Legal Transformation Center

Monitoring Report

Freedom of Assembly Restrictions in Belarus:

Judicial Practice on Administrative Offences in 2012

Minsk, 2012

Contents

LIST OF ABBREVIATIONS

AP – Administrative proceedings

CAO – Code of Administrative Offences of the Republic of Belarus

ECHR – European Convention on the protection of human rights and fundamental freedoms

ECrtHR – European Court on human rights

HRC – Human Rights Committee of the United Nations

IAB – Internal Affairs Bodies

ICCPR – International Covenant on Civil and Political Rights

LME – Law "On mass events in the Republic of Belarus"

ODIHR – Office for Democratic Institutions and Human Rights

OSCE – Organization for Security and Co-operation in Europe

PACE – Parliamentary Assembly of Council of Europe

PECAO – Procedural Executive Code of Administrative Offences of the Republic of Belarus

UN – United Nations

I. Summary

The aim of the report is to give an objective legal assessment of the court practice on the cases of administrative prosecution linked to the freedom of assembly in Belarus in 2012.

The necessity of this monitoring is caused by the amendments adopted in 2011 into the legislation on mass events and by the toughened responsibility for its violation. A new version of the Law on mass events (hereinafter referred to as the Law) was studied and negatively estimated by the Venice Commission. The main drawbacks of the law are: (a) it does not promote and does not guarantee the freedom of peaceful assemblies, (b) it establishes an excessive number of bureaucratic procedures, and (c) it leaves wide room for the authorities' abuse of prohibitive and restrictive measures.

The following issues are considered in the report:

(a) The observance of the freedom of assembly and freedom of expression by state bodies on the example of show cases when there was interference into peaceful assemblies and/or prosecution of participants;

(b) Reasonable grounds for restricting the freedom of assembly by the law enforcement bodies and courts that is prescribed by the national legislation on mass events;

(c) Compliance of court procedures with national and international standards of fair trial.

The questions linked to court trials are considered on the basis of the data collected by the Monitoring Group of the Legal Transformation Center (Lawtrend) during selective monitoring of court proceedings that took place from December 9, 2011 till November 30, 2012. The court argumentation was studied on the basis of texts of court decisions on the named cases. The development of the event itself and the actions of law enforcement bodies were restored with the help of procedural documentation of administrative cases; evidence of citizens and of those brought to accountability; witnesses (including policemen); video records (in case of availability) made by policemen and watched at court sessions; media reports. In common, these sources contain full information, sufficient for the purposes of the present research.

In general, the Monitoring Group followed the development of situation around 42 events; detentions or/and court trials in relation to more than 50 citizens became the subject of monitoring. The geographical scope of monitoring includes Minsk (courts of Centralny, Partizansky, Frunzensky, Pervomaisky, Moskovsky, Sovetsky districts), as well as Baranovichi, Novopolotsk, Svisloch, Smolevichi, Smorgon. The research contains the

description of 15 show cases that characterize the court practice both on the question of application of legislation on mass events and on the compliance with the fair trial standards.

II. The main conclusions and recommendations

A. Conclusions

Legal regulation of freedom of assembly and freedom of expression. The legislation of the Republic of Belarus applies a contradictory approach to the regulation of the freedom of assembly. The Constitutional guarantees and the indication of the priority of generally recognized principles of international law suppose that the State is obliged to guarantee and promote freedom of assembly. At the same time, the repressive in its nature Law "On mass events in the Republic of Belarus" actually denies this freedom, making its respect almost impossible. In Belarus, the principle of authorization and not of notification is established for the organisation of assembly. Also, there is an absolute ban on such forms of peaceful assemblies as spontaneous and simultaneous assemblies, as well as counter-demonstrations. Restrictions on time and place of assemblies give wide opportunities to ban events. Other provisions of the Law, that determine the requirements to organisers, the circle of participants and the procedure for receiving authorization, are discriminatory.

Certain types of assemblies, such as pre-election pickets, assemblies of employees' of the enterprise, local assemblies, etc., are regulated by other legislative acts. Based on the content and practice of application of the Law on Mass Events, it is necessary to note that more extensive guarantees and freedoms are granted to the events, which are not formally subjected to its regulation. At the same time, the number of such events was substantially narrowed by the amendments of 2011 to the Law on Mass Events and by the amendments of 2012 to the Law on National and Local Assemblies. However, there are cases when events are organised in such a way that their form does not fall under the norms of the Law. This leads to the problem with applicable legal regulations. In this case, the vague definition of a mass event allows law enforcement bodies (department of internal affairs – police; and court) to interpret deliberately the Law.

The existence of different approaches to the procedure for holding mass events, depending on the objectives of participants, constitutes a negative practice. With such an approach, the aim to ensure public order gives way to the aim to control all forms of public expression by all means. For citizens this procedure creates additional difficulties, since, as the practice of law enforcement shows, legal requirements are not always obvious to all.

Freedom of expression. The inclusion of one-man actions or actions without involvement of people into the definition of mass events lacks reasonable grounds. Such

actions do not threaten public order. They represent a way of expression, therefore, they shall be granted the guarantees stipulated in the Constitution and can be restricted only in cases provided by the Constitution. Similarly, when considering the use of symbols by participants of the event only on the basis of the Law's norms, the court unreasonably restricts the right to freedom of expression without any legitimate purpose.

The role of law enforcement bodies. Officers of Departments of internal affairs (police) involved in the maintenance of public order, obviously, are not well informed about freedom of assembly and their function to protect this freedom. Basing on the presumption of unlawfulness of assemblies, their actions are often aimed to stop an event and to hold participants liable. At the same time, it is not taken into account, whether the actions of participants present a real danger to public order. Especially, it concerns one-man pickets and small actions that constitute the majority of the examined cases. Intervention or termination of peaceful assemblies that do not pose a clear threat to public order constitutes a disproportionate measure and violation of the freedom of assembly and freedom of expression.

Personal freedom and administrative detention. Procedural legislation contains a list of legitimate purposes for detention, but does not establish directly the duty of an authorized body to justify the need to choose the measure. Thus, records of administrative detentions lack references to the purposes of detention, they also lack indications of the inability to use other provisional measures without applying detention. The legislation does not provide the necessity of obligatory judicial review of reasonableness for detention. Long-term detention (over 3 hours) is the most severe provisional restriction, and it should be applied only in the last resort. That is why, the examined cases does not give grounds to consider that detentions of participants of the event by police were justified.

The right to a fair trial. Most examined trials are characterized by: (a) lack of openness to public, (b) neglect or lack of attention to the rules of procedural legislation, (c) selective approach to the examination of evidence, which leads to clear accusatory bias; (d) violation of the adversarial principle due to the absence of the body conducting administrative process as a party; (e) violation of the presumption of innocence because of undue burden of proof on persons held liable; (f) not sufficiently full explanation of their rights to participants of the trial, in particular, their right to defence and the right to appeal decision. These are typical problems associated with both – drawbacks of the procedural law and established practice of law enforcement. Some of them can be solved by changing the practice of application of procedural legislation by courts; in order to correct other problems, amendments to the procedural legislation are required.

Courts in their decisions tend to be motivated by limited interpretation of legislative norms, ignoring superior regulations, including the Constitution and international treaties of the Republic of Belarus. When holding participants of peaceful rallies administratively liable, courts violate their right to peaceful assembly.

