



WHAT IS NOT PERMITTED IS PROHIBITED

SILENCING CIVIL SOCIETY IN BELARUS

**AMNESTY
INTERNATIONAL**



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Cover photo: Law enforcement officers form a corridor and beat demonstrators as they pass through to the police van on 19 December 2010 © Leonid Varlamov

Amnesty International is a global movement of more than 3 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights.

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1. INTRODUCTION

In this report Amnesty International examines the state of the rights to freedom of peaceful assembly and of association in Belarus. These rights, along with freedom of expression, are fundamental to the existence of civil society because they enable people to express their political opinions, engage in cultural endeavours, practice their religious or other beliefs, and cooperate with others to represent their interests. A healthy civil society is essential to hold governments to account and to contribute to government policy making.

In Belarus civil society activists who try to organize to make their concerns public must operate within the framework of restrictive laws, which are applied in ways which violate their rights to freedom of peaceful assembly, association, and of expression. Civil society organizations face closure, and individuals face prosecution if they criticize the authorities. Any form of public action, even a one-person picket, is subject to permission which is rarely granted, and peaceful demonstrators face fines or short prison sentences.

The lack of freedom of peaceful assembly in Belarus came to the world's attention in December 2010, when a mainly peaceful demonstration following the presidential elections was brutally suppressed by law enforcement officers. Hundreds of protesters were beaten, arbitrarily arrested and summarily sentenced. All the main opposition presidential candidates and many prominent opposition activists were imprisoned. Mykalau Statkevich, Pavel Sevryarnets, Eduard Lobau and Zmitser Dashkevich remain in prison to this day. The high price of being a human rights defender in Belarus is illustrated by the case of Ales Bialiatski, the Chair of Human Rights Centre Viasna, who was sentenced to four and a half years' imprisonment on 24 November 2011 on tax-related charges for money that was paid into his personal bank accounts in Poland and Lithuania to fund the work of Human Rights Centre Viasna, which had been prevented from opening a bank account in Belarus.

Many more human rights activists, political activists and other civil society activists and groups face constant bureaucratic hurdles, harassment and prosecution on lesser charges. In writing this report Amnesty International has spoken to a wide range of people and organizations, some of whom are working within charities that seek to help groups in their community such as foster parents and adoptive parents, or minority ethnic or other social groups, others are seeking to contribute to environmental policy, to improve workers' rights, help victims of torture and other human rights violations, or improve understanding of society through theatre. While some are seeking political change through political organizations, and see themselves in opposition to the current government, this is by no means the case for all, and many expressed the desire to work with the authorities to improve policy. Yet people who express alternative views to those of the government are treated as enemies of the state. As President Alyaksandr Lukashenka said at a business development meeting in Minsk in February 2013, warning businessmen off financing opposition parties: "If any businessman is going to finance the "fifth column" or in any way exert a negative influence on society, then I will think that they have joined the political struggle, the struggle against the state."¹

BELARUS

Belarus has a population of 9,500,000 and gained its independence from the Union of Soviet Socialist Republics (USSR) in 1991. President Alyaksandr Lukashenka has been President of Belarus since 1994 and since coming to power has increased presidential control over all aspects of society. In 1996 the constitution was changed to increase the powers of the presidency while diminishing those of parliament. In 1999 a presidential decree changed the terms of employment of all workers at state enterprises (90 per cent of the workforce) to put them on temporary contracts. Belarus' disregard for human rights, including violations of the rights to freedom of expression, peaceful assembly and association has led to international condemnation and isolation of the country. Belarus is not a member of the Council of Europe and its special guest status was suspended in 1997 after reportedly unfair elections. Belarus is the only country in Europe and Central Asia that still executes prisoners – it maintains the death penalty for “premeditated, aggravated murder” and 12 other peacetime offences.

Throughout the former Soviet Union civil society is at varying stages of development as it struggles to throw off the Soviet legacy of total state control, and some governments are taking steps towards including civil society in policy making.² However, in Belarus the government seeks to assert its control over civil society through repressive legislation and threats of prosecution and other sanctions. This report analyses the legislation governing freedom of peaceful assembly and association in Belarus, and then documents violations of these rights faced by human rights defenders, trade unions, environmental campaigners, and lesbian, gay, bisexual and transgender individuals.

In this report Amnesty International uses the term non-governmental organizations (NGOs) to cover all civil society organizations including trade unions, although under Belarusian legislation NGOs may register as associations, institutes or foundations. Political parties would not normally fall under the category of NGOs, but the situation in Belarus is anomalous, because faced with over-demanding requirements for the registration of political parties, opposition parties choose to register as NGOs.

