people from one institution to another: *"…we were put into the car to be taken to the Temporary Detention Facility, taken out again or simply stood outside in the street"; "…they could not decide for over 19 hours where to assign us to"; "…they transferred us from one detention facility to another and finally brought us to Kastrychnitski District Administration of the Interior in Minsk"; "…they brought us to the detention facility in Akrestsina Str. where we waited in line for an hour. Police officers decided not to wait any longer and, therefore, took us to Leninsky District Department of the Interior"; "…having waited in line in front of the Center for Isolation of Criminals at Akrestsina Str. for 3 hours since the moment of detention, they brought us to the District Administration of the Interior at Fabrytsiusa Str."*

It should be noted that a number of the detained were transported standing for several hours inside special vehicles of the Interior, later they stood in line waiting for protocols to be filed and stood even more waiting to be transported to court where they stood in a cell for several hours again waiting for the court hearing to begin. Hence, people spent the entire day and night or even longer standing.

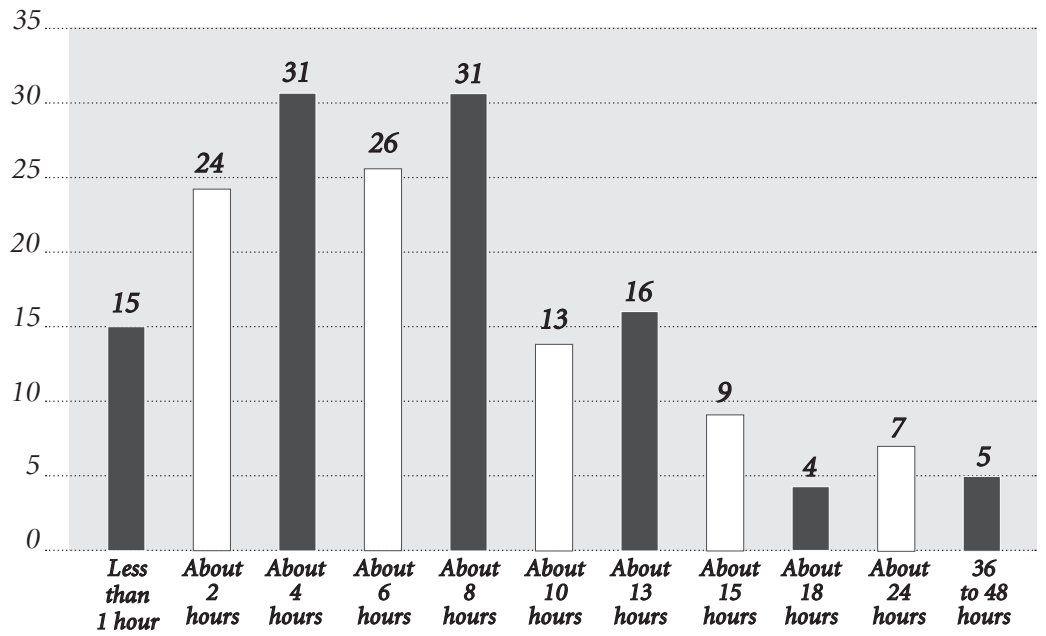
63 respondents reported that when taken to Departments of the Interior, people stood in the corridor with their faces to the wall, arms behind their backs and had to keep this position from 15 minutes to 1.5 days. When they tried to change their pose, state authorities exercised violence: *"…we were brought to Akrestsina Str., put face to the wall and arms crossed in the back. We stood this way the entire night and morning prior to the court hearing. Our hands were dirty after dactylography (conducted illegally and forcedly)"; "…I stood by the wall at the detention center until 5 PM of the next day. I was not allowed to sit down. My arms were kept behind my back for the first five hours." One respondent asserted that he was "…hit by riot policemen for an attempt to sit down." There were several testimonies stating the people waited over 24 hours for protocols to be filed: "…we spent about 26-27 hours in the detention center waiting for the protocol to be filed. We stood with our faces to the wall."*

Number of hours spent standing face to the wall (according to testimonies from 63 persons)



9 persons mentioned that they were allowed to sit down on the floor in the corridor for some time — from 1 hour out of 4 to 6 hours out of 8: *"…we sat on a cold concrete floor until the morning of December 20, 2010."* 2 persons mentioned they sat down on the floor of the assembly hall. There were 7 testimonies stating that the detained spent from 9 to 24 hours in the cells waiting for protocols to be filed: *"…we waited for the protocol for a very long time, the personnel were running around and it seemed as if they did not know what to do."*

Total time spent waiting during the procedure of filing protocols (according to testimonies from 151 persons who indicated waiting time)



Respondents identified particularly outrageous cases of humiliation towards the detained persons when in the Departments of the Interior — state officials forced the detained to fully undress and recorded the process with a video camera: *"They were fully undressed during the pat-down search, everything was filmed with a video camera. A policeman offered three days of arrest to be withdrawn from the sentence of administrative arrest of a person who would be the first one to get dressed."* Other cases were also mentioned: *"My friend was summoned for interrogation in the Temporary Detention Facility. Reporters were already there. They threatened him and made him read out some information in front of the camera. They forced him give false evidence that was later shown on TV."*

A range of respondents mentioned that state authorities, when at locations where protocols were filed, suppressed all attempts of the detained to use mobile phones to inform friends and family about their location: *"…we were not allowed to call relatives or human rights defenders"; "…I was not allowed to make a phone call and get in touch with people at home"; "…they told us to turn mobile phones off"; "…my request to call a human rights defender was answered with twisting my arms, they took my phone away. My arm hurt for another day"; "…there was no possibility to make a phone call"; "…it was forbidden to use my mobile phone to inform family about the place of my location".*

The time of filing protocols in the Departments of the Interior could span up to 10 hours, according to respondents' testimonies. Policemen, in the meanwhile, kept refusing access to drinking water and toilet to people: *"…policemen did not let anyone go to the bathroom"; "…personnel humiliated people, they did not let us sit down or go to the bathroom".* Several witnesses stated that individual detainees, having spent a long time persuading policemen to let them use the toilet, were allowed to do so, as well as get some tap water to drink, but such cases were single: *"…girls begged for water, but policemen did not give them any";*

"…I was allowed to go to the toilet, but its conditions were a sanitary catastrophe — complete insanitariness"; "…women were taken to the bathroom 5 or 6 hours later".

Despite the fact that people were in hands of the authorities for over 10 hours since the moment of detention, cases when food was provided to those detained, according to testimonies of respondents, were single: *"…at about 6 PM on December 21, 2010 they fed us for the first time"; "…the first drink and food provided over the entire period of detention was soup that they brought to us at about 3 o'clock, the soup was made of salty water and macaroni".*

9 cases of failure to provide medical assistance to those in need of aid were mentioned: *"…they saw my wounds when examining me, but no medical assistance was provided"; "...many people could not carry on and fainted, but all was done to avoid providing medical assistance to them"; "…as to the local doctor, I heard him addressing a man: 'What are you, laughing? Then you're healthy!'"* 1 case was documented when assistance was actually provided to a person: *"…a guy with a slight dissection underneath his right eye stood by me and I told him to ask guards that he needed stitches to be put onto his wound. They took him to hospital."*

2.3. Procedure of filing protocols

Part of the respondents stated that when the protocols were filed, state authorities made the detained students read out loud some texts in front of the camera. Students who refused to do so were threatened with expulsion from university.

Respondents mentioned 20 cases when physical force was used by state officials against the detained while the protocols were filed, including the situations when the detained refused to sign the protocol: *"…the protocol was pre-made and if you disagreed with it, you could get a couple of kicks"; "…they hit people when filing the protocols"; "…he punched me on my face and then on the back of my head, I literally hit the desk with my forehead and dropped everything I had in my hands".* One respondent mentioned that he was hit into the area of his genitals for a refusal to sign the protocol. One female respondent stated that an external person came into the room where the protocol was filed and forced her to sign the protocol. Having received a negative answer, he hit her on the face in front of two policemen. Other testimonies: *"Interrogations started the next day and protocols were filed. The protocols were rewritten twice. Despite bad health conditions because of beating, we were still made to stand and wait for a very long time in line to the toilet"; "…they kept us standing all night long, arms behind the back and face to the wall. We were not allowed to either sit or sleep. When somebody bended his knees, he was hit immediately"; "…a policeman hit me with his boot when I sat on the floor (it was allowed to sit by then)"; "…riot policemen hit us on the legs"; "…when I complained that my leg hurt tremendously, one of the personnel cursed and hit me on it"; "…they treated us in a very rough way, some people were hit with truncheons".*

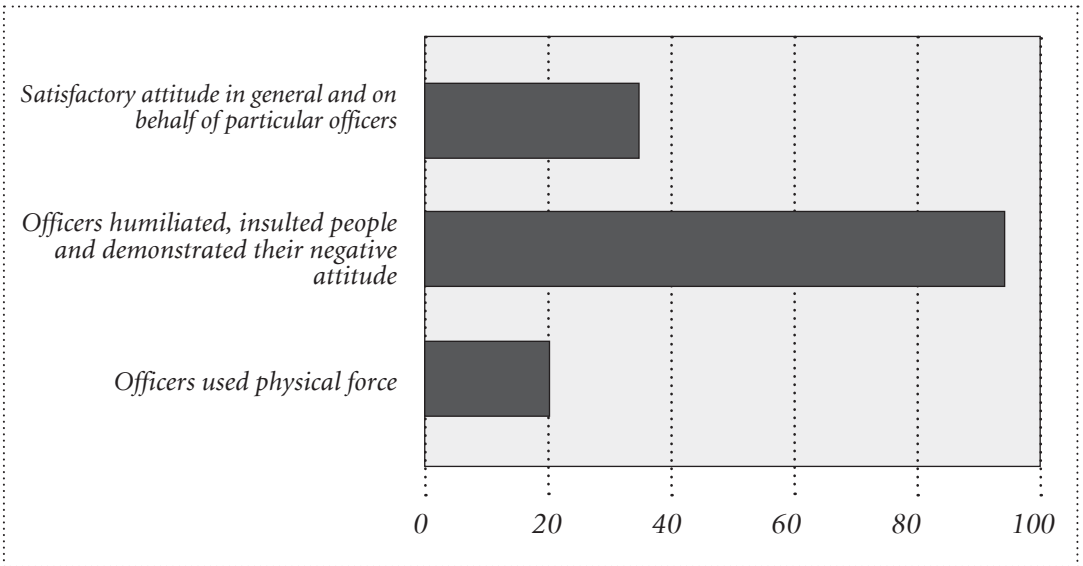
95 respondents stated that they were treated in a rough and cruel way, with insults and threats: *"…the attitude was, mildly saying, humiliating. A man fainted in front of my eyes because of standing"; "…regular policemen treated us normally, but higher-ranking officials were very negative to us"; "…police personnel treated us as if they were animals. It seemed that the only things they were capable of was screaming and brandishing their truncheons"; "…personnel of Kastrychnitski District Department of the Interior threatened to conduct a falsified alcohol determination test, to dip us face down to the toilet, to beat us up"; "…when I was answering the question why I came to the Square, a guard took up a pen and promised he would stick it into my eye"; "…they treated us as if we were sentenced to death penalty"; "…most of the personnel behaved reservedly, but several young lieutenants insulted a girl with a leg displacement, they even punched her with boots"; "…they gave me several papers*

*to sign. When I tried to read them, police personnel got really mad because they had to stay at work throughout the night"; "I refused to give my personal data to them. A policeman yelled 'I am f*cking asking you!' and his colleagues immediately took me to a separate room where six other policemen conducted the interrogation. They took turns and beat me two by two. They hit me on my head so that not to leave bruises, they pulled my hair out and choked me with a scarf. They put tremendous moral pressure: 'You will be left alone, bitch, and the entire department will f*ck you! We will take you to the toilet and piss on you if you don't say what we want!', etc."; "…interrogating officer hit me with a knee onto the inguen area when I refused to sign the protocol"; "…police officers were mad they had to stay at work for the night".*

Typical description of the situation and behavior of the police personnel while the protocols were filed was the following: *"I was deeply insulted by the situation with filing protocols. I wrote the note 'I have no claims towards the police' under torture. Policemen were brutal. My yells and appeals to stop were met with a response that I had 'mirages' and was 'mentally retarded because of a truncheon hit when the demonstration was dispersed'. They basically showed the detained that he had no power in this situation and anything could be done to him."*

At the same time, 33 respondents assessed the attitude of law enforcement personnel in general and that of individual representatives of the Interior as satisfactory or adequate. There were cases when this attitude was even called "positive": *"…regular policemen treated us normally, but higher-ranking officials were very negative to us"; "…most of the personnel behaved reservedly, but several young lieutenants insulted a girl with a leg displacement, they even punched her with boots"; "…personnel of the Temporary Detention Facility were more or less normal, riot policemen were complete freaks"; "…special mission unit officers gave us bread and salo [pork fat] (upon the initiative of minor personnel)"; "…there were two types of police officers at the Temporary Detention Facility: 1) staff personnel and 2) policemen recruited for several days particularly from the Square to guard us. Representatives of both types were not aggressive in their behavior, but the staff personnel exchanged conversations that were not very pleasant to hear. Other policemen behaved decently and treated us with understanding and even support, they let us use mobile phones."*

Attitude of the personnel of law enforcement agencies towards the detained persons



117 respondents mentioned that rights and responsibilities of the detainees were not explained to them in various Departments of the Interior when protocols were filed: *"…they did not say anything about our rights, they said that people like us did not have any rights at all"; "…our rights were not explained to us, they made us understand that we were not meant to have rights at that place"*. There were several cases when respondents mentioned that their rights were actually explained to them, but policemen did it in a very unclear way or simply let people read a paper where rights and responsibilities were written out as extracts: *"…rights were explained to me, but they were never observed"; "…Head of the Center for Isolation of Criminals of Chief Administration of the Interior Mr. Karpovich explained my rights to me"; "the protocol was filed during the day of December 20, 2010, but rights were explained to me only when in court"; "…they gave me a paper with my rights written on it, but it was really hard to read as police officers rushed me saying they had no time to mess around with me"*.

Respondents stated that they observed quite a number of cases when the procedures of filing protocols were violated (simplified), when personnel of the Department of the Interior used pre-filed protocols and helped guards of the detained fill in their reports: *"…the protocol was filed with my minimal participation (I signed it and wrote 'I have read the protocol' note)"; "…protocols and dactylography were done as if on a conveyor line"; "…when I refused to sign the protocol, an investigative police officer told me he would sign it for me"; "…at about 6 AM they told me to sign a protocol and refused to provide me with a copy"*.

Several respondents stated that policemen filled in the already pre-made protocol forms and simply entered the last name of the detained there: *"…protocol was pre-made and when a person disagreed with it, he could be beaten up"; "…all protocols were filed within an hour, they were identical; we were not allowed to see what was written in the protocol; I signed everything under the pressure from policemen"; "…the protocol was filed collectively and upon one sample"; "…one sample protocol was drafted for all the detained, last names of the detainees were changed for individual protocols. The same protocols were used for people who were detained simply in the street, far from Nezalezhnastsi Square"; "…(I personally saw) protocols of the same type piled on the desk"*.

Several respondents stated directly that assistance of the lawyer was denied to them: *"…when the protocol was filed, they hit me for demanding a meeting with a lawyer"; "…when I asked a question if a lawyer could be granted to me, they said a lawyer was not supposed to be given in an administrative case"; "…there could not be a word spoken about the lawyer"*.

The same people — often personnel of the Interior who were earlier in charge of detention — acted as witnesses during the process of filing protocols; in many cases there were no witnesses at all. Witnesses from the side of defense were not allowed: *"…there were no witnesses at all, there were people who did not see any witnesses"; "…there were several witnesses per hundreds of people"; "one witness saw dozens of people violating the law at the same time. When we requested to rewrite the testimony, we were told that all amendments could be introduced already in court"; "…witness (a riot policeman) wrote several identical reports using carbon paper, he copied text from a printed paper a regular policeman gave him"; "…there was one witness for all the detained"; "…two riot policemen that never saw me before were witnesses in my case"; "…when I demanded proofs, they took me by the hair and threw me to the floor. No rights were explained to me. All the time they threatened me with a lockup"; "…when the 'witnesses' — riot policemen — came, they yelled and regretted they had not been allowed to kill us; but I did not see a single riot policeman when I was being detained. They came later."*

7 respondents mentioned that the detained were forced to go through the procedure of dactylography: *"…we stood throughout the night and the morning prior to court hearing,*

our hands were dirty after dactylography (that was forced and unlawful)"; "…they forcedly took my fingers and fingerprinted me"; there was 1 case when a respondent stated it was possible to refuse the procedure of dactylography: "…they did not force those who refused to give their fingers or make photos to do so".

58 respondents stated that time and place of detention written down in the protocols differed from the actual time and place of detention. Respondents said that: *"…they wrote I was detained in Chyrvonahvardzeyskaya Str., whereas in fact I was detained near 'Niamiha' metro station which can be proved by records from the video cameras"; "…place of my detention was not identified in the protocol. Time of detention was written down in the protocol as 10.30 PM, but in fact I was detained at 11.20 PM"; "…it was written in my protocol that I was detained at 10.30 PM near the House of Government, but actually they detained me at 11.30 at the entry to 'Ploshcha Peramohi' metro station".*

3. VIOLATIONS OF HUMAN RIGHTS AND FREEDOMS ON COURT PREMISES AND THOSE RELATED TO PROCEDURES OF COURT HEARING

All people detained that day were not released after the protocols were filed, but transferred directly to courts where their cases were considered within administrative legal proceedings. The process of filing protocols at Departments of the Interior and the course of the trials, as well as the way the detainees were kept inside court premises were accompanied, according to testimonies of 279 respondents, by numerous violations.

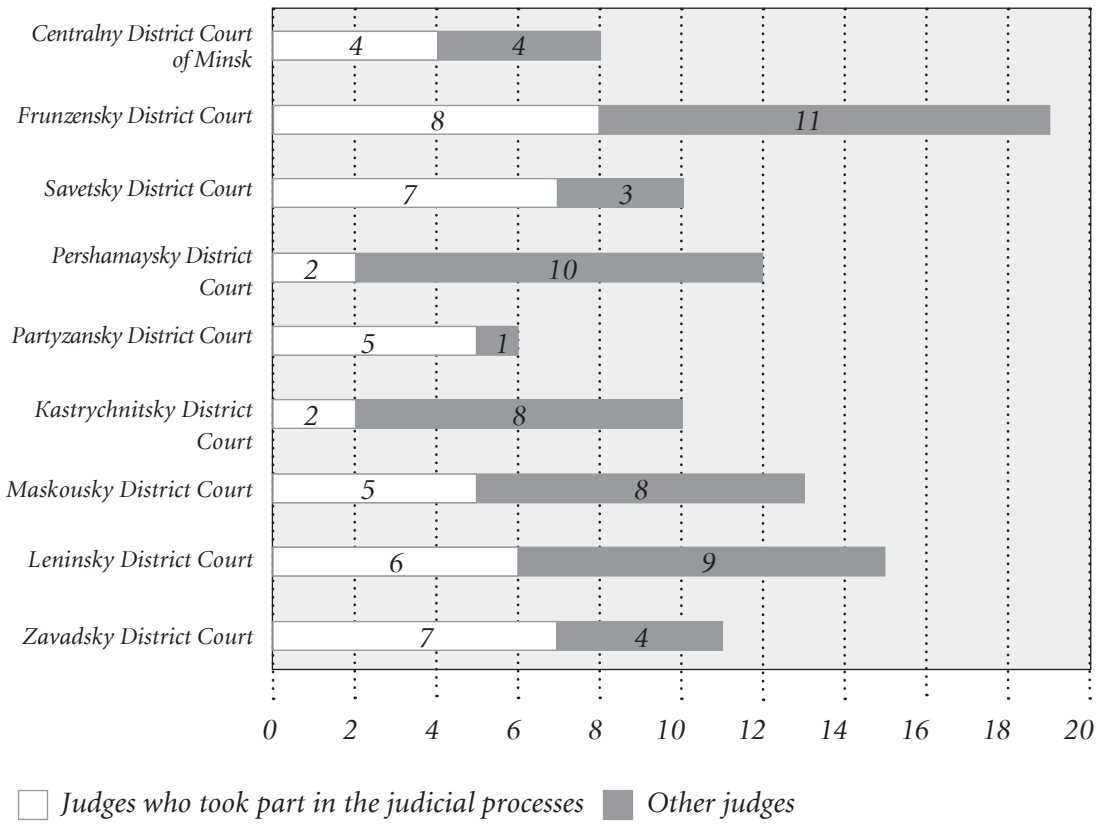
10 respondents stated in their questionnaires that they were kept in overcrowded rooms: *"…9 persons were placed simultaneously into a detention room inside the court building designed for 2 or 3 persons"; "… the way we were kept in the court was the hardest to bear; there were about 6 men in a 2x2 meters cell"; "…we were kept in a stone box 1x1.5 meters prior to and after the court hearing"; "…a group of 30-40 people waited for the court hearing in one of the office rooms inside the court building".*

Many people spent a lot of time waiting: *"…we sat for about 7 hours, each person in a cell 2x2 meters". The detainees were still limited in access to drinking water and/or the toilet: "…there was no water and they told us to drink in the toilet, but there was only hot water there, so we did not have anything to drink until 4 PM"; "…I sat in the cell for about 2 hours when in court and was not allowed to go to the bathroom".*

Respondents mentioned names of 67 judges who considered their cases. 46 of these names were identified on the register of district courts judges in Minsk, accessible on the webpage of Minsk City Executive Committee[2]. The rest of the names could be misspelled, or the webpage could have been not up to date, as far as the structure of the judiciary is concerned. The webpage contains altogether 104 names of judges in Minsk.

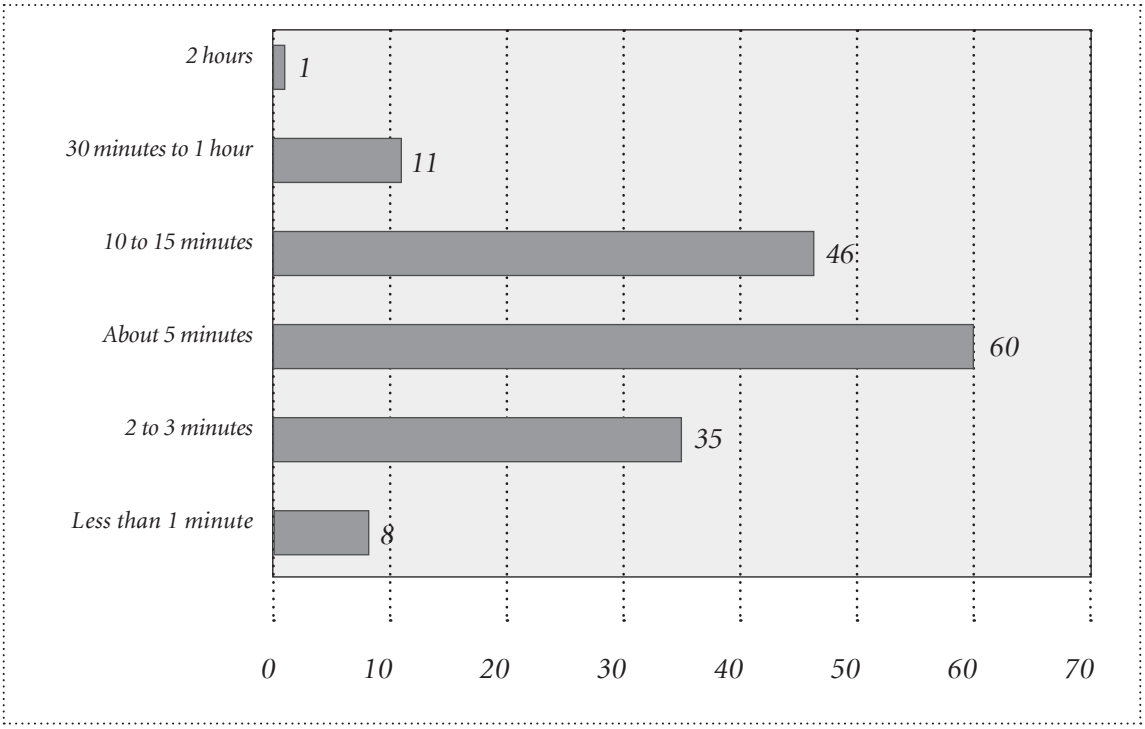
2 *http://minsk.gov.by/en/ - in English*

The ratio between the number of judges that participated in court hearings and the rest of judges in each court (as mentioned in testimonies and upon analysis of the information on the webpage of Minsk City Executive Committee)



Respondents stated that when judges were examining matters of the administrative case during the hearing, the essence of the document under examination was not announced, let alone reading it in full: *"…the judge could not explain the reason of my detention to me, my arguments about unlawfulness of this detention were left without reaction."* In particular, the protocols of the detentions were not always announced, neither were reports of state officials in charge of detention and other important evidence needed to draw out the circumstances of the case and determinant in ruling an accusatory decision: *"…judge was ready to read out her decision at once, there were no witnesses during the hearing, no human rights defenders. I only contacted people who shared the cell with me. The hearing lasted for 10-20 minutes the most. Everything was so quick that I did not have a chance to even mention a lawyer. Witnesses of the defense were not allowed to say a word"; "…my court hearing was at Partyzansky District Court with Judge Tsitsiankova E.V. The hearing lasted for 3 minutes and I was not given a copy of court decision. I was offered to take a lawyer, but I refused to. When I finally received my court decision on February 4, 2011, names of outside persons appeared in it"; "…after the documents were filled in, the court hearing for each person lasted for about 2 or 3 minutes".*

Duration of court hearing
(according to testimonies of 162 persons)



120 respondents gave evidence about participation of a lawyer in the trial. Most respondents noted that they did not have access to legal aid: *"…my question whether lawyer's services were paid services was answered in the affirmative"; "…my request to provide me with a lawyer was met with a question whether I had 300 000 rubles on me to pay for the lawyer"; "…they threatened me in response to my request to call upon a lawyer"; "…when I asked for a lawyer who could verify the facts (in our favor), I received the following answer: 'The Court believes you are trying to avoid responsibility. Your verdict is 15 days of arrest. Please take him away'"*. Respondents mentioned in several cases that they had not been informed by the judge about the possibility to receive assistance from a state attorney. There were several cases when the judges did not let lawyers hired by relatives of the detainees participate in the process. 44 persons mentioned that the possibility to get a defender was granted to them, but usually by means of a lawyer on duty at court: *"…they gave me a lawyer — Mr. Padamatska S.I."*. Most respondents declined services of a state lawyer, considering this idea pointless: *"I was offered a lawyer, but I refused to use his services and wrote a note that I wanted to be my own defender in court"; "…they offered me a duty lawyer, but I refused to use his services"; "…I refused to use a lawyer (as I considered it pointless). Those who agreed to use services of duty lawyers noted that their participation in the court hearing was completely formalized and did not influence the outcome of the hearing: "…they offered to call upon a lawyer, but warned me that it would do no good to the case"; "…the lawyer kept saying buzzwords and could not help me in any way"; "…the lawyer came and left at once without saying a word"*. The result in those minor cases when a lawyer of the accused was allowed into the hearing was identical: *"..they called upon my lawyer, but did not let him examine documents of the case. All in all, the lawyer was absolutely useless."*

120 respondents spoke about witnesses. Most of them noted formal presence of witnesses, usually simply mentioned in the case file and never present at the trial. Witnesses could be clearly identified by names, but there were, however, other cases: *"No witnesses were present in court, no names were given"; "…there were no 'witnesses' at court hearing, their names were never read out loud"*. Witnesses of the prosecution were mostly personnel of the law enforcement bodies: *"…my remark about the witnesses (riot policemen) who only saw me once at the investigator's office were completely ignored"; "…witness evidence provided by riot policemen was considered sound and served as a basis for the conviction"; "…a witness in my case – 'Mr. Hardzeyeu' whom I never saw before – was an officer at Patrol and Guard Service of the Police at Chief Administration of the Interior of Minsk City Executive Committee"*. Other violations were also mentioned: *"…the witness enlisted in the protocol and the one actually present at the office of the judge were different people"; "…I never saw the witnesses mentioned in the protocol during my detention. The same witnesses were signing protocols of other detainees"; "…officers of the Interior mentioned in the protocol as witnesses did not identify me and never actually detained me. There was a feeling that the policemen were given papers to sign, were shown my last name and notified they had to testify against me"; "…when the accused tried to involve witnesses or a lawyer on his behalf, the judge granted him a maximum term of arrest"*. Respondents described a range of cases when judges turned down appeals of the accused to question witnesses of the defense. According to testimonies of all the respondents, defense witnesses were never questioned.

Respondents noted that their court hearings were not public and neither family, nor journalists or representatives of the broad public were allowed into the courtroom. There were rare exceptions.

Respondents mentioned that procedures of lodging appeals against court decisions were not always or not fully explained to them when the judges announced their decisions on the administrative offence: *"…the procedure and terms of appeal were not completely explained: it was not clear how to pay the state duty for lodging an appeal when a person was isolated into custody"; "…there was a note at the bottom of the court ruling paper that appeals could be launched against it within 5 days…it was as if nobody forbade appealing against the court complamts decision or lodging all kinds of, but we did not know how to transmit an appeal from the cell and make sure the documents actually reach the lawyer; we were not sure (or hoped) that our appeals would reach the right addressee. The personnel of the Interior Department of Minsk Region teased us saying that when the term came for us to go to court, we would have already served all the days of arrest."*

Respondents stated that the situation when a paper copy of the court ruling on an administrative offense was presented to them after they had already served the term of administrative arrest impeded the process of lodging an appeal against the court decision. Only 1 of 9 courts in Minsk (Maskousky District Court) issued copies of court decision immediately after the ruling was announced by the judge and before the detained was brought to the Temporary Detention Facility.

Respondents noted that another factor impeding the process of lodging a cassation appeal was absence of paper at some Temporary Detention Facilities: *"…the period for appeal was 5 days, but it was impossible to lodge a complaint because no paper or pen was available at the detention facility"*. In Zhodzina Temporary Detention Facility paper was given to respondents only when the 5-day term of appeal had expired.

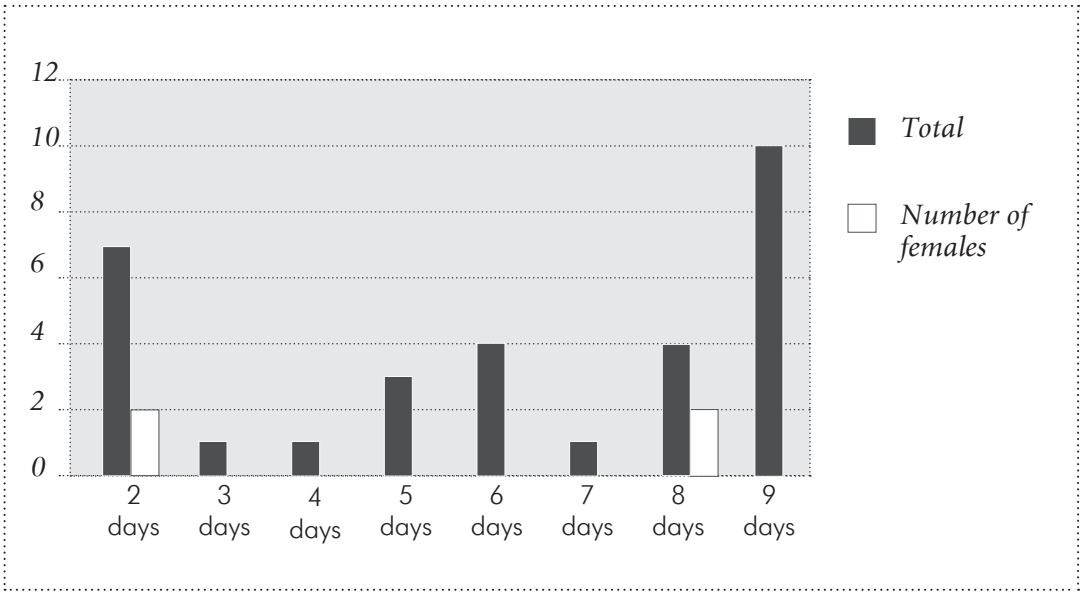
Respondents mentioned that most replies to their appeals against an administrative court ruling contained information that the appeal was rejected due to the respondents' failure to pay a state fee: *"…my appeal was not considered because I did not pay a state fee"*; or they were denied the procedure of appealing with no reason stated. In some cases replies were never received even a month since respondents lodged their appeals.

4. VIOLATIONS OF RIGHTS OF THE ADMINISTRATIVELY DETAINED IN CUSTODY

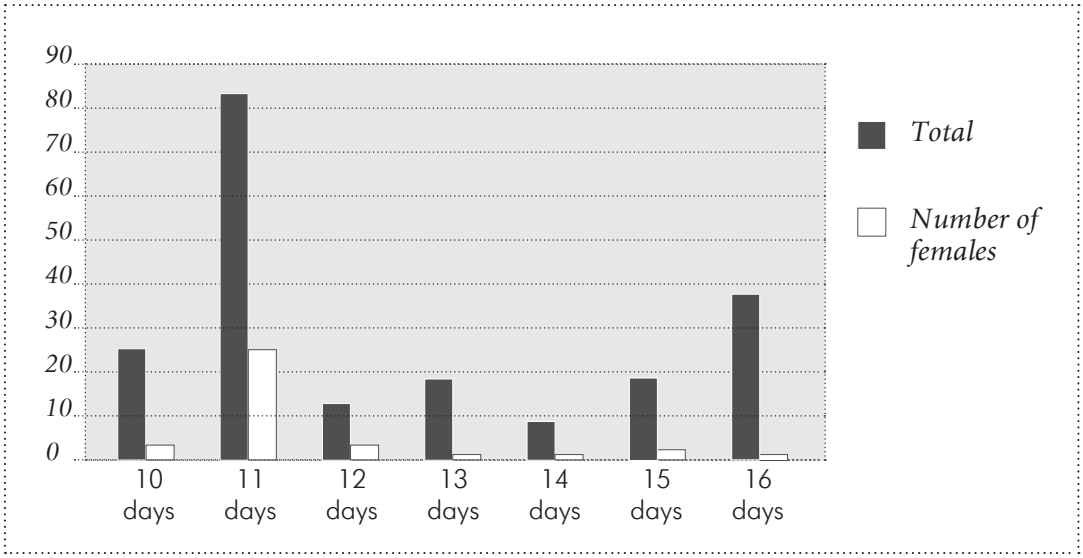
The detainees were transported to two Temporary Detention Facilities after court rulings on their administrative arrest were announced: 98 persons (including 1 female) were transported to the Temporary Detention Facility in Zhodzina (Sukhahradskaya Str., 1); 42 persons (including 39 females) – to the Temporary Detention Facility of Minsk Region (F.Skaryny Str., 20). People were also transported to the Center for Isolation of Criminals of Minsk City Executive Committee (Akrestsina Str., 36) – 109 persons (1 female among them). 6 respondents stated that they were transferred from one detention facility to another. 2 women mentioned that they were kept in the Temporary Detention Facility of Zhodzina City Department of the Interior and later transferred to the Temporary Detention Facility of Department of the Interior of Minsk Region. 4 respondents stated that they were kept at the Center for Isolation of Criminals of Minsk City Executive Committee and later transferred to the Temporary Detention Facility at Zhodzina City Department of the Interior. 3 persons did not indicate where exactly they were kept in custody.

251 respondents out of the total sampling mentioned duration of their stay in detention facilities in their questionnaires.