B. Recommendations

To the legislature, and the subjects of legislative initiative:

To introduce amendments to the legislation regulating the organisation and holding of mass events:

(a) to ensure compliance of the Law "On mass events in the Republic of Belarus" to the provisions of the Constitution and to the generally recognized principles of international law;

(b) to establish the principle of promotion of the freedom of peaceful assembly, including through the introduction of principle of notification of holding mass events;

(c) to allow holding simultaneous, spontaneous assemblies, counter-demonstrations;

(d) to fix a uniform procedure for organising and holding of peaceful assembly;

(e) to remove unconditional bans related to place and time of assembly, as well as remove the limitations in relation to the circle of persons who may act as organisers of assemblies.

To the Constitutional Court of the Republic of Belarus:

To pay attention to the practice of application of legislation on mass events and to include the freedom of assembly into the annual message to the President of the Republic of Belarus and the Houses of Parliament of the Republic of Belarus on the constitutional legality in the country.

To the Supreme Court of the Republic of Belarus:

To examine critically the case law on the application by courts of the norms that establish administrative responsibility for violation of the legislation on mass events. To ensure a uniform application of the named norms based on the promotion of the rights and freedoms of citizens of the Republic of Belarus.

To the Ministry of Internal Affairs of the Republic of Belarus:

To provide adequate training for police officers in order to ensure that each officer, involved in the protection of public order, understands its function to protect and promote freedom of assembly.

To the Ministry of Foreign Affairs of the Republic of Belarus:

To summarize the recommendations of international organisations on freedom of peaceful assembly addressed to the Republic of Belarus and bring these recommendations to the attention of competent State authorities.

III. National Law and International Standards

The Constitution of the Republic of Belarus guarantees the citizens the exercise of fundamental rights and freedoms, and also establishes the criteria for the legality of their limitation.

The catalogue of rights echoes the corresponding list fixed in the basic international documents on human rights.

The right to express thoughts is guaranteed by Article 33:

"Everyone is guaranteed freedom of thoughts and beliefs and their free expression. No one may be forced to express his beliefs or to deny them. No monopolisation of mass media by the State, public associations or individual citizens and no censorship shall be permitted".

Article 35 guarantees the freedom of assembly:

"The freedom to hold assemblies, meetings, street marches, demonstrations and pickets that do not disturb law and order or violate the rights of other citizens of the Republic of Belarus, shall be guaranteed by the State. The procedure for holding the above-mentioned events shall be determined by law."

Article 25 guarantees personal freedom and inviolability:

"The State shall safeguard personal liberty, inviolability and dignity. The restriction or denial of personal liberty is possible in the instances and under the procedure specified by law.

A person who has been taken into custody shall have the right to a judicial review of the legality of his detention or arrest <…>".

Article 23 establishes legal limitations of rights and freedoms of the citizens:

"Restriction of personal rights and freedoms shall be permitted only in the instances specified by law, in the interests of national security, public order, protection of the morals and health of the population as well as rights and freedoms of other persons. <…>"

The fundamental international legal documents in the scope of human rights, mandatory for the Republic of Belarus are The Universal Declaration of Human Rights and International Covenant on Human and Political Rights. While assessing the surveyed court proceedings it is necessary to be guided by the following provisions of the ICCPR: art. 9: The right to freedom and personal inviolability, art. 14: The right to a fair trial, art.19 Freedom of thought**,** art.21 Freedom of peaceful assembly.

Guidelines on Freedom of assembly, prepared by the Council of Experts of the ODIHR OSCE and Venice Commission take a particular place among the sources of international law. The document contains basic standards and guarantees in the sphere of the exercise of the right to freedom of peaceful assemblies. Positive experience in the field of ensuring the freedom of assembly of the States Parties of the OSCE, the UN and other international bodies was taken as the basis of the principles.

At the same time Belarus is not a Member of the Council of Europe and the application of the main regional instrument – the European Convention on the protection of human rights and fundamental freedoms and European Court on human rights – is not applied to it. Thus, the practice of the ECrtHR is used in the given research as a sample of the interpretation widely recognized principles of the international law by a judicial body.

The Republic of Belarus in accordance with art. 8 of the Constitution recognizes the primacy of the generally accepted principles of international law and ensures their compatibility with the legislation. Article 33 of the Law of the Republic of Belarus "On international treaties of the Republic of Belarus" stipulates that the generally recognized principles of international law and the norms of the international treaties of the Republic of Belarus, in force, act as a part of law applied on the territory of the Republic of Belarus.

The order of holding mass events is set by the Law "On Mass Events in the Republic of Belarus" dated December 30, 1997. On October 3, 2011 the House of Representatives of the National Assembly in the course of one meeting in two running readings approved the draft amendments to the LME. The draft law was not available to the public, and the very parliamentary debate was conducted in the absence of the press. On November 27, 2011 the amendment to the law entered into force, despite the protests of human rights organizations, warning of the threat of further restriction of the freedom of assembly by the new provisions of the Law.

International organizations have also paid attention to the shortcomings of the new regulation. UN Special Rapporteurs issued a joint statement in November 2011, stated that the adopted amendments may exacerbate "the present atmosphere of fear and intimidation" in Belarus.[1]

On December 15, 2011 the President of the Political Affairs Committee of PACE asked the Venice Commission to assess the compatibility of the Belarusian Law on mass events with the universal human rights standards, thus initiating the opinion of the Venice

[1] The joint statement of the UN Special Rapporteurs (en.) - www.un.org/apps/news/stor.asp?NewsID=45010&Cr=rapporteur&Cr1=

Commission, which also was joined by the OSCE ODIHR. On March 16 the European Commission for Democracy through Law (better known as the Venice Commission) on the 90th plenary session examined LME, for the compliance with the international standards, on March 20 it published the Joint opinion of the Venice Commission and OSCE / ODIHR (CDL-AD (2012) 006).

In conclusion, inter alia, it was stated that "the Law on mass events is characterized by the excessive regulation detailing the procedural aspects of the meetings. The law creates a complicated procedure to strict and time-consuming procedures for obtaining permits, while leaving wide discretion to the administrative authorities to apply the law. This procedure does not reflect the state's positive obligation to ensure and promote the right to freedom of peaceful assembly and to freedom of expression."[2]

The Law's on Mass Events action is not applied to certain types of meetings which are governed by other legislative acts:

(a) assemblies of employees of the enterprise, political parties, trade unions, religious and other organizations held in the premises in accordance with the law, the Charter of the organizations or some other legal acts on them;

(b) meeting held in accordance with the legislation of the Republic of Belarus on the national and local assemblies (Law on the national and local assemblies);

(c) pickets to collect signatures to nominate presidential candidates, deputies, held in places that are not prohibited for that purpose by the local executive and administrative bodies;

(d) assemblies, meetings and pickets organized by the candidates for President of the Republic of Belarus, the deputies and their proxies in the manner provided in Article 45 of the Election Code.

The procedure for organizing and holding mass events set by the LME, except for certain provisions is not applied to mass events, holding by the decision of state organs.

The responsibility for the violation of the order of organization, holding and participation in public events is provided by the Code of Administrative Offences of the Republic of Belarus, and at the presence of elements of crime - by the Criminal Code. In the present research only the practice of application of law prescribing administrative responsibility is reviewed.