This report describes violations of the right to freedom of expression, peaceful assembly and association, as well as other human rights violations, suffered by men and women in Belarus who strive to work for the good of society individually and as members of NGOs, and makes recommendations for amendments to law and practice to improve the compliance of Belarus with international human rights law and standards, in particular with regard to ensuring the right to freedom of peaceful assembly and association. Amnesty International hopes that these recommendations will benefit all civil society groups in Belarus.

2. INTERNATIONAL HUMAN RIGHTS LAW AND STANDARDS

The rights to freedom of peaceful assembly and of association are enshrined in Article 20 of the Universal Declaration of Human Rights and guaranteed by the International Covenant on Civil and Political Rights (ICCPR). As a state party to the ICCPR, Belarus has undertaken a legally binding obligation to respect the rights set out in that treaty and to ensure that everybody on their territory and subject to their jurisdiction has access to those rights. In 2010, the UN Human Rights Council appointed a Special Rapporteur on the rights to freedom of peaceful assembly and association to monitor states' compliance with these rights and to report on violations, wherever they occur.

International human rights law imposes an obligation on states to respect and fully protect the rights of all individuals to assemble peacefully and associate without undue obstruction, "including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants".³ The UN Special Rapporteur on the rights to freedom of peaceful assembly and association has pointed out that these rights are available to unregistered as well as registered associations.⁴

States' obligations to ensure these and other human rights entail an obligation to ensure that their own officials respect those rights as well as to ensure that individuals are protected against any acts by other individuals or entities that would impair individuals' enjoyment of their rights. States must also ensure that individuals have accessible and effective remedies, including appropriate administrative and judicial mechanisms, for any human rights violations, and must ensure generally that national laws and practices are compatible with international human rights law.⁵

International standards permit states to place certain restrictions on the exercise of the rights to freedom of peaceful assembly and of association and freedom of expression, but any such restrictions are permissible only if they meet all three of the following criteria:

- 1) they must be provided by law, which means that the law must be accessible and formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly;
- 2) they must be only for one of the legitimate purposes set out in international law – that is, the protection of certain public interests (national security or public safety, public order (ordre public), public health or morals) or the rights and freedoms of others; and
- 3) they must be necessary to secure that aim, which means that they must be the least intrusive means of achieving it and must conform to the principle of proportionality.

In this regard, the UN Human Rights Committee, the body of independent experts established under the ICCPR to monitor states' compliance with that treaty, has underlined that "where such restrictions are made, States must demonstrate their necessity and only

take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of Covenant rights. In no case may the restrictions be applied or invoked in a manner that would impair the essence of a Covenant right”⁶ and “in adopting laws providing for restrictions ... States should always be guided by the principle that the restrictions must not impair the essence of the right ... the relation between right and restriction, between norm and exception, must not be reversed”.⁷

With regard to assessing whether restrictions meet the test of necessity, the UN Special Rapporteur has underlined that this means there must be a “pressing social need” for any interference by states. This is also underlined by the Organization for Security and Cooperation in Europe (OSCE) in its Guidelines on Freedom of Peaceful Assembly⁸ and on Freedom of Association.⁹ This standard has also been applied by the European Court of Human Rights.¹⁰

With respect to the right to freedom of expression, the UN Human Rights Committee has observed that this embraces even expression that may be regarded as deeply offensive;¹¹ similarly the European Court of Human Rights has repeatedly ruled that it applies not only to “information and ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population.”¹² It requires states to exercise tolerance and broadmindedness, and to respect plurality:

“Such are the demands of that pluralism, tolerance and broadmindedness without which there is no “democratic society”. This means, amongst other things, that every “formality”, “condition”, “restriction” or “penalty” imposed in this sphere must be proportionate to the legitimate aim pursued.”¹³

The right to freedom of expression includes the right to seek and receive information and ideas as well as to impart them. The Human Rights Committee has noted that this embraces a right of access to information held by public bodies (including non-state entities carrying out public functions) and requires that states proactively put in the public domain and make accessible government information of public interest, and enact procedures for gaining access to information, such as by means of freedom of information legislation.¹⁴ In Belarus this is of particular importance to environmental activists (see pp. 38 - 41).

The constitution of the Republic of Belarus guarantees the right “to hold assemblies, rallies, street marches, demonstrations and pickets that do not disturb law and order or violate the rights of other citizens of the Republic of Belarus” (Article 35), and the right to freedom of association (Article 36). However, in reality these rights are restricted by repressive legislation, presidential decrees, and by overzealous interpretation of these laws and decrees by ministry officials and judges. In a number of cases in recent years where the UN Human Rights Committee has found that individuals in Belarus have suffered violations of their rights to freedom of peaceful assembly and of association, the Committee has noted that even if the restrictions imposed on the rights were based on a law, the authorities had failed to demonstrate that they were necessary for one of the legitimate purposes set out in the Covenant. National laws and practice in this regard are not compatible with Belarus’ obligations under international human rights law, and hundreds of people in Belarus every year are deprived of their rights to freedom of association and assembly.