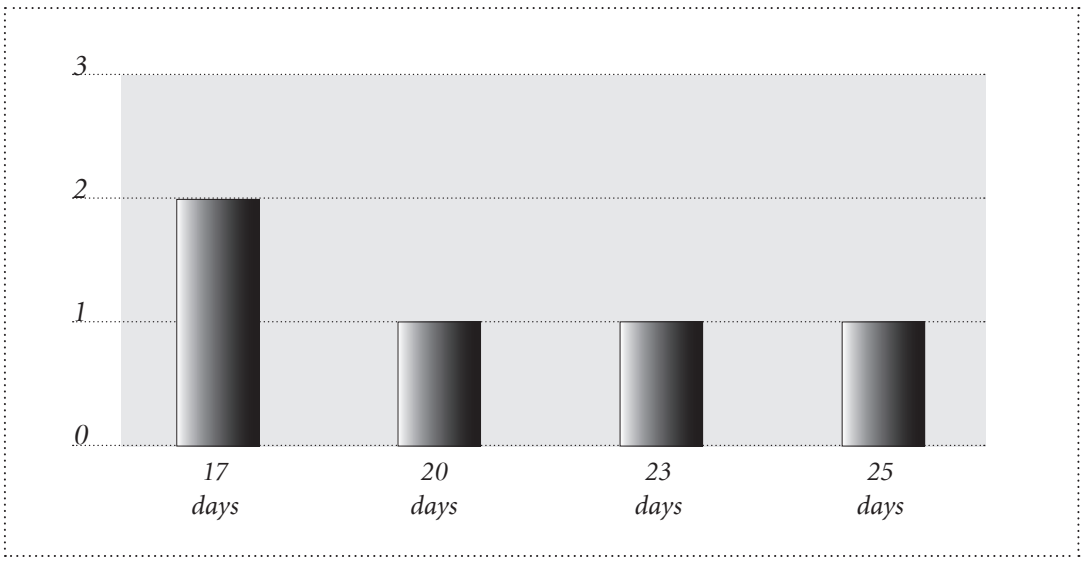
31 persons served the punishment in a form of 2 to 9 days of arrest (including 4 females)



205 persons served the punishment in a form of 10 to 16 days of arrest (including 38 females)

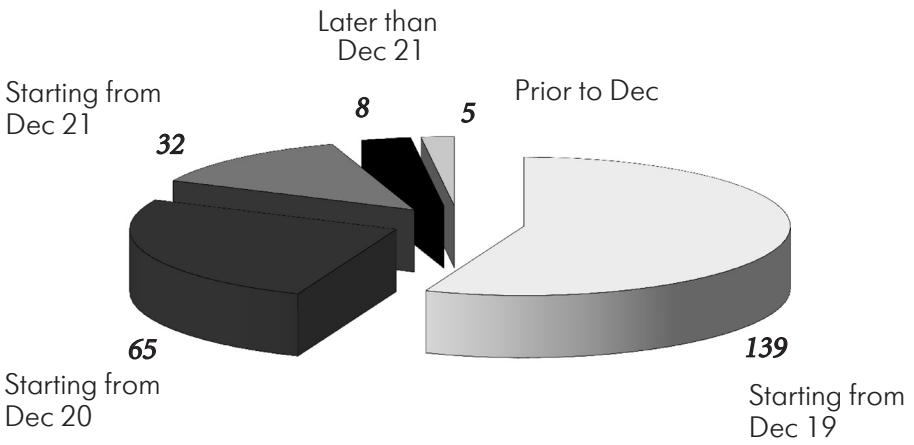


5 persons served the punishment in a form of 17 to 25 days of arrest



249 respondents reported the date when their sentence term began. 5 persons stated that their sentence term was calculated starting earlier than December 19, 2010. The term of the sentence calculated for 139 persons started from the evening of December 19, 2010. The term of the sentence for 65 persons started from the night of December 20, 2010. 32 respondents stated that their sentence term was calculated starting from December 21, 2010. 8 persons claimed their term to have been calculated as starting later than December 21, 2010.

Beginning date of the term of the sentence



All detention facilities mentioned by the respondents were said to have been overcrowded. There were individual cases in the Temporary Detention Facility in Zhodzina when less than 2 square meters of the cell area were allocated per person. 12 persons were reported to have been simultaneously and for a long period kept in a cell with 18 square meters' area. Deficiency of sleeping facilities was mentioned for the Temporary Detention Facility in Zhodzina. One respondent described a case when 14 persons serving an administrative arrest were placed into a cell with sleeping facilities equipped for 10 people only, this leading to the situation when prisoners had to spend the night on the floor.

Respondents reported similar facts concerning the Temporary Detention Facility of Minsk Region. Respondents described that 12 prisoners were placed simultaneously into one cell equipped with just 8 sleeping places, spending a long time there and all having claims for a sleeping place. Respondents also mentioned that prisoners were put into cells where each man was assigned to less than 2 square meters of space.

The situation with custodial conditions for prisoners kept in the Center for Isolation of Criminals was less grievous if compared to what was described above. 10 respondents stated that cells were "insignificantly" overcrowded. There were 3 equipped sleeping places for 4 people in one cell, i.e., one person had to sleep on the floor.

One respondent described that he had spent over 24 hours inside a special vehicle of the Interior because the cells in the detention facility were overcrowded.

Respondents stated that a man who behaved inadequately and was delirious was kept in one of the cells of the Temporary Detention Facility in Zhodzina together with others. The respondents mentioned that his behavior resumed at intervals and resembled disease attacks. The respondents who served their term at the Center for Isolation of Criminals of Minsk City Executive Committee told that they were kept together with other prisoners who supposedly had tuberculosis and chickenpox.

123 respondents kept in different detention facilities mentioned that no drinking water was provided to them during the whole term of administrative arrest. They had to drink water from a tap located in the cell. Most respondents noted that tap water was of the lowest quality and with a strong smell of chlorine. Only several witnesses mentioned that they were provided with access to drinking water.

116 respondents from all three detention facilities mentioned in their questionnaires that the quality of food given to them was very poor. The food smelled bad, looked inedible and was repulsive in taste. Respondents reported facts of mass meal refusal. In certain cases detainees went on a hunger strike. Such facts were described by respondents from all three detention facilities. 14 respondents mentioned cases of indigestion and poisoning among the arrested.

Upon evidence from the respondents, temperature conditions in cells of all detention facilities more or less corresponded to norms, except for the Center for Isolation of Criminals. 47 respondents mentioned that it was very cold in cells during the entire period of their arrest and they always had a feeling there was a draught in the cell.

43 respondents kept in the Temporary Detention Facility of Minsk Region mentioned that during the first three days they had to wear upper clothing when sleeping because the temperature in the cells was very low. According to one of the witnesses, the temperature in the cell during the first three days was no more than 0 degrees centigrade.

51 respondents kept in the Temporary Detention Facility in Zhodzina noted that their cells were well-heated; they even mentioned that it was hot in the cells. However, 3 respondents rated the temperature of their cells as cold.

Most respondents indicated that the system of artificial ventilation was available in cells of all the described detention facilities. However, 43 respondents kept in the Temporary Detention Facility in Zhodzina and 36 respondents kept in the Center for Isolation of Criminals noted that ventilation systems did not work properly. The prisoners of the Temporary Detention Facility in Zhodzina emphasized that it was very stifling in the cells. Those who were kept in the Temporary Detention Facility of Minsk Region specified that ventilation worked very poorly in their cells. Prisoners could open ventlight windows in some cells of the described detention centers to let natural air inside, but this opportunity was not accessible in all cells. Together with that, opening ventlight windows to allow fresh air into the cell would lead to lowering general temperature inside the cells which, in case of bad heating at the Temporary Detention Facility of Minsk Region and in the Center for Isolation of Criminals, would worsen the already complicated situation with temperature conditions in cells.

Weakness of artificial ventilation in all the custodial venues described above had an extremely heavy impact on non-smoking prisoners who were quite many in number. Since the prisoners who smoked and those who did not smoke were kept together and the administration of custodial facilities did not provide smokers with an opportunity to smoke outside the cell, cigarette smoke — considering the bad ventilation system — was airing out very slowly and caused additional discomfort and worsening of non-smokers' health.

As for the issue of lighting inside cells, respondents from all the detention facilities mentioned that it was problematic to read something in the cell as there was not enough light. 69 respondents kept in the Center for Isolation of Criminals complained about bad artificial light inside the cells. Similar situation was described for Temporary Detention Facility of Minsk Region: only 71 prisoners kept there mentioned that illumination was sufficient and cozy for reading, still noticing that artificial illumination was turned on for a short period before sleep, whereas the rest of the time the cell was lit by natural light from the window, which obviously was insufficient. Illumination was inadequate due to the fact that the window was small in size and there were hindrances in front of the cell window. These circumstances were impeding the possibility for prisoners to file their complaints regarding court rulings and incarceration conditions.

Many respondents described in their questionnaires that they could take a shower once

a week. Such a possibility was equally provided in all the described detention facilities. Women who were kept in the Temporary Detention Facility of Minsk Region mentioned that shower was provided to them once in 5-7 days. Together with that, prisoners from the Temporary Detention Facility in Zhodzina stated that time allocated by the administration for showering was extremely short. Respondents explained that showering was limited by no more than 3-4 minutes per person. It needs to be mentioned that one of the prisoners of the Temporary Detention Facility in Zhodzina complained about absence of hot water in the tap during showering. As a result, he had to wash himself with cold water only. 35 of those imprisoned to the Center for Isolation of Criminals noted that they had to lodge a collective complaint against the administration of the facility, and it was the collective complaint that pushed the administration towards a decision to provide prisoners with a possibility to take a shower. A case when access to showering was granted to a prisoner on the ninth day of his term was reported in the Center for Isolation of Criminals.

Respondents from all the detention facilities mentioned that there were toilets in the cells. Some of the cells of the Temporary Detention Facility in Zhodzina were equipped with full-fledged toilet pans. In all other cases at Temporary Detention Facility in Zhodzina and at Temporary Detention Facility of Minsk Region, as well as in the Center for Isolation of Criminals in Minsk there were no full-fledged toilet pans organized in the cells. 39 respondents kept in the detention facility in Minsk noted bad conditions of privacy when using toilet. The height of partition bars separating the toilet from the rest of the cell was no more than one meter, and this did not let the prisoner feel isolated when using the toilet. The same reason caused discomfort of prisoners who could be eating when someone else was using the toilet. Moreover, the personnel of the detention facility could observe the toilet area, this causing more discomfort to the prisoner. Similar information about using the toilet was mentioned in the questionnaires filled in by those imprisoned in the Temporary Detention Facility in Zhodzina and in the description of 45 respondents kept in the cells of the Center for Isolation of Criminals in Minsk. 21 respondents, having served their term in the Temporary Detention Facility of Minsk Region, said there were no sinks in their cells and it was only possible to wash and brush teeth using the tap located above the toilet, which caused the feeling of disgust because of the smells rising from the toilet. Administration of the Temporary Detention Facility in Zhodzina never provided the prisoners kept there with toilet paper or other hygienic means.

Eyewitnesses testified that there was a problem with individual bedding in all of the described facilities. Prisoners were either not given a mattress, or a blanket, or sheets. There were cases mentioned when nothing of the above was given to a prisoner. There were cases described in the Center for Isolation of Criminals in Minsk when prisoners used bedding during a part of their term of arrest and were forced to spend another part of their term without bedding as it had been confiscated. Some prisoners described a range of cases when they had been provided with extremely dirty mattresses that firmly and sharply smelled of urine.

Most respondents mentioned that cells where they were kept were quite equipped with furniture. There were desks, benches and bed stands in the cells. However, the prisoners of the Center for Isolation of Criminals stated that they were kept in cells with no other furniture but individual sleeping places. Consequently, they had to keep their upper clothing on their sleeping place and eat there, as well.

Many respondents kept in the Temporary Detention Facility in Zhodzina stated that there were cockroaches in their cells. Prisoners kept in the Center for Isolation of Criminals in Minsk mentioned that there were cockroaches and even mice in separate cells, though

such descriptions are rather single. The least amount of cases when cockroaches were detected was mentioned in the Center for Isolation of Criminals.

Respondents mentioned that implementation of the prisoners' right to have a daily walk was a huge problem. All those who were kept in the Center for Isolation of Prisoners claimed that during the whole term of their arrest they were never taken outside for a walk. Prisoners that were kept in the Temporary Detention Facility of Minsk Region said that daily walks did not last longer than 30 minutes. One female respondent stated that prisoners from their cells were not taken outside for three days in a row. The respondents testified that allegedly daily walks were allowed for them in the Temporary Detention Facility in Zhodzina only once in two or three days. 90 per cent of the respondents confirmed this information. The total duration of walks was no more than 30 minutes per day. According to the testimony of another respondent, he was not taken outside for a walk for 5 days in a row. Prisoners described that the area of the inner yard aimed for walks was about 20 square meters.

Respondents mentioned that medical assistance was provided to prisoners in all the detention centers, but people kept in the Temporary Detention Facility in Zhodzina stated that a physician could come upon a request for assistance only on the next day after a complaint about health conditions had been launched to the personnel of the detention facility. One prisoner described that medical assistance was provided to him on the third day since he launched his complaint. Nearly all the respondents that received medical assistance stated that local doctors used aspirin and charcoal to treat all diseases. Those kept in the Center for Isolation of Criminals noted positively that medical personnel conducted daily examination of all prisoners.

Respondents from all the detention facilities noticed serious problems with transfer of foodstuffs, hygiene products and personal belongings. They noted that despite malnutrition in the detention facility, administration of the facilities did not allow relatives of the prisoners transfer any foodstuffs but water and juice to them. There were numerous cases when items transferred by relatives of the prisoners in official packages "disappeared" from them when reaching the addressee. Such facts were mentioned by the prisoners of Center for Isolation of Criminals and of Temporary Detention Facility in Zhodzina. Those who served their sentence in the Temporary Detention Facility of Minsk Region even mentioned that packages disappeared completely.

An important problem mentioned by the respondents during the questioning was demonstration of violence, humiliation and cruelty on behalf of the custody personnel in relation to the prisoners. The respondents mentioned that one shift of guards was quite different from another, but the general context was unsatisfactory. 58 prisoners who were kept in the Temporary Detention Facility in Zhodzina mentioned cruelty and even facts of physical violence on behalf of the personnel. One respondent stated that a guard hurt him hitting on the chest with a wrist. Prisoners at the Center for Isolation of Criminals in Minsk mentioned cruelty and offences committed by the guards. Female prisoners kept in the Temporary Detention Facility of Minsk Region were the only ones to state that guards had rarely been rude to them, but they mentioned a number of cases when guards on shift were under the influence of alcohol.

Summarized information about incarceration conditions in particular cells

Cell number	*Information about incarceration conditions*
Temporary Detention Facility in Zhodzina	
Cell №1	6x4x3 or 10x10x3. 10–11 persons were kept in the cell. The 11th person slept on the floor (according to testimonies of 5 respondents). Concrete walls or walls covered with tile. No furniture but a desk and beds. Two windows 1x1 meters hardly let the light through. Artificial illumination: a lamp and a bed lamp. The bed lamp burnt out and people had to sleep with the light of the regular lamp on. Enough light to read. Temperature in the cell was about 25 degrees centigrade. Ventilation through the window, enough air, no condensation on the walls.
Cell №2	4x2x3. 12 square meters. 8 persons were kept in the cell (according to testimonies of 2 respondents). Walls covered with rough plaster and painted. A desk, benches, beds, a locker. A window 1x1 meters hardly let the light through. Daylight lamp was on. Weak ventilation, no condensation on the walls. Temperature in the cell — 20 degrees centigrade.
Cell №3	4x2x3. 12 square meters. 4 persons were kept in the cell (according to testimonies of 2 respondents). Concrete walls. Benches, a locker. A window 1x1 meters, louver shutters did not let natural light through, but good artificial illumination — possible to read. Night lighting turned on at night. Very weak induced ventilation. Good natural ventilation through the window, but it's impossible to close the window and, therefore, is cold.
Cell №5	6x3x3 or 6x3.3x3, or 6x4x3.5, or 6x5x2.5. From 8 to 10 persons were kept in the cell (according to testimonies of 4 respondents). Concrete walls, whitewash, walls painted with oil paints. Two-tier bunks, a desk, 2 benches by the desk.
Cell №5 (separate building)	4.5x4x3. 4 persons were kept in the cell (according to testimony of 1 respondent).
Cell №6	5x3x3 or 6x4x3. 10 persons were kept in the cell (according to testimonies from 4 respondents). 10 beds, 10 cups without handles. A locker, a desk, two chairs. Ventilation systems did not work. 8 of 10 prisoners smoked.
Cell №8	5x3.5x3 or 5.5x2, or 7x4x3. 8 to 10 persons were kept in the cell (according to testimonies of 4 respondents). Concrete painted walls. Window allowed no light into the cell. Louver shutters. Ventilation did not always work. Hangers on the wall for clothing.
Cell №9	4 meters high. 8 persons were kept in the cell (according to testimony of 1 respondent). Louver shutters pointed up. Very stuffy in the cell. Ventilation worked poorly.
Cell №10	8x4x3 or 5x3.5x3 or 6x4x3. 8 to 11 persons were kept in the cell (according to testimonies of 4 respondents). Opaque glass.
Cell №11	6x3.5x2.8. 7 or 8 persons were kept in the cell (according to testimonies of 2 respondents). A metal desk, metal locker, metal shelves. Very cold.
Cell №12	5x3x3 or 7x3.5x2.5. 8 to 10 persons were kept in the cell (according to testimonies of 3 respondents). Bad nutrition. Hot water. Ventilation could not cope with the cigarette smoke.

Cell №13	8x4x3 or 5-6x3-4x2.5-3. 7 to 9 persons were kept in the cell (according to testimonies of 3 respondents). Very stuffy, impossible to open ventlight windows. Ventilation did not work.
Cell №14 (separate building)	6x2.5x3.2. 10 persons were kept in the cell (according to testimonies of 2 respondents). Ventilation worked well at some point, and worked terribly at another point.
Cell №15	6x3x2.5. 8 to 10 persons were kept in the cell (according to testimonies of 2 respondents). Very stuffy in the cell, windows could not be opened. Artificial ventilation worked only at smoking area.
Cell №16	5.5x3.5x3 or 5x4x3. 10 persons were kept in the cell (according to testimonies of 3 respondents). Very stuffy in the cell.
Cell №17	4 persons were kept in the cell (according to testimonies of 2 respondents).
Cell №18	5x3x2. 10 persons were kept in the cell (according to testimony of 1 respondent). Very stuffy in the cell. Ventilation did not work every day.
Cell №18 (separate building)	20–25 square meters of area, 3,8-4 meters of height. 10 persons were kept in the cell (according to testimony of 1 respondent).
Cell №19	6x3x3. 10 persons were kept in the cell (according to testimonies of 2 respondents). Bad ventilation, hard to open or close windows. Personnel did not react to requests. Many people smoked and non-smokers were at discomfort.
Cell №20	8x5 steps or 4x3x3, or 6x3x2.8. 4–8 persons were kept in the cell (according to testimonies of 5 respondents). Eyesight was worsened due to bad lighting in the cell. At times there was not enough air. The window was covered with louver shutters, bad lighting. The window hardly let light in. Natural ventilation through open windows.
Cell №22	4.5x2.5x2.2 or 6x2x3. 4 persons were kept in the cell (according to testimonies of 2 respondents). Guards did not explain how to open or lock the windows. Both smokers and non-smokers were kept in the cell and, therefore, ventilation was not enough.
Cell №23	10x5x3,5. 10 persons were kept in the cell (according to testimonies of 4 respondents). Not enough air, bad ventilation. Bad lighting conditions — just one lamp.
Cell №24	12 square meters. 8 persons were kept in the cell (according to testimonies of 2 respondents). The window did not let natural light in. Light was not turned off, but turned down at night. Ventilation was often turned off.
Cell №26	6x3.1x3. 8 persons were kept in the cell (according to testimonies of 3 respondents). Light was not turned off at night. The window did not let natural light in.
Cell №27	6x3x3-4 or 5x3x3. 8 persons were kept in the cell (according to testimonies of 2 respondents). Practically no ventilation, smoke never disappeared.
Cell №28	6x3x2.2. 8–10 persons were kept in the cell (according to testimonies of 2 respondents). One of the witnesses was also kept in cell №6.
Cell №29	10x4x4 or 6x3x4, or 7x4, or 3x6x3.5, or 4x7. 8 persons were kept in the cell (according to testimonies of 5 respondents). Windows could not be locked. It was cold. People could catch a cold if they slept on beds by the windows. People slept with their coats on.

Cell №31	5x4x2.5. 8–14 persons were kept in the cell (according to testimonies of 3 respondents). It was not possible to see daylight. Ventilation was turned on for 30 minutes once in three hours. We kept the window open, but people on the second layer of the bunk bed were very cold.
Cell №32	6x2.6x2.8 or 10x4x3. 10–12 persons were kept in the cell (according to testimonies of 3 respondents). Louver shutters on the window. Artificial lighting not enough to read. Ventilation did not work well, it could not dissolve the smoke from cigarettes.
Cell №34	5x3x2.2 or 6x2x3, or 10x3x3. 4–11 persons were kept in the cell (according to testimonies of 4 respondents). Not enough air. The window was open. Very cold in the morning. Window did not let the natural light in.
Cell №35	4–15 persons were kept in the cell (according to testimony of 1 respondent).
Cell №36	5x4x2.5 or 6.5x4x3, or 7x3x4. 10–12 persons were kept in the cell (according to testimonies of 5 respondents) though the cell was meant for 10 persons only. The window did not let natural light through. We opened the window with a hand-made paper device. There were two smokers in the cell. It was very cold at night as the window was open and there was no possibility to lock it for the first several days.
Cell №38	6–8 persons were kept in the cell (according to testimony of 1 respondent). It was very stuffy in the cell.
Center for Isolation of Criminals of Minsk City Executive Committee (at Akrestsina Str.)	
Cell №1	3 persons were kept in the cell (according to testimony of 1 respondent).
Cell №2	6x8. 1 person was kept in the cell — a girl (according to testimony of 1 respondent). Walls covered with rough plaster. Impossible to read. The window did not let light through. Cold, headaches because of acetone and urine smells. Lights on for 24 hours. Very cold. I slept covered with my clothing as there were no blankets.
Cell №3	4 persons were kept in the cell (according to testimony of 1 respondent).
Cell №4	3–5 persons were kept in the cell (according to testimonies of 2 respondents). Cell for men. The window did not let light in. Draughts in the cell. Cold. Just beds.
Cell №5	3.2x3.4x3 or 4x2x3, or 4x4.5x3. 1–6 persons were kept in the cell (according to testimonies of 3 respondents). One large matting as a bed. No desks or benches. The window did not let enough light in. We were not allowed to open windows. It was hard to read with artificial illumination. It was very cold on the first day. Further on it was very stuffy. Windows were nailed up.
Cell №6	7x3x3 or 6x3x3, or 6x4x3, or 3-4x5-6x2.5. 7–10 persons were kept in the cell (according to testimonies of 5 respondents). One respondent mentioned that the cell was designed for 4 persons only. Matting and a shelf for hygienic devices. No desk or benches. The window did not let the light through. One dull lamp was lit during day and night. Impossible to read. Bad ventilation and no windows to be opened. Very stuffy. Very cold at night. No linen provided. Dim glass in the windows.
Cell №8	3x3x2.5 or 4x3x3. 6–8 persons were kept in the cell (according to testimonies of 3 respondents). Common plank beds where people ate and slept. Dishware given only at meal time. Natural light could not come through the window. Dull lighting on day and night. Bad ventilation, but possible to open a window. Many people smoked which was hard for non-smokers. Very cold at night.

Cell №9	4x3x2.5, 5–8 persons were kept in the cell (according to testimonies of 2 respondents). Matting 0.5 meters high. Natural light could not come through the window, rifled opaque glass. Impossible to read because of dull lighting. Very cold, condensation on the wall and ceiling. Bad ventilation. Cold when the vent window was open and stuffy when the window was closed. Light from the street reached through a broken part of the window glass. Guards said that lighting in the cells was not meant for reading, but for them to inspect on prisoners. The ceiling of the cell was smoked, its plaster fell down. Water drains because of the leaking radiator. A bucket was keeping the water of the leaking and making noise when water dropped. Very stuffy.
Cell №11	5 persons were kept in the cell (according to testimony of 1 respondent).
Cell №12	5x3x3. 7 persons were kept in the cell (according to testimony of 1 respondent). The window did not let light in. Dull lamp that was always on. Very cold in early morning. Bad ventilation.
Cell №13	5x2.5x2 or 2x3.3x2.8, or 4x3x2.9, or 6x2.5x3. 6-8 persons were kept in the cell (according to testimonies of 4 respondents). The window did not let light in. Dull lamp was always on, even for the night. Very stuffy and bad ventilation. No linen given. The matting padded with plywood. Cold in the morning. Natural ventilation with opened windows. Uncomfortable for non-smokers.
Cell №14	2.5x4x3 or 3x1.5x2.5, or 2.5x3.5x9.7, or 4x3x4, or 4x2.5x3. 2-10 persons were kept in the cell (according to testimonies of 6 respondents). 40 cm of the matting per person. Broken ventilation. Poor quality of food.
Cell №15	5x3x3 or 6x4x3. 8–12 persons were kept in the cell (according to testimonies of 2 respondents). Impossible to read. Constant condensation. Very cold when the window was open.
Cell №16	8x6x3. 6–11 persons were kept in the cell (according to testimonies of 2 respondents). Poor lighting from the window. Ventilation by two holes by the ceiling.
Cell №17	5–7 persons were kept in the cell (according to testimonies of 2 respondents). Nothing but the matting. Natural light barely came in through the window. Lights were not turned off for the night. We opened the window.
Cell №21	6x5x2.7 or 8x3x3.5. 6–8 persons were kept in the cell (according to testimonies of 4 respondents). Matting. Bad natural and artificial lighting. Very cold at night. Window was not closed tightly, hence, wind came through it. Ventilation did not work.
Cell №22	6–7x4–5x3–4 or 5x4x3. 5 persons were kept in the cell in accordance with the number of people it was presupposed for (according to testimonies of 4 respondents). The window did not let natural light in, but the cell was lit enough. Bed for each prisoner. Normal ventilation.
Cell №23	5x5x3 or 5x5x2.5, or 10x12x3, or 18 square meters. 10–14 persons were kept in the cell (according to testimonies of 6 respondents). Wall covered with rough plaster. Old ventilation system. We opened the windows. Very cold. Relatives transferred drinking water. Low access of daylight. Matting. Condensation on the walls.
Cell №24	5 persons were kept in the cell (according to testimony of 1 respondent). A desk and benches were in the cell.
Cell №25	6x4x4.5. 5 persons were kept in the cell (according to testimony of 1 respondent).

Cell №28	7x3. 5 persons were kept in the cell, equal to the number of places arranged for (according to testimonies of 2 respondents). Individual beds. Light hardly got through the window. Night lamp prevented from sleeping. No forced ventilation.
Cell №29	6 persons were kept in the cell (according to testimony of 1 respondent). Individual beds, desk, benches. The window did not let daylight in. Night lamp was very bright.
Cell №30	30x5x3.5 or 5x4x3.6. 6 persons were kept in the cell (according to testimonies of 3 respondents). A desk, beds. Daylight hardly got through the window.
Cell №31	5.7x4.7x2.5 or 25 square meters. 7 persons were kept in the cell (according to testimonies of 3 respondents). Bare light through the window. Cold and hot water available. Showering was provided once during the arrest term. One of the two lamps did not work for 2 days. Very cold at night.
Cell №32	6 persons were kept in the cell.
Cell №35	5 persons were kept in the cell (according to testimony of 1 respondent). Very stuffy and cold. Bare light through the window.
Cell №39	5x4x3. 5–7 persons were kept in the cell (according to testimonies of 2 respondents).
Cell №40	5x6x3 or 6x5x5, or 7x3x3. 6 persons were kept in the cell (according to testimonies of 3 respondents). Beds. Bare light coming through the window. Not enough ventilation Stuffy. Tap water only.
Cell №41	10x5x2.8. 6 persons were kept in the cell (according to testimony of 1 respondent). Cool or cold at night. Beds.
Cell №42	10x5x3 or 7x7x5. 5–6 persons were kept in the cell (according to testimonies of 3 respondents). The window barely let light through. Bad ventilation. People smoked a lot, but ventilation could not cope with it. No daily walking during the whole detention. Very cold.
Temporary Detention Facility of Minsk Region (at F.Skaryny Str.)	
Cell№1	Cell for women. 5-7 persons were kept in the cell even though it was equipped for 4 persons only. The window barely let light through as it was covered with a bar screen painted white. Wind came from the window. Very cold.
Cell№2	6x3x1.5 or 4x3x3, or 4x3x2.5. Cell for women. 4–7 persons were kept in the cell (according to testimonies of 3 respondents). Nothing but a bed. The window barely let light through. Artificial light was dull. Very cold. Absolutely cold for the first three days, but then the heating was turned on. Not enough fresh air. No desk.
Cell№3	6x3x1.5 or 4x3x3, or 4x3x2.5. Cell for women. 4–7 persons were kept in the cell (according to testimonies of 3 respondents). Nothing but a bed. The window barely let light through. Artificial light was dull. Very cold. Absolutely cold for the first three days, but then the heating was turned on. Not enough fresh air. No desk.
Cell №4	4x3x3. Cell for men. 2 persons were kept in the cell (according to testimony of 1 respondent). Desk, beds. Window did not let the light through as it was covered with a shield with tiny holes. Dull natural lighting. Very cold. A blanket was given only on the second day. Many people smoked.

Cell №5	4x2–2.5x2.5 or 4x2x3. 3 persons were kept in the cell even though it was equipped for 2 persons only, the third person had to sleep on a mattress on the floor (according to testimonies of 2 respondents). Cell for women. The window was nailed up, no light could come through it. A shield with holes. Not enough artificial lighting. Very cold.
Cell №6	3.5x2x3.5. An equipped cell for women. 2 persons were kept in the cell, but there were several cases when a person was put in and had to sleep on the floor. No sink. We had to wash standing above the toilet. Window covered with a metal sheet with holes.
Cell №7	5x3.5x2.5 or 8x4x2.5, or 5x3x2. A cell for women. 11–13 persons were kept in the cell, the 13th girl was placed to the cell for 1.5 days (according to testimonies of 4 respondents). Rough plaster on the wall and all covered with smoke. Matting. Windows covered with paint. Very weak artificial lighting. Cold. Condensation on the walls and in the corner. Wind coming from the window. Broken ventilation. Hard to breathe when somebody's smoking. Bars separated sink and toilet from the cell. The window was broken, that is why there were draughts and cold.
Cell №8	5x3x2.7 or 6x3x3, or 4x4x5, or 3x3x3.4, or 5x6x2.5–3. A mixed cell. 12–16 persons were kept in the cell even though it was equipped for 8 persons only (according to testimonies of 8 respondents). Beds. Window glass was broken and covered with cloth. No light came through the window. A very dull lamp. No ventilation and very cold. People slept with their clothes on. Fungus on the walls. 4 bunk beds. A broken window was covered with dark lining on the fourth day. There was no heating during the first days.
Cell №9	6x4x2.5 or 5x3.5x3, or 10 square meters, or 5x3. 8-13 persons were kept in the cell even though it was equipped for 8 persons only (according to testimonies of 7 respondents). Daylight barely came through the window. Thick glass covered with paint from within. Natural ventilation due to holes in the window and doors. Draughts, very cold. 4 two-layer bunk beds. People slept with their hats on. People on the lower layer of a bed by the window slept by two to get warmer. It got warmer by the end of term, but still was cold. People slept with several sweaters and pants on, in socks. Artificial lighting was poor and people lost their vision after a walk on the street. People smoked. Nothing to breathe with. Radiator was warm for a few hours during the day. It was hard to breathe with 13 people in one cell. No non-smokers.
Cell №10	6x3 or 4x4, or 5x3x2.8, or 4.5-5x2.5-3x2.5, or 6x6x4, or 5x3x3,5, or 10x6, or 4x3x3, or 5–6x4-5x2.5x3. 9–13 persons were kept in the cell even though it was equipped for 8 persons only, non-political prisoners were also put into the cell (according to testimonies of 9 respondents). Matting. No natural light and very low artificial light. Very cold in the cell, ventilation was broken. Mold on the ceiling. Smelled like moisture. Window covered with a shield with holes. Wind blowing from the window. Dirty walls. Reading in such conditions could cause headaches. The toilet was often plugged up, but the personnel did not clean it or give equipment to clean the clog. It was impossible to beg for hot water. 13 persons were kept in the cell for two days, 12 persons were there during the rest of the days. Walls were covered with black carbon and dust. Cigarette smoke could not be aired out for a long time. We covered windows with a blanket so that to keep the wind from the windows away. 8 persons were left in the cell only after prisoners went on a hunger strike. Blankets given to people were very thin and could not warm them up. People slept with their clothing on. It was possible to get warm only with the blankets that were transferred by the family.

Cell №11	5x4x2.5 or 4x2x3-2.5, or 6x6x4. 10–13 persons were kept in the cell even though it was equipped for 6 persons only (according to testimonies of 6 respondents). Matting for sleeping. Some people slept on the floor. Windows did not let light through, it was windy. People covered windows with clothing that family transferred to them to keep the wind outside. Dull artificial light. Ventilation worked well. It was very cold. Condensation was on the wall. People were in their upper clothing all the time in the cell. It was cold for the first 4 or 5 days. Something was fixed later on and it got warmer in the cell. Due to stuffiness we asked the guards to open the window of the door. Walls were very dirty.

5. CONCLUSIVE REMARKS AND RECOMMENDATIONS

It is possible to firmly assert, according to the data under analysis, that state authorities were most violent and cruel during detentions. Violence was exercised against the majority of the detainees and was accompanied by insults and humiliation towards the people detained. The greater part of those detained did not demonstrate resistance in any form, and in most cases people stood with hands up in the air as a sign of readiness to obey to representatives of the state. Authorities, meanwhile, did not wear identification marks in every tenth detention and even hid their faces behind masks. Impossibility to identify people in charge of detention did not just deprive a detained person of the right to appeal against unlawful actions of state authorities or disorient him/her as a person under violence, but in this case gave no grounds for a correct decision as to personal mode of behavior: whether to resist, obey or run away.

The number of cases when violence was exercised against the detained persons in the special transportation vehicles, at locations where protocols were filed and in courts was a bit lower, but the number of facts of cruel, inhuman and degrading treatment significantly increases under these circumstances depicted by the following actions of the authorities: the respondents were kept for a long time in overcrowded special vehicles and in humiliating poses (lying face down; standing face to the wall; arms crossed behind the back); no access to drinking water was granted to the respondents; the respondents were for several hours denied a possibility to use toilet; no medical assistance was given to people with severe injuries; the detained were made standing for many hours and were not given a possibility to take a minimal rest or relax. Such methods of inhuman and degrading treatment were periodically accompanied by physical violence on behalf of the state authorities that can be described as directed towards abasement of human dignity of the detained, meant to break down a person's will.

Violations of administrative prosecution procedures stood out on this background. Serious violations happened during the process of filing protocols, in the outmost, because protocols were ready before their official filing procedure happened. Reports of certain state authorities were written according to a pre-made sample. There were even cases when a place of detention mentioned in the protocol did not correspond to the real location where the detention was conducted. Mismatch of real detention location and of that mentioned in the protocol, as well as testimonies of the respondents who stated that they were detained not at the actual place of a public action, but at bus stops, metro stations and the railroad, give ground to assume that state officials deliberately changed the place of detention in documents to hide the fact they detained people who had no relation to the public action. There was no access of the detained to legal protection; threats and insults, cursing and physical violence were used during interrogations.

Violations of procedures for administrative legal proceedings may be considered "gross". This is seen in the fact that average duration of court hearings on cases of the detainees was from 2 to 15 minutes. This time was obviously insufficient to conduct the hearing in accordance with the law, considering the fact that most of the detainees had not been subject to administrative liabilities earlier, and consideration of the cases required an individual approach. Brevity of court hearings combined with other factors indicated that thorough consideration of each administrative case in its uniqueness was never done by court. Judges demonstrated evidently negative attitude towards the detainees, thus, contradicting to the principles of judicial neutrality, they tended to extend terms of arrest in their rulings towards people who claimed for their rights and lawful procedures to be observed in court. At the same time, less than 50 per cent of the judiciary personnel of Minsk courts were involved into trials.