Article 23.34 of the CAO provides: "1. The violation of the rules of the assembly, meetings, street processions, demonstrations, picketing, as well as public calls for the

[2] Conclusion (en.) CDL-AD(2012)006 http://www.venice.coe.int/docs/2012/CDL-AD(2012)006-e.pdf

organization or holding meetings, rallies, street marches, demonstrations, picketing with the violation of the established order of their organization or, if these acts do not constitute a crime, committed by a participant of such activities - entail a warning or a fine of up to 30 calculation basis (hereinafter - CB[3]), or administrative arrest.

2. The violation of the rules of the assembly, meetings, street processions, demonstrations, picketing, as well as public calls for the organization or holding meetings, rallies, street marches, demonstrations, picketing with the violation of the established order of their organization or, if these acts do not constitute a crime, committed by a participant of such activities - are punishable by a fine of twenty to forty CB or administrative arrest.

3. The actions envisaged in parts 1 and 2 of this Article, if repeated within one year after the imposition of an administrative penalty for the same violation - punishable by a fine of from 20 to 50 CB or administrative arrest.

4. The actions envisaged in part 1 of this Article, if committed for remuneration - are punishable by a fine of 30 to 50 CB or administrative arrest.

5. Actions envisaged in part 2 of this article, accompanied by the payment of compensation for participation in meetings, rallies, marches, demonstrations, picketing, - punishable by a fine of 40 to 50 CB or administrative arrest, as a legal entity - from 250 to 500 CB. "

Thus the violation of LME provisions may entail the liability in the form of a heavy fine or arrest for up to 15 days.

The procedures related to administrative detention, preparation of the case, the judicial review of an administrative case are regulated by the Procedural Executive Code of Administrative Offences of the Republic of Belarus.

IV. Procedural Issues

A. Pre-trial stage

One of the major problems hindering the realization of the freedom of assembly and public expression of thought is the interference of representatives of the state in the course of the meeting. As a rule, the basic forms of the interference are (a) the termination of the meeting and (b) the detention of participants in order to bring to justice.

As a measure to ensure that the administrative proceeding to the participants of most of the activities which are the subject matter of this research, the administrative detention was applied. Detentions are held frequently with the use of physical force and special means. As a

[3] The amount of CB was 35000 BYR (~3,5 EUR), and from April 1, 2012 became 100000 BYR (~9-10 EUR)

rule, participants do not give cause for such police actions. However, experience shows that bringing to justice of law enforcement officers who have committed a disproportionate use of force, is quite difficult. This was exemplified by the case of the mass detentions at the club Yo-ma-yo[4].

The detention of participants of public events is accompanied by a number of violations of procedural law. However, this problem is not unique to this category of detention. Some common violations include (a) the detention of persons who cannot be identified as Police officers; (b) failure to inform the detainees of the reasons for their detention ; (c) failure to inform the relatives about the detention and whereabouts; (d) the non-admission of lawyers to the process at the pre-trial stage, (e) insufficient explanation of the rights to the detainees; (f) unreasonably long term of the detention.

The practice of the detention by the enforcement officers in plain clothes is quite common. The problem was particularly acute during the "silent actions" in the summer of 2011. In 2012, in some cases, participants of public events were detained by the people who could not be identified as representatives of law enforcement bodies.[5] This practice is unacceptable, because it contradicts with the public function of Internal Affairs Bodies (police). It also makes it difficult to appeal the actions of law enforcement officers during the arrest.

The reason for the detention must be declared at the time of the person's detention. In practice, there are cases where notification of the reasons is made only at the moment of the drawing up of the procedural documents at the police station.

Despite the fact that at the request of the detainee the law enforcement officers shall notify his family of his status and whereabouts, in practice there are cases when such information is not available to relatives, even when they themselves are turning to the police station for help. In some cases there is a misrepresentation of friends and relatives of the person.[6]

Since the procedural law allows the IAB to set their own detention period (within the permissible norms of the COA), this leads to a disproportionate and unjustified restriction of personal freedom. Taking into consideration the sanction of Article 23.34. of the CAO, which is imposed to the unauthorized assembly participants, administrative detention period can be

[4] See, section VI-F of the report

[5] See sections VI-A (T. Gatsura case) and VI-K (A.Kurlovich and others. case)

[6] See VI – A: T. Gatsura case (the picket against the death penalty, where unidentified persons sent from the detainee's phone a false message).

up to 72 hours.[7] As a result, at the discretion of the agency conducting the AP, after the preparation of procedural documents necessary to prepare the case for the submitting to the court, the participant can be released before the court hearing, as well as he can remain in the status of the detainee before the trial.

Formally, this approach is not contrary to art. 8.2. of the COA, which lists legitimate purpose of the detention[8], but not directly establishes the duty of the agency conducting the AP, the necessity of justifying the provisional measure. Thus, in the records of the administrative detention there is no any reference to the purposes of detention, as well as an indication of the inability to use other measures to ensure the non-restriction of freedom. The article also does not prescribe the compulsory judicial review of the validity of detention.

At the same time, under the international obligations of the Republic of Belarus, the guarantees established by art. 9 of the ICCPR shall be applied, to the administrative detention "p. 3. Anyone arrested or detained on a criminal charge[9] shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release <...> ".

In this case, detention is the most severe penalty, and should be used only in extreme cases. The UN HRC expressed an opinion on the permissible grounds for the restriction of personal freedom before the trial: "The Committee reiterates its previous conclusion that the content of pre-trial detention shall be an exception and shall be implemented to bail, except in situations where there is a probability that the defendant abscond or destroy evidence, influence witnesses or be outside the jurisdiction of the member state."[10]

An official of the body conducting the AP must justify the legality, necessity and reasonableness of detention, especially when it comes to the detention for a period of 3 to 72 hours. In this case, the reasonableness of the choice of detention as a provisional measure of security should be obliged to be checked by the court. Under current legislation such

[7] According to Art. 8.4. of the CAO a person may be detained for more than three hours, but for not more than 72 hours for committing an administrative offence for which an administrative penalty is administrative arrest.

[8] Administrative detention of an individual is used to: 1) prevent illegal activities, and 2) draw up the protocol on administrative violation if its drawing up on-site detection (commission) of the administrative offense is impossible, and 3) identification, and 4) the participation in the proceedings of administrative offense, 5) suppression of concealment or destruction of evidence, 6) enforcement of an administrative penalty in the form of arrest or deportation.

[9] Despite the use of the term "criminal" in the text of the Covenant, in this case guarantees of personal liberty and a fair trial must be respected also in the administrative process, because the sanction under Art. 23.34 of the Administrative Code provides for the restriction of personal freedom.

[10] UNCHR, case «Hill vs. Spain» (Hill v. Spain), UN Doc. CCPR/C/59/D/526/1993, April 2, 1997, §12.3. See also General Regulation 27, CCPR/C/21/Rev.1/Add.9, November 2, 1999 , §14.

verification can be carried out only on the complaint of a person, but its effectiveness is questionable.[11]

B. Trial Stage

A very different degree of openness of court to the public and the media should be emphasized according to the findings of the monitoring group. In some cases, the hearing is allocated a separate room; people present in courtroom have the opportunity to observe the hearing. In others - there is no information about the time and place of the hearing, the public and media access to the judicial process is limited[12]. As a rule, public access to the courts is restricted by security officers (department of IAB) who do not subordinate directly to the Chairperson of the court. This procedure significantly limits the authority of the court, since the representatives of IAB are able to abuse their power, violating the principle of public scrutiny of the administrative case.