3. FREEDOM OF ASSOCIATION

There are a number of laws in Belarus which apply to particular types of organizations and which provide detailed regulations for those organizations:

- Law of the Republic of Belarus on Political Parties
- Law of the Republic of Belarus on Trade Unions
- Law of the Republic of Belarus On Freedom of Conscience and Religious Organizations
- Law of the Republic of Belarus on Associations

Non-governmental organizations in Belarus can choose to register as a foundation (фонд), institute (учреждение), or an association (общественное объединение). Associations and foundations register with the Ministry of Justice, or its territorial offices, while institutes are registered with the local authorities in the various regions of the country who may delegate the task to city or district authorities. Political parties register with the Ministry of Justice and trade unions are registered with local authorities.

Some NGOs choose to register as institutes or foundations because the registration requirements are less strict than for association. Registering as an association provides greater scope for NGOs as they may have membership, and collect membership fees, yet they are subject to greater supervision from the state and must seek permission to register. Institutes only need to notify the state of their existence, but need to register a name, which can prove difficult as can be seen from the example of Platforma (see pp.17-18).

In 2012, 2,477 associations 15 political parties, and 37 trade unions were registered in Belarus.¹⁵ In 2012, 111 new associations were registered and of those 56 were sporting associations. According to the Centre for Legal Transformation, an NGO which monitors freedom of association in Belarus, these registration figures show a bias on the part of the registering authorities against certain types of association: among the 111 associations registered, not one was active in the areas of women's rights, gender equality, human rights, or any aspect of democratic transformation.¹⁶ There is only one republican human rights association currently registered, the Belarusian Helsinki Committee, however, there are a number of local human rights NGOs, and institutes such as the Legal Transformation Centre.

The Law on Associations provides for three forms of sanction for associations that infringe their own statutes or infringe the Law on Association: a written warning, suspension, or liquidation. Suspension or liquidation may follow after one or several warnings, and can only be triggered by infringements that cannot be corrected. Furthermore, there are a number of Presidential Decrees which take precedence over parliamentary legislation, and introduce further requirements for the operation of non-governmental organizations of all kinds. In August 2012 a draft law "On introduction of alterations and addenda to certain laws of the Republic of Belarus on the issues of functioning of political parties and other public associations" was presented to the House of Representatives and was still under discussion at the time of writing. The draft law slightly simplifies the procedures for registration, but does not significantly improve respect for the rights to freedom of association. Suggestions for improvements put forward by the NGO Centre for Legal Transformation were rejected by the House of Representatives in March 2013.

3.1 EXCESSIVE RESTRICTIONS

Under Article 22 of the ICCPR, states may not place any restrictions on the exercise of the right to freedom of association unless such restrictions are prescribed by law and are “necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.”

NGOs in Belarus are subject to very detailed requirements which can serve as reasons for the authorities to refuse registration in the first place or to liquidate the organization for failure to comply with requirements. The stringent requirements placed on NGOs, and the consequences of closure and threats of closure which result from a failure to comply with them, do not meet the tests of necessity for a legitimate purpose set out in international human rights law.

BELARUSIAN CHRISTIAN DEMOCRATIC PARTY

One of the leaders of the Belarusian Christian Democratic Party (BCDP), Pavel Sevyarynets, is currently serving a three year hard labour sentence for taking part in the mainly peaceful demonstration on 19 December 2010.

The party has attempted to register five times since 2007 and has been refused on each occasion. For example, in 2007 the application was rejected by the Ministry of Justice on the basis that the application “violated the law on public associations” because the application stated that the members should be “supporters of a Christian worldview”. Attempts to register in 2009, 2010, 2011 and 2012 were also rejected because of objections to individuals on the list of founders. Many of the founders were pressurized to withdraw their signatures and were threatened. For instance, following a founding meeting on 17 December 2011, Anastasia Matsak, a member of the party organizing committee who works in a kindergarden in Naroulyain Homel district was called to the local education committee on 28 December and showed a file on her that had been sent by the Ministry of Justice. She was told that if she did not leave the organizing committee of the party her contract would not be renewed (like all state employees she works on a contract basis). Members of the party have also been threatened with prosecution under Article 193-1 of the Criminal Code for acting in the name of an unregistered organization. On 22 October 2012, Aleh Aksenov, the party coordinator in Mahiliou was informed that he had been placed on a watch list by the State Security Committee (KGB) for a possible violation of Article 193-1. To date nobody has been prosecuted. However, as a party member told Amnesty International: “The absence of the legal status, however, is not an obstacle for the BCDP to organize and develop the party structures and make political campaigns. Though, acting on behalf of an unregistered organization is a crime in Belarus, which can be punished by two years of prison according to the article 193-1 of the Criminal Code, and our activists have to make a serious decision when joining the party.”¹⁷