A number of other rough violations of proceedings were allowed for during court hearings: personal attorneys, family, journalists and the general public were not allowed into court room; judges refused to question witnesses of the defense; judges did not explain procedures for lodging appeals against court decisions; court rulings were not presented to the detainees in due time which deprived people of a possibility to further appeal against them.

Incarceration conditions in three detention facilities where the administratively arrested were kept (two Temporary Detention Facilities and one Center for Isolation of Criminals) may be called degrading for most cases. Cells were overcrowded, it was very cold, ventilation worked poorly, lighting was insufficient; linen, sleeping facilities and furniture was not enough to sustain tolerable being of the convicts. Cockroaches and mice were detected in cells which gives evidence concerning bad hygienic situation. Access to drinking water was not granted to people, nutrition quality was poor, use of shower and walk yard were utterly limited and not enough to sustain a normal living and observe personal hygiene. Toilets were barely equipped in terms of privacy and most of them could not be used by prisoners with disabilities. Custodial personnel were rude and partially stole belongings of the respondents transferred to them by family. It is possible to state that detention facilities were not ready to accept such a large number of detainees, whereas administration of the Temporary Detention Facilities and Center for Isolation of Criminals did not take the measures needed to solve the overcrowdings issue and to provide prisoners with individual sleeping places. The authorities preferred to solve the overcrowdings issue in another way that roughly violated the prisoner's rights. The issue of overcrowdings very much influenced the decision of detention facilities administration to refuse to observe the principles of individual incarceration of prisoners.

It is possible to assert that incarceration conditions for the detainees and persons under administrative arrest hardly corresponded to the minimal international standards depicted by the general recommendations of the Standard Minimum Rules for the Treatment of Prisoners approved by the UN ECOSOC Resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977. They also contradicted to the provisions of Article 7 of the International Covenant on Civil and Political Rights on "Rights to humane treatment and respect of inherent dignity of a human person as related to prisoners" (No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment). Thus, it is possible to assert that the state of the Republic of Belarus grossly violated its international obligations in this sphere.

General conclusive remarks upon the facts mentioned in the present Analytical Note shall be the following: in detaining participants of the action of December 19, 2010, in putting the administratively detained persons on record, in keeping them under arrest, in conducting court trials upon administrative cases, in further placing the convicts under custodial restraint, the authorities of the Republic of Belarus conducted actions of repressive character meant to intimidate the population and to be a general precaution towards public expression of opinion through peaceful assembly. Despite the obviously coordinated character of the law enforcement personnel behavior and targeted detentions of hundreds of people, the state failed to provide the detained with at least minimal standards of humane treatment and respect of dignity during detention and their further placement into custody, which led to mass violations of rights and freedoms of these persons. Such actions directly violate liabilities of the Republic of Belarus in the sphere of human rights and contradict to generally accepted standards of the rule of law.

RECOMMENDATIONS:

To state authorities in the Republic of Belarus

1. To take urgent measures in re-training policemen that participate in controlling public order during mass events and public actions, with the aim to avoid further application of violence and cruelty against the detained and their degrading treatment;

2. Law enforcement bodies of the Republic of Belarus should develop (upon the principles of current international standards, namely, OSCE/ODIHR and Venice Commission Guidelines on Freedom of Peaceful Assembly) mechanisms of action during mass public actions, including those not allowed by the authorities, with the aim to bar mass disorders and prevent violence, the method of mass detentions to be used in exceptional cases of justified and urgent necessity;

3. Law enforcement bodies of the Republic of Belarus should strictly observe human rights standards and demands of national legislation when conducting mass detentions. In particular, to conform in all situations to rules of transportation of detainees in automotive vehicles, to adhere to technical norms of allowed number of people for transportation per each specialized vehicle, to provide detained persons with conditions allowing them satisfy physical needs, to observe the fill rate of cells in temporary detention and custodial facilities, to consider the number of places available in corresponding facilities and to adhere to international standards of incarceration that grant respect to human dignity of the detained persons;

4. Public Prosecution Office of the Republic of Belarus should investigate all facts of violence, torture, cruel and degrading treatment of persons during and after the public action of December 19, 2010;

5. Courts of Minsk should be reconstructed to ensure possibility to conduct public and open trials;

6. Judicial community should examine facts when judges violated procedures of court trials when considering cases of people detained during a public action of December 19, 2010. Judges in charge of such violations should be held liable to disciplinary and other forms of punishment;

7. Supreme Court of the Republic of Belarus should analyze materials of these court trials and draft a compilation of court practices with the aim to prevent future violations of human rights;

8. Incarceration conditions in Belarusian Temporary Detention Facilities (namely, the Temporary Detention Facility in Zhodzina, Temporary Detention Facility of Minsk Region and

Center for Isolation of Prisoners in Mink) should be brought into compliance with the Standard Minimum Rules for the Treatment of Prisoners approved by the UN ECOSOC Resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977 as concerns the area of cells and cubic capacity of cells per prisoner, general sanitary and hygiene conditions inside the cells, number and size of windows, possibility to implement hygienic procedures privately (use the toilet, shower), nutrition of prisoners, allocation of bedding, possibility to have walks, to communicate with family and receive packages.

9. Authorities of the Republic of Belarus, namely, the Public Prosecution Office, should investigate all facts of unlawful actions on behalf of detention facilities personnel and actions humiliating human dignity of prisoners. Compensations should be allocated to those affected and punishment — to those guilty;

10. Corresponding Mandatees of the UN Human Rights Council should be invited to the Republic of Belarus to work within fact-finding missions.

To Mandatees of the UN Human Rights Council (in the first place, to Working Group on Arbitrary Detentions and to Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment):

1. To assess mass violations of rights of those detained during the public action of December 19, 2010, from the perspective of international human rights standards;

2. To establish fact-finding missions in the Republic of Belarus; to publicize results of their work and recommendations during the sessions of the UN Human Rights Council.

To OSCE countries:

1. To initiate, where jurisdictional bonds are present (e.g., when citizens of corresponding states were injured), their own investigation upon facts of tortures from the side of law enforcement bodies of the Republic of Belarus;

2. To organize support to Belarusian and international NGOs in their effort to investigate the truth about tortures against people detained after the action of December 19, 2010, to identify and punish those guilty.

To NGOs that work in Belarus:

1. To provide victims with legal and consultative support, namely, in the procedures of lodging complaints (including those to international institutions) against the actions of Belarusian authorities that allowed for acts of violence, cruel and degrading treatment when ceasing the public action of December 19, 2010, and when the detainees were transported and kept within special transportation vehicles and in custody.

2. To regularly inform Belarusian publicity and international community about the flow of investigation and appealing process against violations of rights of those detained during the public action of December 19, 2010.

Aleh Fiadotau

ANALYTICAL NOTE

on availability and efficiency of appeal in an administrative procedure of the Republic of Belarus regarding administrative offence cases under articles 23.34 of the Code of Administrative Offences of the Republic of Belarus (CAO) committed during the period from December 18 to December 24

1. INTRODUCTION

Understanding the necessity of the procedure of appeal against a judicial act, solving a case on the merits is generally recognized. And, first of all, it concerns an appeal against a judicial against act which has not yet become effective in law. In different countries it is generally called either an appeal or a cassation. However, the two-level judicial system[1] can be found in an absolute majority of both developed and developing countries. In the Republic of Belarus the right to appeal is enshrined both in the national legislation and in international treaties which came into force for it.

Citizens involved in an administrative procedure in the Republic of Belarus have the right to review a decree which has not yet become effective in law with regard to a case on an administrative offence as well as within criminal, economic or civil procedure being reviewed.[2] Thus, the Procedural Executive Code of Administrative Offences of the Republic of Belarus (hereafter — PECAO) stipulates "the right to appeal against legal proceedings, decrees" (Article 2.16), according to which a person in respect of whom an administrative process is pursued, a defense counsel, a complainant, a legal representative, a representative <...> shall be entitled to appeal <...> against a decree adopted with regard to an administrative offence in accordance with the procedure established in the PECAO.
The PECAO authorizes the following participants of an administrative procedure to appeal against a decree with regard to a case on administrative offence[3]: a person in respect of whom an administrative process is pursued (Item 12 Part 1 Article 4.1), a complainant (Item 11 Part 2 Article 4.2), a legal representative of a natural person, a representative of a juridical person, a defense counsel and a representative (Part 2 Article 4.3, Part 1 Article 4.4 and Item 7 Part 6 Article 4.5 respectively), a head of a body which sent up the administrative offence case for consideration[4] (Part 1 Article 12.1 and Part 1 Article 12.11 respectively). The prosecutor who is not a participant of an administrative procedure nevertheless has the right to protest decrees which have not yet become effective in law and which have entered into legal force. The procedure of appeal and protest against a decree with regard to a case concerning an administrative offence is specified in more detail in Chapter 12 of the PECAO and will be described further.

The right to appeal is enshrined in the International Treaty of the Republic of Belarus — the International Covenant on Civil and Political Rights dated 1966[5] (hereafter — ICCPR) authorizes persons under the jurisdiction of a participating state to appeal: in order that *everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law* (Article 14 (5)). But when reading this article, it can be noted that it refers to conviction for an offence. At the same time Item 17 of the General Comment No. 13 dated April 13, 1984 and Item 45 of the General Comment No. 32 dated August 23, 2007 specify that the guarantee is enshrined in Section 5 Article 14 of the ICCPR has effect not only in case of the most major infractions. Also, according to Article 14(1) of the ICCPR, 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

1 *A court of first instance solves a case on the merits, and a court of second instance checks a court below.*

2 *According to Article 5 of the Code of the Republic of Belarus on Judicial System and Status of Judges administrative legal proceedings are one of forms of effectuation of justice by ordinary and economic courts.*

3 *The right to appeal against both decrees which have not become effective in law and which have entered into legal force is meant here.*

4 *Can appeal only against a decree on termination of an administrative offence.*

5 *Came into force for Belarus on March 23, 1976.*

competent, independent and impartial tribunal established by law. In addition, according to the practice of the UN Human Rights Committee, guarantees of a fair and public hearing should be observed at the stage of an appeal hearing.[6]

Is it possible to qualify Belarusian administrative offences as criminal offences in terms of the ICCPR? The author does not know any practice of the UN Human Rights Committee (hereafter — UNHRC) where the issue of validity of applying Article 14(5) of the ICCPR to hearing of administrative offence cases in Belarus was scrutinized. But we suppose that in this case we should proceed from the premise that the term "crime" enshrined in Article 12(5) needs autonomous interpretation.[7] As M. Novak fairly points out, in any other case participating states of the ICCPR could freely escape liability for violation of Article 14 through transfer of powers for passing a sentence for criminal offences, including awarding a punishment, to administrative bodies.[8] When resolving such issues the UNHRC often recourses to the jurisdiction of the European Human Rights Court (EHRC) under Article 6 of the European Convention on Human Rights (ECHR) which also contains the term "criminal charge".

Thus in the case *Engel v. Netherlands* the EHRC set out the following criteria for the concept "criminal": the classification in an internal law of a state, the nature of offence, the type of punishment and its severity. Besides, the ECHR takes into account whether the punishment for the given administrative offence is applied to any number of unspecified persons or not. If the answer is yes, then Article 6 of the ECHR is applicable (*Weber v. Switzerland*). Also, the EHRC pays attention to the purpose of punishment: it should match the criterion of deterrence, retribution, setting it apart from punishment for other, minor offences (*Ozturk v. FRG*[9]). The recent practice of the European Human Rights Court has recognized justification of extension of Article 6 of the ECHR to hearing of administrative offence cases. Thus, in the case of *Galstyan v. Armenia*[10] the court reasoned that, as the accused was sentenced to 3 days of administrative arrest when he could be sentenced to 15 days, it helps consider the act committed by the accused as a criminal one by its significance for goals of the Convention (Section 56). Manfred Novak also specifies that *"not only the nature and severity of an imposed punishment, but also the type of a punishable act should be understood in order to find out whether a penal* ***offence*** *occurs"*.[11]

It is also noteworthy that, when joining the ICCPR, a number of countries made a notation to Article 14: Austria excluded application of the specified article in regard to imprisonment in the event of administrative, criminal and financial proceedings, France — in regard to the disciplinary regime in the army. Norway refused to guarantee the right to appeal at all.[12] But Belarus did not make any notation to Article 14 of the ICCPR which, when a number of conditions are met, additionally confirms the possibility of application of Article 14 of the ICCPR to the Belarusian administrative procedure.

Presumably with a view to Article 14 of the ICCPR, it is possible to qualify Article 23.34 of the Code of Administrative Offences (hereafter — CAO) settling liability for violation of the order of organizing and holding mass events as a criminal one in concept. Thus, this article is applied to all citizens being in the territory of Belarus regardless of their occupation, po-

6 *See Pinkney v. Canada, No. 27/1978, Section 21.*

7 *Known expert in the ICCPR Manfred Novak writes about it in his work U.N. Covenant on Civil and Political Rights. — Kehl am Rhein; Strasbourg; Arlington; Engel. 1993, p. 243.*

8 *Ibid, 243.*

9 *In this case ECHR considered road traffic offences which are not a crime in Germany as a criminal offence.*

10 *Galstyan v. Armenia, Judgment of November 15, 2007, Application No. 26986/03.*

11 *U.N Covenant on Civil and Political Rights — Kehl am Rhein; Strasbourg; Arlington; Engel. 1993, p.p. 243-244.*

12 *Ibid, p. 237.*

sition, another status, as well as to legal entities.[13] The following punishments are provided: a warning notice[14]; or a fine (up to 30, from 20 to 40 and up to 50 basic units[15]) or an arrest up to 15 days. Article 23.34 of the CAO has three parts[16] stipulating for commission of various offences when violating the order of organizing and holding mass events, and when committing two and more offences provided for by various parts of Article 23.34 of the CAO in bulk, a penalty can be imposed in the form of a fine up to 100 basic units or an arrest up to 25 days. It is worth nothing that in December, 2010 cases of levying penalty in the form of a fine were singular, at the level of a statistical error (less than 1% of all penalties according to Article 23.34 of the CAO). The most widespread penalty was an administrative arrest which, according to Article 6.7 of the CAO, was detention of a person in conditions of complete isolation. According to Chapter 18 of the PECAO administrative detainees have the right to meeting only with a lawyer or another person appointed as a defender.[17] Phone calls can be allowed if paid from personal finances, but only if there is a payphone at the establishment for isolation of administrative detainees. They are also allowed to transfer only procedural documents and appeals to state authorities. The establishment for isolation of administrative detainees has the right to engage them in room decontamination without payment for labor (Article 18.8 of the PECAO). As a punishment for misbehavior, detainees can be sent to a punishment cell for 5 days with deprivation of the right to take writing materials, periodical press, television programming, listening-in, therewith, in a punishment cell individual sleeping berth and bedding are provided only for the period of sleeping.

Thus, proceeding from the nature of an administrative offence according to Article 23.34 of the CAO, the nature and severity of the punishment for committing it in the light of practice of the UNHRC and ECHR, it is quite reasonable to consider it falling within application of Article 14(5) of the ICCPR.

Decrees with regard to a case concerning an administrative offence as per Article 23.34 of the CAO issued in December 2010, questionnaires of persons subjected to administrative penalties, decrees upon the results of considering the appeals, other correspondence with state authorities serve as an empirical base for the given research.

2. AVAILABILITY OF APPEALS IN CASES UNDER CONSIDERATION

In legal systems of most countries, information on the possibility to appeal is provided to the defendant at the stage of the final sentence. As a rule, explanation of the procedure of appeal is contained at the end of the operative part of the sentence or is additionally verbally explained by the judge to the accused, after reading the judicial act. Accordingly, if the procedure of appeal is fully, logically and competently explained at a court of first instance, so chances of the condemned for review are real. According to Part 2 of Article 11.5 of the PECAO a judge explains to the person, in respect of whom an administrative process is pursued, his rights and duties, and the right to appeal, in particular, according

13 Since 2011 a fine for a legal entity for commission of an offence according to Part 5 Article 23.34 of the Code of Administrative Offences is no more than 500 base rates.

14 Only one real case of imposing a penalty in the form of a warning notice is known. An activist of the Belarusian LGBT-movement Varvara Krasutskaya detained on the rally on December 19, 2010 was subjected to such a punishment. The administrative offence case was considered on February 10, 2011 as on December 19 Varvara was beaten in detention and hospitalized with a traumatic brain injury.

15 Until April 1, 2012 the basic unit amounted to 35,000 Belarusian rubles. At present it is 100,000 rubles or about 10 Euros at the exchange rate of the National Bank of the Republic of Belarus dated June 10, 2012.

16 Article 23.34 of the CAO as in force in December, 2010.

17 Till January 12, 2011 in accordance with the law, close relatives could not be appointed defenders of the person in respect of whom an administrative process is pursued.

to Part 2 of Article 11.9. of the PECAO, among other things, the period and procedure for appeal is specified in the decree on an administrative offence case.

To find out how judges observed the obligation to explain the right to appeal, its order and period, and also the direct possibility of appeal, we examined 285 questionnaires of persons subjected to administrative liability according to Article 23.34 of the CAO from December 20 till December 27, 2010, and 262 judicial decrees issued with regard to these persons. We were interested in the following factors which had an effect on the success of appeal:

1) an access to a defender at the stage of hearing at the court of first instance and at the Offender Custody Center (hereafter — OCC);

2) a level of explanation of the procedure and periods for appeal by a judge;

3) the possibility to prepare the appeal (availability of paper, a pen, a copy of the decree);

4) the possibility to send the appeal from the Offender Custody Center.

2.1. Access to a defender

Availability of a defender at the court of first instance helps draw up an appeal faster, since already while the case was heard on the merits, the defender could form his position in relation to real and potential violations of material and adjective law. Participation of a defender in preparation of an appeal after issuing a judicial decree is not less important, since a citizen being in prison has much less possibilities for self-defense, especially in consideration of a shortened appeal period and inaccessibility of many procedural documents. Accordingly, it is very important to find out whether there were defenders at the stage of consideration of administrative cases on the merits and while citizens were at offender custody centers.

According to Part 2 of Article 4.5 of the PECAO[18], a defender of a physical person in respect of whom an administrative process is pursued could be only a lawyer-citizen of the Republic of Belarus and/or a foreign lawyer, if his participation in the case is stipulated by the corresponding international treaty of the Republic of Belarus.[19] In other words physical persons in respect of whom an administrative process was pursued, did not have the right to choose a close relative as a defender, as this right has appeared since January 12, 2011, which obviously violated Article 62 of the Constitution and Article 14 (3) (d) of the ICCPR together with Article 2 of the ICCPR. Thus it should be noted that now physical persons in respect of whom an administrative process is pursued can exercise their right to apply for appointing a close relative as a defender only at the stage of preparation of case files (a pre-trial stage), as such petition can be authorized only by a body dealing with an administrative case, i.e. in our situation by officials of the RIAD (Regional Interior Affairs Directorate). Considering the fact that the stage of preparation of administrative offence case files is not public, one can assert that it opens a wide field for abuses on the part of employees of the Regional Interior Affairs Directorate while securing the detainee's right to defense.

The analysis of the questionnaires showed that at the stage of review of an administrative case there was no need for a defender because of their uselessness, as only in one case a respondent points out directly that the period and order of appeal were explained by a lawyer, and in six cases appeals were submitted by a lawyer employed by his relatives. In 27 cases respondents point out that they refused to hire a lawyer though they were offered

18 As in force when the administrative cases were heard and the administrative arrests served, i.e. before January 12, 2011.

19 For example, such possibility is provided by the Agreement on Rendering Legal Assistance in Civil and Criminal Matters between the Republic of Belarus and the Republic Lithuania.

to. Refusal reasons are different, but as a rule, they point out the pointlessness of a lawyer's presence as they do not help: "came and left", "said if there were no defense witnesses, there was no point for him to be [in the process] either", "was present formally", "other detainees said lawyers did not help", "there was a lawyer, but he did not help".

As a rule, all this knowledge about uselessness quickly ran through the court, as detainees were in custody in big groups and right after a rapid judgment came back to the same room where there were other persons whose administrative cases were not yet reviewed. It should be noted that, according to respondents, court administrators, militiamen, employees of an offender custody center predisposed to waive a defender. Sometimes, to requests for a lawyer, policeman asked detainees whether they had money to pay for their work, convinced in their uselessness, derided their wish, declined or did not respond to their requests. In 26 cases respondents reported there had been no possibility to call a lawyer and they had not been offered to call one. Only sometimes respondents pointed out that the defender who appealed against the judicial decree had been employed by the relatives; but it was reported about cases of denying access to a defender hired by the relatives, even up to giving the lawyer a false court room number where the proceedings were due to take place.

We believe the reasons for inactivity and inefficiency of state-granted lawyers' work in proceedings in December, 2010, firstly, lie in their status in the context of an administrative procedure. First of all, unlike the Criminal Procedure Code of the Republic of Belarus (hereafter — CPC), the PECAO does not provide for the right to free legal aid. The CPC of the Republic of Belarus enshrines the right of a suspect to receive free legal assistance of a lawyer prior to the first examination upon and after detentions or imprisonment (Item 5 Part 2 Article 41), to have a defender from the moment of detention (Item 6 Part 2 Article 41) and to be examined in the presence of a defender within 24 hours from the moment of detention (Item 8 Part 2 Article 41). The accused is provided with the same rights by the Belarusian Criminal Procedure Code (Items 4, 5, 7 Part 2 Article 43 of the Criminal Procedure Code). Thus the Criminal Procedure Code thoroughly regulates cases of mandatory participation of a defender (Article 45) and the order and cases of assigning a defender, and when to exempt a suspect fully or partially from the fee for legal assistance, in such cases the lawyer's work is payable either at the expense of the Bar (actually at the expense of lawyers) or at the expense of the state (Article 46 Criminal Procedure Code). When a lawyer works without a contract with the client (assigned by the inspector or the judge), the work is paid for by the state, and then the fees can be recovered by the client (Part 9 Article 46 of the Criminal Procedure Code). Thus, one may conclude that the Criminal Procedure Code directly provides for a possibility to receive free legal assistance during the whole process, and in some instances there is even no need to compensate it (consultation before the first examination).

Unlike the Criminal Procedure Code, the PECAO does not contain any indication that free legal aid might be obtained; it just states the fact of the right to defense. Article 2.8 of the PECAO states that *a physical person, in respect of whom an administrative process is pursued, has the right to defense. This right can be exercised personally or with the help of a defender in accordance with the procedures established by the PECAO.* Articles 4.1 and 4.5 of the PECAO also state the right of a physical person, in respect of whom an administrative process is pursued, to have a defender from the moment of detention and the order of engaging the defender in an administrative process. Meantime, the PECAO does not have a word about a possibility to exempt one from paying for the lawyer's work, and who is due to cover the fee. Thus, literal reading of the PECAO norms does not allow to claim about availability of free legal assistance in an administrative process. Besides, statements of employees of police districts, centers of isolation and judges about the possibility to

invite a lawyer only if the detainees have money on them, which was often pointed out by respondents in the questionnaires, only proves this thesis.

It should be also noted that engaging the lawyer in the administrative process requires a warrant, issued to him/her by the legal aid bureau only after the contract on rendering legal service has been drawn up and paid for (a payment receipt is to be shown to the accounts department of the legal aid bureau). Thus, when a duty lawyer is invited by the judge to work in court proceedings, the work needn't to be be paid for by anybody,[20] and the very fact of engaging the lawyer is not provided for by law, which means that the quality of work of such defender cannot be controlled. Absence of payment for work will hardly become a suitable impetus for conscientious work for a Belarusian lawyer, since under such conditions a lawyer got into an unfavorable position as compared with his colleagues whose free work within criminal trial is anyway paid for by the state.

The fact that physical persons in respect of whom an administrative process is pursued have no right to get free legal assistance is proved in Article 6 that was in force in December, 2010 of The Law on the Lawyers' Bar of the Republic of Belarus dated June 15, 1993 N 2406-XII. It is also confirmed by the analysis of rulings of the Presidium of the National Bar Association and decrees of the Ministry of Justice of Belarus dated December 11, 2007 N 86 "On several issues on rendering free legal assistance". At the same time Item 4 of the Decree of the Ministry of Justice No. 86 specifies that *in cases not established in Item 1 of the Decree, free legal assistance is rendered on the basis of the Ruling of the Presidium of the National Bar Association or orders of a legal consultation chairperson to fully or partially exempt a person form the fee for legal assistance.* The decision to exempt a client from the fee is made on the grounds of an appropriate written application within 10 days from the date of its submission. Bearing in mind the short period for appeal and the necessity to send the application from the detention facility, administrative arrestees would simply have no time to get such legal assistance so as to prepare and file the appeal.

The second reason for lawyers' passivity in administrative processes in December, 2010 seems to be the political coloration (they were result of the protest rally in Independence Square against electing A.G.Lukashenko). Belarusian lawyers, as well as judges, are vulnerable before the executive power and once again (especially for free) try to "keep the head down". It is easier for them to keep silent during a process, or to recommend that the client admit guilt and don't make the court angry by their persistence.

All the above mentioned factors show why citizens refused from duty lawyers — they could not be effective assistants, they did not want to be them and, in principle, they could not be such. At the same time according to Part 3 Article of 2.8 of the PECAO, **violation of the person's right to defense /.../ constitutes grounds to repeal the administrative decision on imposing an administrative penalty issued against him/her.**

2.2.
Degree of judge's explanation of the period and procedure for appeal

According to Part 1 of Article 2.3 of the PECAO the court, a body dealing with an administrative case, shall ensure protection of rights, freedoms and legitimate interests of participants of an administrative process, shall create conditions established by the PECAO for their implementation, shall take steps to meet their legal requirements in due time. According to Part 2 of Article 2.8 of the PECAO the court shall explain the rights

20 Allegedly the National Bar ruled that in the legal proceedings of persons which were administratively detained on December 19, 2010 lawyers should work without drafting an agreement with their client and receiving the fee beforehand, but should later issue an invoice to the state budget. But there is no documentary proof of it, and the main thing is that the detained citizens did not know about it, therefore, as they did not have money to pay for lawyer's work, they refused to use legal services.

to a physical person, in respect of whom an administrative process is pursued, and shall take measures to ensure that the person has actual possibility to use all means and ways of protection provided by the PECAO. The judge's duty to explain the rights to a physical person, in respect of whom an administrative process is pursued, is envisaged by Part 2 of Article 11.5 of the PECAO. One of the rights is the right to appeal against a decree in an administrative offence case. Thus, the procedure and the period for appeal should be specified in the court decree.

According to Article 12.2 of the PECAO, an appeal against a decree in an administrative offence case under Article 23.34 of the CAO can be submitted:

(1) To Minsk City Court.[21]

(2) Through the district court that issued the decree on the case.

(3) The appeal should be paid for in the amount of the state duty established by law.

According to Part 1 of Article 12.4 of the PECAO, an appeal (a note of protest) against a decree in an administrative offence case can be filed:

(4) within ten days from the date when a copy of the decree in the administrative offence case is received by the person, in respect of whom an administrative process is pursued, **or when it is delivered in the presence of the person, in respect of whom an administrative process is pursued, within ten days from the date of its announcement,**

(5), except for an appeal (a note of protest) against the decree on imposing an administrative penalty in the form of an administrative arrest or deportation, which can be filed **within five days.**[22]

Thus, on the basis of Articles 12.2 and 12.4 of the PECAO the following elements should be specified in a decree in an administrative offence case: 1) where to send the appeal to; 2) via what court (to whom it should be transferred physically); 3) the need to pay the state fee and its amount; 4) the period of appeal; 5) the starting moment of the period for appeal.

We believe that a judge should also explain that the procedural period starts on the next day after the decree is announced or received if it was announced in the absence of the appellant. This obligation, as well as the obligation to explain the basic unit rate, lies in Part 2 Article of 2.8 of the PECAO, according to which a judge shall take measures to ensure that the citizen has actual possibility to use all means and ways of protection established by the PECAO.

To clarify to what extent judges explained the period and procedure of appeal, we studied 285 questionnaires and 263 judicial decrees.

41 respondents reported that they were told **only about** the period of appeal, where in some instances it was specified that the judge mentioned the period of 10 days (incorrect period), or upon the expiration of 5 days from the date of issuing the decree (it must be done prior to the expiration of 5 days). 10 respondents reported that they were told only about the procedure of appeal. 31 respondents pointed out that they were told about the period and procedure of appeal, however, in some cases it was pointed out that the judge told about it "formally", "quickly", "unclearly", "did not offer explanations", "did not repeat". 55 respondents reported that they were told about **"the possibility to appeal"** without specifying it (the procedure and (or) period); meanwhile in some cases respondents specified that explanations were short, unclear.

In some cases only the right to appeal without its mechanism was explained. In other cases judges explained the appeal can be made at the person's will. It is also reported that in

21 This analysis is dedicated to proceedings held in Minsk only.

22 In December, 2010 the state fee for appeal of an administrative tax penalty in the form of a fine amounted to 1 basic unit (35,000 rubbles), the fine itself depending on its rate was 0.5 basic units, or 2 or 3 basic units, other penalties — 1 basic unit.

certain cases judges told that the procedure of appeal would be explained at the detention center, and there the detainees were told it was the judge's duty to explain it. It is also reported that in certain cases judges, having explained the procedure of appeal, said it was useless and with no chance to succeed. 40 respondents reported that they did not receive any explanations about the possibility to appeal. Only two respondents reported that they received explanations, in particular, that they needed to pay the state fee for filing the appeal; however, in one case it was said by an employee of the detention center, and by doing so the employee demotivated the arrestee to submit the appeal.[23] In the case under consideration we are firstly interested in those respondents who were told only about the procedure of appeal, or both the procedure and the period of appeal, or just "everything was explained". In order to find out what judges meant under the procedure of appeal, it makes sense to study court decrees in the administrative offence cases, which should be announced in full (i.e. including the procedure and period of appeal).

So, in all 263 court decrees under consideration, the necessity to pay the state fee for filing the appeal is not mentioned, although according to Article 12.2 of the PECAO the procedure of appeal includes the obligation to pay the state fee. In other words, on the basis of this point alone, one can assume that the persons administratively charged did not have complete information on the procedure of appeal. In 17 decrees the incorrect period for filing the appeal is specified —10 days, whereas appeal term for the arrested is five days. In 71 decrees the real period for appeal is specified — five days, but it is not specified from what moment this period is counted, although Article 12.4 of the PECAO on the period for appeal specifies the moment: since the person receives a copy of the decree, if it was issued in the absence of this person, or after the decree was announced in the presence of the responsible person. In ten decrees it is pointed out that they can be appealed within 5 days since receiving the copy, or since its delivery, which is incorrect because if the decree is read out in the presence of the responsible person, the period starts from the moment when the decree is announced. Finally, in 29 decrees it is pointed out that they can be appealed <...> after the decree is received or announced or delivered, which is also considered to be a legal error as well as in the previous two cases. Article 12.4 of the PECAO imperatively states elements of the period for appeal: 1) the correct period in days; 2) starting time. A mistake or absence of at least one of the elements involves appeal failure.

One should also take into account that if the decree is announced in the presence of the person in respect of whom it is issued, it is not obligatory to hand in the copy of the degree, and it is carried out only upon a request from the charged person (Article 11.11 of the PECAO). Correspondingly, in many cases a citizen, having received the court decree after leaving the detention facility or later, thought that s/he had five more days to appeal, though, by law, the period for appeal had ended. Other failures and mistakes were also revealed. 22 decrees contain the following information: "... the decree can be appealed and protested by the prosecutor at Minsk City Court through ..." In other words the phrase concerning the procedure of appeal is formulated in such a way that it is evident for the reader that this decree can be appealed/protested only by the prosecutor, but not by the person in respect of whom the decree is issued, which is obviously a mistake since the prosecutor can only protest.

The question of necessity to inform a citizen about the possibility to appeal against a decree is open. According to Item 12 Part 2 Article 4.1 of the PECAO a physical person, in respect of whom an administrative process is pursued, can appeal the decree, and according to Part 2 Article 11.9 a judge explains the order and period for appeal. The protest against the decree is filed by the prosecutor only (Part 2 Article 12.1 of the PECAO). At the

23 It is impossible to pay the state fee at the OCC as it is not provided by law.

same time, a complaint can also serve as the basis for the protest. It should be noted that the PECAO does not explain the mechanism based on which the prosecutor registers the protest. Can the person, in respect of whom the decree is issued, send the complaint with a request to lodge a protest against the decree on the case to the prosecutor, by analogy with civil, criminal and economic proceedings? Is the prosecutor obliged to lodge the protest in all cases, or only when the complaint contains evidently reasonable grounds?

The PECAO does not give irrefragable answers. Thus, according to Part 2 Article 11.11 of the PECAO, a copy of the decree is submitted to the body which had sent the administrative offence case to court, but there is no mention of the prosecutor. Correspondingly, the prosecutor simply cannot know about the issued decree, as he does not receive its copy, except for the cases when the prosecutor comes to court by himself to study the issued decrees in archive, which is highly improbable due to the workload of prosecutors. According to Part 2 Article 12.9 and Part 3 Article 12.14 of the PECAO the prosecutor is informed only about the results of the hearing of the protest lodged against a decree which has not yet become effective in law or has entered into legal force. Thus, it may be concluded that lodging a protest can be initiated only by a complaint of the interested person after paying the state fee.

Correspondingly, we believe that according to the law a judge should explain that a person can also file such a complaint to the prosecutor with a request to lodge a protest after paying the state fee. The question is open whether the filed complaint[24] with a request to lodge a protest against the decree is obligatory for the prosecutor. According to Part 9 Article 39 of the Law on Public Prosecution Service of the Republic of Belarus dated May 8, 2007, № 220-Z, lodging, review and resolution of a protest and a statement of the prosecutor at court are carried out according to the procedural legislation. But, the PECAO does not oblige the prosecutor directly and unambiguously to lodge a protest upon receiving a complaint against the decree with payment of the state fee.

The analysis of the court decrees also revealed other failures. In a rush judges pointed out not Minsk City Court but "Mincitcourt "[25], and not an appeal but "a private appeal"[26], which indicates lack of professionalism and may confuse a citizen.

Thus, the analysis of the questionnaires of administrative detainees and issued decrees showed that the procedure and period for appeal was not fully explained (concerning payment of the state fee) and in some cases (about 50% of decrees) was explained incorrectly, which gives grounds for restoration of the period for appeal in the mentioned cases.

2.3. Ability to prepare an appeal (availability of paper, a pen, a copy of the decree, ability to pay the state fee directly at the offender custody center)

Ensuring the right to appeal and interpretation of the appeal procedure is an indispensable element in a constitutional state, but not sufficient, unless there are additional mechanisms that allow to realize it, for example, providing a pen and a sheet of paper for actual writing of the appeal, delivering a copy of the decree with details about the court to which the appeal will be addressed and the court that issued the decree.

It was impossible to pay the state fee while being directly at the Offender Custody Center or the Temporary Detention Facility, because it is not envisaged by the legislation in principle. Officials of the OCC and the TDF are also not obliged (and have no right) to pay the

24 With payment of the state fee in the amount established by Appendix No. 17 to the Special Part of the Tax Code of the Republic of Belarus.

25 Such abbreviation is not used in official documents.

26 The term was taken from the civil process.

state fee for filing an appeal instead of the person serving an administrative arrest. In other words, the arrested citizens who decided to defend themselves without any legal help, for which they have right under Article 14(3) of the ICCPR, by getting into the OCC were placed in a situation of factual and legal impossibility to appeal against the court decree. Bearing in mind the fact that in all the decrees information on the state fee was missing, citizens learned about this duty from the OCC staff by themselves, i.e. when there was no time left to get in touch with relatives and ask them to hire an attorney to prepare and submit an appeal. Thus, it should be mentioned that administratively arrested citizens are in a discriminatory position in comparison with prisoners in the criminal process, as the Criminal Procedure Code (Article 372) and the Tax Code (Appendix 14 to the Special Part) do not require the convicted to pay the state a tax for filing a cassation appeal, but for lodging a supervisory one only. In the Russian Federation, for example, administrative detainees are not required to pay the state fee when lodging an appeal, which greatly accelerates the appeal examination process and increases the availability of an appeal.