The courts have taken different approaches to the hearing of cases of the participants of the same event. Most often, we see the consideration of each case in a separate process. While this procedure allows joining several administrative cases in the same process[13], in particular when it comes to committing the same administrative offence jointly by two or more persons. Given the fact that in some cases all persons held liable for the participation in the same event, we can assume that the judges had the formal reasons to join the cases. The vast number of sources of evidence in joint cases coincided. The reluctance to join the case of the participants of the same event in one process does not constitute a procedural violation; however, it does not contribute to a more objective consideration of the case.

Generally, the judge reads out the list of rights provided for in Articles 4.1., 4.6. of the COA to the participants of the trial. Despite the fact that the legislation does not specify how detailed must be the explanation of the detainee's rights, the court should exercise greater care to the most important of them. For example, one cannot effectively exercise the right to defence and representation, if it is only voiced as his right "to have a defence counsel from the beginning of the administrative process, and in the case of administrative detention - with the

[11] Procedure of appeal of the administrative detention is provided by Part 3. Art.7.2. of the CAO and suggests the possibility of filing a complaint to the prosecutor or the court. In this case, art. 7.4. sets the five-day period for the review of the complaint, that, given the maximum period of detention (72 hours) makes the procedure meaningless.

[12] The two opposing practices can be illustrated, on the one hand, with a positive example of the case of VI - M: commemoration event of the Kalinouski brothers, on the other - case VI - I: the picket with the photo, where the public was not even allowed in the courtroom.

[13] Article 11.31 ,CAO.

announcement of his administrative detention." It should further be clarified that as a defence counsel may act a lawyer or a close relative of the person under investigation in AP.

In relation to motions submitted by the parties, it should be noted that not always judges state the reasons for their decisions in their resolutions. The announcement of the motives of some procedural decisions would serve the transparency of the trial.

The observance of the principle of adversary in the administrative process in the first place is determined by the officer's of the agency conducting the AP participation or non-participation in the hearing, to submit the case for consideration. The procedural rules establish such participation as optional[14]. At the same time, the role of the official in the trial is to provide evidence against a citizen held liable. That officer shall maintain an accusatory position of the agency conducting the AP, and refute the arguments of the defence. In the absence of an official of the agency conducting the AP, the court is forced to take on the role of the prosecutor, thus rejecting the role of impartial arbiter. None of the cases observed were heard with the participation of the bodies conducting AP. Thus, the adversarial principle is systematically violated in hearing the cases of administrative offences by the Belarusian courts.

The opportunity to appeal the court decision on an administrative offence is directly linked to how fully and clearly all elements of the procedure are explained: (a) the terms of appeal; (b) the ability to recover deadline missed for a valid reason; (c) a higher court, to which a complaint should be addressed; (d) the necessity to pay the state duty for filing a complaint and its amount; (e) the possibility of exemption from the payment of state duty. Bringing the person to the liability in the form of administrative arrest, the court should be particularly careful in explaining the procedure of appeal, since for a citizen under arrest it is extremely difficult to get additional consultation. The information on how to appeal should be maximum fully reflected in the court order, a copy of which shall be issued to the citizen. The same applies to the right to examine and making notes in the records of the hearing. In all the cases that had been monitored, the court restricted its comments to the terms of appeal and naming a higher court - the recipient of the complaint. The same information is duplicated in the regulations. Such a lack of information makes it impossible to process the appeal without further legal advice.

[14] Part 4, art. 11.4, CAO.

V. Questions of law: freedom of assembly and freedom of expression

All the activities described in Section VI, became a pretext for the prosecution of their participants, undoubtedly, should be considered in the context of freedom of assembly. Accordingly, the organizers and the participants had the right to rely on the guarantees of the Constitution and international treaties of the Republic of Belarus. But the situation is complicated by the fact that national laws governing the conduct of mass events contradicts to international legal standards. Instead of the promotion and protection of peaceful assemblies, the law is based on the presumption of illegality of public meetings, regardless of the nature and behaviour of participants. The paradoxical result of this contradiction is that the activities that are not formally covered by the regulation of the LME, enjoy greater freedom and legal protection.

The practice of applying LME illustrates the contradiction and sometimes the absurdity of its provisions.

In many cases, the assessment of the guilt of the participants of public actions depends not on the objective facts of the violation of the public order or a threat from the event, but on the presence or absence of formal signs of mass action within the meaning of LME. For example, as the court found it impossible to establish the chairman and secretary of the meeting of cottage owners' partnership, it was considered by the court as a public event, and its members automatically became violators of the Administrative Code[15]. Another example: the court, having ascertained that during the prayer in memory of the heroes of K. Kalinouski's uprising some of the participants turned to the rest with the solemn speeches, has described this event as a part of an unsanctioned meeting[16]. This limited understanding of freedom of assembly, established by the Law contradicts the Constitution and the generally recognized principles of international law.

We should also focus on the practice of picketing campaign to collect signatures for the candidate. Article 3 of the LME states that "picketing for the collection of signatures for the nomination of candidates <...> for deputies, held in places that are not prohibited for that purpose by the local executive and administrative bodies," is not regulated by this law. Therefore, it is not possible to find the violation of the order of organizing and holding mass events.

In the case of Margolin and Vasiliev a picket to collect signatures for the nomination of the candidate for deputy was competent and could not break the LME because it is

[15] See case VI – D (case of A.Dmitriev and M.Pashkevich).

[16] See case VI – M (case S. Gusakova and others).

determined that such picketing is regulated by electoral legislation. Article 61 of the Electoral Code states that "the collection of signatures can be performed in the form of picketing." The permission for such picketing is not required when it is held in places that are not prohibited by the local executive and administrative bodies.

The question of the use of symbols, flags, posters, etc. during the event should be considered in the context of the freedom of expression, which is also guaranteed by the Constitution and international treaties on human rights. Meanwhile the LME prohibits participants of the mass event to use flags that are not registered in the prescribed manner, regardless of their content[17]. In its turn, this prohibition is not applied to the activities that are not subject to the regulation of the LME. It is obvious that these provisions of the law are in conflict with the constitutional guarantees.

In practice, this leads, for example, to the fact that the persons, who use the white-red-white flag[18], are the offenders, if they come with it to public events. In other cases, this flag will not be a banned symbol.

However, the courts in none of the cases did consider cases on administrative offences under Art. 23.34. of the CAO in the context of the freedom of assembly and freedom of expression. Common to all cases was that the Court focused on clarifying the following issues: (a) whether the considered acts of citizens have the signs of the participation in public events, in accordance with the LME, thus falling under the statutory limits; (b) whether the permission of the executive power to hold the event was obtained.

However, the court did not give due importance to the issues, the study of which is mandatory in cases involving constitutional rights: (a) whether there has been a restriction on the freedom of assembly in relation to such citizens; (b) whether such a restriction is based on the law; (c) whether such a restriction is necessary in a democratic society; (d) whether there was a legitimate purpose of such restrictions (the interests of national security or public safety, public order, public health or morals or the rights and freedoms of others[19]. Following the requirements of art. 6.2. of the CAO, the court should also determine "the nature and extent of the damage caused by an administrative offence."

[17] Part. 2 art. 11, LME.

[18] This flag, in some periods of history was the State flag (1918-1919, 1991-1995), It illustrates the absurdity of the ban of unregistered symbols at public events. As the former national flag cannot be registered as a party symbols or associations, its use in public events is outlawed. See the case VI - M.

[19] Legal restrictions on freedom of assembly in accordance with Art. 21 of the ICCPR.

Noteworthy is the absence references to provisions of the Constitution of the Republic of Belarus in all judicial decisions on administrative cases under survey. Thus, the direct constitutional guarantees of the freedom of assembly and freedom of opinion, and the legal restrictions of these freedoms, apparently, the court did not take into account, as well as international law norms. The basis of the resolutions were put solely by acts of subordinate legislative acts, in particular, LME.

However, while making decisions the judge must be guided primarily by the Constitution but if there are grounds for that - to put the question of the constitutionality of other legal acts:

Article 112 of the Constitution. "The courts shall administer justice on the basis of the Constitution and other normative acts adopted in accordance therewith.

If, during the hearing of a specific case, a court concludes that a normative act does not conform to the Constitution, it shall take decision in accordance with the Constitution and raise, under the established procedure, the issue of whether the normative act should be deemed unconstitutional."

The restrictions on the freedom of expression and assembly, as described in this report clearly demonstrate that law practice is in conflict with the Constitution and the international obligations of Belarus. National judicial instances are guided by a narrow interpretation of the provisions of the LME, avoiding the complex consideration of cases for the legality of purposes and the need to limit the rights and freedoms in a democratic society.

VI. Description of showcases

A. Picket against the death penalty (Case of T. Gatsura)

On December 6, 2011 Tatiana Gatsura held a public picket against the death penalty in Belarus. During the action, Tatiana together with his sons, ten and nine years old, went outside with a placard "Mr. President, I have four children, who guarantees them the right to life?" With a poster she went to the building of the Presidential Administration, to submit the petition to the President demanding to replace the death penalty to Dmitry Konovalov and Vladislav Kovalev, convicted of the terrorist attack in Minsk subway, with life imprisonment.

The police did not interfere in the action. Tatiana was detaineded by two persons in plain clothes in a few days, on December 9, at the exit from the house and taken to the police department of the Centralny district to prepare an administrative case on Part 2of Art. 23.34 of the Administrative Code. The detention lasted until trial, which took place on the same day in the Centralny District Court of Minsk. The information about her arrest and trial was not

disclosed by the enforcement officers to any relatives or a lawyer. Moreover, from Tatiana's phone, which was seized by police immediately after the arrest, a message was sent saying that she was being taken to the court of the Moscovsky district.

The hearing was held in the judge's office, the information about the hearing was not available on the stands. The defence counsel was able to engage in the process at the stage of trial. The hearing was open, but the lack of information prevented the presence of the public and journalists. As stated in the court order, Tatiana admitted her guilt. However, she explained to the court that she did not have another option to express her position, but to break the regulations of the law, which is contrary to the Constitution and international treaties. This statement was not taken into account and was not reflected in the resolution on the case. The court decided to draw Tatiana Gatsura to administrative liability for organizing an unsanctioned public event - a fine of 700 thousand BYR. In the ruling, the court does not disclose what actions constitute a picket and how the public order was disrupted. The Court does not investigate whether the case contains the materials, confirming the lack of resolution of Minsk City Executive Committee to hold the event.

Further appeal of the decision in the Minsk City Court on cassation, and in the order of supervision did not lead to the cancellation or the change of the resolution.

B. Arbitrary detention near the picket (Case of S. Zadedyurina)

On December 19, 2011 at the Independence Square in Minsk a rally was held in honour of the thousands of protests after the presidential elections in 2010. There is no information about a permission for holding the picket by Minsk City Executive Committee.

Svetlana Zadedyurina was detained near the Independence Square. According to the record on administrative offence of December 19, Svetlana took part in an unsanctioned picket in which according to the testimony of law enforcement officers she was shouting political slogans and did not react to the repeated requests by the police to stop illegal actions.

At the public hearing, which was held on March 12, 2012 in the Partisansky District court of Minsk with the participation of a defence counsel, Svetlana did not plead guilty and explained to the court that on December 19 she was going home after classes through the Independence Square, she did not shout any slogans, and did not take part in the picketing.

At the hearing the written evidence was examined, indicating Svetlana's need to pass through Independence Square directly: evidence for the route (certificate of residence, data of the mobile operator). The witnesses for the defence were listened to: the employee of the University testified that shortly before the unauthorized activities Svetlana was in the classroom and performed the test (confirmed by a certificate signed by the dean of the

faculty). The court assessed the evidence of the witness as objectively reflecting the event. The version of the police as a witness was supported by law enforcement officers Avramenko A.V., which detained Svetlana. The court treated the testimony of the witness as "ungrounded and insufficient" because the witness was unable to give the details: what she was dressed in, if Svetlana was talking on the phone at the time. The fact that in the report the law enforcement officer made it clear that Svetlana Zadedyurina commit unlawful acts, the court did not regard as perjury, stating that the witness perhaps took her for one of those present at the event. The second witness Davidyuk A.P., also an enforcement officer, was not able to provide evidence for the court, as he was not involved in the arrest of Svetlana, and drew up a protocol on administrative violation based on the report of Avramenko A.V. The court also failed to find out the exact time of the detention because of illegible writing in the protocol.

As a result, the court found that the evidence submitted by the defence are quite convincing. They show that Zadedyurina could not participate in the picket at a time specified by the law enforcement officers, because she spent a lot of time on the road from the university classroom to the site of the picket. In this regard, the court dismissed the case for the lack of offence. In the ruling, the court did not consider whether the picket took place on the Independence Square, whether it was authorized, what elements it included, and whether or not the public order was disrupted by the participants.

C. Public action of toys (Case of Vinogradov and A. Artsybashev)

Pavel Vinogradov and Alexander Artsybashev, the activists of the Youth Campaign «Zmena», on February 10, 2012 held a public rally in Minsk. They placed toys near the bus stop and miniature placards reading "Muka-Ludak", "Alejandro! Let people go", "Toy mitengue", "Where? the Freedom of the press", "I demand the SCO", "Where's my $ 500 salary?" These actions continued for about 5 minutes. There were a few photos made. After that the young people left.

Pavel Vinogradov, was arrested on February 21 and until the trial, which took place the next day, was kept in the centre for the isolation of offenders (the institution for the detention of administratively liable persons). Artsybashev Alexander was arrested on February 22 in the same courthouse where Pavel's case was heard. His case was also heard by the court on the same day. Police accused the young men in holding the picket, without prior permission of Minsk Executive Committee (Part 1 of Art. 23.34. of the CAO). The cases were heard separately by the court of the Moskovsky district of Minsk. In both cases, the court found a violation of the LME. According to the court, Paul and Alexander were brought to

administrative liability under part 1 art. 23.34 of the CAO in the form of administrative detention (Pavel Vinogradov - 10 days, Alexander Artsybashev - 10 days).

Alexander acknowledged the fact that he really was at the specified time at that address and arranged stuffed toys and placards. But he explained that he did not take part in a picket, as the picket was organised by the toys. The Court considered the recognition of the fact that Alexander was setting toys, his actual confession. As it can be seen from the court decision on the case, Pavel Vinogradov did not admit his guilt and explained that he was near the bus stop, however, he did not participate in the picket.

In both trials a witness was heard - a police officer. He explained to the court that he had seen a group of young people arranging the stuffed toys on a flowerbed near the bus stop. When he appeared, the young people ran away. The court examined the written evidence - mostly procedural documents drawn up by the police. There was not any document indicating the absence of Minsk City Executive Committee's permission to hold a mass event. In the ruling, the court did not disclose what in this case the concept of picketing is, which elements of unlawful picketing occurred, and how the public order had been violated.