The analysis of the questionnaires showed that 44 respondents pointed out that there was a possibility to appeal, however in some cases citizens were told about futility of appeal, including the impossibility to pay the state tax. 30 respondents said they had no opportunity to appeal, including the fact that they could not pay the state tax for filing the appeal; taken as a whole, the respondents did not explain what the lack of a possibility to appeal was. In 19 cases respondents reported that they were not given a pen and or a sheet of paper. However, this obligation of the OCC staff is provided by the Decree of the Ministry of Internal Affairs of the Republic of Belarus № 194 dated August 8, 2007 "On adoption of internal regulations of special agencies of the interior performing administrative penalty in the form of administrative detention" (hereafter — Regulations). Thus, according to Paragraph 33 of the Regulations, writing tools and paper are given on the request of the administratively arrested for writing suggestions, applications and complaints. The respondents note that this instruction was worst performed in Zhodzina prison №8, which seems to be the TDF[27] of Zhodzina DIAD[28]. Arrestees of this TDF were told that they were deprived of the right to correspondence and that they were not entitled to have writing tools.

Another common situation is when writing tools were given after the 5-day period for appeal expired. It deprived the arrested of motivation to appeal while being at the OCC and after leaving it. Another problem faced by the arrested citizens was lack of envelopes. According to Chapter 9 of the Regulations, costs for sending proposals, applications and complaints are paid by the sender; if administrative arrestees or detainees lack personal funds, appeals against decrees in administrative offence cases, as well as proposals, applications and complaints addressed to the body handling the administrative process are sent at the expense of a special agency (Interior Affairs Body). However, in some cases respondents remarked that the administration employees of the OCC or TDF refused to provide envelopes.

There was also a problem to get a copy of the decree in an administrative offence case. The fact is that according to Article 11.11 of the PECAO, if a decree is announced in the presence of the person in respect of whom the case is considered, a copy of the decree is given upon a request from the person or his/her attorney. But according to Paragraph 49 of General Comment № 32 dated August 23, 2007 the right to review conviction can be effectively implemented only if the convicted person gets access to a properly motivated judgment of the court in a written form. Taking into account the transience of processes (sometimes 1.5 minutes), reading a full list of rights was almost always omitted, and if read,

27 *Temporary Detention Facility.*

28 *District Interior Affairs Department.*

then quickly, incompletely and without explaining possibilities to implement them. Therefore, in most cases citizens did not always realize that they can get a copy of the decree only upon request. In the cases when citizens asked immediately to give them a copy of the decree, it still not always happened, because practically courts were transformed into a pipeline, and the judge had to consider the following case. In many cases judges managed to prepare a copy of the decree only a few days later, or sent the decree not to the OCC, but to the home address of the administrative arrestees.

Also, in some cases respondents reported that upon the arrival at the OCC or the TDF, the institution administration took away their copies of the decree and gave it back after the expiry of the five day period to appeal, or when leaving the OCC, or sent home. Since there wasn't a copy of the decree, citizens did not even know about the shortened procedure of appeal, in particular, non-resident citizens did not know what the court and the district of Minsk was where they were judged; and it is via the district court that the appeal must be filed. In such cases, only a complaint to the Supreme Court made it possible to figure out in what court the case of a particular citizen was considered. Herewith the Supreme Court and other judicial authorities always note in their responses that court records do not contain information that the citizen filed a request for a copy of the decree. But, as practice shows, being at the OCC or the TDF (especially in another city), citizens' chances to get familiarized with the court records, and especially to send objections to it to the Court, were even fewer than to appeal against the decree itself.

2.4.
Possibility to send a complaint from the offender custody center

According to Paragraph 55 of the Regulations, the staff of specialized institutions daily inspect cameras and take suggestions, applications and complaints from administrative arrestees and administrative detainees, both in a written form and orally, herewith, appeals against the judgment in administrative offence cases are sent according to the procedure, provided by Article 12.2 of the PECAO (Paragraph 58). Answering how appeals were passed on to courts, respondents noted that administration officials either immediately refused to take complaints or took, but did not send them, judging from the fact that two weeks and even a month later, there was no response to the complaint from the court. In one case, a respondent stated that the arrestees themselves were afraid to address to administration employees of the OCC; in another case, moral distress and unwillingness to do anything was reported; finally, there was a case when ordinary workers of the OCC said that complaints must be taken by the chief of the institution, while the latter in his turn claimed the opposite. However, there were cases when complaints reached district courts, but on the basis of the questionnaires and mass media messages it can be assumed that the number of such complaints (sent from the OCC) does not exceed 10% of all the decrees.

3. APPEAL AGAINST JUDICIAL DECREES WHICH HAVE NOT YET BECOME EFFECTIVE IN LAW

The procedure of appeal against a decree in an administrative offence case which has not yet become effective in law is regulated by Articles 12.1–12.10 of the PECAO. An appeal may be filed by both a person in respect to whom the decree is issued and by his defender (attorney). The exact number of appeals to Minsk City Court by administratively liable persons according to Article 23.34 of the Code on Administrative Offences in December 2010 is unknown, as the Deputy Chairman of Minsk City Court in his response № 4069 dated April 4, 2011 reported that the statistics on the number of the appeals submitted to Minsk City Court against the judgment with regard to cases on administrative

offences under article 23.34 of the CAO as of from December 20, 2010 to March 2011 is not maintained, generalization of the data was not conducted, and therefore, he cannot provide the requested information. All district courts of Minsk refused to allow the author of the present research to their archives.

The analysis of the questionnaires of the persons administratively liable in December 2010 under article 23.34 of the CAO showed that out of 285 respondents, 43 reported that trey had appealed the decree against them, herewith the results of the appeals were different. Only in the cases when the respondent appealed the judgment through an attorney hired by the family, the appeal, with the state tax paid; was sent to Minsk City Court for review. Consideration of appeals took place without the arrestees, as according to article 12.8 of the PECAO, absence of the appellant, properly informed about the date and place of the appeal consideration, or his defender, is not an obstacle for the appeal consideration. Furthermore, according to Article 18.7 of the PECAO and Chapter 8 of the Internal Regulations of Special Institutions of the Interior, performing administrative penalty in the form of administrative detention, transportation of the administrative arrestee to a higher court to consider the appeal is not provided.

Also respondents reported that, giving out the appeal to an employee of the OCC, they stayed unaware of its destiny, and two weeks later did not get an answer from the district court which had to send the appeal to Minsk City Court. Respondents noted that sometimes they were not informed about the registration number of outgoing correspondence with the enclosed appeal; in another case all persons in the same cell gave the appeal to an employee of the OCC, but it still was not transferred further.

Finally, in one third of the cases the complaint was really sent from the OCC to the district court, but the applicant received an answer from there that the appeal was returned because the state tax had not been paid envisaged by Part 3 article 12.2 of the PECAO. In some court responses the appellant was offered to pay the state tax within the term and to re-send the appeal with the receipt of payment. But some responses dismissed the appeals without explanations, and as a result the citizens decided that they had no right for the second attempt, even if the decree itself said nothing about the need to pay a state tax.

Considering this situation, a number of questions appeared: who is authorized to make the decision to return the appeal because the state fee has not been paid; could the person who filed the appeal apply for restoration (extension) of the period to appeal and who is authorized to allow this petition? The PECAO, unlike the Civil Procedure Code and the Criminal Procedure Code, does not contain a detailed description how the district court, whose decree is appealed against, should tackle the appeal. Therefore, by analogy with the civil and criminal proceedings, the judge, who has made a particular decision on a case on administrative offence, when the appeal against the decree comes, verifies himself whether the procedure and time of appeal are observed under article 12.2 and 12.4 of the PECAO. As a result the judge makes a decree either to send the appeal to Minsk City Court or to return it back. The main reasons for the appeal to be returned are failure to pay the state tax and missing the five days' period for appeal. In some cases, when the tax was not paid or the period passed, the judge in the answer did not write that the appellant has the right to apply for restoration of the expired term under article 12.5 of the PECAO.

It should be noted that paragraph 3 of article 12.2 establishing that the appeal should be returned to the appellant if the state tax is not paid, provides no answer whether the judge can set a date for the tax to be paid and the appeal re-filed. We assume in this case that the appellant still had the right to re-file the appeal with the receipt of the tax payment and apply to restore the period to appeal, as he missed it because of non-payment of the tax which had not been mentioned in the decree itself. Further the decision to restore the

expired term must have been made by the judge of Minsk City Court who according to article 12.5.of the PECAO has authority to consider the appeal. But, in some cases, such application was considered by the same district court judge who had made the decision to return the appeal because the tax had not been paid or the term had expired. And the judge again returned it, indicating that the cause of missing the term was unreasonable, moreover, at that time (December 2010 – April 2011) the official document providing at least an approximate list of valid reasons for missing the term of appeal was absent.[29] It should be noted that the judge's decision to refuse to restore the term to appeal is final and not subject to appeal, as the PECAO did not stipulate a procedure of appeal of such decision.

The procedure of considering an appeal is also hardly regulated by the PECAO because under article 12.8 of the PECAO the Court (Minsk City Court) checks the legality and validity of the judgment on the case. The individuals[30] present at the proceedings may give explanations and submit additional materials in support of their demands. Witnesses at this stage are not questioned, court records are not kept, the procedure itself is simplified as much as possible, and some procedural gaps are resolved by judges by analogy with civil or criminal proceedings. The analysis of the examined cases helps conclude that participation of an attorney on appeal is not a guarantee for a successful review of the administrative case, only availability of written arguments (official certificate) or video. Namely the mentioned proofs gave grounds to cancel two decrees on administrative cases. In some cases attorneys were able to convince of essential violation of procedural provisions. In other cases, attorney participation did not help the person (three people[31]). Upon considering an appeal, the judges of Minsk City Court made the following most typical decisions:

1) to dismiss the appeal, leave court decision unchanged (the vast majority of cases);

2) to uphold the appeal and return the case for review to the same court to a new judge (it may be asserted that such solution was made in less than 10% of appeals). Herewith further actions of a new judge were: having received the case from Minsk City Court, the judge returned the procedural documents of a case to the DDIA for correction. Herewith, according to article 7.6. of the Code on Administrative Offences, a new penalty should be imposed within two months since the decree was canceled. If the deadline is missed, proceedings on the administrative case stop. Accordingly, if the DDIA employees saw that the person was inactive and did not follow the revision of the case materials, they waited when the two-month period expired and stopped the proceedings on these grounds, which were not rehabilitative and did not entitle the appellant to moral damage compensation from the state for arbitrary detention, conviction and arrest.

In general, on the basis of the Requirements of the HRC General Comment № 32 of 23.08.2007 it can be stated that the procedure of appeal against the ruling that did not

29 For example, according to paragraph 6 of the Regulation of Plenum of the Supreme Court of the Republic of Belarus №6 of September 30, 2011 "On the practice of considering appeals (protests) to the decrees on cases of administrative offences by courts" valid reasons for restoration of the period to appeal, in particular, may include: health status, being on a business trip, other facts and circumstances objectively indicating that the person had no possibility to file the appeal in a fixed time. But, in December 2010 – April 2011 this regulation was absent, and therefore, the judges were guided only by their inner conviction in deciding whether the reason for missing the period for filing the appeal was reasonable.

30 A person who filed an appeal, if he is not in the Offender Isolation Centre, his attorney, an appellant and his representative, an official who sent the case concerning administrative offence to the court.

31 It concerns the cases when the appeal hearing was attended by the author, or there are appropriate documents. Herewith, the total number of the considered appeals may be estimated as no more than 10% of all decrees, i.e. no more than 65–80 appeals.

come into force meets article 14(5) of the Covenant, since a case is reviewed not only in questions of law, but also in facts. Besides, article 12.8 of the PECAO supposes that the case is reviewed in its entirety, that is, it is obligatory to pass over all documents of the case to the cassation court. The negative aspect is that the person who filed the complaint cannot be present at the appeal if s/he is serving administrative detention while the appeal is considered. If the appellant hired an attorney only for filing an appeal, then the judge will examine the case alone (even without the court clerk) and without presence of any other person, whose admission to the courtroom is not prohibited, though.

A particular aspect that requires more understanding is that such penalties as administrative detention or deportation are enforced immediately before the decree of their imposition comes into force, which in fact violates the principle of the presumption of innocence, vested in article 14 (2) of the Covenant. First of all, this situation leads to the fact that a citizen, who by law cannot yet be called an offender, will already be treated as the administrative arrestee, i.e. a person who is serving an administrative penalty in the form of administrative arrest. This also discriminates administrative detainees in comparison to citizens sentenced to prison in the criminal process, because the latter are subject to restraint in the form of custodial placement, until the sentence on criminal case comes into force.

4. APPEAL AGAINST COURT RESOLUTIONS WHICH HAVE COME INTO LEGAL FORCE

It should be noted that according to item 50 of the Requirements of the UN HRC General Comment No. 32 of 23.08.2007, the system of supervising proceedings which are applied only to the sentences carried into effect, doesn't meet the requirements of item 5 of article 14, regardless of the fact whether such review can be initiated upon petition of the condemned person or within the procedure of discretionary powers of the judge or the prosecutor. Thus, we believe, under supervising proceedings the UN HRC understands the classical scheme which has developed in the Soviet law system:

1) the claim is filed with a request to bring a protest against a sentence that came into legal force,
2) the official solves whether there are grounds for this, and
3) depending on it the protest is filed.

Can one consider the procedure of appealing against the court decision on administrative case that came into legal force as equivalent to supervising proceedings, and, thus, inefficient and unavailable?

Up to January 12, 2011 the procedure of appealing the court decree which has come into legal force[32] was the following. The term for submission of the appeal is six months from the moment when the decree on the case of an administrative offence has come into legal force. Moreover, one should have appealed the sentence, and also pay the state fee. The decree on the administrative case appealed before it came into force in the district executive committee or to the higher official, could be reviewed by the district court; and the decree on the administrative case appealed against before it came into legal force in court could be reviewed by the chairman of a higher court.

Herewith, the judge of the district court or the chairman of a higher court checked legality, validity and justice of the decree only within the arguments of the appellant, but could also check the case more in-depth by their own initiative. Claiming materials in the case under such procedure is not obligatory, either. As a rule, in all cases of review of the decree that

32 Decree on the case of an administrative offence will come into force on the day of expiration of the appeal period or on the day when the appeal against the decree is announced.

came into legal force, it already has been enforced, moreover, the administrative punishment in the form of administrative arrest is performed immediately, before the decree on imposing it comes into legal force. According to article 14.7 of the PECAO, the court on its own initiative or upon petition of the person concerned can delay execution of an administrative arrest for a month, spread out for about two months. The grounds for this are circumstances hindering execution of the decree on imposition of the penalty. Nevertheless, practice of applying article 14.7 is unknown, and it is likely that delay/spread out of execution of an administrative arrest according to article 23.34 of the PECAO has not happened yet.

The law No. 198-L of the Republic of Belarus of November 30, 2010 came into force on January 12, 2011 amending, among all, article 12.11 of the PECAO: in particular, it reduced the range of cases when the decree that came into effect can be reviewed.

Now, by a general rule, the judge of the district court or the chairman of a higher court can review the decree, which was appealed before it came into legal force, only of the body conducting an administrative process on the administrative case. The court is not a body conducting an administrative process, so, the new procedure of review does not extend to decrees made by the court of the first instance. The amended article 12.11 of the PECAO contains one more provision: *the court order which has come into legal force on the case of an administrative offence can be reviewed by the chairman of a higher court irrespective of availability of an appeal or a protest.* In this case we speak of any decree on case because it is not specified who made it: the court or the body conducting an administrative process.

One can easily notice that the given provision does not contain clearly expressed right of a person to appeal the decree which has come into legal force and obligation of the chairman to accept the appeal and to begin the procedure of review of the decree of the district judge, i.e. the situation is indefinite. It says only about a discretional right of the chairman to review the decrees which have come into legal force. However, after January 12, 2011 the Chairman of Minsk City Court reviewed all rare appeals against the decree which has come into legal force. As a rule, in his answer the Chairman summed up conclusions of the previous two decrees and did not get in any serious analysis of arguments of appellants, although materials of all cases case were requested for to the full extent.

One should remark that in review of the decree on an administrative case which has come into legal force the court checks legality, validity and justification of the resolution only within the arguments of the appeal, herewith, neither the appellant nor his defender, nor someone else can participate in the review procedure: it is conducted *in camera*, in an office of the judge without a call of the parties, i.e. without a public hearing and announcement of the decision on the case. The PECAO does not contain any regulations on the right of the judge to uphold petitions at this stage: for example, about claiming for proofs from state bodies, etc.

Thus, taking into account that review of decrees which have come into legal force is carried out when the penalty (arrest) has been imposed, only arguments of the applicant are considered, reclamation of the case is implemented only at the initiative of the chairman of the court, there is no public hearing and judgment is not announcement, one can draw a conclusion that such procedure has no signs of appeal according to article 14(5) of the Pact, so, one can state its inefficiency. Also the new wording of article 12.11 of the PECAO leaves an open question: whether in all cases the person subjected to the penalty can seek review of the decree which has come into legal force if it was originally made by the court.

5. CONCLUSIONS AND RECOMMENDATIONS

5.1. Conclusions

1) The legislation of the Republic of Belarus regulates a procedure of appealing a decree on the case of an administrative offence that has not came into legal force and formally, from provisions of the PECAO, it corresponds to formulation of article 14 (5) of the Pact and to the Requirements of the HRC General Comment No. 32 of 23.08.2007;

2) one can assert that articles 14 (1) and (5) of the Pact should be applied also in the administrative process of the Republic of Belarus;

3) the persons held liable according to article 23.34 of the CAO in December, 2010 had no access to appeal for the following reasons:

- absence of a high-grade and effective defender (lawyer) and impossibility in absolute majority of cases to choose one's own defender. Since the lawyers' community is dependent on the executive authority and its own inside problems, and also because the free nature of legal aid in the PECAO is not specified, and because the lawyer cannot continue protection of the client at the appeal stage only on the basis of the court appointment, lawyers on duty could not be effective defenders, did not want to be them and, in principle, could not be such;
- procedure of appeal and the right to appeal were not explained to the extent required by the PECAO, and in most cases were not explained at all;
- in most cases there was no physical possibility to prepare an appeal as there were no writing materials, or they were issued after the term of appeal expired, the decree copies on some cases were was not handed over, and there was no actual access to court records;
- it was impossible for the arrestees to pay the state fee in the OCC establishment, due to a legislative gap in this regard, which made it impossible to appeal the decree independently;
- in many cases the OCC or TDF administration either accepted appeals, but did not send, or accepted, but after the appeal term ended;
- the administration of OCC, the judges and employees of the DDIA created such psychological environment that even interested persons gave up trying in complete emotional depression.

4) The very procedure of appealing the decree which has not come into legal force though formally corresponds to article 14 (5) of the Pact and to the Requirement of the HRC General Comment No. 32 of 23.08.2007, but in practice it was reduced to formal "reading" by the judge of Minsk City Court of materials of the case and stating there was no violation. In most cases appeal was considered after the penalty had already been enforced. In rare cases, when the appeal was filed by the lawyer hired by relatives of the arrested, the case was reviewed upon serving at least 1/3 of the term of the administrative arrest.

5) The procedure of reviewing the decree that came into legal force is inefficient, and though, it does not correspond to classic supervising proceedings, it has other characteristics that does not allow to make it available and predictable: the decree review takes place upon serving the penalty (arrest), only arguments of the applicant are considered, certiorari requested only at the initiative of the chairman of the court, there is no public hearing and public announcement of the judgment.

5.2.
Recommendations

To the bodies of the prosecutor's office:

1) to study materials of the cases on administrative offences according to article 23.34 of the CAO for December, 2010 and to recommend to persons concerned who did not appeal the decrees to submit petitions to restore the missed term of appeal;

2) to make official explanations concerning the procedure of bringing a protest and submitting a complaint to the prosecutor.

To Parliament – the National Assembly of the Republic of Belarus:

To amend the PECAO, and, in particular:

- to remove the obligation to pay the state fee while appealing the court decree which has not come into legal force, or to allow to postpone the payment for the persons in isolation establishments serving the arrest;
- to ensure a ten-day term for appeal and for cases when the decree imposes administrative arrest or deportation;
- to oblige the court in a mandatory order to hand over the decree personally to the condemned within two days' term after its announcement;
- to provide the possibility for the person, serving an administrative arrest, to be present at considering the appeal against the decree which has not come into legal force on the case of an administrative offence;
- to ensure in the PECAO the possibility to get free legal aid and for the court or the official body conducting an administrative process to assign a lawyer, guaranteeing that the lawyer would continue representing the person at an appeal stage without making a supplementary contract with the client;
- to ensure the possibility for the judge to appoint a close relative of the accused as a defender.

To the Ministry of Home Affairs:

- to prescribe the procedure that would ensure transparency on how the administration of isolation centers perform their obligations, including those of supplying writing materials to arrestees and sending claims and petitions received from the arrested to the relevant bodies in due time.

Volha Damarad

ARBITRARY DETENTIONS IN BELARUS IN THE CONTEXT OF INTERNATIONAL STANDARDS

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CHAPTER I. INTRODUCTION

In recent years information on abundant and unlawful arrests in Belarus has appeared more and more frequently. Isolated cases of arbitrary detentions appeared periodically in the media, but a dramatic increase occurred in the number of such reports both in the media and in human rights organizations statements after mass actions[1], for example, "Day of Will" (2008)[2], "Chernobyl Way" (2005)[3], (2009)[4], and Actions of Opposition (2010)[5]. Yet private statements about detentions (which may be arbitrary) began to surface from December 19th, 2010 when the electoral campaign for the Presidency of Belarus culminated in a protest rally against falsified presidential elections, and more than 800 people[6] were arrested. Throughout the following year information appeared on these unlawful acts. In addition to the aforesaid detentions, there was a huge wave of such detentions on the night from December 19 to 20, 2010, which is confirmed by numerous reports of international non-governmental organizations[7] and international institutions[8]. Additionally, there was a statement by the Minister of the Interior, Mr. Anatol Kuliashou, who said during the press conference on January 26, 2010 that he "leaded personally on the Square"[9] *(on Nezaleznasti Square where hundreds of people were arrested without valid reason — Volha Damarad)*. It gave the implication that mass detentions and arrests were committed at the personal behest of the Minister of the Interior without any legal reason to do so. Subsequent profuse detainments, which can be considered spontaneous, were in the period

1 Belarusians and Market (2009) 'To the Army under Police Escort', available at: http://www.belmarket.by/ru/13/25/774/%D0%92-%D0%B0%D1%80%D0%BC%D0%B8%D1%8E-%D0%BF%D0%BE%D0%B4-%D0%BA%D0%BE%D0%BD%D0%B2%D0%BE%D0%B5%D0%BC.htm (Russian), accessed 8 May 2012.

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2 Gazeta.Ru (2005) 'The Activists of Yabloko were Detained in Minsk', available at: http://www.gazeta.ru/politics/news/2012/04/27/n_2315661.shtml (Russian), accessed 8 May 2012.

3 TUT.By (2009) 'Photo and Video. Chernobyl Way-2009', available at: http://news.tut.by/otklik/135652.html (Russian), accessed 8 May 2012.

4 Grani (2010) 'The Action of Opposition in Minsk was Desperate', available at: http://grani.ru/Politics/World/Europe/Belarus/m.174521.html(Russian), accessed 8 May 2012.

5 Belarusian Partizan (2010) 'The Month of Terror', available at: http://www.belaruspartizan.org/bp-forte/?page=100&backPage=13&news=75045&newsPage=0 (Russian), accessed 8 May 2012.

6 Amnesty International (2012) 'Annual Report 2011', available at: http://www.amnesty.org/en/region/belarus/report-2011#section-13-6, accessed 8 May 2012.

7 Amnesty International (2012) 'Annual Report 2011', available at: http://www.amnesty.org/en/region/belarus/report-2011#section-13-6, accessed 8 May 2012.

Human Rights Watch (2012) 'World Report 2012: Belarus', available at: http://www.hrw.org/world-report-2012/world-report-2012-belarus, accessed 8 May 2012.

FIDH (2012) 'Belarus: Restrictions on the Political and Civil Rights of Citizens Following the 2010 Presidential Elect ion', available at: http://www.fidh.org/IMG/pdf/rapport_Belarus_En_web.pdf, accessed 8 May 2012.

8 EU (2012) 'Statement by the EU High Representative Catherine Ashton on the conviction and sentencing of Belarusian opposition representative', available at: http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/119382.pdf, accessed 8 May 2012.

OHCHR (2012) 'Resolution adopted by the Human Rights Council. Situation of human rights in Belarus. A/HRC/RES/17/24', available at: http://www2.ohchr.org/english/bodies/hrcouncil/17session/docs/A-HRC-RES-17-24.pdf, accessed 8 May 2012.

OSCE ODIHR (2012) 'Report. Trial Monitoring in Belarus (March-July 2012)', available at: http://www.osce.org/odihr/84873, accessed 8 May 2012.

9 Naviny.by (2011) 'Anatol Kuliashou: I commanded personally on the Square', available at: http://naviny.by/rubrics/society/2011/01/26/ic_articles_116_172202/(Russian), accessed 12 May 2012.

between May and September 2011, and referred to as "silent" or "clapping" protest.[10]

Belarusian and international human rights organizations have voiced determinations that detention during public events in Belarus violates the laws of the Republic of Belarus, in addition to international standards. In particular, there were cases of random detainment of people on their way to shops,[11] merely standing in the street,[12] or in the well-known case of studious biologists.[13]

These outrages committed in this particular time period gave the implication that in Belarus an arrest is used as a tool to deprive of personal liberty the people who think differently from the majority and, more important, oppose the ideology of the State. This illegitimate State practice is ongoing and the Belarusian society constantly shudders from the headlines of newspapers reporting about mass detentions; for example, the mass detention of 100 people in the rock party to support the movement "Food not bombs" on March 23, 2011.[14]

Belarusian political expert Aleh Grableuski explains that this measure — detention — is one of the variety of tactics which Belarusian authorities use to pressure political opponents, i.e. everyone who does not support the existing political regime. In addition to arrests and detentions, Grableuski noted other methods of Belarusian practice: economic (fines, confiscation of property), psychological (humiliation in the State media of honor, dignity and goodwill of political activists), and social (the risk of losing your job)[15].

On the basis of the aforementioned facts, there was a reason to suggest that in Belarus the possibility of violent detentions truly exist. The main goal of this research is to analyze the state practice in the procedure of administrative detention of people: domestic legislation, state practice and its correspondents to international legal standards. The level of implementation by Belarus of the right to personal liberty in the context of fulfilling its international obligations, namely Article 9 of the UDHR and Article 9 of the ICCPR, in the scope of the politically motivated administrative arrests and detentions, and furthermore, to identify the most common problems and violations. Regardless of our findings, in conclusions by the official position of the Belarusian government, it was admirably and clearly indicated that "there is no factual basis for the allegations that persons are detained and brought to trial on political grounds in Belarus".[16]

The main purpose of this survey is to track the level of observance and implementation of the international obligations undertaken by Belarus in the field of guaranteeing the right to personal liberty, namely article 9 of the UDHR and article 9 of the ICCPR on the basis of the analysis of selected administrative cases, in order to identify the most common problems in this sphere in Belarus.

10 Naviny.by (2012) '"Silent Protests" Was Held More then in 40 Belarusians Cities', available at: http://naviny.by/rubrics/society/2011/06/22/ic_news_116_370652/ (Russian), accessed 8 May 2012.

Charter97 (2011) 'Russia Condemned the Desperation of Silent Protests in Minsk', available at: http://charter97.org/ru/news/2011/7/7/40347/ (Russian), accessed 8 May 2012.

11 Charter97 (2012) 'Anastasia Shuleika was Robbed During Her Term at Okrestina', available at: http://charter97.org/ru/news/2012/5/1/51583/ (Russian), accessed 8 May 2012.

12 Newsland (2012) 'For What Reason People Was Arrested?', available at: http://www.newsland.ru/news/detail/id/737302/ (Russian), accessed 8 May 2012.

13 Naviny.by (2012) 'It was decided to cover up the case of biologists?', available at: http://naviny.by/rubrics/society/2011/02/10/ic_articles_116_172391/, accessed 8 May 2012.

14 Korrespondent (2011) 'On the Concert in Minsk 100 people were arrested', available at: http://korrespondent.net/world/1332921-smi-v-minske-na-koncerte-arestovali-100-chelovek, (Russian), accessed 12 May 2012.

15 Nashe Mnenie (2012) 'Persecution: Everything Should be According to the Law', available at: http://nmnby.eu/news/analytics/3235.html (Russian), accessed 12 May 2012.

16 OHCHR (2012) 'Report of the Working Group on the Universal Periodic Review. Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review', available at:

http://lib.ohchr.org/HRBodies/UPR/Documents/Session8/BY/A.HRC.15.16.Add.1_BELARUS_eng.pdf, accessed 12 May 2012.

CHAPTER 2. UN STANDARDS ON ARBITRARY DETENTIONS

2.1. International legal standards

International human rights law establishes international legal standards which are for all national legislations. The main aim of these standards is to create a universal level of respect for human rights in accordance with obligations that every State voluntarily accepted.

2.1.1 Universal Declaration of Human Rights

The Universal Declaration of Human Rights (hereafter — UDHR) is not the first document which fixed the right to liberty and security of person. The Magna Charta in 1215 gave us this human right which was previously undocumented and used time-to-time in accordance with the act of *habeas corpus*. In 1945 the right to liberty was included as a single article in article 9 of the UDHR which says that "No one shall be subjected to arbitrary arrest, detention or exile".[17] In this article, the right to personal freedom "appears in a short and pragmatic version, with further elaboration left to future human rights conventions".[18] The wording "arbitrary" appears in many articles of the UDHR, for example, in articles 12, 15, and 17, but in this work we will only analyze article 9 of the Declaration, which covers the main topic of this research.

The *travaux preparatoires* of the UDHR gives the interpretation of the word "arbitrary" as "illegal", or "unjust", or "both illegal and unjust"[19].

In 1965 the UN Study of the Right of Everyone to be Free from Arbitrary Arrest, Detention and Exile[20] (hereafter — Study) was adopted with the precise concretization of the word "arbitrary". As it says in the Study: "[a]n arrest or detention is arbitrary if it is (a) on grounds or in accordance with procedures other than those established by law, or (b) under the provisions of a law the purpose of which is incompatible with respect for the right of liberty and security of person"[21].

In fact there are no precise interpretations of the word "arbitrary" in Art.9 of the UDHR. There is only one case which provides distinction between "illegal" and "arbitrary"; it was maintained in the separate opinion in the Anglo-Iranian Oil Co.[22] case before the International Court of Justice on Art. 17 of the UDHR, where it was said that "no one shall be arbitrarily deprived of the property" and this means that "nationalization was not in accordance with the principles of international law"[23]. If we implement this technique to Art. 9 of the UDHR, "arbitrary arrest or detention" means such arrest or detention without special legal order; moreover, such legal order shall be issued by an official institution which is established in accordance with the existing country law and in accordance with the domestic legislation which correlates to the international human rights standards.

17 *UN GA Res. 217A (III), U.N. Doc A/810 at 71 (1948).*

18 *Alfredsson, G. and Eide, A. (eds.) (1999) The Universal Declaration of Human Rights. A Common Standard of Achievement, Martins Nijhoff Publisher, the Netherlands. P. 210.*

19 *Alfredsson, G. and Eide, A. (eds.) (1999) The Universal Declaration of Human Rights. A Common Standard of Achievement, Martins Nijhoff Publisher, the Netherlands. P.211*

20 *UN (1965) 'Study of the Right of Everyone to be Free from Arbitrary Arrest, Detention or Exile', UN Publication Sales No 65.XIV.2.*

21 *Ibid.*

22 *ICJ (2012) Anglo-Iranian Oil Co. Case, Judgment of July 22, 1952.*

23 *Hassan, P. (1969) 'The Word "Arbitrary" As Used In The Universal Declaration Of Human Rights: "Illegal" or "Unjust"?', Harvard International Law Journal. P.263*

2.1.2 International Covenant on Civil and Political Rights

Article 9 of the International Covenant on Civil and Political Rights contains the prohibition of arbitrary detention: "[e]veryone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law".[24]

One of the most significant parts of the article, in terms of this work, is to find out the difference between the terms "arrest" and "detention". Prof. Nowak argues that the difference is in the causes for deprivation of liberty. The strict definition of "arrest", in accordance with the Commentary of Prof. Nowak, "refers to the act of depriving personal liberty and generally covers the period up to the point where the person is brought the competent authority"[25]. It means that the arrest can be conducted only by competent authority, i.e. state officials who have legal competencies to do so. "Detention" means "state deprivation of liberty"[26], in other words, a person can be detained only by "police, military or other security organizations on the basis of special security ordinances"[27]. It means and it was approved in *Sergio Euben Lopez Burgos v. Uruguay*[28] and *Lilian Celiberti de Casariego v. Uruguay*[29] cases that if the detention was conducted by organizations which do not fall under these categories (police, militia or special security police), the detentions might be recognized as kidnapping, and the people who were detained as "disappeared" persons.

The General Comment 8 establishes that this right is applicable "to all deprivations of liberty, whether in criminal cases or in other cases such as, for example, mental illness, vagrancy, drug addiction, educational purposes, immigration control, etc"[30]. Moreover, "[w]hether deprivation of personal liberty is permissible in a given case must be evaluated against the principle of legality and the prohibition of arbitrariness"[31]. Therefore, in legal theory there are discussions in the scope of this article about the "principle of legality" and the "principle of prohibition of arbitrariness" in the scope of Art. 9 of the ICCPR.

The "principle of legality" is based on the requirements both of the grounds for detention and the following procedure of detention. In the article this requirement contains the wording "prescribed by law". Prof. Nowak argues that "there can be no doubt that the word "law" ("loi") refers to the domestic legal system"[32] and this term can be understood as "parliamentary statute or an equivalent, unwritten norm of common law accessible for all individuals subject to all jurisdictions"[33]. It means that legal rules, regulations, provisions or restrictions should be settled in written documents (for the countries of written law) or in customs (for the countries where the custom laws prevail) which are accessible for all people in advance. Therefore, according to this requirement, the detention can be only on the ground of domestic regulation, which, in addition, has to correspond with international law regulation.

In the practice of the Human Rights Committee (hereafter — HRC) this principle was established in the case of *Bolacos v Ecuador*. The Committee said that the principle "of the

24 UN GA A/RES/2200A/XXI 16 December 1966.

25 Nowak, M. U.N. Covenant on Civil and Political Rights: CCPR Commentary. – Kehl am Rhein: Strasbourg; Arlington: Engel 1993. P.167.

26 Ibid. P.167.

27 Ibid. P.170.

28 Communication No. R.12/52, U.N. Doc. Supp. No. 40 (A/36/40) (1981).

29 Communication No. 56/1979, U.N. Doc. CCPR/C/OP/1 (1984).

30 General Comment No. 08: Right to liberty and security of persons (Art. 9). Para.1.

31 Nowak, M. P. 170.

32 Ibid. P. 171

33 Ibid. P. 171

legality of detention is the fundamental guarantee of a detainee's constitutional and human rights in the case of deprivation of liberty by the state. It must be noted as well that, according to the petitioners' submissions, there was a lengthy delay in the processing of a writ in this case. The Government has provided no information on the *habeas corpus* petitions filed in this case"[34].