D. Summer cottage residents' meeting against the construction of the industrial park (Case of A. Dmitriev and M. Pashkevich)

On March 10, 2012 in Smolevichi, Minsk region a meeting was held by the summer cottage residents' of Owners' Partnership "Alesya". About 700 people from Smolevichi and surrounding towns and villages gathered to take counter-measures to the construction of the Chinese- Belarusian industrial park. At the meeting it was decided to create a public organization "Tvoya sotka". "The main purpose of the union was to be the coordination of summer residents to prevent the construction of the industrial park. The chairpersons of the various associations, representatives of the villages spoke at the meeting. The meeting was attended by the activists of the campaign "Tell the Truth!" Andrey Dmitriev and Mikhail Pashkevich. Dmitriev spoke to the present people. The representatives of the authorities did not interfere in the organization of the event.

More than a month after the events Andrey Dmitriev and Mikhail Pashkevich were called to Smolevichi police department, where they were handed in a subpoena. Their case of committing an administrative offence under Part 1 of Art. 23.34. of the CAO was heard on May 7.

The case was considered by the judge Misnik in Smolevichi District Court in open hearing. The witnesses were examined - the participants of the assembly. According to the defence it was a meeting of the owners of the partnership, which, thus, is not subject to

regulation by the LME. According to the court, the fact that it is not possible to establish the chairman and secretary of the meeting, and get consistent evidence about the agenda and decisions, meant that the event cannot be seen as a partnership assembly. Therefore, the order of the meeting is regulated by the LME, i.e. it is necessary to obtain permission to hold such an assembly.

The court found that Dmitriev and Pashkevich by their actions violated the order of, and participation in public events (Part 1 of Art. 23.34 of the Administrative Code), and they both were liable to the administrative detention - for 10 days each. The court did not examine whether the meeting was of peaceful nature and whether disrupted the public order.

E. The action in front of the Chinese Embassy (Case E. Kontush)

On March 16, 2012 the activists organizing committee of the National Bolshevik party held an action in Minsk near the Chinese Embassy. It expressed the protest against the "Chinese expansion" and the rights of the citizens of the Republic of Belarus. 5 - 6 young people unfurled a banner with the picture of crossed inscription «Made in China", and lit a flare pot, while chanting "No to Chinese expansion". The nature of the protest and rally was peaceful.

During the action Evginiy Kontush , a member of the organizing committee, was detained by the departmental security officer. The participants of the rally went away. March 16 was Friday so by the decision of the agency conducting the administrative process, Evgeniy before the trial, which took place on Monday, was held at the Centre of the isolation of offenders. The police officers charged Evgeniy with the fact that he at 16.40 near the Embassy of the People's Republic of China without the consent of local authorities "unfolded and carried a placard with the inscription crossed « made in china », thus violating the established order of the picket.

March 19, 2012 with respect to Eugene began hearing presided over by Judge D. Pavlyuchenko Central District Court, which was then postponed to March 23 due to the fact that the protocol on administrative violation has been sent back for revision. The basis for this decision was incorrect qualification. Revised Part 1 case was reclassified to part 3. Art. 23.34.of the CAO. Public access to the courts and the media was not limited, but on the information board there was no information about this trial.

At the further hearing on March 23 Evgeniy did not plead guilty, and explained that actually he was at the time specified in the protocol directed towards the Belarusian State Philharmonic and passing by the embassy, he saw a group of people who held a picket. He began to photograph what was happening, but after a while a security guard ran out and

detained him for no reason. At the trial, the witnesses were examined - a police officer Shumchenya A.U., who was not able to confirm the fact that Kontush was holding a banner in his hand.

Court also identified the violation of the procedure of the drawing up the report of the administrative infraction, in particular, the discrepancy of the witnesses and available reports of the questioning. The Court concluded that "the report on administrative offence specified the information that is not true", and the report itself was drawn up with the violations of the CAO requirements. Therefore, the case was dismissed in the lack of administrative infraction in the act. The court did not aim to find out whether the meeting was illegal and whether it violated public order.

F. Mass detentions during a concert at the club "Yo- ma- yo"

On March 24, 2012 at the club "Yo-ma-yo " in Minsk a concert was held in support of alternative music antimilitary campaign "Food Instead of Bombs" which has been carried out for a long time by the groups of anarchist orientation throughout Belarus. Immediately after the concert, the police special forces burst into the hall, and for no apparent reason conducted the detention of all club visitors.

Most of the participants were detained for more than 5 - 7 hours, during which the police officers copied their personal data, conducted personal searches, mandatory fingerprinting and genotypic analysis. All this time, the detainees were kept in inappropriate conditions (unheated building in the territory of the police department premises of the Centralny district of Minsk) without declaring their status and the reasons for the detention. After these procedures, most detainees were released without drawing up any procedural documents. 16 people were detained for longer periods of time and have been in this status for more than one day - before the hearing of the cases on administrative offences. The trials were held in the Centralny District Court. 14 citizens were charged with disorderly conduct (swearing at the police department building), two other participants - with the appearance in a public place while intoxicated. As the prosecution evidence in the case was only the evidence given by the police, the evidence of persons present at the event and later at the police department, were not taken into account. On this basis, seven people were brought to administrative liability in the form of fines, 9 - to the administrative detention for a period of 2 to 3 days.

The court has not addressed the issue of the availability of legitimate purpose, the necessity and proportionality of the mass detentions at the club. Despite claims on the ill-treatment of detainees, the court did not examine those circumstances. Subsequently, the

police actions were the subject of inspection carried out by the Investigation Committee and it lasts to the present period of time.

G. Pickets in support of a political prisoner (Case of A. Molchan)

On May 19, 2012 Andrey Molchan passing with his sister through the streets of Minsk on his way home, unfolded the white-red-white flag. Later he was detained by the law enforcement officers. He was released after the drawing up the procedural documents. It is worth mentioning that Andrey Molchan is an activist of the civil campaign "European Belarus" and conducted this action in support of the political prisoner Sergey Kovalenko. Molchan was charged with the violation of part 1 of Article 23.34 of the CAO, namely the violation of the order of picketing. Committing the offence, according to the police, Andrey shouted slogans of the civil campaign "European Belarus" and did not respond to the comments made by the police. At the hearing which was held on July 4, Andrey did not admit his guilt explaining that he had not shouted slogans, and his actions had not disturb the peace of the citizens.

Assessing the evidence of police officers and Molchan's sister, and written evidence, the judge Lyushtyk S.A. of Pervomaiski district court concluded that the guilt was proved, and drew Andrey Molchan administratively liable to a fine of 8 CB (800 000 BYR). In the ruling, the court does not address the question of how the violation of the public order was expressed, and how serious it was.

H. Picket to collect signatures to nominate a candidate for Parliament (Case of L. Margolin and M. Vasiliev)

Lev Margolin, Mikhail Vasiliev - members of the United Civil Party - on August 4, 2012 in the town of Borisov, Minsk region held a picket to collect signatures to nominate Lev Margolin candidate for deputy in the House of Representatives of the National Assembly. The picket was held in accordance with the electoral law at the place that is not prohibited by the authorities, with the slogan "For Fair Elections without "Lukashenko". In the opinion of the law enforcement officers who detained them, doing so, these citizens were campaigning for the candidate instead of collecting signatures.