Dr. Jayawickrama argued that "the "lawfulness" of an arrest or detention has to be determined in the light not only domestic law but also general principles in the relevant international or regional human rights instruments"[35]. Further it was explained that "if "lawfulness" is limited merely to compliance with domestic law, it will be possible for the state to pass a domestic law validating particular category of detentions, and a detained person falling with that category would be effectively deprived of his or her right under the relevant article"[36].

The second principle — the "principle of prohibition of arbitrariness" — lies on both the domestic legislation and on the law-enforcement authorities as well. Therefore, this proviso somewhat includes the "principle of legality", because the domestic legislation should maintain the requirements for detentions and enforcement organizations should execute it literally. According to this principle, deprivation of liberty "must not be manifestly unproportional, unjust or unpredictable, and the specific manner in which an arrest is made must not be discriminatory and must be deemed appropriate and proportional view of the circumstances of the case"[37].

This principle was approved by the practice of the HRC which maintain that the lawful detention should include three elements — appropriateness, justice and predictability[38]. Moreover, in this case, the case of van *Alphen v.the Netherlands*, the Committee said that remand in custody pursuant to lawful arrest must not only be lawful but reasonable and necessary in all the circumstances[39].

Art. 9 (5) contains as well the right to compensation and all people who were unlawfully deprived of their liberty can claim compensation for their sufferings. There are some requirements of this right to compensation:

- it is applicable only to victims of unlawful arrest or detention within the scope of article 9 of the ICCPR; and
- unlawful arrest or detention shall contradict to Para. 1 or 4 of the ICCPR or the domestic regulation in the field of arbitrary detentions. Prof. Nowak comments this proviso — "an arrest may be consistent with domestic law but nevertheless unlawful under international law, regardless of where this is arbitrary or in violation of the procedural guarantees in paras. 2 and 4"[40].

Dr. Jayawickrama notes that the compensation for unlawful arrest should include "any loss of earnings consequent the imprisonment and recompense for the inconvenience and distress suffered during incarceration" and "[r]eal compensation and not mere damages must be awarded"[41].

34 *Manuel Stalin Bolacos Quicones v. Ecuador, Case 10.580, Report No. 10/95, Inter-Am.C.H.R., OEA/Ser. L/V/II.91 Doc. 7 1996).*

35 *Jayawickrama, N. (2011) The Judicial Application of Human Rights Law: National, Regional and International Jurisprudence, Cambridge: Cambridge University Press.P. 373.*

36 *Ibid. P.381.*

37 *Nowak, M. U.N. Covenant on Civil and Political Rights: CCPR Commentary. – Kehl am Rhein: Strasbourg; Arlington: Engel 1993.P. 173.*

38 *Hugo van Alphen v. The Netherlands, Communication No. 305/1988, U.N. Doc. CCPR/C/39/D/305/1988 (1990).*

39 *A. W. Mukong v. Cameroon, Communication No. 458/1991, UN doc. GAOR, A/49/40 (vol. II) (1994).*

40 *Nowak, M. P.181.*

41 *Jayawickrama, N. P.424.*

The right to compensation is approved in the broad HRC practice and this right is applicable to each paragraph of Art.9 of the ICCPR. Therefore, the right to compensation has approved and found violated in the case of *Portorreal v. Dominican Republic*, where it was said that "under an obligation, in accordance with the provisions of article 2 of the Covenant, to provide Mr. Martinez Portorreal with effective remedies, including compensation".[42] The right to compensation for violation Paras. 3 and 4 was settled in the cases of *Santullo Valcada v Uruguay* and *Bolacos v Ecuador*, respectively[43].

In the individual opinion by Prafullachandra N. Bhagwati in the case *A v. Australia* was explained that "compensation for detention "unlawful" either under the terms of the domestic law or within the meaning of the Covenant or as being arbitrary"[44]. It means that the Government should pay compensation both if a detention was arbitrary under the domestic legislation or with the violation of international standards.

It should be noted that the right to compensation is applicable only to arbitrary arrests or detentions. Thus, for example, in the case *Soteli Chambala v. Zambia* the Committee decided to pay compensation only for "the further two months following the High Court's determination that there were no grounds to hold him in detention was, in addition to being arbitrary in terms of Article 9, Paragraph 1, also contrary to Zambian domestic law, thus giving rise to a violation of the right to compensation under Article 9, Paragraph 5"[45], but not for the whole period of detention because the HRC did not address to this time (twenty-two months) as an arbitrary detention. But at the same time, the HRC argued that "the right to compensation may exist independently of whether the arrest or detention can be regarded as the basis for a claim under article 9, paragraph 1, provided that it is unlawful under domestic law"[46].

2.1.3 Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

For the purpose of this work the author has chosen only the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (hereinafter – Body of Principles)[47], nevertheless there are some model standards that developed under the auspices of the UN. More specifically, there are at least four such documents:

- Standard Minimum Rules of the Treatment of Prisoners;
- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;
- Code of Conduct for Law Enforcement Officials;
- Principles of Medical Ethics for the Protection of Prisoners and Detainees, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

All those above mentioned model standards protect all prisoners (and arbitrary arrested

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42 Ramon B. Martinez Portorreal v. Dominican Republic, Communication No. 188/1984,

U.N. Doc. Supp. No. 40 (A/43/40) (1988).

43 Edgardo Dante Santullo Valcada v. Uruguay, Communication No. R. 2/9, U.N. Doc. Supp. No. 40 (A/35/40) (1980). Manuel Stalin Bolacos Quicones v. Ecuador, Case 10.580, Report No. 10/95, Inter-Am.C.H.R., OEA/Ser. L/V/II.91 Doc. 7 1996).

44 A v. Australia, Communication No. 560/1993, U.N. Doc. CCPR/C/59/D/560/1993 (30 April 1997).

45 Alex Soteli Chambala v. Zambia, Communication No. 856/1999, U.N. Doc. CCPR/C/78/D/856/1999 (2003).

46 Adimayo M. Aduayom, Sofianou T. Diasso and Yawo S. Dobou v. Togo, Communications Nos. 422/1990, 423/1990 and 424/1990, U.N. Doc. CCPR/C/51/D/422/1990, 423/1990 and 424/1990(1996).

47 UN (2012) 'Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment', available at: http://www.un.org/documents/ga/res/43/a43r173.htm, accessed 23 April 2012

as well) from torture and degrading treatment, but they do not contain specifically information about arbitrary arrests or detentions. Therefore, those documents would not be the subject of this research. Moreover, the Body of Principles was drafted not only as a document which should protect prisoners but as the instrument which would protect also "persons deprived of their liberty by acts of state authorities."[48]

The Body of Principles was prepared by the United Nations Sub-Commission on the Prevention of Discrimination and Protection of Minorities and adopted without vote in 1988 by the Resolution of the General Assembly on 7th Plenary Meeting. This document does not have legal force as the SMRs as well, because it was adopted by the Resolution of the General Assembly. It is a set of rules to protect not only prisoners and offenders after their detention but in the moment of detention too.

This document divides two terms "arrest" and "detention". According to the introduction part of the Body of Principles, arrest means "the act of apprehending a person for the alleged commission of an offence or by the action of an authority". This term can be applied to administrative and criminal arrest and does not contain any difference between them. The term "detention" means "the condition of detained persons", i.e. "any person deprived of personal liberty except as a result of conviction for an offence". In other words, the difference between detention and arrest, according to the Body of Principles, in prerequisites of particular deprivation of liberty, i.e. a person can be arrested only for any unlawful act, but a person can be detained even without any obvious legal circumstances, for identification, for example.

The Body of Principles applies to the term "judicial or other authority". According to the term, it means "a judicial or other authority under the law whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence" (Principle F). It is obvious, that the Body of Principles does not require that authorities should be appointed in accordance with the law and call into question the requirement of "guarantees of competence, impartiality and independence". In Principle 2 it is said that "arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose". There is no any official comment on the Body of Principles, but if we interpret it in accordance with art. 31 of Vienna Convention on Treaties[49], detention can be conducted only by an official who has authority for it in accordance with local legislation. Further in Principle 9 it is refined that "the authorities which arrest a person, keep him under detention or investigate the case shall exercise only the powers granted to them under the law and the exercise of these powers shall be subject to recourse to a judicial or other authority". It means that at the moment of detention the bodies who conduct such detention should not exercise any other power than the one which they are entitled under the law.

The fundamental set of rights of detainees is enumerated in this document:

- the right to be promptly informed about the reasons of arrest (Principle 10);
- the right to defend oneself (Principle 11);
- the right to receive information in the understandable for the detainee language (Principle 14);
- the right to communication without delay with defender and family members (Principle 15);
- the right to inform his/her defender or family members about the transfer to another place of detention (Principle 16);
- the right for a legal defender or he/she can realize this right himself/herself (Principle 17);

48 Bernard, S. (1993-1994) 'An Eye An Eye: The Current Status of International Law On the Human Treatment of Prisoners', Rutgers Law Journal. P.775.

49 Vienna Convention on the Law of Treaties. United Nations, Treaty Series, vol. 1155, p. 331.

• the right to communicate with an advocate without any delay, censorship, and in a confidential place (Principle 18);

• the right to communicate with the outside world, i.e. to be visited by the family members (Principle 19);

• the right to be imprisoned (if it is possible) in the nearest place to his/her residence (Principle 20);

• the right not to be a subject of violence, threats and methods of interrogation which impair his capacity of decision or his judgment (Principle 21);

• the right not to be a subject of any medical or scientific experimentation which may be detrimental to his health (Principle 22);

• the right to proper information about his/her materials of the case (recordings of the interrogations, for example) (Principle 23);

• the right to proper medical care and treatment which should be free of charge (Principle 24);

• the right to request or petition a judicial or other authority for a second medical examination or opinion (Principle 25);

• the right to access to the results of medical examination (Principle 26);

• the right to obtain within the limits of available resources from public sources, reasonable quantities of educational, cultural and informational materials (Principle 27);

• the right to be heard before disciplinary action is taken and to bring such action to higher authorities for review (Principle 28);

• the right to make a request or complaint regarding his/her treatment, in particular in case of torture or other cruel, inhuman or degrading treatment, to the authorities responsible for the administration of the place of detention and to higher authorities (Principle 33).

Therefore, as it is obviously seen, the Body of Principles contains full and broader set of rights of detainees that "already widely accepted Standard Minimum Rules, reinforcing international support of the rights of prisoners"[50]. Moreover, there some rights which are unique and are not included in other international documents, these rights are: the right to receive proper educational materials; the right to communicate with the outside world; the right to be imprisoned (if it is possible) in the nearest place to his/her residence; the right to request or petition a judicial or other authority for a second medical examination or opinion. The general clause stresses that "[n]othing in this Body of Principles shall be construed as restricting or derogating from any right defined in the International Covenant on Civil and Political Rights".

To sum up, the Body of Principles is a substantial instrument for protection of the rights of detainees, arrested and imprisoned people. It does not have legally binding force, nevertheless, because of the highly important issues which are raised in this document; these provisions should be implemented in the local legislations of the UN member states.

2.2
UN Working group on arbitrary detention

2.1 Origin and mandate

Lately the situations when people were detained unlawfully occurred in different countries around the world. Therefore the Commission on Human Rights, which now has been rearranged to the Human Rights Council, decided to create a group of experts who will monitor the situation with unlawful arrests. On May 5, 1991 the Resolution establishing the Working Group of Arbitrary Detention (WGAD) was adopted.

50 *Bernard, S. P. 776.*

The WGAD started their work in 1991. The mandate of the group lasts three year and then they re-elect their members. At this moment the Chair-Rapporteur of the group is a representative from Senegal Mr. Malik El Hadii Sow who was elected in 2008, and the re-election will be this year. The Group is composed of 5 experts who are appointed by the Human Rights Council after rounds of consultation. The appointment is going under the suitable geographical distribution[51]. At this moment the Group is composed of experts from Senegal, Pakistan, Chile, Norway and Ukraine.

The WGAD reports about its activity to the Human Rights Council in the form of annual reports. In this annual report the group represent themselves before the Human Rights Council.

Another form to investigate cases of arbitrary detention is field-missions, or country visits. The WGAD is highly appreciated to be invited by the Governments for observing and "to have better understanding of cases of arbitrary detentions in particular country".[52] For example, in 2009 the WGAD was with a country visit in Senegal, and after the mission they produced a report with detailed information about arbitrary detention in this country.[53]

Special attention shall be put on individual complaints. The WGAD is only one non-treaty-based mechanism which has this individual complaint procedure. One more form of the activity of the group is opinions adopted on individual cases. Individual claims shall be submitted to the Secretariat of the WGAD. These claims may be submitted by victims, their families of representatives of Governments, inter-governmental or non-governmental organizations. The most important thing here is that WGAD does not require the exhaustion of domestic remedies[54]. This flexible approach allows the maximum number of arbitrarily detained persons to be protected by the international body.

The admissibility criteria on individual cases are the following: *ratione materiae* — only violations of the rights under the article 9 of the UNDHR, the article 9 of the ICCPR and Body Principles of the Protection for All Persons under any form of Detention of Imprisonment; *ratione temporis* — the Group "will give preference to allegations received on cases that occurred after its establishment"[55]; *ratione personae* — the Group receives claims from the individuals who are victims or from their relatives, non-governmental organizations or their defenders, by default, the passive subject of such appeals will be a State and "violations attributed to terrorist or insurgent groups that are flight against the government on their own territory are excluded from the competence"[56]; *ratione loci* — under the mandate of the Group are all the UN member counties (193 countries[57]). After receiving the communication the Group addresses to the Governments for their reply and within 60 days (previously it was 90 days) the Governments shall respond to this request and provide as full information as possible about this case.

51 UN Human Rights Council (2012) 'Fact Sheet No. 26. The Working Group on Arbitrary Detention', available at: http://www.ohchr.org/Documents/Publications/FactSheet26en.pdf, accessed 9 April 2012.

52 Rehman, J. (2010) International Human Rights Law: A Practical Approach, London: Brunel University. P. 860

53 UN Human Rights Council (2012) 'Report of the Working Group on Arbitrary Detention on its mission to Senegal', available at: http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/124/72/PDF/G1012472.pdf?OpenElement, accessed 9 April 2012.

54 Genser, J., and Winterncorn-Meikle, M. (2007-2008) 'The Intersection of Politics and International Law: the United Nations Working Group on Arbitrary Detention in Theory and in Practice', Columbia Human Rights Law Review. P.672.

55 Ibid. P.675

56 Piernas, C. J. (2006) The Legal Practice in International Law And European Community Law: A Spanish Perspective, the Hague: Brill Academic Publishers. P.312.

57 For the information on April 2012 - http://www.un.org/en/members/growth.shtml.

According to the analysis of the WGAD annual reports, conducted by Jared M. Genser and Margaret K. Wintenkorn-Meikle, "in the last ten years, governments have been responded with increasing frequency — more than eighty percent of the time in the last five years" (2008)[58]. If the Government cannot reply during this period, the Group can prolong this time for no more than one month, and even if in this time the Group does not receive a response from the Government, they use all the information it has obtained. On these grounds, the WGAD decides if the arrest was arbitrary or not and makes recommendations to the Government when this arrest took place. This decision is adopted in the form of Opinion and included in the annual report and shall be brought to the attention of the Human Rights Council.

In 2011 the Group recognized the Belarusian ex-candidate for Presidency and the leader of the Social Democratic Party of Belarus Mr. Mikalai Statkevich as an arbitrary detained (category II and III)[59]. The WGAD received from the relatives[60] of Mr. Statkevich a claim that he was arbitrarily detained on 18 January 2011. According to the procedure, the Group made an information request to the Government about this case, but 90 days later did not receive any information. Then, the Group discussed the real reason for this deprivation of liberty: exercise of the freedom of thought, freedom of opinion and expression, freedom of peaceful assembly and association, or the right to take part in the government of one's country, directly or through freely chosen representatives under the UHDHR; or in the framework of the ICCPR — freedom of thought, freedom of opinion and expression, freedom of peaceful assembly, or freedom of association. The decision was that it was an arbitrary detention of category II according to the classification of the Group. The disposition of this opinion concluded that the Government violated article 9 of the UNDHR and article 9 of the ICCPR and "requests the Government of Belarus to take the necessary steps to remedy the situation, which include the immediate release of Mr. Statkevich and adequate reparation to him."[61]

It should be noticed that in December 2011 the international group of lawyers working *pro bono* (lawyers of organization "Freedom Now" and lawyers of international legal organization "Hogan Lovells") sent to the WGAD the appeal about the detention of Zmitser Bandarenka who participated in the electoral campaign of one of the candidates to Presidency Andrey Sannikau[62]. But the Group has not taken any further actions to this appeal.

These are the most important forms of reporting and work of the WGAD. For the purpose of this paper and further analysis, it makes sense ta explain terminology of the WGAD. Because there is no clear and precise explanation of arbitrary detention in international law, the WGAD for working convenience divided different situations of arbitrary detentions in three types.

According to the definition of the WGAD, arbitrary detention is detention which is contrary to human rights[63]. The Group sets three types of arbitrary deprivation of liberty: first

58 Genser, J., and Winterncorn-Meikle, M. Supra.

59 UN Human Rights Council (2012) 'Opinions adopted by the Working Group on Arbitrary Detention, 2–6 May 2011', available at: http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/111/78/PDF/G1211178.pdf?OpenElement, accessed 9 April 2012.

60 Naviny.By (2012) 'UN Working Group on Arbitrary Detention demands immediate release of Mikalay Statkevich', available at: http://naviny.by/rubrics/english/2011/06/21/ic_news_259_370490/, accessed 9 April 2012.

61 UN Human Rights Council (2012) 'Opinions adopted by the Working Group on Arbitrary Detention, 2–6 May 2011'. Supra.

62 Charter97 (2012) 'US lawyers stood up to defend Zmitser Bandarenka', available at: http://charter97.org/ru/news/2011/12/21/46025/, accessed 9 April 2012.

63 Frontline Defenders (2012) 'The Working Group on Arbitrary Detention', available at: http://www.frontlinedefenders.org/manual/en/wgad_m.htm, accessed 9 April 2012.

— detention or arrest without any legal basis; second — imposed because of the exercise of human rights; and third — imposed in violation of the principle of fair trial[64]. The categories of detentions depend on the situation: (1) arrest without special arrest warrant; (2) incommunicado detention (without giving any indication as to the maximum length of such detention); (3) unfair *habeas corpus* procedure (long pre-trial detention, cases of torture in detention, decision by courts that were not competent under national law, by courts established *ex post facto*, or by courts that were either not independent or impartial)[65]. At the same time the international law, as it was explained above, does not contain a clear explanation of this definition. There is a special definition for pre-trial detention worked out by the WGAD, in compliance with it this detention "constitutes a grave limitation on the freedom of movement, a fundamental and universal human right. It places an individual's life under the authority of agents responsible for his or her custody"[66].

The Group classifies arbitrary arrests or detentions according to five categories regarding their character. The arbitrary arrest of category I means the impossibility "to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his sentence or despite an amnesty law applicable to him)"[67]. Category II means "when the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights"[68]. "The total or partial non-observance of the international norms relating to the right to fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character" seen as Category III. Prolonged administrative custody without the possibility of administrative or judicial review or remedy is considered to be category IV. And the last category V is understood as continuing violation of "the international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; disability or other status, and which aims towards or can result in ignoring the equality of human rights"[69].

Therefore, if the types of arbitrary detentions, developed by the WGAD, help to define and find in each particular case arbitrary detention, the categories of arbitrary detentions establish the degree of arbitrariness.

To sum up, the WGAD is one of the mechanisms of the UN. Therefore, the WGAD established by the Resolution of the Commission of Human Rights but not a treaty, it does not have any power which can put on the States for implementing and fulfilling human rights standards on arbitrary detention. On the one hand, the Group has the power to investigate cases of detention, on the other — their opinions do not have any obligatory power. Therefore, the WGAD has quasi-judicial character. The main forms of activities of the Group are: investigation on individual claims, "deliberation" and "urgent" procedures

64 Rudolf, B. (2000) Die Thematischen Berichterstatter und Arbeitsgruppen der UN-Menschenrechtskommission, Berlin: Springer. P. 567.

65 Gutter, J. (2006). P. 86.

66 UN Human Rights Council (2012) 'Annual Report of the Working Group on Arbitrary Detention 2011', available at: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-57_en.pdf, accessed 9 April 2012.

67 UN Human Rights Council (2012) 'Opinions adopted by the Working Group on Arbitrary Detention 2–6 May 2011 (Saudi Arabia)', available at: http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/111/64/PDF/G1211164.pdf?OpenElement, accessed 9 April 2012.

68 OHCHR (2012) 'Fact Sheet No.26, The Working Group of Arbitrary Detention', available at: http://www.ohchr.org/Documents/Publications/FactSheet26en.pdf, accessed 9 April 2012. Para. B.

69 Ibid. Para. B.

and field missions. Upon these activities the WGAD produces annual reports, opinions on individual claims and reports based on facts after their country missions. Moreover, the Group has to cooperate and provide all possible assistance to other UN human rights bodies and mechanisms and non-governmental organizations.

2.2 Mission to Belarus

In 1999 the Sub-Commission on the Promotion and Protection of Human Rights received an invitation to visit Belarus with a country visit from the former Deputy Permanent Representative of Belarus to the United Nations Office at Geneva. In 2004 during 10 days (from 16 to 26 August) the WGAD visited Belarus with a country visit. The Group mentioned in their report some times the willingness of the Belarusian Government to facilitate a visit by the Working Group and their openness[70]. The delegation composed of five persons and during the mission visited six Belarusian cities. The report says that the delegation met with various officials and with representatives of national and local non-governmental organizations, former detainees, relatives of persons in detention and other individuals; 15 detention centers and other facilities visited, and the delegation had meetings with more than 200 detainees.

The report describes the general structure of the administrative, judicial and penitentiary institution in Belarus, positive aspects of the existing system and areas of concern for the WGAD as well. The final part of the report provides conclusions and recommendations for the Government. The prominent part of the report describes the detention centers and other places of deprivation of freedom on the one hand, and on the other — the problems and defects of the judicial system, prosecutor's office, investigator and pressure and weaknesses in the work of the Bar Association. The procedure and mechanism of arrest or detention was reported just in a few words.

In compliance with the report there are two different procedures of detention: criminal and administrative detentions. Detention in the criminal procedure may proceed by Officials of the Ministry of Internal Affairs (police, border guards), the Committee for State Security (KGB), the Military Police and the Presidential Guard. A suspect can be detained for no more than 72 hours and put in a police station or in a detention centre. Anyone suspected of a criminal offence may be detained till 24 hours without an arrest warrant. After 24 hours the detained must be released or the prosecutor has to motivate the reasons for his/her detention in the arrest warrant. From the moment of the arrest, the suspect has the right to see the lawyer or public defender and his/her relatives must be notified about the arrest. According to the criminal procedure, the detained person can be held in a police station or in a detention center up to 10 days and in case of pre-trial detention up to 18 months. This mechanism of criminal detention is described in the report, and the actual situation with it will be described in the next chapter of this thesis.

Administrative detention in Belarus is stipulated in the Administrative Code of the Republic of Belarus and provides two aspects: (a) a person may be detained up to 30 days for ascertaining his/her address or identity and after this period must be released; (b) a person can be sentenced by a court to a maximum of 15 days' imprisonment for minor offences such as hooliganism, alcohol consumption in public places; malicious disobedience to an order by a police agent, illegal or unauthorized assemblies or demonstrations; obstruction of a public thoroughfare or in public means of transportation. The WGAD describes two situations which seem to be problematic. In one group of similar cases, persons who were arbitrary detained and after the term of their detention they were charged by the

70 UN Human Rights Council (2012) 'Report of the Working Group on Arbitrary Detention. Mission to Belarus', available at: http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G04/166/25/PDF/G0416625.pdf?OpenElement, accessed 9 April 2012.

Prosecutor's office and put in prison. The other group of cases concerns people who are waiting to be deported for illegal standing in the country may be placed in administrative detention without a time limit.

The WGAD pays special attention to detention in psychiatric hospitals. There are three requirements when a person may be detained and put into a psychiatric hospital: (a) when there is a risk for the person or for the others; (b) at his or her own request; and (c) at the request of his or her relatives. During 10 days' period the Court has to approve or decline forced treatment in psychiatric hospital.

In the part on positive elements of the mission, the report outlined only the conditions of detainee centers, reducing the length of the pre-trial detention term, regular issuing of the presidential amnesty decrees and one of the best in the world situation of illegal immigrants, asylum-seekers and applicants for refugees' status. For the purpose of this thesis, a much more important issue is the moment of detention or arrest: particular moment of detention and what is happening next with the detained person, but the report did not say anything about it in a positive light.

The WGAD focused special attention on eight more problematic areas which took place during the mission, *inter se* the role of prosecutors and investigators during the pre-trial detention and pre-trial regime, the lack of independence of the Bar Association, detention as a means to repress freedom of expression, military courts over civilians and some other. In this thesis it is much more important to put maximum attention to administrative arrests as a form of repression of freedom of expression, because this problematic issue is one of the most important nowadays, which results in mass detentions, especially during different demonstrations. In this regard the WGAD raised the concern that people who exercised their freedom of opinion and expression, exercised their right to assembly and demonstration, disseminated information in a peaceful manner, were arrested and detained for short periods and charged with administrative offences. The Group concluded that these detentions had political context. The report sets two cases as examples for such detentions. The first case is about a woman who distributed leaflets against the President in a metro station in Minsk and was sentenced to two and a half years of forced labor. The second case described in the report is about a trade-union activist and leader of the National Committee of Belarus who was administratively detained for 15 days because he had planned to distribute leaflets. After his administrative term he was formally charged with insulting the President of the Republic and sentenced to two years' imprisonment.

The final part of the report draws up the results of the mission where the Group expressed their concern on five problematic areas from their point of view. First, the report some times and in the conclusion part noticed that the Group was not allowed to visit special detention facilities under the supervision of the KGB, which caused anxiety that in this place might be people who were detained arbitrarily. Second, the Group expressed concerns over the situation with illegal immigrants, asylum-seekers and refugees in Belarus who are subject to international standards and norms. Third, there were specific problematic issues of imbalance between the powers granted to the prosecutor and defense lawyers. Forth, the Bar Association suffered pressure from the Government which prevented lawyers from fulfilling their competence and powers to the full extent. The last and the most important problem, as viewed by the Working Group, is detaining political activists when exercising their freedom of expression.

At the final press conference in the UN Office in Belarus, the delegation paid special attention to pre-trial detention because "the decision to maintain a person in detention or to extend the period of his detention is taken not by a judge but by the Prosecutor, acting on proposal of the investigator" and "the conditions of pre–trial detention are much worse

than the ones for convicted persons" as well[71]. Moreover, it was said "persons exercising their rights to assembly, demonstration, freedom of expression, opinion, or disseminating information, in a peaceful manner [...] were arrested and detained for short periods or even convicted to several years of deprivation of liberty" and the main reason for such detention is the Code of Administrative Offenses which is used "to detain persons who exercise peacefully these rights and is concerned that this procedure is being used to reprimand peaceful demonstrators or political opponents".

It should be mentioned here that on 29 March 2012 the Belarusian non-governmental organization Legal Transformation Center initiated the collection of signatures of Belarusian human rights organization and defenders under an appeal[72]. According to the appeal, on 24 March 2012 approximately 100 persons were detained without any reasons and were subject to physical force: people were detained for more than five hours, nine of them were arrested to 2 or 3 days of administrative arrest, seven of them were sentenced to pay a fine. Eight representatives of human rights organizations and two individuals in personal capacity singed this appeal and sent it to the Group.

CHAPTER 3. THE COMPARATIVE LEGAL ANALYSIS OF BELARUSIAN PRACTICE AND INTERNATIONAL STANDARDS

This chapter reviews relevant Belarusian legislation (the Constitution of the Republic of Belarus, the Code of Administrative Offences, the Procedural-Executive Code, etc.) in the field of preliminary administrative arrests and detentions in correlation with the relevant international standards. The second part of this chapter analyzes each international standard in comparison with the existing Belarusian practice.

3.1. National Legal Framework

The Constitution of the Republic of Belarus[73] was adopted on March 15, 1994, three years after the country declared its independence from the Soviet Union. The Constitution has been amended twice since the primary adoption, in 1996 and in 2004. The Constitution contains quite strong set of provisions on human rights protection.

Art. 8 of the Constitution recognizes the supremacy of universally acknowledged principles of international law and ensures that national legislation comply with such principles. The Constitution also stipulates that the State is obliged to guarantee the rights and freedoms of the citizens of Belarus that are enshrined in the Constitution and the law, and specified in the State's international obligations. The supremacy of the international law principles are also approved by the Law "On International Treaties of the Republic of Belarus" (art. 33).

The former Head of the Constitutional Court of the Republic of Belarus, Doctor and Professor of law Rygor Vasilevich has developed a scientific concept on "universally acknowledged principles of international law". This concept is widely accepted in Belarus. According to his theory, the universally recognized principles of human rights and freedoms are those contained in the most important international legal instruments, namely in the Bill

71 UN (2012) 'The Working Group on Arbitrary Detention Visited Minsk', available at: http://un.by/en/bulletin/2004-4/agenda/2004-4-rab.html, accessed 9 April 2012.

72 Lawtrend (2012) 'Belarusian human rights defenders informed the Working Group on arbitrary detention about the arbitrariness of the police forces', available at: http://lawtrend.org/ru/content/about/news/Obrascheniev Rabochyugruppupoproizvolnimzaderzaniam/, accessed 9 April 2012.

73 National Legal Internet Portal of the Republic of Belarus (2012) 'Constitution of the Republic of Belarus', available at: http://pravo.by/main.aspx?guid=3871&p0=v19402875&p2={NRPA} (Russian), accessed 6 May 2012.

of Rights[74]. It should be noted that the Bill of Rights includes the ICCPR. Accordingly, the provisions of the ICCPR are binding in Belarus. The ICCPR entered into force for the Republic of Belarus on 12 November 1973 (Belarus signed on 19 March 1968)[75]. Moreover, Belarusian legislation should be brought into line with these standards. In other words, art. 9 of the ICCPR has binding force in Belarus. In case of non-compliance of Belarusian law enforcement practice with this provision, rights of citizens can be defended according to the complaint procedure 1503.

According to art. 21 (3) of the Constitution, the State guarantees "the rights and liberties of citizens of Belarus that are enshrined in the Constitution and the laws, and specified in the State's international obligations". The ICCPR is an international treaty of the Republic of Belarus. According to the Law on International Treaties (art. 33 (2)), the law contained in international treaties of the Republic of Belarus are part of the existing in the territory of the Republic of Belarus legislation and are directly applicable, except for the cases when an international treaty envisages that to apply such rules, a special norm has to be added into domestic regulation.

In accordance with art. 3 of the Law on International Treaties, the execution of international treaties of the Republic of Belarus is carried out in accordance with the Constitution of the Republic of Belarus, generally recognized principles of international law, and the Vienna Convention on the Law of Treaties. The Vienna Convention entered into force for Belarus on 1 May 1986[76]. The Convention establishes the principle "*pacta sunt servanda*" which means that "[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith" (art. 26), but also contains a rule that "[a] party may not invoke the provisions of its internal law as justification for its failure to perform a treaty" (art. 27).

Art. 1 (4) of the Criminal Procedural Code of the Republic of Belarus stipulates that international treaties of the Republic of Belarus, which define the human and civil rights and freedoms in criminal proceedings are applied along with this code. Art. 1.1 (3) of the Executive Code of Administrative Offences of the Republic of Belarus maintains that the Code is based on the Constitution of the Republic of Belarus and the universally accepted principles of international law. If enacted international treaties of the Republic of Belarus provide for regulations other than those established by the present Code, the regulations of the international instruments are applied.

Therefore, first of all, the provisions of the ICCPR (art.9 of the ICCPR as well) are part of the legal system of Belarus; secondly, provisions of the Covenant as an international treaty have a higher legal power over domestic legislation, and in accordance with the scientific interpretation (the conception of Prof. R. Vasilevich), have priority as universally recognized principles of international law.

Every person has the right to personal freedom and dignity. In accordance with art. 25 (1) of the Constitution "[t]he State shall safeguard personal freedom, inviolability, and dignity. The restriction or denial of personal freedom is possible in the instances and under the procedure specified in the law". Art. 25 (2) guarantees to every person in custody the right to judicial review of the legality of his/her detention or arrest and para. 3 prohibits torture, cruel, inhuman or degrading treatment or punishment. The prohibition of torture and other ill-treatment may not be restricted even during a State of emergency (art. 63 (2)).

74 Vasilevich, R. (2003) Constitutional Law of the Republic of Belarus, Minsk. P. 250-259.

75 UN Treaty Collection (2012) International Covenant on civil and Political Rights, available at: http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en, accessed 29 May 2012.

76 UN Treaty Collection (2012) Vienna Convention on the Law of Treaties, available at: http://treaties.un.org/Pages/ViewDetailsIII.aspx?&src=TREATY&mtdsg_no=XXIII~1&chapter=23&Temp=mtdsg3&lang=en, accessed 29 May 2012.

Moreover, according to art. 60 of the Constitution, everyone has the rights to be judged by a competent, independent and impartial court established by law. In art. 62 it is said that "[e]veryone shall have the right to legal assistance to exercise and defend his rights and freedoms, including the right to receive, at any time, assistance of lawyers and other representatives in court, other state bodies, bodies of local government, enterprises, establishments, organizations and public associations, and also in relations with officials and citizens. In the instances specified by law, legal assistance shall be rendered by public means".

Administrative detention

Administrative detention is regulated by the Code of Administrative Offences of the Republic of Belarus (hereafter — CAO). The Administrative Offences Code of the Republic of Belarus [77] was adopted on April 21, 2003 and entered into force on March 1, 2007. The Code contains 17 different *corpus delicti* for which it is possible to apply to administrative arrest. Administrative arrest can be up to 15 days of arrest for an offence (art. 6.7 (1)) and up to 25 days for multiple offences (art. 7.4 (2)). The procedure for bringing to administrative responsibility is regulated by the Procedural-Executive Code of Administrative Offences of the Republic of Belarus (hereafter — REC) which was adopted on December 20, 2006.

In accordance with art. 8.2 (1) of the REC, administrative detention of an individual is "actual short term restriction of liberty of natural person against whom administrative process for a misdemeanour is initiated, delivering the person to the administrative body in charge of the process, and holding the person in this agency". Art. 8.2 (2) of the REC generates an exhaustive list of the grounds for detention of an individual:

1) suppression of illegal activity;

2) drafting administrative protocol because of an offence, if making it in the place of detention is not possible;

3) identification;

4) to ensure participation in a case concerning an administrative offence;

5) suppression of concealment or destruction of evidence;

6) enforcement of administrative penalty in the form of administrative detention or deportation.

According to art. 7.2 of the REC, actions and decisions of the official bodies in charge of an administrative process can be appealed to the superior officer of a higher authority, i.e. to a prosecutor's office or to a court. Actions and decisions of judges may be appealed to the head of the court. A complaint may be filed during the term of an administrative process. An administratively detained person can appeal against the detention to the head of the detention body (Ministry of Internal Affairs or Prosecutor Office) prior to his/her court proceeding and court decision. After the sentence is announced, the court ruling can be appealed against with a higher court and the General Prosecutor Office.

The state agency considering an appeal should take immediate measures to restore violated rights and interests of the complainant within the limits of its competence. After examining the appeal, a just decision must be made. The decision can uphold the appeal, fully or partially, or dismiss it. The complaint against actions and decisions of judges, official bodies of the administrative process must be considered within five days' term since it is submitted. The complainant must be informed about the results of examination of the com-

77 National Legal Internet Portal of the Republic of Belarus (2012) 'Code of Administrative Offences of the Republic of Belarus', available at: http://www.pravo.by/main.aspx?guid=3871&p0=hk0300194&p2={NRPA} (Russian), accessed 2 May 2012.

plaint. The decision on the complaint is final and not subject to appeal. Moreover, a prosecutor can lodge a protest in the case of an administrative offence. It should be mentioned that a complainant has to pay a fee for his claim. The amount of the fee is established by a law regularly each year.