The trial against them was open and took place on August 8, in Borisov district court. Margolin and Vasiliev did not plead guilty for their actions, explaining to the court that they had been at that place and conduct pre-election rally. At the same time, the tablet was launched with a portrait of Margolin and the slogans were written, "I will tell about them everything I think " and "For fair elections without Lukashenko". Margolin did not deny that

it was his campaign slogan. Vasilyev interpreted it to the court that the slogans should be considered as the opinion of the candidate or his party. Both detainees said they did not consider their actions to be the breach of law, since the place chosen by them is not a prohibited one by the district executive committee, and the event was held in the framework of the electoral law. Thus, its holding is regulated by the Electoral Code, and not by the LME.

The judge Panasyuk I.A. regarded the actions of these citizens as campaigning for a candidate, considering that prior to the registration as a candidate campaigning is subject to the LME restrictions. The Court characterized the actions of Vasilev under Part 1 of Art. 23.34 of the Administrative Code as participation, and the actions of Margolin, part 2. Art. 23.34 of the Administrative Code as organizing an unsanctioned rally. The court imposed an administrative penalty of a fine to Vasiliev - 20 CB, Margolin - 30 CB. Further appeal of the decision in the Minsk regional court of cassation did not change the decision.

I. Picketing by photographing (Case of I. Kozlik and Yu. Doroshkevich)

Photographer Yulia Doroshkevich and journalist of the newspaper "Komsomolskaya Pravda in Belarus" Irina Kozlik on August 8, 2012 were detained by the police in Minsk, near the Palace of Arts. At the time of the detention the girls were photographing with a small teddy bear. It was a part of a solidarity campaign in support of the arrested journalist Anton Suryapin in connection with the "teddy troops". Photos were intended for posting in the Internet. In the police department of the Soviet District the reason for the detention was announced to them. In the view of law enforcement officers, the journalists participated in an unauthorized "picketing by photographing."

Until the trial by the Sovetsky district court, held on the following day, August 9, the journalists were detained. The two cases were considered by the judge D. Pavlyuchenko in separate processes. The case has caused a resonance among the media. Shortly before the beginning of the trial the court building entrance was blocked by employees of the security (department of the IAB). For this reason, only a few people could hardly get into the courtroom. The law enforcement officers refused to state the reasons for this non-admission of the public to the building. The court administration did not respond to the situation. In response to a complaint by the journalists and observers, the answer came from the Head office of the Soviet District Court, from which it follows that the security officers of the court are not directly subordinating to the Chairperson of the court.

The court heard the witnesses – the enforcement officers who carried out the detention. They considered that the girls hold a picket, as they were photographing with a teddy bear and held a note with some inscription in their hands.

The court also found that the actions of Kozlik and Doroshkevich must be qualified as a mass event. Since the permission of Minsk City Executive Committee for holding a picket had not been received, the court found in the actions of the journalists the offence under Art. 23.34. of the Administrative Code (unauthorized picketing). By court order both got the administrative liability of a fine - 30 CB each. The court did not put the question of how the actions of Kozlik and Doroshkevich disturbed the public order.

J. March and rally of artists with the paintings (Case of A. Pushkin and others)

On September 2, in the town of Smorgon the artists Valentin Voronische, Gennady Drozdov, Ales Tsirkunov, Ales Pushkin and Vladimir Shulzhitsky visited an Orthodox church, where, upon their request, four portraits Rostislav Lapitski were sanctified, and held a prayer service in memoriam of the repressed leader of anti-Soviet underground movement. After the service, they went to the monument to Franciszek Bogushevich in the city park, where they put the pictures on the grass and benches. On the way, they handed out a few leaflets with the biography of Lapitski. The picket and a street procession, as the Court further qualified in its judgment on the case of the participants, lasted 30 minutes. During this the police approached the participants, found out the circumstances, but the picket was not cancelled. At the conclusion of the action the participants marched towards the house of one of the artists, and 300 meters farther they were detained. Before the trial the participants were in the status of the detainees at the Smorgon district police department.

In protest against the illegal detention the protesters were on hunger strike. The trial of detainees began on 3 September. Ales Tsirkunov was punished by a fine of 10 basic units. The case of Gennady Drozdov was postponed to September 10 due to the fact that he demanded the defence counsel. During the hearing, chaired by Judge L.G. Petrova for Gennady Drozdov and Valentin Voronische they were charged that they were violating LME participating in the holding of the picket to draw attention to the circumstances of the illegal shooting of Rostislav Lapitski, and then participated in an outdoor procession, thus creating obstacles for the pedestrians.

Drozdov did not plead guilty of violating the established order of pickets and a street procession. Alongside with this, he testified that after the Liturgy in the Church he with Pushkin, Voronische, Tsirkunov, Shulzhitsky went to the city park of Smorgon with portraits of Rostislav Lapitsky and other paintings by members of the Union of artists. They carried the paintings in front of them, because it was more convenient. In the park the paintings were exhibited for the public. And then they walked through the town to the house of Valentin Voronische, at this moment they were detained by the police officers. The actions of the

participants were designed to honor the resident of Smorgon Rostislav Lapitski, who was shot in the 50s for anti-Bolshevik activities. In his opinion, such actions are not illegal. The similar testimony was given by Valentin Voronische.

Stepping from the text of the judgement, the court does not rate the witnesses' testimony, who spoke at the hearing. The names of witnesses are not even mentioned in the court decision on Valentin Voronische's case. Also in the cases there is not any evidence of the lack of permission to hold the event. The judge assessed the actions described as unauthorized picketing and street processions. Valentin Voronische was imposed an administrative penalty of a fine of 10 CB, Gennady Drozdov - 30 CB under part 1 art. 23.34 of the CAO. Other participants of the event were brought to administrative liability: Mr. Shulzhytsky – a fine of 30 CB, Ales Pushkin - 10 days of arrest, Ales Tsirkunov – a fine of 10 CB.

K. The pre-election rally in support of the boycott (Case of A. Kurlovich and others)

On September 18, 2012 Anna Kurlovich, Alexander Artsybashev, Pavel Vinogradov, Igor Vinyatsky – the activists of the youth campaign «Zmena» - held the rally in the Frunzensky district of Minsk, opposite the popular department store on the eve of the parliamentary elections. The aim of the picket was convincing people to boycott the elections. During the action the activists handed out borshch, thus ridiculing the scandalous statement of the Head of the Central Election Comission Lidiya Yermoshina after the presidential election. Activists used the banner reading "Do not participate in the elections, cook borsch" and a banner with the words "Vote, do not vote." At the time of the action Pavel Vinogradov was a trustee of the candidate Artem Lyava and had the right to hold a picket under the electoral legislation and not LME. The picket started at 12.15 and ended at 12.30 with the detention of four activists and several journalists covering the action. The detention was made by unknown persons in plain clothes, then the detainees were taken to the police department of the Frunzensky district. The journalists were released two hours later. At the same time, the Associated Press photojournalist Sergei Grits was beaten.

Records on an administrative offence under Art. 23.34 were drawn against the participants, and against Pavel Vinogradov Art.17.1 of the CAO (disorderly conduct: obscene language) was also applied. Before the trial, which took place the next day, the young men were in the status of the detainees and were kept in the centre for the isolation of offenders. According to the police, who carried out the detention, these citizens while at the specified

location, setting posters and banners, shouting slogans such as "Do not participate in the elections," thus, violated the order of the picketing.