An appeal or a prosecutor protest of the administrative offence can be sent within 10 days from the date when the court decision is announced. This term is calculated from the date of delivery or receipt of the copy of the judgement. Every appeal that skips this term will be returned to the appellant. However, in case there are justifiable reasons for laches of the term, the appeal can be considered. In practice, the court can consider illness (with medical certificate) or receiving a copy of the court decision after the expiration as justifiable reasons.

According to the provision of the CAO (art. 12.9) authority dealing with an appeal can take one of the following decisions:

- leave the decision unchanged, dismiss the appeal;
- cancel the decision and close the administrative case;
- cancel the decision and return the case for reconsideration;
- cancel the decision in whole or in part and solve the issue on the merits;
- change measure and type of penalty;
- stop the administrative proceeding if the deadline for bringing to administrative responsibility is expired.

The revised court decision enters into force immediately after its sentencing. A copy of the decision has to be send to the appellant within three days.

Criminal Detention

Criminal detention is regulated by the Criminal Procedural Code of the Republic of Belarus (hereafter — CPC) which was adopted on July 16, 1999 and entered into force on January 1, 2001. In accordance with art. 41 suspects and accused in crimes have the right to legal aid from the moment of detention. According to Belarusian legislation, there is essential difference between the definitions "detention" and other measures which can be applied to suspects. The Code defines criminal detention as "actual detention of a person and his/her transportation to prosecution agency and short-time detention on remand". The decision about detention can be taken not only by the law enforcement agency (art. 107) but any citizen who is able to conduct it (art. 109). Moreover, the decision about the detention cannot be appealed in the court.

In accordance with art. 117 (1) of the CPC he/she may be preventively arrested only in case there are reasonable grounds to assume that the person may escape from prosecution and court, or hamper the preliminary investigation or court proceedings. Moreover, art. 126 (1.2) of the same Code establishes that preventive penal detention can be applied only in the cases when a person is suspected or accused of committing a crime for which the law prescribes punishment in the form of deprivation of liberty for more than two years. Therefore, Belarusian legislation maintains that criminal preventive detention can be applied only in cases with "particular gravity of criminal crimes".

In accordance with art. 119 (1, 2) of the CPC the measures applied to a detained person may be changed by the Prosecutor, the investigator, the Minister of the Interior of the Republic of Belarus, the Head of the Committee of State Security of the Republic of Belarus, the Deputy Head of the State Control Committee of the Republic of Belarus, the Head of the Department of Financial Investigation or a judge.

It should be mentioned that in the cases *Bandajevsky v. Belarus*[78] and *Smantser v. Belarus*[79] the HRC examined the requirement of the CPC regarding preventive criminal detention twice and found breach of art. 9 (3) of the ICCPR in these provisions.

The Committee argues, first, "that it is inherent to the proper exercise of judicial power, that it be exercised by an authority which is independent, objective and impartial in relation to the issues dealt with. It further considers that the public prosecutor cannot be characterized as having the institutional objectivity and impartiality to be considered as an "officer authorized to exercise judicial power" within the meaning of art. 9 (3) of the ICCPR[80].

The Decision of the Plenum of the Belarusian Supreme Court stipulates that "preventive detention of a suspect can be used to check the legality and validity of detention or prolongation of custody".[81] However, in Belarusian practice, the Courts have never checked validity of preventive detention and "positive decisions of such checking is unknown"[82]. Moreover, as the experts argue, "the procedure for judicial review of detention is ineffective", because as the analysis of decisions shows the "courts do not verify preventive measures on the merits and ignore the requirements of legislation concerning the binding nature of such verification".[83] Therefore, this provision in Belarusian legislation violates art. 9 of the ICCPR.

Art. 144 of the CPC does not establish obligatory participation of suspects and accused persons in the judicial review of the legality and the grounds for the arrest or detention and in the case of prolongation of the detention as well. This means that the term of detention can be increased without direct participation of the suspect. But the judge considering such case can call the suspect or accused for an examination. Therefore, the full realisation of the right of suspect is at discretion of the judge. Belarusian lawyers argue that practice shows that judges never realise their right and never call suspect to the court, even in the cases when suspects request for it[84].

CHAPTER 4. ANALYSIS OF THE QUESTIONNAIRES, INFORMATIONAL RESPONSES FROM THE GOVERNMENTAL INSTITUTIONS, INTERNATIONAL AND NATIONAL NON-GOVERNMENTAL ORGANIZATIONS

4.1 Methodology

Practical components of this research is examination of the detentions and arrests in Minsk from December 1, 2010 to December 1, 201, including preventive arrests the primary motive of which was detention of the political and civil activists. This period was selected

78 *Yuri Bandajevsky v Belarus, Communication No. 1100/2002, U.N. Doc. CCPR/C/86/D/1100/2002 (2006).*

79 *Aleksander Smantser v Belarus, Communication No. 1178/2003, U.N. Doc. CCPR/C/94/D/1178/2003 (2003).*

80 *Yuri Bandajevsky v Belarus. Para. 10.3. Aleksander Smantser v Belarus. Para. 10.2.*

81 *Levonevsky (2012) 'On the Practice of the Courts Review Complaints About the Use of Preventive Detention, House Arrest or the Extension of their Actions', the Decision of the Plenum of the Supreme Court of the Republic of Belarus, available at: http://pravo.levonevsky.org/bazaby11/republic03/text600.htm (Russian), accessed 29 May 2012. Para.3.*

82 *Platforma (2012) Report 'On the application of international human rights standards in the preparation of national and international protection (the analysis of the situation with regard to the criminal and administrative prosecution of persons who took part in the unsanctioned rally December 19, 2010, in Minsk, Republic of Belarus)' (Russian), available at: http://platformarb.com/zakonodatelstvo/zakonodatelstvo-respubliki-belarus/o-primenenii-mezhdunarodnyx-standartov-prav-cheloveka-pri-podgotovke-nacionalnoj-i-mezhdunarodnoj-zashhity/, accessed 6 May, 2012.Para. 2.2.*

83 *Ibid. Para. 2.2.*

84 *Ibid. Para. 2.2.*

due to the fact that in the run-up to the presidential elections in the Republic of Belarus in December 2010 a massive wave of preventive detentions of civil and political activists because of their political standing took place around the country[85], which culminated in a violent dispersal of the peaceful public rally against falsification of the presidential election on December 19, 2010. Taking into account different estimations on that night from 600[86] to more than 700 people[87] were detained. This tendency of detentions continued in the year 2011[88], which manifested in mass arrests, most of which Belarusian and international human rights defenders tend to view as arbitrary, taking place in Minsk and other cities of Belarus in summer during the "clapping protest". The number of detainees during the summer "silent" or "clapping protests"[89], which lasted from June to September, is uncertain, but, according to preliminary estimates from open sources this amount exceeds the total number of detainees on 19-20 December 2010.[90] Arrests and detentions continued in the second half of the year, namely detentions took place at various public events[91], local public transport[92] and international trains[93].

85 Charter 97 (2012) 'Preventive detention ahead of the people's councils in the regions', available at: http://charter97.org/be/news/2011/10/6/43338/ (Belarusian), accessed 1 May 2012. Deutsche Welle (2012) 'Mass media: Belarus preventive detentions of opposition activists began', available at: http://www.dw.de/dw/art./0,,15612824,00.html (Russian), accessed 1 May 2012.

86 Forbes (2012) 'About 600 people arrested in Minsk for participation in the oppositional rally 19 December', available at: http://www.forbes.ru/news/61351-okolo-600-chelovek-arestovany-v-minske-za-uchastie-v-aktsii-oppozitsii-19-dekabrya (Russian), accessed 1 May 2012.

87 Human Rights Watch (2012) 'World report 2012: Belarus', available at: http://www.hrw.org/node/104527 (Russian), accessed 1 May 2012.

88 The Epoch Times (2012) 'The TV channel BELSAT journalist Ivan Shula was detained in Minsk', available at: http://www.epochtimes.ru/content/view/33565/2/ (Russian), accessed 1 May 2012.

Charter 97 (2012) 'Disbanded the opposition rally on St. Valentine's day in Minsk', available at: http://charter97.org/ru/news/2010/2/14/26364/ (Russian), accessed 1 May 2012.

UDF. BY (2012) 'Storming the office of the independent TV channel BELSAT by unknown', available at: http://udf.by/news/main_news/print:page,1,7068-neizvestnye-shturmuyut-ofis-nezavisimogo.html (Russian), accessed 1 May 2012.

89 Belarus Partizan (2012) 'Action on June, 29. Dozens of detainees', available at: http://www.belaruspartisan.org/bp-forte/?newsPage=0&backPage=13&news=91934&page=100&locale=ru (Russian), accessed 1 May 2012.

Naviny (2012) 'Shares of tacit protest on independence day. Online-report', available at: http://naviny.by/rubrics/society/2011/07/03/ic_art.s_116_174249/ (Russian), accessed 1 May 2012.

Euroradio (2012) 'All over Belarus were silent protests, there are detentions', available at: http://euroradio.fm/ru/report/pravookhraniteli-otseplyayut-oktyabrskuyu-ploshchad (Russian), accessed 1 May 2012.

90 Utro (2012) 'In Belarus 450 protesters were detained', available at: http://www.utro.ua/ru/proisshestviya/v_belarusi_zaderzhali_450_uchastnikov_aktsii_protesta_foto_1308822930 (Russian), accessed 1 May 2012.

Komsomolsjaya Pravda (2012) 'During a silent protest were detained even cyclists and dogs!', available at: http://kp.by/online/news/928319/(Russian), accessed 1 May 2012.

Deutsche Welle (2012) 'Comment: Belarusian special services have declared war to peaceful protest', available at: http://www.dw.de/dw/art./0,,15210034,00.html (Russian), accessed 1 May 2012.

91 Telegraf (2012) 'At the regular action of solidarity in Minsk detained six activists', available at: http://telegraf.by/2011/10/na-ocherednoi-akcii-solidarnosti-v-minske-zaderjali-shesterih-aktivistov (Russian), accessed 1 May 2012.

Charter 97 (2012) 'Participants on Kastrychnickaya square prayer for political prisoners', available at: http://charter97.org/ru/news/2011/11/16/44769/ (Russian), accessed 1 May 2012.

Charter 97 (2012) 'Participants on Kastrychnickaya square prayer for political prisoners', available at: http://charter97.org/ru/news/2011/11/16/44769/ (Russian), accessed 1 May 2012.

92 Naviny (2012) 'Arrests of public activists and organizers of the gathering of Narodny Shod in Vorsha, Polatsk, Vitebsk, Asipovichy, Slonim and Macty', available at: http://naviny.by/rubrics/society/2011/10/08/ic_news_116_378054/ (Russian), accessed 1 May 2012.

93 Charter 97 (2012) 'On the boundary was off the train Dmytro Drozd', available at: http://charter97.org/ru/news/2011/11/10/44527/ (Russian), accessed 1 May 2012.

The main criterion of selected cases was administrative detentions of people who supposed that they were arbitrarily detained during the period from December 1, 2010 to December 1, 2011. In organizing the interviewing of the detainees, substantial assistance has been provided by the Human rights center "Viasna"[94].

The methodology of the conducted monitoring in this research accumulates the working experience of international organizations, namely the OSCE/ODIHR, the Committee on International Control over the Situation with Human Rights in Belarus[95] and practical approach of the Helsinki Foundation for Human Rights (HFHR)[96], as well as recommendations of the Belarusian and international human rights organizations. In addition, practical experience of the author in human rights organisation "Legal Transformation Center" was very substantial. Methodological guidelines of the HFHR in the preparation of the questionnaires and monitoring process were extremely useful for the author of this research.

The main aim of the research is not to assess the fairness of convictions or charges because such assessments should be the subject of discussion by the community and experts at the national and international levels. The study is focused on the follow-up of the administrative arrest, namely the delivery of a detainee to a police station, drawing up the administrative protocol, bringing to the centre of isolation of offenders and other. In addition, the study did not assess specific actions of individual representatives of the public authorities. Only general and impersonal characteristics and tendencies were studies during the research.

The author was also interested in interpretations and explanations of reasons for the arrests and detentions by the detainees themselves, the position of the authorities who were engaged in the detentions and arrests, and of non-governmental human rights organizations, both national and international.

Thus, one problem was chosen for the analysis: whether the detentions and arrests in the Republic of Belarus from December 1, 2010 to December 1, 2011 comply with the requirements of the Belarusian legislation and international standards.

The most significant standard of justice of a sentence, as regarded by the author, is procedural standards at the time of the arrest, which is an indicator whether the detention was arbitrary or not. Such characteristics were chosen by the author on the basis of the analysis of the legal sources and international standards above, and include the following criteria:

- the procedure of detention must be prescribed by law;
- the arresting officer should have the legal authority to make the arrest;
- the right to be appropriately informed about the reasons for detention;
- necessity and proportionality of the use of force during detention;
- the right to access to lawyers;
- reasonable time limits set on the length of preventive detention;
- the right of *habeas corpus*;
- proceeding before a competent court;
- the judge should be authorized to exercise judicial power;
- effectiveness of the right to challenge detention;

94 Human Rights Centre "Viasna" (2012), available at: http://spring96.org/, accessed 1 May 2012.

95 Committee on International Control over the Human Rights Situation in Belarus (2012) 'Special Rapporteur on the Events of 19 December 2010. Final Human Rights Assessment of the Events of 19 December 2010 in Minsk, Belarus', available at: http://hrwatch-by.org/sites/default/files/Final_HRights_Assessment_of_19-12-2010_in_Minsk-eng_final.pdf, accessed 1 May 2012.

96 Nowitski, M., Fialova, Z. (2001) Human Rights Monitoring, Helsinki Foundation for Human Rights: Warszawa.

- a detention or arrest should be exercised in accordance with a lawful warrant;
- a detention with the purpose to prevent unauthorized entry to the country;
- a detention as a precautionary measure (preventive detention);
- the right to compensation.

To gather information, illustrating the practical realization of the chosen standards, it was decided to use the primary personal sources of information. So, for the needs of the research a questionnaire was developed which was aimed at persons directly subjected to detention for political reasons or in connection with the civil activity from December 1, 2010 to December 1, 2011. A standard for the questionnaire was the Model Questionnaire to be Completed by Persons Alleging an Arrest or Detention, developed by the UN WGAD[97] and the model questionnaire of the International Foundation for the protection of human rights defenders "Front Line Defenders"[98].

The questionnaire contains questions about the sequence of events during the detention and descriptive answers to the questions. Moreover, the respondents have the opportunity to describe their own understanding of their arrests. The questionnaire was distributed to persons who had been arrested from December 1, 2010 to December 1, 2011. Data were collected with the assistance of the Human rights centre "Viasna". 30 questionnaires were distributed between administratively charged people who thought that their detention was arbitrary and 17 questionnaires were collected and used in this study.

In order to assess the point of view of the authorities, a method of information requests to the authorities to clarify the facts has been applied. The requests were sent to the Ministry of the Interior and to the General Prosecutor's Office. These bodies were chosen because under the Belarusian legislation, detentions and arrests are in the scope of their mandate. The requests and responses to and from the authorities are systemized in this table:

Table 1. Communication with State authorities

Date of the request	Institution of request	Date of response	OInstitution of response
February 21, 2012	Ministry of the Interior; Minister of the Interior, Mr. Anatol Kuliashou (Annex 4)	March 7, 2012	First Deputy Head of the Directorate-General Office of the Law and Order, Mr. Ivan Kubrakou (Annex 5)
February 22, 2012	General Prosecutor's Office (Annex 1)	February 28, 2012	Head of the Department of the Division of Individual Appeals, Mr.Yrij Karpitski
February 23, 2012	General Prosecutor's Office (Annex 2)		
March 2, 2012	General Prosecutor's Office, General Prosecutor of Belarus, Mr. Aliaksandr Kaniuk	March 13, 2012	Deputy Prosecutor General of Belarus, Mr. Mikalay Kuklis (Annex 3)

All replies from the authorities were analyzed in the study as an illustration of the State's positions on the most problematic issues i.e. the right to personal security and protection

97 OHCHR (2012) 'Model Questionnaire to be Completed by Persons Alleging Arbitrary Arrest or Detention', available at: www2.ohchr.org%2Fenglish%2Fissues%2Fdetention%2Fdocs%2FWGADQuestionnaire_en.doc, accessed 1 May, 2012.

98 Front Line Defenders (2012) 'Model Questionnaire to be Completed by Persons Alleging Arbitrary Arrest or Detention', available at: http://www.frontlinedefenders.org/manual/en/wgadengq_m.htm, accessed 1 May, 2012.

from arbitrary detention. Detailed responses by public authorities can be found in the Annexes 1–5 to this paper.

To the first author's application to the General Prosecutor's Office with a request to provide the statistic and factual information about arbitrary detentions in Belarus in the period of 2010-2011 years, the author received the answer that it *"is impossible to provide you with the statistical data and other information"* with the reference to the Law of the Republic of Belarus "On Information, Informatization and Protection of Information"[99]. The author made the second application based on the provisions of this Law and explaining that the requested information "is not: 1. information about the private life of persons and their personal data; 2. does not represent a State secret in accordance with the provisions of the Law of the Republic of Belarus "On State Secrets"; 3. does not constitute commercial and professional secrecy; 4. nor is the information contained in the cases of administrative offences, criminal cases, the prosecution documentation or related to the court hearings pending the verdict" and the General Prosecutor Office is obliged to provide this statistical information. The General Prosecutor's Office did not provide any further answer and such behaviour of the Governmental body can be litigated in the court in accordance with the Belarusian legislation. Moreover, this shows that the State officials do not provide citizens with the statistics on the number of detained people and, therefore, violate art. 19 of the ICCPR.

Views of human rights and civil society organizations are represented through unstructured interviews with experts. The experts were asked to examine independently the situation with arbitrary detentions in Belarus and their positions will be presented below. List of experts and their full transcripts of the interviews are presented in the Annexes 6-9.

In this research the Analytical Review No.4-1 has been used, prepared by the International Observation Mission of the Committee on International Control over the Situation with Human in the Republic of Belarus, Legal Transformation Center and the Foundation for Legal Technologies Development "An Analytical Review upon Results of the Examination of Evidence from 205 Citizens Detained during the Public Action on December 19th, 2010 in Minsk"[100] .

4.2. Case Study

In further parts of the paper each international standard on arrest or detention in comparison to the Belarusian legislation, the practice of the HRC, answers of the Governmental bodies and national and international human rights organisations through the questionnaires will be examined.

The procedure of detention must be prescribed by law

In the cases of the Human Rights Committee (hereafter — HRC) Delgado *Paez v. Colombia*[101], *Bwalya v. Zambia*[102], *Bahamonde v. Equatorial Guinea*[103] it was said that the right to liberty is the independent human right. In another case, *Jayawardene v. Sri Lanka*[104], the HRC argues that "the State is under obligation to protect person's right to personal security against attacks by private persons"[105].

99 *Annex 3. Reply from the General Prosecutor Office of the Republic of Belarus.*

100 *Committee of International Control (2012) 'An Analytical Review upon Results of the Examination of Evidence from 205 Citizens Detained during the Public Action on December 19th, 2010 in Minsk', available at: http://hrwatch-by.org/sites/default/files/IOM_Analytical_Review_N4-1_ENG_0.pdf, accessed 2 May 2012.*

101 *William Eduardo Delgado P6ez v. Colombia, Communication No. 195/1985, U. N. Doc. CCPR/C/39/D/195/1985 (1990).*

102 *Chiiko Bwalya v. Zambia, Communication No. 314/1988, U.N. Doc. CCPR/C/48/D/314/1988 (1993).*

103 *Oly Bahamonde v. Equatorial Guinea, Communication No. 468/1991, U.N. Doc. CCPR/C/49/D/468/1991 (1993).*

104 *Jayawardene v. Sri Lanka, Communication No.916/2000, U.N. Doc CCPR/C/75/D/916/2000 (2000).*

105 *Ibid. Para. 14.*

The wording "prescribed by law" was precisely interpreted by the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights where said that "[n]o limitation on the exercise of human rights shall be made unless provided for by national law of general application which is consistent with the Covenant and is in force at the time the limitation is applied"[106]. Further the Principles explain that "[a]dequate safeguards and effective remedies shall be provided by law against illegal or abusive imposition or application of limitations on human rights"[107]. Moreover, these Principles set two criteria: "[l]aws imposing limitations on the exercise of human rights shall not be arbitrary or unreasonable" and "[l]egal rules limiting the exercise of human rights shall be clear and accessible to everyone". It means that legislations must be accessible and available for everyone and people cannot be detained without any reason.

The first question in the questionnaire is the following: What happened when you were arrested? Why were you arrested? The answers were as follows:

- *"Over the corner of Nezalezhnasti Avenue members of the special police squad were running to me. I was not explained anything, but simply shouting "Charged!" I was pulled into a paddy wagon";*
- *"I was detained near the Red Castle with other people at candle procession to support political prisoners. I was warned by a man in civilian clothing. He refused to present himself. He told me to go away. I was detained near the shopping centre "Stalitsa" by unknown people and put in a small bus without car numbers";*
- *"Walking along Yanka Kupala street I was surrounded by men in civilian clothes (who jumped out of the car of State Traffic Patrol Department) and arrested me. As I was told, I was detained because my car was parked in a prohibited place, so I had to pay the fine. Subsequently, after the fine was paid, I was told that at the time of detention I resisted the police and I was taken to the police station. And already at the Police Department I was told that I was swearing in a public place, so I committed an administrative offence. In fact, the cause of the arbitrary detention and subsequent arrest was to prevent my participation in and coordination of "silent" protest actions on June 29 and July 3 on Independence Day";*
- *"I was summoned for a preventive conversation with police. When I came to the Moscow District Police Station, they told me "SURNAME , you are swearing! It is a violation of art. 17.1 of the Administrative Code of Belarus!". It was preventive detention, most likely to ensure that I would not participate in the protest the next day";*
- *"It was Wednesday. The day of silent protest. […] I think it was an accidental arrest, maybe because of my backpack";*
- *"I was detained for having expressed my rights […] during the picket";*
- *"During the public gathering in the evening at 7.20 I was detained without any reason";*
- *"The KGB officials picked me up from the University";*
- *"When I was performing my professional duties. I was preparing journalistic material about the rally to support political prisoner Zmitser Dashkevich";*
- *"I was detained near the building of the KGB during the campaign of the Ukrainian movement "Femen". I'm a photographer, and I was at my work. A few minutes after*

106 *UN (2012) "Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights", available at: http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G84/182/73/PDF/G8418273.pdf?OpenElement, accessed 7 May, 2012. Para. 15.*

107 *Ibid. Para. 18.*

the action two people ran out of the building and in an offensive form forced me and colleague-operator (a girl) into the building of the KGB";

• *"I was sleeping at home. The KGB officials refused to explain me why I was arrested, they said that I will know about it at place";*

• *"I posted satirical pictures on advertising stands";*

• *" I was detained preventively so that I was unable to take part in the action of solidarity with political prisoners";*

• *"I posted agitation pictures";*

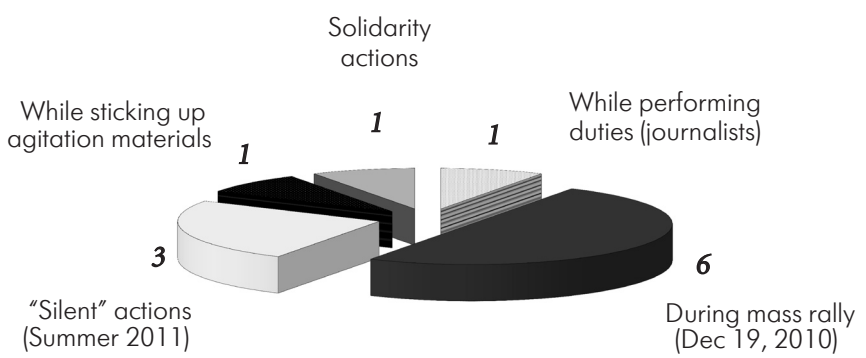
• *"I and my friends were leaving the store when three unknown men in sports clothing rushed in. After applying physical force to us, they forced us into a minibus Volkswagen, without car numbers and with tight-closed windows. We did not know the reasons for detention, as well as who did it";*

• *"At the rally of solidarity with political prisoners. I was detained because I was near the castle of St. Alena and Simon".*

From the answers above it is obviously seen that seven persons were detained by riot policemen, four persons were detained by unknown men in civilian clothing, one person was detained by policemen and one person was detained by KGB men.

These data were summarized and you can see the results of it in the chart below.

Chart 1. Place of Detention



This diagram shows that out of the 17 respondents, almost half (6 persons) were detained during a public rally against rigged results of the presidential elections on 19 December, the other most popular reason of detention was participation in the summer silent protest (3 of those interviewed).

The collected factual information shows that only four of the respondents clearly understand the reasons for their detention (*"detained because my car was parked in a prohibited place", "I was detained preventively so that I was unable to take part in the action of solidarity with political prisoners"*, etc.). The remaining detainees did not understand the causes and motives of their detention, and officials did not explain the reasons for such action. Moreover, three respondents from 17 indicated that they thought they were detained preventively (*"it was preventive detention most likely to ensure that I would not participate in the protest the next day", "I was detained preventively so that I was unable to take part in the action of solidarity with political prisoners"*, etc.). Preventive arrests fall under art. 9

(2) of the ICCPR. "Preventive detention is not a punitive but a precautionary measure. The ostensible object is not to punish a person for having done something but to intercept him before he does it and to prevent him from doing it"[108]. Therefore, there were no objective reasons for detaining the mentioned persons, as none of the cases met the requirements of art. 8.2 (2).

According to the respondents' answers, people who detained them did not have any legal reasoning for their actions: they did not have arrest warrant — neither at the moment of detention nor after it, when the administrative protocol was drawn up.

Therefore, according to all the evidence gathered in the questionnaires and from the information provided by human rights organizations reports, one can state that this international standard was violated.

The arresting officer should have the legal authority to make the arrest.

Para. 9 of the Body Principles enshrines that "[t]he authorities which arrest a person, keep him under detention or investigate the case shall exercise only the powers granted to them under the law and the exercise of these powers shall be subject to recourse to a judicial or other authority"[109]. At the same time Prof. Nowak argues that arrests and detentions should be conducted by "police, military or other security organs on the basis of special security ordinances"[110]. In cases *Lopez Burgos v. Uruguay*[111] and *Celiberti v. Uruguay*[112] the HRC said that kidnapping people by security service agents is a direct responsibility of the State and attributable to the State, moreover, it is a violation of art. 9 of the ICCPR and kidnapped people could be considered as "disappeared persons". In addition, the Committee underlines in the communications in the aforementioned case that absence of an arrest warrant may be a criterion of an arbitrary detention. In this case only one exception: "[t]he police may frequently arrest a suspected terrorist on the basic of information which is reliable but which cannot, without placing in jeopardy the source of the information, be revealed to the suspect or disclosed in court to support a charge"[113]. "An arrest without a warrant is only lawful if the type of information which would have been contained in the warrant is conveyed orally"[114]. Moreover, if a detainee "fully aware of the reasons for which he was detained"[115] in this case art. 9 of the ICCPR would not be violated.

In accordance with art. 8.3 of the REC, administrative arrest can be conducted only by five categories of the officials; besides, this list is exhaustive. Offenders can de arrested or detained only by:

• officials of the Ministry of the Interior — in all cases of administrative offences;

• officials of the State Security Service, who have power to draft reports only on administrative offences in the following cases:

108 Jayawickrama, N. (2011) The Judicial Application of Human Rights Law: National, Regional and International Jurisprudence, Cambridge: Cambridge University Press.

109 UN (2012) 'Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment', available at: http://www.un.org/documents/ga/res/43/a43r173.htm, accessed 1 May 2012.

110 Nowak, M (2005) UN Covenant on Civil and Political Rights. CCPR Commentary (2nd rev. ed.). Kehl am Rhein: Engel. P.170.

111 Sergio Euben Lopez Burgos v. Uruguay, Communication No. R.12/52, U.N. Doc. Supp. No. 40 (A/36/40) (1981).

112 Lilian Celiberti de Casariego v. Uruguay, Communication No. 56/1979, U.N. Doc. CCPR/C/OP/1 (1984).

113 Jayawickrama, N. (2011) The Judicial Application of Human Rights Law: National, Regional and International Jurisprudence, Cambridge: Cambridge University Press. P. 391.

114 Ibid.P.398.

115 Ibid.P.399.

- demonstration, manufacturing and/or distribution of Nazi symbols or emblems (art. 17.10 of the CAO);

- production, distribution, or storage of extremist materials (art. 17.11 of the CAO);

- receiving money or other property for the purpose of financing the media from foreign legal persons, foreign citizens and stateless persons (art. 22.9 of the CAO);

- disclosure of official secrets through negligence (art. 22.15 of the CAO);

- violations of the requirements on the use of the national segment of the Internet (art. 22.16 of the CAO);

- illegal entry to protected objects (art. 23.14 of the CAO);

- violation of the procedure for the use of foreign non-reimbursable assistance (art. 23.23 (1, 2) of the CAO);

- infringement of traffic rules in special technical means for secretly obtaining information (art. 23.52 of the CAO);

- violation of the rules of entry into the Republic of Belarus, as well as the rules of transit (transit) across the territory of the Republic of Belarus (art. 23.55 of the CAO); and

- failure to implement private determination (decision) of the court or prescription to rectify violations of law, causes and conditions that encourage to commit offences (art. 24.3 of the CAO).

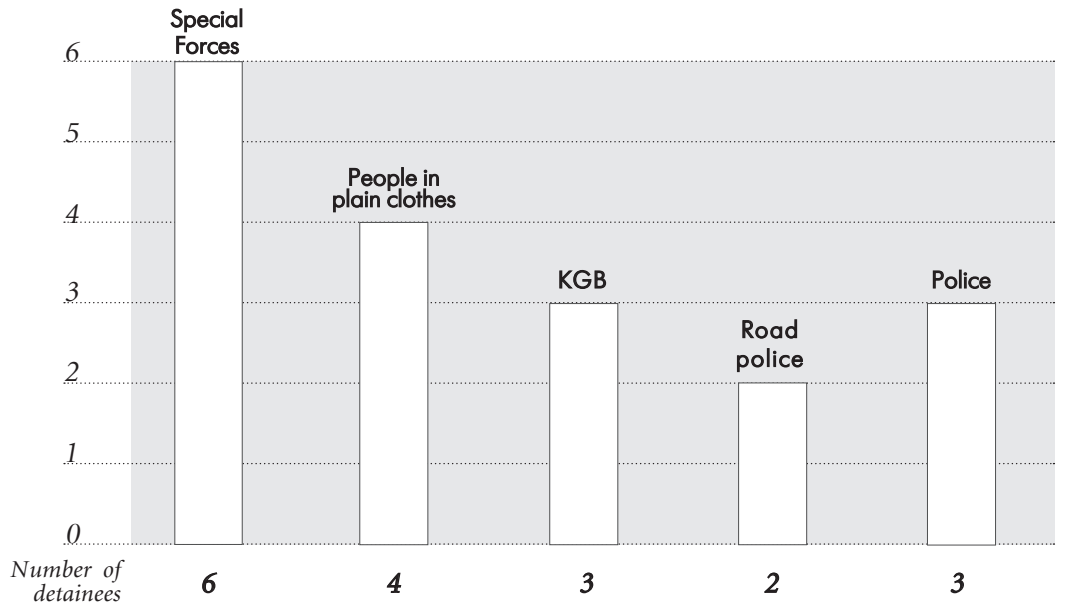
Thus, the provisions of the Belarusian legislation provide an exhaustive list of persons who can make an arrest or detention: these are employees of the law enforcement authorities and border guards. Pursuant to art. 8.3 of the REC, State security officials are authorized only to make protocols of administrative arrest, but do not carry out arrests.

In an interview to the Internet service TUT.By the MP of the House of Representatives of Belarus Anatoly Glaz said that "detention by persons in civilian clothes is not allowed! [...] Where is the guarantee that these are real policemen in civilian clothes, and not criminals? If they are police officers, they have to show ID to detainee and it must be clear who is in front of you"[116]. Mr. Glaz is a high-ranking official in the Belarusian Parliament; therefore, his statements reflect the official position of the Belarusian State. Taking it into consideration, the position expressed by Mr. Glaz, one may come to the following conclusion. The House of Representatives as one of the Chamber of Parliament knows that people are arrested regularly by unknown people in civilian clothing. Moreover, they acknowledge on the criminal liability for such actions. But, at the same time, such actions have continuing character, even after the statement of Mr. Glaz. It means only that the law enforcement officials do not obey the domestic legislation provisions.

Thus, on the basis of the analyzed questionnaires, it is shown that most of those interviewed were detained by riot policemen who did not have the authority to arrest people. Four of 17 respondents said that they "*were detained by people in civilian clothing*" and it is a violation of both art. 8.3 of the REC and the Body of Principles.

116 TUT.By (2011) 'The Depute Glaz: Detentions by People in Civilian Cloth are denied!', available at: http://news.tut.by/politics/244513.html (Russian), accessed 8 May, 2012.

Procedure of detention



In addition, two of 17 respondents indicated that they were detained by "*the police officials in civilian clothing*". On the one hand, the respondent recognizes that the detention was carried out by "*the police*", on the other hand, "*the unidentified men in civilian clothes*". Because it is impossible to give a clear evaluation of the responses there might be minor discrepancies in the table above.

Question 4 of the questionnaire dealt with appearance of the persons conducting the detention. The following table summarizes the data.

Table 2. Person Conducting the Detention

Special Police Forces	People in civilian clothes	KGB	State Traffic Patrol	Police
"They were dressed in black uniforms. They were in helmets, with shields and there were eagles on the shields"	"Civilian clothes, without helmets and any special signs, weapon"	"KGB officers [...] were wearing civilian clothes, without identifying marks, masks/helmets, used mobile phones, I have not seen the weapons"	"State traffic patrol officer with special tools, dressed in official uniform, had weapons, radio sets, special tools"	"The district police officer was in civilian clothes. The policeman was in uniform"
"Blue winter uniform. As weapon were only batons"	"Without helmets and masks, without weapon and portable radios"	"Civilian clothing. There were no helmets"		"They were in uniforms and in civilian clothing"
"They were wearing special uniforms and with radios and batons"	"They were in civilian clothing without any signs"	"One person was in civilian clothing, second in green sports clothes. The second person had a stick and both of them – radios"		
"Camouflage uniform of the special police forces with marks, without ID, had radio"	"Civilian clothing"			
	"Civilian clothing"			

From the responses above, we can make the following generalizations. Officers of the Special Forces who conducted the arrests were wearing black and blue uniforms with clear hallmarks — helmets, shields, batons and radios. Although one respondent detained by riot police noted that the Special Forces had no ID-cards, any special symbols on the uniform and on helmets.

The category of "*people in civilian clothing*" is of special interest. The respondents said that these people were in civil clothes without any special marks. Some of the respondents said that this category of people possibly had radios ("*I am not sure, but it is seemed to me that they had radio*"), and some of them said they were sure that these people had radio ("*some of them had radios*"). One respondent gives a precise description of "*people in civilian clothing*" — "*formless sport pants*" and "*classic style of clothing*", moreover, these respondents said that they "*have radios in the cars*", in addition, "*they actively used mobile phones*". In other words, according to descriptions of the respondents, it is impossible to identify precisely these people in the crowd and, moreover, it is clearly the violation of the Belarusian legislation.

According to the descriptions of the respondents, the Committee of State Security (well known as the Soviet abbreviation KGB) officers barely differ from the category of *"people in civilian clothing"*— both of them do not have markings, helmets and weapons. One respondent noted that the KGB officer had *"the KGB ID-card"*, another respondent said that the KGB officer had *"radio"*. This remark is significant and might mean that actions of the KGB officers engaged in detention may have been coordinated via portable radios. It is just an assumption, but it is only one explanation of this difference between people in civilian clothing and KGB officers.

The Minister of the Interior Anatol Kuliashou pointed out during the hotline with the readers of *Respublika* newspaper that it was him who ordered police officers to work in plain clothes during peaceful rallies. This made impossible to identify whether individuals who beat and detained peaceful citizens were in fact police officers and to which police stations the arrested citizens were transferred to[117]. In our opinion, this statement is very illustrative and has remarkable character. Firstly, it means that because of the order of one single person (Mr. Kuliashou), without issuing arrest warrants, more than 800 people were arrested on 19 December 2010. Based on this logic, it can be assumed that any high-ranking official in the Belarusian Government may issue an order to arrest any person without legal reasoning. Such situation is possible only in a State where the rule of law does not operate. Secondly, it reveals strong powers for one person which is contrary to the law. Orders issued by high-ranking officials are not discussed or negotiated, and it is impossible to stop them. All this shows that the State knew about such situation (mass detentions, 'officials' in civilian clothing) and did not do anything to prevent violations of international legal standards and even of domestic legislation.

The International Observation Mission of the Committee of International Control over the Situation with Human Rights in Belarus has practically the same results of the examination. In their Analytical Report I-1, approximately 100 respondents said that they were detained by riot police; approximately 60 people by the special police forces; almost 20 people by people in black uniform without any signs, and 15 by people in civilian clothing[118]. It is evident that they are distinguishing "people in black uniform" and "people in civilian clothing". Moreover, "according to those interviewed, they saw patches on the black clothes "special police unit", inscriptions on shields "riot police", as well as the logos on their jackets "special police unit", "riot police", and "police". However, some of the representatives of the State really had no colorful signs or catchy captions on uniforms, informing people of who performed the detention. In addition, the secret service officials in civilian clothes were also in the Square, which made it difficult to identify the representatives of the State performing detentions. According to the detainees, some representatives of the special services worked in the square in helmets, masks and scarves which hid their faces, and the opportunity to identify them was minimal"[119].

The commentary of the public organisation "Legal Initiative" proves the data and gives the same description of people who executed mass detentions describing them as *"people dressed in civilian clothes and without ID-cards or other distinctive marks on clothing, rude*

117 Human Rights House Foundation (2012) 'NGO report on the implementation of the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment by the Republic of Belarus in relation to the review of Belarus at the 47th session of the United Nations Committee against Torture', available at: http://humanrightshouse.org/Art.s/17263.html, accessed 5 May 2012.

118 The Committee of International Control (2012) 'Analytical Review I-2 upon of the Examination of Evidence from detained People during a Public Rally on December 19, 2010 in Minsk', available at: http://hrwatch-by.org/sites/default/files/IOM%20Analytical%20Review%20I-1%20-%20RUS.pdf (Russian), accessed 6 May, 2012.

119 Ibid. P.5.

crowds of protesters caught and forcibly shoved him in paddy wagons, as well as civilian cars that have no public rooms of the established sample"[120]. Moreover, in this commentary it is said that "*[p]eople were arbitrarily detained and subsequently were released without drawing up a protocol and without explanations of their detention or conviction on charges of administrative offence*".

Studying the questionnaires received by the author of this research, reports of human rights organizations, statements in the media, communication with State bodies and commentaries of Belarusian human rights organizations, there are full authentic proofs that in Belarus in the period from December 2010 to December 2011 there were repeated detentions of citizens by people in civil clothes without any marks on their clothes. Such practice did not happen only in the period described, but has occurred from the election of the first President of the Republic of Belarus. This is a violation of article 9 of the ICCPR, and it has been many times stated by all Belarusian human rights organizations which call on the Government to change the situation, but the calls fall on deaf ear. It is absolutely clear that during mass demonstrations in Belarus mass kidnapping of people takes place. If the Government does not do anything to stop this violent practice, we can suppose that the Government encourages doing so, dreadfully violating the basic principle of human rights and article 9 of the ICCPR in particular.

The right to be informed about the reasons for detention

This standard includes "two-stage notification process: at the moment of arrest, a person must be told about the reasons why he/she is being taken into custody; within short period of time, the person must be informed about the charges against him/her"[121]. Moreover, a detainee should be informed in a language which is understandable for him/her but if it is impossible, the authorities should provide the interpreter. This provision is imposed in principle 13 of the Body of Principles. In the case *Philibert v. Zaire*[122] it was said that if the person is not informed about the reasons for his/her arrest and about the charge against him/her, art. 9 (2) is violated. In *Caldas v. Uruguay*[123] the Committee argues that every detainee should be "adequately informed of the facts and legal authority relied on to deprive of his liberty"[124], moreover, the provision of art.9 (2) of the ICCPR does not "imply a right to a full documentation of the case [...], does not require information to be given in detail"[125].

The international standard of the "right to be informed about the reasons for detention" includes the two-steps procedure. Firstly, a detainee should be informed shortly about the reasons for his/her detention and an officer who performs the detention should name his/herself and numbers or other distinctive information about the police station or unit which he/she represents. 'Shortly' means just reasons and the ground of these reasons. In this situation the following formula can be used: "Hello, I am [rank] [name]. Mr/Ms. [Surname], you are being detained under art. [...] of the [title of law or Code], because of [reason]". Therefore, at this first step, a detainee has these rights: (a) to demand explana-

120 *Annex 7. Comment of the Public Organisation "Legal Initiative".*

121 *Jayawickrama, N. (2011) The Judicial Application of Human Rights Law: National, Regional and International Jurisprudence, Cambridge: Cambridge University Press. P.396-397.*

122 *Luyeye Magana ex-Philibert v. Zaire, Communication No. 90/1981, U.N. Doc. CCPR/C/OP/2 124 (1990).*

123 *Adolfo Drescher Caldas v. Uruguay, Communication No. 43/1979, U.N. Doc. Supp. No. 40 (A/38/40) 192 (1983).*

124 *Jayawickrama, N. (2011) The Judicial Application of Human Rights Law: National, Regional and International Jurisprudence, Cambridge: Cambridge University Press. P.399.*

125 *Ibid. P.400.*

tions of the purpose of the detention; and (b) to demand respect for oneself. The following duties should be observed as well: (a) to provide any identity document (passport or car licence); and (b) not to be a victim of cruel, inhuman or degrading treatment. The detaining officer has the following obligations: (a) to greet a detainee; (b) to identify him/herself and his belonging to the police; (c) be polite; (d) to explain the reasons and purposes of detention; and (d) to avoid statements and actions that offend honor and dignity of the detainee. All these responsibilities lie in the scope of the Law on Home Affairs.

The second phase of the realisation of this right takes place in a police station or other place where the detainee was transferred. At the police station during the drawing up the administrative protocol on offence or during the determining the detainee's identity, the reasons and legal basis should be explained fully (precise, reliable and immediately).

The answers of the respondents are systematized into a table below:

Table 3. Procedure of Informing About Detention

No. of questionnaire	Where were you informed	When were you detained	How long you were detained without any explanations
1	"Lenin Police District in Minsk"	"19 December 2010 22. 30 p. m."	"3 hours"
2	"In the court"	"19 December 2011 near 19. 20 p.m."	
3	"Moscow Police District in Brest "	"28 June 2010 in 12. 40 a.m."	"2 hours after the detention"
4	"in room 101 of the Moscow District police station in Minsk"	"30 December 2011"	
5	"while reading the administrative protocol, in the police station"	"19.12.11"	
6	"only in the police station"	"20 July 2011, near 18.00 a.m."	
7	"in the Soviet District police station	"13 July 201, 20.10 a.m."	"2 hours after detention"
8	"in the police station"	"26.10.11"	"26.10.11"
9	"in the Central district police station"	"19.12.2010"	
10	Minsk, the Moscow District police station"	"6 January 2011, 12.00 a. m."	
11	"during the drafting of the administrative protocol in the police station		
12		"19.12.2011, 11.10 a.m."	
13	"in the Kastrychnicki district police station"	"31 December 2011, 08.50 a.m."	"3 hours after detention"
14		19 December 201, near 22.00 p.m."	"I was informed in the morning of the next day
15		"21.10.2011"	
16	"in the police station"	"17.09.2011, 01.00 a.m."	
17	"in the police station"	"30.10.2011"	

According to these data: 12 of 17 respondents were informed about the detention in a police station; two were not informed; one was informed during court proceeding; and one person was kept in the dark about the reasons and duration of detention. It should be noted that the detainees were informed on their detention in a police station (12 respondents), while one of them observed that *"on the way to the police station no one did say any single word about our detention"*, it was also pointed out by one of the respondents that the he/she was informed by *"the police officers who did not detained them"*. One of the detainees said he was not informed, but *"they made a hint to my lawyer"*, in other words, the detention order was not made familiar to the detainee personally, but through his/her lawyer, and the information on the detention was in a form of a hint. One of the respondents explained that *"all 10 hours that we were in the police station, nobody told us that we were detained, they said that we were not detained and the bosses had to decide what to do with us"*, i.e. the officers who conducted the arrest did not understand and did not know why they performed this arrest, probably they did it because of the order from higher official.

The REC does not contain a requirement to explain the reasons for the arrest or detention, however, the Law on Home Affairs in art. 23 says that "[o]fficer of internal affairs bodies in all cases of restriction of the rights and freedoms of the citizen is obliged to explain the reasons for such restrictions, as well as rights and duties"[126].

Thus, despite the fact that the legislation (art. 23 of the Law on Internal Affairs, art. 5 of the Law on the Internal Troops of the Ministry of Internal Affairs of the Republic of Belarus[127]) of the Republic of Belarus establishes the duty of employees of law enforcement agencies to inform the arrested or the detained, which meets the international standard, this requirement fails, as it can be seen from the table above.

The Report of International Observation Mission noted that according to their examination after the 19th December events, nine people said that they had to wait up to 6 hours for the protocol to be drafted and seven people said that they spent from 9 to 24 hours waiting for theirs protocols on administrative offences. Moreover, some of the respondents of Human Rights Watch examination reported certain alleged cases of humiliation in the departments of the Interior Ministry, *"authorities forced detainees to undress, recording the process on camera with wording: "the one who dresses the first will receive minus three days to his administrative arrest"*[128].

"Legal Initiative" in their commentary noted that detainees were *"not explained about the reasons for detention and their rights"* and further the organisation argues that *"people did not understand why they were detained. Probably, such measures were politically motivated — because even those who tried to protest peacefully had been detained"*[129]. The systematized answers of the respondents and commentary of "Legal Initiative" show that in most cases the detainees were not informed about the reasons for their detention. It can be interpreted only as a lack of understanding by detaining officers of the procedure of detention and the Belarusian legislation. We can suppose that the Ministry of the Interior recruits Belarusian's Academy of the Interior cadets or other people (soldiers or highway policemen) to detain people who participate in mass demonstrations (for example, in mass protests in December 2010 or in 'silent' protests).

126 National Legal Internet Portal of the Republic of Belarus (2012) 'Law of Internal Affairs of the Republic of Belarus', available at: http://www.pravo.by/main.aspx?guid=3871&p0=h10700263&p2={NRPA} (Russian), accessed 4 May 2012.

127 National Legal Internet Portal of the Republic of Belarus (2012) 'Law on the Internal Troops of the Ministry of Internal Affairs of the Republic of Belarus', available at: http://pravo.by/main.aspx?guid=3871&p0=V19302341&p2={NRPA} (Russian), accessed 30 May 2012.

128 The Committee of International Control (2012). Supra. P.10.

129 Annex 9. Comment of the Public Organisation "Legal Initiative".

Based on the answers of the respondents, it is quite difficult to judge unambiguously this international standard. Some of the respondents indicated that they did not receive any explanations about their detention nor during the detention, not in the police station or at the detention center. But another group of respondents proved that they were not informed about the reasons during the detention, but they were explained the reasons for their deprivation of liberty while drawing up the protocol on the detention. This tendency was proved by the data of International Observation Mission over the Situation with Human Rights in Belarus.

Therefore, it is impossible to indicate the violation of this standard without further and deeper research of this situation. Moreover, a more specialized study is needed in each particular case or situation, because even during the largest gathering on December 19, 2010, there were different testimonies on how this standard had been observed.

To sum up, by analyzing the responses, the author can say that in some cases this standard was violated, but, at the same time, there were indications of the contrary.

Necessity and proportionality of the use of force during detention

This right lies not in the scope of art. 9 of the ICCPR, but is guaranteed by art. 7 of the ICCPR and prohibits torture, cruel or "inhuman or degrading treatment or punishment"[130]. General Comment 20 explains that this art. "allows of no limitation" and "[t]he prohibition in [...] relates not only to acts that cause physical pain but also to acts that cause mental suffering to the victim [and ...] moreover, the prohibition must extend to corporal punishment, including excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure"[131].

Belarusian experts suppose that the scope of this article can be applied to excessive use of force, and illustrate this with mass detentions on 19 December 2010 in Minsk when rubber truncheons were used against detainees, and state that "[t]his situation may raise a question about exceeding the limits of necessary force to disperse demonstrations and detentions of demonstrators as they were unarmed and had not resisted"[132]. Additionally, the General Comment underlines that "[i]t is the duty of the State party to afford everyone protection through legislative and other measures as may be necessary against the acts prohibited by art. 7, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity".

In the commentary of "Legal Initiative" it is noted that detainees were placed at the Isolation Center in Akrestsina Street in Minsk waiting for their proceedings, and they estimate the conditions of this detention center as torture, cruel and inhuman treatment: "*[t]he cells were overcrowded with unsanitary conditions, there was no ventilation and natural light, access to drinking water, there were no beds and obligatory walks have not been provided*" .

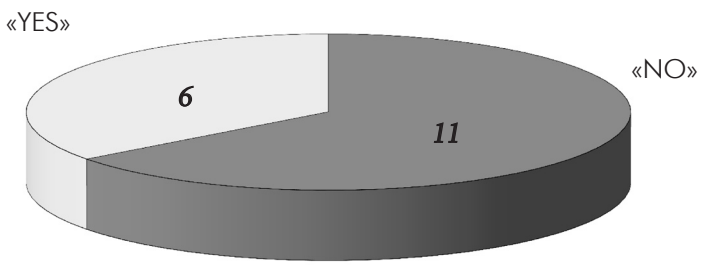
The questionnaires within this study contained three relevant questions: *Did officials physically harm you in any way? If so, have you been beaten or otherwise ill-treated? and Did it make any effect on your body?* The analysis of the questionnaires gave the following results:

130 OHCHR (2012) 'International Covenant on Civil and Political Rights', available at: http://www2.ohchr.org/english/law/ccpr.htm, accessed 6 May, 2012.

131 General Comment No. 20: Replaces General Comment 7 concerning prohibition of torture and cruel treatment or punishment (Art.7).

132 Platforma (2012) Report 'On the application of international human rights standards in the preparation of national and international protection (the analysis of the situation with regard to the criminal and administrative prosecution of persons who took part in the unsanctioned rally December 19, 2010, in Minsk, Republic of Belarus)' (Russian), available at: http://platformarb.com/zakonodatelstvo/zakonodatelstvo-respubliki-belarus/o-primenenii-mezhdunarodnyx-standartov-prav-cheloveka-pri-podgotovke-nacionalnoj-i-mezhdunarodnoj-zashhity/, accessed 6 May, 2012.

Diagram 1. The use of physical force



Although 11 respondents said "No" and 6 respondents said "Yes", this diagram contains non-representative selection and few data to make deep analysis. The Analytical Review I-1 prepared by the Foundation for Legal Technologies Development, International Observation Mission and Legal Transformation Center is based upon the data gathered from 205 persons over the period from January 3rd, 2011 up to and including January 21st, 2011 in Minsk and testifies to the contrary. During their examination 288 people were asked and 215 of them said that the force was used against them and 43 said that unreasonable force was not used against them[133].

The study by the author of this research shows that respondents claim physical force was applied against them: *"[d]uring detention I was beaten and fell to the ground"*, *"[w]hen loading in the minibus I was hit a couple of times"*, *"we were beaten in the bus"*, *"[t]he detention was quite harsh (we have been dragged over the clothing and hands)"*, *"member of special police unit used force, he hit me with his knee into my back"* and one of the respondent said about the damage to his belongings — *"my backpack was torn"*.

The Analytical Review I-1 gives evidence a deeper and more extended examination: according to these data, the biggest part of the respondents gave testimony about use of force and special weapons against them: *"rubber truncheon"* (61 respondents from 288), *"beaten with feet"* (23 respondents), *"plastic shield"* (6 respondent), *"beaten with hands"* (2 respondents), *"rubber sticks with metallic pieces"* (1 respondent), and one of them said about *"asphyxiation"*[134].

Moreover, the examination of the International Mission and Legal Transformation Center clearly shows that such practice was applied with exceptional cruelty: *"[t]he 15 people described that police surrounded them in the "ring" and they have to go in this corridor to the special transport of the Ministry of Internal Affairs, and when people sat in the transport the police started to beat them"*[135]. This remark shows that the actions of the detaining officers were planned and coordinated, because it is not possible to surround and organize immediately "the ring" of people or the "corridor".

Therefore, it shows that such practice of unreasonable and unnecessary use of force is quite spread in Belarus. Nevertheless, art.5 of the Law of the Internal Troops of the Ministry of the Interior prohibits degrading treatment; there is a lot of evidence of the violation of international standards which are obligatory for the State. Articles 18 and 19 of the same Law establish that officers have the right to use physical force, including military hand-to-

133 *The Committee of International Control (2012). Supra. P.13.*

134 *Supra. P.3.*

135 *Ibid. P.3.*

hand combat techniques to prevent offences, for self-defense, only in case if non-violent ways to carry out their tasks fail. This Law regulates use of handcuffs, truncheons, special chemicals, special light devices, etc. Art. 20 of this Law establishes that these special devices (handcuffs, truncheons and so on) are used on the decision of the detaining officer, taking into account the prevailing circumstances, the nature of the offence and the personality of the offender. Further this article prohibits using special devices against pregnant women, disabled, and minors.

This destructive practice is confirmed by the examination of the International Observation Mission in Belarus and Legal Transformation Center; according to their data "22 respondents indicated that during their detentions the State officials used violence, swearing, insults and threatened with physical violence and even murder. 7 women indicated that policemen insulted and humiliated women[136]. Their data are proved by the answers of other respondents: "*[o]ne of the riot policemen tried to put on me his feet, but when I did not allow to do, he hit me*" or "*a man was lying on snow unconscious, the police did not provide any help*".

Human Rights Watch also proved this information stating that "*[t]he police abused most of those they arrested by punching, pushing, and hitting them with batons, kicking those who fell, and chasing and grabbing people, including bystanders in adjacent streets*"[137]. These facts were proved as well by the commentary of the "Legal Initiative" which explained that "people dressed in civilian clothes and without ID-cards or other distinctive marks on clothing, stormed crowds of protesters, caught and forcibly shoved them in paddy wagons, as well as civilian cars that had no public rooms of the established sample".

Therefore, taking into consideration the respondents' answers in table 2 and the commentaries of the organizations above, violation of international standard "proportionality of the use of force during detention" can be found. It demonstrates that practically in all cases described by the respondents, detaining officers used cruel force unreasonably, without obvious necessity. Not all of the officers had ID-cards and were wearing uniforms as it is required by the domestic legislation.

This standard is also problematic to evaluate, the same as the previous one. Practically all notifications in the media testify that this standard was violated in a harsh manner. The statement of the UN, the EU, the OSCE and other international organizations proved it as well. Numerous reports from national human rights organizations and International Observation Mission over the Situation with Human Rights in Belarus gave the evidence of it, too. The results from the questionnaires are not so evident and do not give serious grounds to make a single decision.

In some questionnaires there was an indication of disproportional and inhuman force during detention, but others gave completely opposite results. While monitoring all the statements and analyzing the questionnaires, it was noticed that groundless forces was used during mass gatherings, for example the public action on December 19, 2010, but when people were detained one by one, there were no such claims.

Therefore, this international standard should be studied in-depth in order to make a decision on its implementation in Belarusian law enforcement practice.

The right to access to lawyers

The appropriate access to lawyers is regulated by art.9 (4) of the ICCPR. In practice it seems difficult for people without special legal education to challenge successfully their detention without legal assistance. The Concluding Observations on Ireland noted that

136 Ibid. P.2.

137 Annex 9. Comment of the Public Organisation "Legal Initiative".

during the pre-trial detention the access to lawyers and proper legal assistance must be permitted, moreover, "[t]he State party should ensure that all aspects of detention, including the period of detention and availability of legal aid, are administered in full compliance with art. 9 of the Covenant"[138].

According to art. 62 of the Belarusian Constitution "[e]veryone shall have the right to legal assistance to exercise and defend one's rights and liberties, including the right to make use, at any time, of the assistance of lawyers and one's other representatives in court, other state bodies, bodies of local government, enterprises, establishments, organizations and public associations, and also in relations with officials and citizens. In the instances specified by law, legal assistance shall be rendered from public funds". Art. 43 of the Criminal Procedural Code guarantees that "[t]he accused has the right to a defence. The body directing criminal proceedings shall provide the accused the opportunity to exercise the right to protection by all legitimate means and ways". The right to access to lawyer is also guaranteed to all detained or arrested in art. 2.8 "[p]hysical person in administrative process has the right to a defense. This right can be exercised both personally and with the assistance of a defense lawyer in accordance with the procedure established by this code".

General Comment 32 insists that "accused persons must have adequate time and facilities for the preparation of their defense and to communicate with counsel of their own choosing"[139]. But at the same time the Covenant does not explain the legal framework of the "adequate time". Para. 7 of the Basic Principles on the Role of Lawyers establish that "[g]overnments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention"[140].

In accordance with chapter 16 (142) of the Internal Operational Guidelines for investigative Detention Facilities of the State Security Services of the Republic of Belarus "detainees are guaranteed the right to communicate with their defense lawyer in a private and confidential setting without limitations in time and frequency of meetings"[141].

The gathered data with answers to the questions: "*Was legal help available for you? If so, what kind of legal help: state lawyer or activist from human rights center?*" provides the following information:

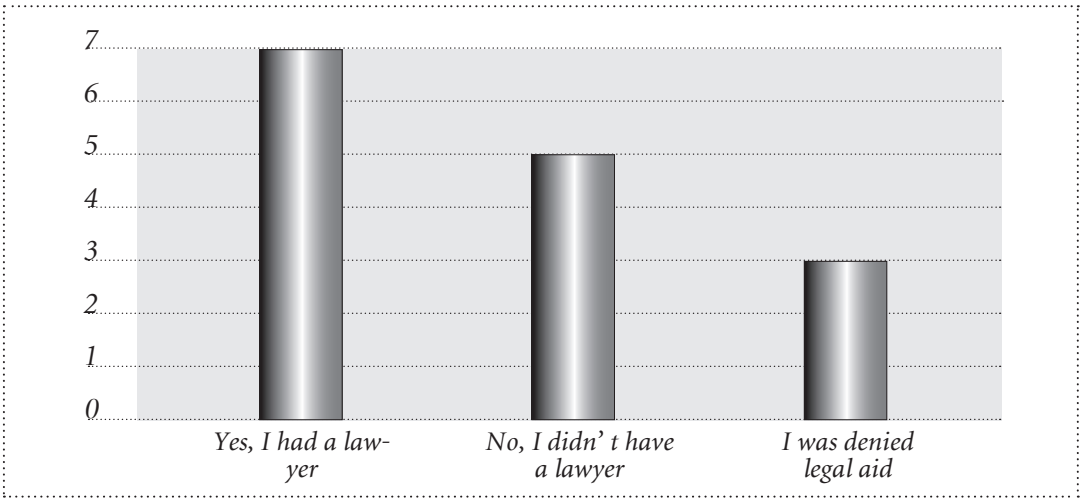
138 UNHCR (2012) 'Consideration of reports submitted by State parties under art. 40 of the Covenant : International Covenant on Civil and Political Rights: Ireland: Information received from Ireland on the implementation of the concluding observations of the Human Rights Committee (CCPR/C/IRL/CO/3)', available at: http://www.unhcr.org/refworld/type,CONCOBSCOMMENTS,HRC,IRL,4a891ec2a,0.html, accessed 6 May, 2012.

139 General Comment No. 32: Right to equality before courts and tribunals and to a fair trial (Art. 14).

140 Basic Principles on the Role of Lawyers, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 (1990).

141 Annex 7. Reply from Human Rights Watch.

Graph 2. Access to Lawyers



Some of the respondents said about "State lawyer" — 3 respondents: *"[t]he State lawyer was granted only during the proceeding", "I was offered the State lawyer, I refused", "[t]he lawyer was more similar to the KGB officer";* some of them certified the presence of human rights defender from human rights organizations — *"I received legal assistance from the center "Viasna" and "Helsinki Committee", "there was help from the side of human rights protection organization, moreover, I asked them and they found for me an independent lawyer", "it was the representative of a human rights organization", "there was a lawyer from "Viasna", "during my proceeding there were the representatives from Belarusian human rights organizations";* and some respondents said that they were denied this right — *"I was denied legal assistance from the moment of detention until the proceeding. I publicly asked for a lawyer or to be allowed to conclude a contract"* and *"did not even have a conversation about it".*

Human Rights Watch in the country visit also reported about the violation of the right to legal assistance. The commentary which the organization provided to the author of this research states that "[t]here were consistent and serious allegations about denial of the right to legal counsel" and "[a]lthough individuals held on riot charges have occasionally had a lawyer present during their interrogation, none has been allowed to have direct and private meetings with his or her lawyers at any stage of detention". Further Human Rights Watch assumes that in such situation art. 14 and 9 of the ICCPR were violated.

Therefore, the right to appropriate legal assistance was also violated. During the country visit of Human Rights Watch interviewed one of the women who said: *"[w]hen I asked for a lawyer, I was dragged into the hallway and three guards in uniforms started kicking me and hitting me with batons. People who saw that screamed at them to stop. Then the guards took me to a room on another floor and put together my arrest report. They didn't even bother giving me a copy; they told me "You are not going to sign it anyway"*[142]. One of the accused said to Human Rights Watch that he did not have any confidential meetings with his/her lawyer over 41 days that he spent in detention[143]. As it was indicated in Graph 3 in the majority of cases the "right to access to lawyers" was violated, i.e. detainees were denied this right or they did not have access to legal assistance.

142 Human Rights Watch, 'Shattering Hopes. Post-Election Crack Down in Belarus', Human Rights Watch: New York, 2011. P.11.

143 Ibid.P. 16

In this research the author gave more consideration to the right to access to lawyers during administrative detentions, not criminal arrests. Bearing in mind this factor and the results of the survey, it should be noted that in the majority of cases the detainees had a possibility to exercise their right to legal counsel. It should be mentioned that in most cases, although the detained people had a lawyer, the latter were uninterested in positive results. A negative trend in Belarusian legislation is the prescription to have a preliminary agreement between the detainee and the lawyer, without which it is impossible to render legal services immediately.

It should be noticed as well that practically all people arrested under criminal charges for political reasons indicated the violation of this standard. The international estimation by high-ranking international organizations (such as the UN and the EU) proves it, and their statements are based not only on the results of fact-finding missions, but also on communication with national human rights organizations.

Summarizing, the Belarusian practice should be subject to a more insight and impartial study in order to make any decisions on this standard.

Reasonable time limits set on the length of preventive detention

In accordance with art.9 (3) of the ICCPR detainees shall be entitled to trial within reasonable time or released. General Comment 8 explains that "pre-trial detention should be an exception and as short as possible"[144]. The Committee gave some explanations in Fillastre ans *Bizouarn v. Bolivia*[145] case and said "[u]nder art. 9, paragraph 3, anyone arrested or detained on a criminal charge 'shall be entitled' to trial within reasonable time... What constitutes 'reasonable time' is a matter of assessment for each particular case. The lack of adequate budgetary appropriations for the administration of criminal justice alluded to by the State party does not justify unreasonable delays in the adjudication of a criminal case"[146]. Therefore, the HRC did not establish the precise term of length of pre-trial detention, but at the same time it was noted by the Committee that a period of sixteen months' pre-trial detention without explanation breaches art.9 of the ICCPR[147]. In other cases the pre-trial detention exceeding five years will constitute unlawful detention in violation of art.9[148].

Prof. Nowak argues that "a time limit is appropriate can be evaluated only in the light of all the circumstances of a given case"[149]. Moreover, he states that art.9 (3) of the ICCPR contains "an indirect claim to release from pre-trial detention in exchange for bail of some other guarantees"[150]. While considering the circumstances of reasonableness of the period of detention, two main questions should be taken into account. One of them is "where there are specific indications of a genuine requirement of public interest, which notwithstanding the presumption of innocence, outweigh the rules of respect for individual liberty"[151]. The second one was proved in the case *van Alphen v. Netherlands* where it was said that "if the relevant and sufficient circumstances do exist for not releasing the accused

144 General Comment No. 08: Right to liberty and security of persons (Art. 9).

145 Fillastre, Bizouarn v. Bolivia, Communication No. 336/1988, U.N. Doc. CCPR/C/43/D/336/1988 (1991).

146 Ibid. Para. 6.5.

147 Mr. Kenneth Teesdale v. Trinidad and Tobago, Communication No. 677/1996, U.N. Doc. CCPR/C/74/D/677/1996 (2002).

148 Manuel Stalin Bolacos Quicones v. Ecuador, Case 10.580, Report No. 10/95, Inter-Am.C.H.R., OEA/Ser. L/V/II.91 Doc. 7 (1996).

149 Nowak, M (2005) UN Covenant on Civil and Political Rights. CCPR Commentary (2nd rev. ed.). Kehl am Rhein: Engel. P.177

150 Ibid. P.178.

151 Jayawickrama, N. (2011) The Judicial Application of Human Rights Law: National, Regional and International Jurisprudence, Cambridge: Cambridge University Press. P.410.

Hugo van Alphen v. The Netherlands, Communication No. 305/1988, U.N. Doc. CCPR/C/39/D/305/1988 (1990).

person pending trial, whether the authorities have conducted the case in a manner which has unreasonably prolonged the detention on remand thus imposing on the accused person a greater sacrifice than could reasonably be expected of a person presumed to be innocent".

As it was mentioned above, according to art. 8.4 of the REC, the person may be detained up to three hours without drafting the protocol, after three hours' detention the officer is obliged to draft the protocol against the detainee (para. 4). The general rule of the Code is that the person could not be detained more than 72 hours (art. 8.4 (2). This rule is appropriate only in the case of administrative detention. Moreover, art. 8.4 (5-7) gives different terms of detention for people who violate border regime, for foreigners, and for cases of deportation.

The CPC determines the term of detention from 12 hours (art. 108 (2) to 72 hours (art. 108 (3)) and the difference in these terms lies in the kind of offence. As it is said in art. 108 (3), after 72 hours the detainee must be released or the charges must be adduced.

The questionnaires did not contain the question about pre-trial detention, but for the purpose of this research this information was monitored in open sources. The NGO report on the implementation of the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment by the Republic of Belarus within report procedure of Belarus at the 47th session of the United Nations Committee against Torture[152] prepared by Belarusian human rights NGOs reveals that "[i]ndependent journalist Iryna Khalip was detained on 19 December, after the peaceful meeting of protest in Minsk in Nezavisimosti Square. She was kept in the KGB pre-trial prison. Ten days after the detention she was charged under art. 293 (1, 2) of the CPC (mass riots)"[153].

In accordance with art.127 (5) of the CPC pre-trial detention can last up to 18 months. In the case *Smantser v. Belarus*, the author "was not brought before a judge for more than eight months from the date of his actual arrest and the date when his case was transmitted to the court". The HRC stated that "pre-trial detention should remain the exception and that bail should be granted, except in situations where the likelihood exists that the accused would abscond or tamper with evidence, influence witnesses or flee from the jurisdiction of the State party"[154] and the Committee found that the right under art. 9 (3) was violated.

International Commission of Jurists assumed that "[b]ecause of the common practice of pre-trial detention, the charges are often based on information received as a result of torture or other ill-treatment, while those who fabricate cases using such abuses could not be punished"[155]. This comment reflects practically typical Belarusian situation, confirmed by the statements of former detainees of the prisons. For example, the ex-candidate to the Presidency Ales Mikhalevich reported about tortures during his term at the KGB prison ("They took me down a spiral staircase into a separate room and started pulling my arms up so high that my bones cracked, demanding that I promise to do whatever I was told

152 Penal Reform International (2012) 'NGO report on the implementation of the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment by the Republic of Belarus in relation to the review of Belarus at the 47th session of the United Nations Committee against Torture', available at: http://www.penalreform.org/news/pri-un-committee-against-torture-review-belarus, accessed 30 May 2012.

153 Ibid. P.15

154 Aleksander Smantser v Belarus. Supra. Para. 3.1.

155 International Commission of Jurists (2012) 'Report of the International Commission of Jurists for the universal periodic review for the Republic of Belarus', available at: http://old.icj.org/IMG/Belarus_UPR_Rus.pdf (Russian), accessed 5 May 2012.

to do by State Security officers. And they kept pulling my arms up until I said yes"[156]). The same practice was proved by the Deputy Foreign Minister and one of ex-candidate for the Presidency Andrey Sannikau who said after his release that "authoritarian government had tried to push him to commit suicide in prison"[157].

Moreover, "analysis of decisions and rulings of courts [...] indicates that courts do not verify preventive measures on the merits, thus ignoring the requirements of legislation concerning the binding nature of such verification"[158].

There were no indications about over-limit preventive detention. But, at the same time, the Analytical Report of the International Observation Mission over the situation with Human Rights in Belarus gave indications against it. According to this Report, this standard was violated in a harsh manner on the night on December 19-20, 2010. The international statements from different international organization prove this tendency, too.

For this reason, the implementation and fulfillment of this standard cannot be evaluated objectively without studying more evidence of arbitrary detentions.

The right of habeas corpus

The right of *habeas corpus* follows from art. 9 (4) of the ICCPR. The doctrine of *habeas corpus* stems from the Anglo-American legal, system; therefore, it cannot be implemented directly because Belarusian legal system belongs to the Civil law legal system. The special nature of this principle is that it should be applied in any legal system, regardless of whether it Ango-American or Continental legal system. It means that the primary source of law in Belarus is a codified written source. The main idea of *habeas corpus* is in the obligation of a court to determine the lawfulness of a person's detention. Moreover, it should be mentioned that this right is used only in cases of criminal detentions. *Habeas corpus* is the crucial safeguard against arbitrary detention across the globe. For example, in 2008 Uzbekistan adopted this conception.

Prof. Nowak interprets this right as the possibility of "[a]ll persons who have been deprived of their liberty" to be reviewed "in a court without delay"[159]. In the case *Stephens v. Jamaica*[160] the HRC said that it is the entirely responsibility of the detainee to seek review of the lawfulness of his/her detention. There is no single agreement of opinion at the HRC. In the case *Hammel v. Madagascar* the Committee noted that three days' of detention incommunicado is a violation of art. 9 (4) of the ICCPR. In another case (*Portorreal v. Dominican Republic*[161]) fifty hours' detention without a possibility to challenge a detention was found

156 *Taylor, J. (2011) 'President's rival tells of torture in Belarus jail', The Independent, 1 March, available online at: http://www.independent.co.uk/news/world/europe/presidents-rival-tells-of-torture-in-belarus-jail-2228537.html, accessed 30 May 2012.*

157 *Makhovsky, A. (2012) 'Freed anti-government Belarus leader says was pushed to kill self', 16 April, available online at: http://www.reuters.com/article/2012/04/16/us-belarus-sannikov-idUSBRE83F0TJ20120416, accessed 30 May 2012.*

158 *Platforma (2012) Report 'On the application of international human rights standards in the preparation of national and international protection (the analysis of the situation with regard to the criminal and administrative prosecution of persons who took part in the unsanctioned rally December 19, 2010, in Minsk, Republic of Belarus)', (Russian), available at: http://platformarb.com/zakonodatelstvo/zakonodatelstvo-respubliki-belarus/o-primenenii-mezhdunarodnyx-standartov-prav-cheloveka-pri-podgotovke-nacionalnoj-i-mezhdunarodnoj-zashhity/, accessed 5 May, 2012.*

159 *Nowak, M. Supra. P. 178*

160 *Lennon Stephens v Jamaica, Communication No. 373/1989, U.N. Doc. CCPR/C/55/D/373/1989 (1995). Para. 9.7.*

161 *Ramon B. Martinez Portorreal v. Dominican Republic. Ibid. Paras. 2.3, 11.*

as a breach of art. 9 (4) of the ICCPR. In case *Vuolanne v. Finland*[162] ten days of military disciplinary detention the Committee found the violation of this right.