All cases were considered in separate processes in the Frunzensky district court. Anna Kurlovich's administrative proceedings under Part 1 of Art. 23.34 of the CAO were considered by the judge Lappo L.I. The hearing was not reported: the information was not available at the stands, and the office did not also provide any information. For this reason, the public and the media could not have access to the process, and in the case of the trial of Pavel Vinogradov the judge simply did not allow the audience to the office, where the case was heard. At the hearing of Alexander Artsybashev's case there was not enough room for the interested public in the judge's office.

Anna Kurlovich at trial pleaded guilty partially and explained that at the specified location an authorized picket was held, and in accordance with the electoral law 2 days before the event Minsk city executive committee had been notified. Anna designed the stand, she was present at the site of picketing, mounted a banner with the text, but did not shout any slogans. Except her the picket was attended by Alexander Artsybashev, Yegor Vinyatsky, Pavel Vinogradov. The latter in this case was a trustee of the candidate Artem Lyava. No illegal acts were committed. Anna also explained that after the detention she was aware of the fact that Artema Lyava withdrew his candidacy for parliament, but she did not know that the picket was unauthorized.

The policemen testifying as witnesses have confirmed that Anna was near the supermarket, and participated in the picketing. Also, one of the policemen witnesses informed the court that the two young men swore rough foul language.

As a result, the court found Anna guilty of an offence and brought to administrative responsibility in the form of a fine of 20 CB.

Other protesters were brought to justice in the form of arrest: Alexander - 10, Vinyatsky - 7, Vinogradov - 12 days (5 days on and 7 days art.17.1 art.23.34 of the CAO)

L. Difficulties of the expression in public space (Case of M. Gulin and others)

The artist Mikhail Gulin, his three assistants: Oleg Davydchik, Vladislav Lukyanchuk, Sergei Panasyuk and photographer Tatyana Gavrilchik were detained on October 9, 2012 in Oktyabrskaya Square while holding the action "Difficulties of the expression in public space".

The action was in combining by the group's participants of the parts of the sculpture containing 3 coloured cubes and one parallelepiped. Having mounted this sculpture in Yakub

Kolas and Kalinin Squares the participants moved to Oktyabrskaya Square where they were detained by the police without the explanation of the reasons.

After seven hours of detention in respect of them, with the exception of Tatiana, the protocol was drawn up under Art. 23.4 of the Administrative Code, for disobeying the lawful demands of the police. According to policemen the participants resisted the police: clutching their uniforms, rested their feet on the ground, did not react to the demands to stop illegal actions. Later, the participants said that the in the building of the Central District police station physical force was used against two young people without a legitimate reason. According to the testimony of police officers who carried out the arrest, the protesters were taken to the police station because of their refusal to present documents on demand. Thanks to video surveillance cameras, requested by the defence, the testimony of policemen found no evidence during the trial. Thus the legitimate reasons for the detention of participants were not available. The court has not raised the issue of the justification and proportionality of the interference of the police department in holding the action. By the decision of the Central District Court of Minsk for failure to prove the guilt of the participants, they were acquitted. The participants' statements on the use of physical force by the police department are being reviewed by the Investigation Committee.

M. Rally in memory of the heroes of the uprising in 1863-1864. (Case of S. Gusakova and others)

On October 27, 2012 a group of 40-50 people arrived in the town of Svisloch, Grodno region to respect the memory of brothers Kalinouski and other heroes of the uprising of 1863. At the entrance to the town the bus with the participants was stopped by police for a verbal warning about the inadmissibility of illegal actions and the use of unregistered symbols. The participants of the event arrived at about 11 a.m. on a bus and several cars. With the participation of the Orthodox priest a prayer service was held at the cemetery in Komsomolskaya street where Viktor Kalinouski was buried. During the prayer service, several participants, including Stanislava Gusakova and Ales Krot, were holding a white-red-white flags. After the service 2-3 person in turn pronounced speeches to the audience about the heroes of the 1863 uprising, and the significance of their actions to the history of Belarus. The participants then proceeded to the monument to Kastus Kalinouski at Marx Street where several participants also made speeches facing the audience. During the rally, several participants, including Stanislava Gusakova and Ales Krot, were holding white-red-white flags. After that the participants by bus and several cars left the city and went to the village

Yakushevka - a place where the brothers Kalinouski were born. There, with the participation of the Orthodox priest also a prayer service was held.

According to the testimony of the witnesses, heard in court as well as on the basis of video recordings it was clear that during the event any extremist statements violating the law did not sound, the behaviour of the participants was peaceful, the cases of the violations of law and order were not registered.

According to the information provided to the court by the Deputy Chairman of Svisloch executive committee, the event organizers did not apply for the permission to hold public events.

At about 14:00, after the event was over, the police stopped two cars with the participants of the event. Stanislava Gusakova, Ales Krot and Witold Ashurok were detained and taken to the police station of Svisloch. The detention lasted for about 52 hours - up to the hearing the cases in court. B. Lopasov was detained until the end of the event, after drawing up the necessary procedural documents he was released till the hearing.

The trial of the case of V. Lopasov was held on October 29-30, of Stanislava Gusakova and Ales Krot – on October 30, of the case of Witold Ashurok - started on October 30 and finished on November 1. All of the cases were considered in separate sessions by the Chairman of Svisloch District Court Judge A. Shilin. All of the participants were accused of the violation of the order holding the public events (Part 1 of Art. 23.34 of the Administrative Code). None of them pleaded guilty of this offence. All detainees were found guilty and were brought to administrative liability: Krot, Gusakova, Ashurok - in the form of detention for a period of 3 days from the time offset of administrative detention, Lopasov - a fine of 30 CB.

N. A poster on the bridge to support political prisoners (Case of S. Malashenok)

On October 8, 2012 Sergey Malashenok attempted to hang a banner with the words "Freedom to political prisoners!" on the road bridge in Novopolotsk but he was detained by the police. The record for violating the order of organizing of mass events under part 1 art.23.34 of the CAO of was drawn up to Sergey. According to police, he was holding a picket with banners, publicly expressing his political views, his actions attracted the attention of the citizens, thus violating the requirements of LME.

Sergei during the trial did not plead guilty. He did not deny the fact that he had hung a banner on the bridge at the time specified by the police, but did not consider this action unlawful. He did not receive any permission in Novopolotsk City Executive Committee for this action,. By the decision of the judge Bolobolov Z.V. of Novopolotsk Court Sergey Malashenok was brought to administrative liability in the form of a fine of three CB. In the

ruling, the court did not disclose what actions were constituting the picket, which items it included, and how the public order was disrupted. Further appeal of the decisions in Vitebsk regional court of cassation has not led to change them.

O. A charity dinner at the market (Case of N. Chernous)

On October 6 the entrepreneur Nickolay Chernous from Baranovichi organized at the local market near his sales site a charity dinner and collecting signatures for a free ride for children on public transport to school to attend the electives. On October 25 a record on an administrative offence under Part 2 of Art. 23.34 of the Administrative Code was drawn up to Nicholay.

At the hearing, which was held on November 19 in the court of Baranovichi district and Baranovichi chaired by Judge O. Sarakhman, Nickolay explained that he did not hold public event. He said he "simply treated the entrepreneurs with the porridge cooked by himself ", also at the request of the people he was collecting signatures for free rides on public transport for children to attend electives at school. Due to the fact that he did not consider his actions picketing, he did not apply to local authorities for the permission to hold the event.

The court decided to consider Nickolay administratively liable to a fine of 30 CB. The threat to the public order because of the actions of Nickolay Chernous was not questioned by the court.