According to this principle a court has to review the lawfulness of detention which should examine the legality and the necessity of the detention. As it was pointed out in the report of Human Rights Watch over the situation with *habeas corpus* in Uzbekistan, the importance of it is "a critical safeguard" and it can be understood "in two ways"[163]. First of all, "it protects the physical integrity of the individual by compelling the person's appearance before the court"[164]. It means literally that a detainee should be transferred physically to a court. This obligation of an official who detains should prevent torture and other unlawful behavior concerning detainees.

Observing media sources it can be noticed that there were violations of the right of *habeas corpus*. Thus, one of the administrative detainees in November 2011 in a small town of Krupki said in an interview that he "[...] found himself in a paddy wagon. There were already a few guys. We were set down on the floor of the paddy wagon, beaten, frightened, and they told us that they were going to get a condom onto truncheon and rape us"[165]. This is the evidence of the same violation of administrative detention in December 2010 when one of the detained during the public gathering said that in paddy wagons officers "beat them for the slightest movement"[166].

Secondly, the right of *habeas corpus* focuses on the actions of an official who performs the detention. It means that the official should execute his/her responsibility in good faith. Taking into account aforementioned citations, there is obvious evidence that this right was violated because officers exceeded their powers and unreasonably used force and did not transfer detainees to the police stations or detention centers physically unaffected.

The case *Hill v. Spain* stipulates that "pre-trial detention should be the exception and that bail should be granted, except in situations where the likelihood exists that the accused would abscond or destroy evidence, influence witnesses or flee from the jurisdiction of the State party"[167]. As Belarusian practice shows in most cases (which have a slight political context — as it was in relation to all ex-candidates for the Presidency) pre-trial detention was applied. The Prosecutor or the President of the State have the right to change this preventive measure[168].

To sum up, the violation of art. 9 (4) of the ICCPR can be found in the period under consideration.

Judge or other officer authorized by law to exercise judicial power

This right established by art. 9 (3) of the ICCPR is applied to criminal proceedings only. This provision adjusts two categories of people who can exercise judicial power: "judges" or "other officers authorized by law". Prof. Nowak interprets "other officers authorized by

162 Antti Vuolanne v. Finland, Communication No. 265/1987, U.N. Doc. Supp. No. 40 (A/44/40) (1989). Para. 6.3.

163 Human Rights Watch (2012) 'No One Left to Witness. Torture, the Failure of Habeas Corpus, and the Silencing of Lawyers in Uzbekistan', available at: http://www.hrw.org/sites/default/files/reports/uzbekistan1211webwcover.pdf, accessed 30 May 2012.P.35.

164 Supra. P.35.

165 Naviny.By (2012) 'The Rule of Law in Krupki: Detainees Were Run Into Walls of Paddy Wagons', available at: http://naviny.by/rubrics/society/2011/11/22/ic_articles_116_175920/ (Russian), accessed 30 May 2012.

166 The New Times (2012) 'The Choice of Bat(s)ka', available at: http://newtimes.ru/articles/detail/32518/ (Russian), accessed 30 May 2012.

167 Michael and Brian Hill v. Spain, Communication No. 526/1993, U.N. Doc. CCPR/C/59/D/526/1993 (2 April 1997). Para. 12.3.

168 Vedomosti (2012) 'Lukashenko Granted to the Oppositioners a Pardon', available at: http://www.vedomosti.ru/politics/news/1643414/dvoe_belorusskih_oppozicionerov_vyshli_na_svobodu, accessed 30 May 2012.

law" as someone who "have some attributes of a "judge" and offer guarantees befitting the "judicial power"[169]. As he explains further "judges" or "other officers" should contain three types of guarantees. First of all, they have to posses "institutional guarantees", it means the independence from executive and legislature. The next one is a "procedural guarantee" that means that a "judge" hase to hear individual brought before him. The third is "procedural guarantees" that means that a "judge" must be obliged "to review the circumstances militating for or against detention; to decide, by reference to legal criteria, whether there are reasons to justify detention; and to order release if there are no such reasons"[170].

The case *Kulomin v. Hungary* the HRC clarifies that "the public prosecutor could not be regarded as having the institutional objectivity and impartiality necessary to be considered an "officer authorized to exercise judicial power" within the meaning of article 9(3)"[171]. It means that only judges who have full independence and impartiality can execute judicial powers.

Art. 2 of the Code of Judicial System and Statues of Judges establishes that "judicial system is independent and interacts with the legislative and executive powers"[172]. The judges of the Constitutional Court are appointed by the President of Belarus (6 of 12), and remaining 6 are selected by the Council of the Republic. According to the Belarusian legislation people do not have direct right to appeal, only indirectly[173]. This means that people can ask the Constitutional Court to check the conformity of any legislation act to the Constitution of Belarus and domestic legislation. Nevertheless, not all the appeals for citizens will be accepted, but only appeals that have strong necessity and contingent upon availability.

Judges of district, regional, military, and specialized courts are appointed by a joint decision of the Minister of Justice and the Head of the Supreme Court[174]. Thereby, all judges in Belarus are appointed by the highest judges and by the agreement with the Ministry of Justice.

This right does not lie in the scope of the questionnaires and requests to the authorities and non-governmental organizations. The monitoring of open Internet sources show that there are some problems in Belarus with it. During the round table with Belarusian lawyers and human rights defenders it was pointed out that Belarusian judges are dependent on the executive branch of power[175]. The same position was proved by the former judge Aliaksandr Dziadok who said in his interview to *Nasha Niva* newspaper that "all the questions in the courts are governed by heads of courts but, at the same time, they are governed by the Lukashenka's administration"[176].

It is impossible to give proper evaluation of the implementation of this right in Belarusian legislation without further deep analysis and estimation of this issue because this right exceeds the scope of the thesis (the main direction of the thesis is administrative detention).

169 *Nowak, M. Supra. P. 408.*

170 *Nowak, M. Supra. P. 408.*

171 *Vladimir Kulomin v. Hungary, Communication No. 521/1992, U.N. Doc. CCPR/C/50/D/521/1992 (1996). Para. 11.3.*

National Legal Internet Portal of the Republic of Belarus (2012) 'Code of Judicial System and Status of Judges in the Republic of Belarus', available at: http://pravo.by/main.aspx?guid=3871&p0=hk0600139&p2={NRPA} (Russian), accessed 31 May 2012. Para. 2.

173 *Ibid. Para. 22.*

174 *Ibid. Para. 99.*

175 *Nashe Mnenie (2012) 'Round Table: Judicial Power and Political Repression', available at: http://nmnby.eu/news/discussions/3313.html (Russian), accessed 31 May 2012.*

176 *Charter 97 (2012) 'Former Judge Diadok: Court Dependence Put Across Absurd', available at: http://www.charter97.org/ru/news/2012/5/7/51837/, accessed 31 May 2012.*

Effectiveness of the right to challenge detention

This right is regulated by art. 9 (4) of the ICCPR. This standard includes the possibility and accessibility for every detainee to appeal and take a proceeding before a higher court for review of lawfulness of his/her detention. Moreover, lawfulness of the detention must be limited merely to compliance of the detention with domestic law. In the case *A v. Australia* Mr.Bhagwati in his concurring individual opinion said that this right should be interpreted broadly and expansively because of the word "lawful". He argues that although the word "arbitrary" is absent in art. 9 of the ICCPR, but "it is elementary that the detention which is arbitrary is unlawful, or in other words unjustified by law"[177].

The international standard of this right is the available possibility for every detained to challenge the lawfulness of his/her detention before the court. This standard was not touched upon in the questionnaires, therefore it is impossible to evaluate it. Belarusian human rights experts suppose that this standard is violated partially. For example, Gomel lawyer Leanid Sudalenka suppose that in some cases the administration of detention centers do not explain the procedure of cassation and because of this arrestees lose their right to appeal[178]. Therefore, slight deviation form this standard can be found, but it is impossible to give objective estimation. To sum up, the implementation of art. 9 (4) of the ICCPR is impossible to evaluate because the issue lies beyond the research.

CHAPTER 5. CONCLUSIONS AND RECOMMENDATIONS

Conclusions

On the basis of the legal analysis of the Belarusian legislation for compliance with the international standards in the sphere of arbitrary detentions, carried out by the author of this study by means of questioning 17 detainees, conducting a survey of public authorities and Belarusian and international non-governmental organizations, the following conclusions can be drawn.

The Constitution of the Republic of Belarus guarantees quite a strong level of protection for citizens against arbitrary detention, guaranteeing the right to freedom, inviolability and dignity of the person, which is fully in line with international standards. In addition, the Constitution fully implements the standard for the timely provision of qualified legal assistance in order to protect the rights and freedoms of citizens.

Detention for administrative offences that were considered in this document is governed by the Code of Administrative Offences in the Republic of Belarus, and the manner of their implementation — by the Procedural-Executive Code of the Republic of Belarus. Despite the fact that the provisions of the Codes in general are within the standards of international commitments of the Republic of Belarus in the sphere of preventing arbitrary detention, detailed analysis of the documents raises some concerns.

The Constitution of Belarus proposes serious level of protection and maintains the right on judicial review (art. 25 (2)) and prohibits torture, cruel, inhuman or degrading treatment or punishment (art. 25 (3)). The right to legal assistance is guaranteed by art. 62 of the Constitution. Thus, these articles correspond to the main international standards — prohibition of torture, the right to judicial review and the right to legal assistance.

Administrative detention of a person is regulated by the Procedural-Executive Code of Administrative Offences of the Republic of Belarus. The Procedural-Executive Code of

177 A v Australia. Supra. Para. 9.5.

178 Strategicheskaja Mysl (2012) 'Human Rights Day. General Violations in Gomel District in 2011. Analysis and Tendencies', available at: http://gomel-experts.org/pravo/2565-den-prav-cheloveka.html (Russian), accessed 31 May 2012.

Administrative Offences gives the exhausted list of reasons for which a person can be detained. More detailed legal provisions which regulate the procedure of detention are contained in the Law on Home Affairs and in the Law on the Internal Troops of the Ministry of the Interior. The norms of these legal acts give ample powers to the officials who can perform detention of people, therefore, they can detain people without an arrest warrant. Even more, art. 8(2) of the Procedural-Executive Code makes possible detentions with the purpose of "identification" only, even if this individual is not suspected in a crime.

The research findings state the violation of the following international standards: the procedure of the detention must be prescribed by law; the arresting officer should have the legal authority to make the arrest; and the right to be informed about the reasons for detention. Some of the standards need to be studied in-depth to make a decision on its implementation in domestic practice: necessity and proportionality of the use of force during the detention; the right to access to lawyers; reasonable time limits set on the length of preventive detention; and the right to *habeas corpus*. There is a number of standards which exceed the scope of this research and need to be examined properly in further research work —judicial power of a judge or another official authorized by law to exercize judicial power and effectiveness of the right to challenge detention.

Most facts from the questionnaires give all evidence to conclude that in Belarus mass arbitrary detentions of people occurred in the period from December 2010 to December 2011. Such detentions had undulating nature — detentions had mass arbitrary character during the mass gatherings which had public or political context, but at the same time single cases of arbitrary detentions continued during the whole period under consideration. In addition, it should be noted that arrests and detentions without any legal reasons take place periodically in Belarus, which testifies to the existing problem.

The author supposes that this research will be helpful for further legal research on this topic and provides unique information on arbitrary detentions in Belarus in the period from December 2010 to December 2011. This research contains unique information for Belarusian legal theory about the UN Working Group on Arbitrary Detentions, their mandate and procedure and, the most important, the appealing procedure and the results of the Belarusian mission.

Recommendations

The recommendations suggested by the author can be divided into three groups. The author has chosen these institutions because they play primary role in detention and arrests.

The Ministry of the Interior

Firstly, the author will make recommendations to the Ministry of the Interior because the research showed that this body was violating the international law standards more frequently. According to the Belarusian legislation, particularly to the Law on Home Affairs, the body has powers to detain people. Although there were indications of detentions of people without any reasons during the whole period under consideration, the reply from the Ministry said there were no arbitrary detentions during this term.

On these grounds the following recommendations were made:

- To investigate all the cases of such arbitrary kidnapping of people in the streets without any reasons;
- To investigate all the cases of violence, unnecessary force or even torture, cruel and degrading actions applied to detainees;

• To amend the legislation with the norms prohibiting the law enforcement officials (policemen) conduct their service without obligatory uniform with all indications of his/her unit, city district, surname and name;

• To conduct the investigation of the cases where law enforcement officials were conducting their service in inappropriate appearance;

• To train police officers to present themselves and explain the reasons for detentions and amend the domestic legislation with the responsibility-provision for not doing so;

• To follow that every detainee have access to a lawyer;

• To observe that the pre-trial detention term complied with domestic legislation;

• To implement all the recommendations of the Working Group on Arbitrary Detentions.

The General Prosecutor Office

The second State institution which is responsible for arbitrary detentions is the General Prosecutor's Office. According to the Belarusian Law on the Prosecutor's Office in the Republic of Belarus, this body is responsible for investigations of any cases of arbitrary detentions; besides, the Prosecutor can release any detained person. The results of the communication with the General Prosecutor's Office were not very productive. At first, the General Prosecutor replied that information on arbitrary detentions was classified. However, any information, data or questions about human rights are not secret in any state, *a priori*, excluding questions which are confidential because of security reasons. This provision is vested in the Law on Information, Informatization and Protection of Information. This unwillingness of the State body indicates that authority does not want to share information about it.

The recommendations of the author to the General Prosecutor Office will be the following:

• To investigate all the cases of arbitrary detentions apparent in the reports of national human rights institutions, statements of international organizations;

• To pay fair compensation to all victims of arbitrary detentions;

• To instruct sufficiently the law enforcement officials to explain the reasons for detention and introduce themselves;

• To amend the domestic legislation with the norm prohibiting service without a uniform with ID data and distinctive marks;

• To implement all the recommendations of the Working Group on Arbitrary Detentions.

Belarusian Non-Governmental Organizations

National non-governmental institutions, as the research showed, have fundamental role in the monitoring of all cases of human rights detentions in Belarus and render legal assistance to the victims. Moreover, one should bear in mind the legislation barriers to register human rights organizations, therefore, in Belarus only several human rights organizations legally conduct their service, for example, Belarusian Helsinki Committee and Legal Transformation Center. Human Rights Center "Viasna" does not have legal registration and works illegally, nevertheless, it plays the major role in this field.

Therefore the recommendations are the following:

• To continue the monitoring activities on gathering information about the facts of arbitrary detentions;

- To render legal assistance in finding independent lawyers, drawing up the appeals claims;
- To support independent lawyers through educational programs, seminars and other activities.

These recommendations will be sent to the Ministry of Home Affairs, the General Prosecutor's Office and to the Belarusian non-governmental organizations: Belarusian Helsinki Committee, Legal Transformation Center, Legal Initiative and Human Rights Center "Viasna".

Amendment to National Legislation

On the basis of theoretical study and international legal analysis of the issues related to the procedure of detention, the author proposes the following recommendations in legislative acts.

Procedural-Executive Code of Administrative Offences of the Republic of Belarus

The author proposes to amend art. 8 of the REC and include it in the text of the Code in the following form:

Para. 1. Administrative detention of an individual is an actual short-term restriction of liberty of a natural person against whom administrative process for a misdemeanour is initiated, bringing the person to the agency in charge of the administrative process, and being in this agency. Administrative arrest may be carried out only on the grounds of a written arrest warrant or with the oral sanction of the prosecutor if the detention must be carried out immediately.

Para. 2. Administrative detention of the individual should be grounded on an arrest warrant issued according to the national legislation and because of the following reasons:

1) suppression of illegal activity;

2) drafting administrative protocol because of an offence, if making it in the place of detention is not possible;

3) identification if a person cannot provide the documents (passport, ID card, etc.) or identification because of physical condition (alcohol or drug intoxication) is not possible;

4) suppression of concealment or destruction of evidence;

5) enforcement of administrative penalty in the form of administrative detention or deportation.

Para. 3. Every detainee should be given an opportunity (by phone or other) to inform his/her family members, close relatives, the defender, the employer with whom the detainee has an employment relationship, the administration of educational institutions about the detention and his/her place of residence within three hours. In case of detention of a minor, the parents or persons *in loco parentis* must be informed immediately.

Para. 4. Foreign citizens or stateless persons arrested for committing an administrative offence shall be informed without delay in a language which they understand about the reasons for their detention and the rights they have. The officer of a consulate office of the country that the detainee represents or the officer working in the national service for the protection of stateless persons must be informed immediately.

ANNEX 1

TRANSLATION

Appeal to the General Prosecutor Office of the Republic of Belarus (February, 2012)

To: The General Prosecutor
Office of the Republic Of Belarus
To: Mr. Aliaksandr Kaniuk
220030, Minsk, GSP
Internatsionalnaya Str., 22

From: Olga Domorad,
[contact address]

Appeal

Mr. Aliaksandr Kaniuk!

At this moment I am conducting a research on the compliance of Belarusian legislation with international standards on human rights. My research focuses on arbitrary detentions in the Republic of Belarus in the period from 2010 to 2011. To conduct objective and factually reliable academic studies, I would like to make use of official statistical data and materials of your Office for purely scientific purposes.

In my research I am interested in the following questions:

1. Do you have documented facts of arbitrary detentions during 2010–2011, or any citizens' complaints about such cases?

2. If such acts of arbitrary detentions were recorded, did the law enforcement agencies or prosecutors check the facts or prevent such offences (in accordance with art. 27 of the Law on the Prosecutor Office in the Republic of Belarus) (hereinafter — the Law)?

3. How many people illegally detained have been released under the order of a Prosecutor, in the period of 2010–2011 years (art. 27 (2, 3) of the Law)?

4. Have you addressed any instructions in 2010–2011 to the police concerning arbitrary detentions (art. 41 of the Law)?

In view of the mentioned above, and in accordance with art. 40 of the Constitution of the Republic of Belarus and art. 4 of the Law of the Republic of Belarus "On the Appeals of Citizens and Legal Entities", I request:

1. Comment on the above mentioned questions.

2. Reply to me in accordance with the law.

Please, send your response to my e-mail: [email address].

22/02/2012 *Olga Domorad*

ANNEX 2

TRANSLATION

Appeal to the General Prosecutor Office of the Republic of Belarus (March, 2012)

To: The General Prosecutor
Office of the Republic Of Belarus

To: Mr. Aliaksandr Kaniuk
220030, Minsk, GSP
Internatsionalnaya Str., 22

From: Olga Domorad,
[contact address]

Appeal

Mr. Aliaksandr Kaniuk!

On February 28, 2012 I received a reply from the General Prosecutor's Office of the Republic of Belarus (reference number-2400r-434, 440) to the appeal from February 22, 2012, providing reliable information concerning arbitrary detention in the Republic of Belarus as part of my research.

In this reply, the Head of the Department of the Division of Individual Appeals, Mr.Yrij Karpitski denied me the requested information, on the grounds that the requested information is not publicly available. I believe that this information is not the kind of information with restricted access or distribution of which is limited. I refer to the provisions of the Law of the Republic of Belarus "On Information, Informatization and Protection of Information" (art. 17).

Thus, without giving me information that is of scientific interest for me, Mr. Karpitski violated art. 34 (1) of the Constitution of the Republic of Belarus, as well as art. 19 (2) of the International Covenant on Civil and Political rights, which says:

"Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice".

In the sense of art. 17 of the Law "On Information, Informatization and Protection of Information", the information which I have requested is not: 1. information about the private life of persons and their personal data; 2. does not represent a State secret in accordance with the provisions of the Law of the Republic of Belarus "On State Secrets"; 3. does not constitute commercial and professional secrecy; 4. nor is the information contained in the cases of administrative offences, and criminal cases, the prosecution and the court pending the outcome of the proceedings.

In view of the mentioned above, and in accordance with the Law of the Republic of Belarus "On the Procurator's Office of the Republic of Belarus" (art. 27(4)), the Law of the Republic of Belarus "On the Appeals of Citizens and Legal Entities" (arts. 15 and 16), the Procedural-Executive Code of Administrative Offences of the Republic of Belarus (art. 3.20 (7.2)

and art. 9.1 (1.1)) and the Code of Administrative Offences of the Republic of Belarus (art. 9.13), I request:

1. Reply in accordance with the relevant legislation to my informational request.
2. Inform me about your decision.
3. To instruct Mr. Yurij Karpitski on legislation on public communication.
4. Response to this appeal on e-mail: [email address].

Annex:

1. The text of the previous appeal.
2. The appeal to the General Prosecutor Office of The Republic Belarus.
3. The response of the Head of the Department of the Division of Individual Appeals, Mr.Yurij Karpitski.

02/03/2012 *Olga Domorad*

ANNEX 3

TRANSLATION

Reply from the General Prosecutor Office of the Republic of Belarus

From: General Prosecutor
Office of the Republic of Belarus
Reply to: info@prokuratura.gov.by

To:[email address]
Date: 13 March 2012 16:47
Subject: Answer
13.03.2012
2400-19-2012
Domorad Olga
[email address]

Your appeal to the General Prosecutor's Office of the Republic Belarus sent via e-mail on March 2, 2012 with the request to provide information, including statistical data on the activities of the Prosecutor's Office have been considered.

Article 6 of the Law of the Republic of Belarus "On Information, Informatization and Protection of Information" guarantees the right to receive, store and disseminate complete, reliable and timely information on the activities of State bodies, organizations, about political, economic, cultural and international affairs, and the conditions of the environment of the State.

In compliance with the requirements of the Law, the General Prosecutor's Office on the official website, the media and other sources of public information contain information on the activities of the Prosecutors' Office bodies. Thus, in the context of your research, you can use the information from these sources.

It is impossible to provide you with the statistical data and other information which you requested for because the Prosecutor's Office does not keep statistics.

Deputy of the General Prosecutor of
the Republic of Belarus *Mikalay Kuklis*

APPEAL 4

TRANSLATION

Appeal to the Ministry of Home Affairs of the Republic of Belarus

To: The Ministry of Home Affairs
of the Republic of Belarus
To: Mr. Anatol Kuliashov
220050, Minsk, Gorodskoi Val Srt., 2.

From: Olga Domorad,
[contact address]

Appeal

Mr. Anatol Kuliashov!

At this moment I am conducting a research on the compliance of Belarusian legislation with the international standards on human rights. My research focuses on arbitrary detention in the Republic of Belarus in the period from 2010 to 2011. In order to conduct objective and factually reliable academic studies, I would like to make use of official statistical data and materials of your Office for purely scientific purposes.

In my research I am interested in the following questions:

1. Do you have documented facts of arbitrary detentions during 2010–2011, or any citizens' complaints about such cases?

2. If such acts of arbitrary detentions were recorded, did law enforcement agencies or prosecutors check facts or prevent such offences (in accordance with article 22 of the Law on Internal Affair of the Republic of Belarus) (hereinafter — the Law)? Does Your Office pay any compensation for damage caused to arbitrary detained people in accordance with art. 34 (3) of the Law?

3. In accordance with art.3 of the Law "a law enforcement official in all cases of restriction of the rights and freedoms of citizens are obliged to explain the reasons for such restrictions, as well as his/her rights and duties". Do you instruct your officials in order to fully fulfill this article?

4. Do all law enforcement officials have ID cards on their uniform and explain rights and duties of detainees during the detention in accordance with the Procedure of the Ministry of Home Affairs of the Republic of Belarus "On polite and attentive attitude to citizens from the side of law enforcement officials and military troops"?

In view of the mentioned above, and in accordance with art. 40 of the Constitution of the Republic of Belarus and art. 4 of the Law of the Republic of Belarus "On the Appeals of Citizens and Legal Entities", I request:

1. Comment on the above mentioned questions.

2. Reply to me in accordance with the law.

3. Response to this appeal on e-mail: [email address].

21/02/2012 *Olga Domorad*

ANNEX 5

TRANSLATION

Reply from the Ministry of Home Affairs of the Republic of Belarus

Ministry of Home Affairs
of the Republic of Belarus
POLICE OF PUBLIC SECURITY
Garadski val Str., 2, 220050, Minsk
tel/fax (017) 218 78 56, 218 77 63

Domorad O.V.,
[contact address]

Dear Olga Viktorovna!

The Ministry of Home Affairs of the Republic of Belarus considered your request in the framework of our mandate.

There is no recorded information about the facts of arbitrary detentions of citizens during 2010–2011.The Ministry has not received any complaints about such arrests.

All the staff of internal affairs bodies, who are going for service for the protection of public order, are obliged to be instructed with the requirements of the Law on Home Affair of the Republic of Belarus and the order of the Ministry of Home Affairs of Belarus "On polite and attentive attitude to citizens from the side of law enforcement officials and military troops".

First Deputy of the Head of
Directorate-General Office of the Law and Order *Ivan Kubrakou*

ANNEX 6

TRANSLATION

Appeal to Human Rights Watch

TO: HUMAN RIGHTS WATCH
March 14, 2012

Dear Mr/Ms!

At the moment I spend research on compliance with international standards of human rights in the Republic of Belarus. My research, which I am under my master thesis at the Riga Graduate School of Law, is devoted to arbitrary detention in the Republic of Belarus in the period from 2010 to 2011. In order to conduct objective and factually reliable academic studies, I would like to use a professional comment of your organization purely for academic purposes.

I am interested in your organization's position on the matter. In particular, I am interested in the following questions:

1. In your view, were there facts of arbitrary detention in Belarus during 2010–2011? If so, does your organization have any factual evidence of this information?

2. In your view, does the Belarusian legislation comply with international standards on the question of arbitrary detention?

I would be grateful for any information from your organization on the question of arbitrary detention in the Republic of Belarus during 2010–2011. Any information you provide will be used exclusively for academic purposes within the framework of my research.

Thank you in advance for understanding and cooperation.

Please send your reply at the following e-mail address: [email address].

With kind regards,
Olga Domorad,
Riga Graduate School of Law,
Master Student of Public International Law and Human Rights program

ANNEX 7

TRANSLATION

Reply from Human Rights Watch

Human Rights Watch:

In response to your questions:

A group of Human Rights Watch researchers visited Minsk in February, 2011. Additionally, a HRW researcher conducted three follow-up trips to Belarus in 2012. In the course of the research missions, Human Rights Watch interviewed over 80 individuals in Minsk and other Belarusian cities, both witnesses and attendees of the December, 2010 protest in Independence Square, those who had already been released after serving time in administrative detention, released suspects held on criminal riot charges and their relatives, as well as lawyers, NGO leaders, and international human rights monitors who were witness to the situation in Belarus before and after the elections in December.

Based on the factual data gathered, HRW concluded that the majority of arrests and trials that took place in December 2010 and during the months that followed were conducted with numerous due process violations. In many cases, people were sentenced to administrative detention or found guilty on criminal charges despite the lack of evidence.

On the night of December 19, police and security forces arrested, on both administrative and criminal charges, hundreds of people protesting what they considered to be a rigged vote. The police abused most of those they arrested by punching, pushing, and hitting them with batons, kicking those who fell, and chasing and grabbing people, including bystanders, in adjacent streets. Waves of arrests continued for days and months following the unrest when state security forces turned up at people's offices and homes, summarily arresting anyone suspected of participating in the protest.

Trials held before administrative courts started within days of December 19. During the following two weeks, over 700 people were sentenced to between 10 and 15 days administrative detention for participating in unsanctioned gathering. Trials were held behind closed doors, with no journalists or relatives allowed. Hearings typically lasted between 10 and 15 minutes. In most cases, the accused did not have any defense counsel present and was not allowed to call witnesses. In the rare instances when witnesses were permitted, the judge gave no indication that he took their testimony into consideration.

In many cases, the court did not explain to defendants the procedure of appealing the decision and, with the exception of Minsk District Court, did not provide them with a copy of the decision rendered against them. Most detainees were unable to appeal their sentences since the Belarusian law states that an administrative sentence must be appealed within five days, when they were still in custody without access to counsel.

In accordance with Article 14 of the ICCPR, everyone charged with a criminal offense has a right to, among other things: adequate time and facilities to prepare his or her defense and to communicate with counsel of his own choosing; a public trial, and the conviction reviewed by a higher court tribunal. Although the majority of protesters were charged with an administrative offense under Belarus law, the fact that it carries a significant penalty involving deprivation of liberty for up to 15 days renders it a criminal offense for the purposes of the ICCPR.

Human Rights Watch interviewed a number of people charged with the criminal offense of organizing and participating in riots who were released from detention on their own recognizance. We also spoke to a number of lawyers representing those individuals, and

relatives of those who were still in detention or under house arrest. There were consistent and serious allegations about denial of the right to legal counsel and inhumane conditions in detention.

Although individuals held on riot charges have occasionally had a lawyer present during their interrogation, none has been allowed to have direct and private meetings with his or her lawyers at any stage of detention. This violates Belarus's obligation under Belarusian and international law to allow criminal detainees access to counsel (Article 14 of the ICCPR). The Human Rights Committee has held that when a detainee is not permitted to consult with his lawyer in private, this constitutes a violation of article 14, para.3 (b) of the Covenant (See e.g. *Gridin v Russian Federation*, No. 770/1997, para 8.5) Article 43 part 6 of the Criminal Procedure Code of Belarus and chapter 16, par. 142 of the Internal Operational Guidelines for investigative Detention Facilities of the State Security Services of the Republic of Belarus guarantee detainees' right to communicate with their defense lawyer in a private and confidential setting without limitations in time and frequency of meetings.

Human Rights Watch also monitored and documented violations connected with mass arrests of peaceful protesters in June and July 2011. On July 3, 2011, Belarusian police arrested about 340 people who participated in silent protests in the capital, Minsk, and several other Belarusian cities. Witnesses told Human Rights Watch that in Minsk riot police beat peaceful protesters and used teargas to disperse them. In over 40 cases, courts had issued fines or sentenced the people arrested to up to 15 days of administrative detention for "hooliganism". Human Rights Watch called those arrests an outrageous assault on peaceful assembly. The lawyer, whose organization has been monitoring the trials of silent protesters, told Human Rights Watch that the trials had been marred by multiple due process violations, including the failure of judges to call defense witnesses to testify, sentencing based solely on written testimony from police officers, and the failure to allow independent monitors into the courtrooms.

In theory, the Belarusian legislation prohibits torture and mistreatment of detainees, arbitrary arrests, detention and imprisonment, guarantees defendants' right to attend proceedings, confront witnesses and present evidence on their own behalf. However, according to numerous reports of local and international NGOs, corroborated by research findings by Human Rights Watch, in practice these rights are frequently disregarded and the provisions of the Belarusian law are not implemented at all or implemented poorly.

All HRW findings on the situation in Belarus were reflected in a report on the post-election crackdown in Belarus 'Shattering Hopes', available in English and Russian at *http://www.hrw.org/reports/2011/03/14/shattering-hopes* as well as numerous media statements, letters and press-releases available at *http://www.hrw.org/europecentral-asia/belarus.*

ANNEX 8

TRANSLATION

Appeal to the Legal Initiative

TO: LEGAL INITIATIVE
March 14, 2012

Dear Mr/Ms!

At the moment I spend research on compliance with international standards of human rights in the Republic of Belarus. My research, which I am under my master thesis at the Riga Graduate School of Law, is devoted to arbitrary detention in the Republic of Belarus in the period from 2010 to 2011. In order to conduct objective and factually reliable academic studies, I would like to use a professional comment your organization purely for academic purposes.

1. In your view, were there facts of arbitrary detention in Belarus during 2010–2011? If so, does your organization have any factual evidence of this information?

2. In your view, does the Belarusian legislation comply with international standards on the question of arbitrary detention?

I would be grateful for any information from Human Rights Defenders against Torture on the question of arbitrary detention in the Republic of Belarus during the 2010–2011. Any information you provide will be used exclusively for academic purposes within the framework of my research.

Thank you in advance for understanding and cooperation.
Please send your reply at the following e-mail address: [email address].

With kind regards,
Olga Domorad,
Riga Graduate School of Law,
Master Student of Public International Law and Human Rights program

ANNEX 9

TRANSLATION

Comment of the Public Organisation "Legal Initiative"

The fulfillment by the Republic of Belarus of norms and standards of international law, its implementation into domestic legislation is a burning issue today. Article 21 of the International Covenant on Civil and Political Rights gives everyone the right to freedom of peaceful assembly, and article 9 — the right to liberty and security of person, as well as a guarantee that no person shall be subjected to arbitrary arrest or detention.

As a result of non-compliance with the international obligations, mandatory for our country, we have got the situation after the events of December 19, 2010, when a peaceful demonstration was brutally dispersed by special services. Moreover, this trend continued in summer 2011, when peaceful rallies of dissent, which gathered in the streets and squares of the Belarusian cities, have expressed their protest by applauding were dispersed by the authorities as well.

People were arbitrarily detained and subsequently were released without drawing up a protocol and explanations of their detention or convicted on charges of administrative offence. With the purpose of protecting their rights, many of them addressed to human rights defenders.

The claims to the General Prosecutor Office can testify to the fact that people were detained at the peaceful demonstration by police officers or other special units. Many victims claimed to have behaved honestly and accurately: they did not curse or disturb the public order. However, for some reason, people dressed in civilian clothes without ID-cards or other distinctive marks on clothing, caught rudely crowds of protesters and forcibly shoved them in paddy wagons, as well as civilian cars that had no state numbers of the established sample. The detainees were not informed about their rights and obligations, as well as the purpose and the reasons for their detention. As a result almost all the detainees were mistreated, and many have appealed against the actions of policemen and other law enforcement bodies who detained them.

It should be noted that the Prosecutor's Office answers to the victims are most often senseless papers: effective verification of the circumstances of arbitrary detention, ill-treatment and human rights violations were not carried out.

It is interesting that many of the detainees, and subsequently convicted on charges of hooliganism are totally random people, ordinary passers-by. After analyzing the evidence of victims after the events of December 19, 2010, silent protests in summer–2011, it can be said that people did not understand why they were detained. Probably, such measures were politically motivated — because even those were detained who tried to peacefully protest and express dissent within the campaign.

It was not clear why people (as it became clear later — the police and internal affairs bodies), using force to detainees, did not have special uniform and insignia, ID-cards, and did not explain to the reasons for detention and their rights.

However, a positive trend should be noted. After the defenders helped victims to send a series of claims to various State institutions and bodies, an inspection of the Isolation Center in Akrestsina Street in Minsk was carried out. The result of this inspection showed infringements of sanitary-epidemiological legislation of the Republic of Belarus. This institution is infamous virtually among everyone who was detained at these peaceful assemblies. People were in this particular building before the trial, and after the decision of the court

they had to return here to serve their administrative arrest. Conditions of administrative detainees here can be considered as torture, cruel and inhuman treatment. The cells were overcrowded, unsanitary conditions without ventilation and natural light, access to drinking water, there are no beds and no granted walks. For anyone who has to spend 10–15 days of administrative arrest in such conditions (it is the most frequent term for "offenders" who were taking part in peaceful assemblies) under such circumstances it is tantamount to torture.

This research of the author which systematizes available information on preventive and arbitrary detention in the period December 2010 to December 2011 will be useful for further analysis of the whole situation.

Comment given by the volunteer of Public Organisation "Legal Initiative"
Ksenia Dubitskaya
06.05.2012

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analysis of the law enforcement practice in the context of freedom of assembly

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