In January 1999, the Presidential Decree No.2 “[c]oncerning some measures to regulate the activities of political parties, professional associations and other public associations” was passed. This decree included a requirement on all NGOs to re-register and those that did not pass the registration procedure were liquidated - this led to the liquidation of a large number of non-governmental organizations. The decree tightened the requirements for political parties to register by requiring a minimum of 1,000 members from at least half the districts in the country, and it introduced the requirement for a legal address for registration of a trade union. It also proposed the introduction of changes to legislation to ban the activities of unregistered organizations and introduce administrative fines and short detention periods for

those acting in the name of unregistered organizations.¹⁸

No new political parties have been registered in Belarus since 2000. The Ministry of Justice website lists 15 political parties registered in Belarus, all of which were registered before 1999 and then re-registered in 1999 and 2000 in accordance with the requirements of the 1999 Presidential Decree.¹⁹ Given the difficulties of registering as a political party, and the risks of prosecution for acting in the name of an unregistered party, political parties seek registration as associations or institutions, but even so many experience difficulty in registering. Political parties that register as NGOs can only field individual candidates and not party candidates, but if they fail to register at all they may face prosecution for acting in the name of an unregistered organization.

3.1.1 REQUIREMENT FOR A BUSINESS ADDRESS

Since 2005 the Law on Housing as well as the Presidential Decree No.2 of 1999 require political parties, trade unions and NGOs to be located in business premises and not residential premises. In order to register an association or a trade union the founders are required to provide a notarized letter of guarantee from the landlord and proof of ownership of the premises by the landlord.

Amnesty International recognizes that governments may need to regulate the use of land and property for public health, urban planning or other reasons. However, in a situation where private landlords can be pressurized by the state not to provide premises, this requirement can act as a barrier to freedom of association.

Finding public or business accommodation is particularly difficult for NGOs functioning in the regions, and imposes additional costs. Moreover, NGOs, particularly independent trade unions which are refused premises by their employers, find that private landlords are under pressure from local authorities or other official bodies not to rent premises to them. The failure to be able to produce a business address for registration is a frequent reason cited for the authorities' refusal to register organizations. A flexible application of this requirement, for example, a willingness by the authorities to accept a residential address for the registration of small civil society organizations below a certain size, and the dropping of the requirement for a notarized letter of guarantee from the landlord, could significantly reduce the obstructions to the exercise of the right to freedom of association.

SPEAK THE TRUTH CAMPAIGN (ГОВОРИ ПРАВДУ)

This political movement was registered as an institute in January 2009 under the name of Forward Movement (движение вперед). However, the institute was closed down in September 2010, in the run-up to the presidential elections, on the basis that the institute was using commercial premises, and not office premises as its legal address, and therefore using the premises for a purpose for which they were not intended.

The campaign has attempted to register as a social organization three times since then and each time they have been turned down by the Ministry of Justice. In August 2011, the movement, this time registering under the name of Govori Pravdu (Speak the Truth), was refused registration as an association on the grounds that, a) they had not provided documents proving that the person providing the letter of guarantee for a legal address did actually own the premises in question, b) the letter of guarantee was addressed to the association

and not to the Ministry of Justice, and c) there were discrepancies between the date of birth given in the guarantee letter and in the power of attorney of the person providing the letter of guarantee.

The founders of the movement appealed against the refusal to register them on the grounds that the infringements which were cited as a reason to refuse registration were not irreversible and could have been remedied. They cited Article 15 of the Law on Associations which states that associations can be closed only for infringements that are irreversible.

On 19 October 2011, the Supreme Court ruled that the infringements were irreversible and supported the Ministry of Justice' decision to refuse registration.

In January and February 2012 workers at the Granit gravel quarry in Mikashevichy tried unsuccessfully to secure a legal address so that they could register an independent trade union. The employer, as well as the local authorities in the town refused to provide premises and local landlords refused saying that they needed to "feed their children" (see pp. 34-37).

In 2012, the ILO Committee on Freedom of Association called on the Belarusian government to amend the 1999 Presidential Decree No.2 so that the requirement for a legal address would not act as a barrier to registration of trade unions.²⁰

Amnesty International calls on the Belarusian authorities to modify the application of the requirement for NGOs to provide a business address to ensure that they are not denied registration because they have found it impossible to obtain a business address.

3.1.2 LIMITATIONS ON ACTIVITIES OF NGOS

Since September 2011, the Education Code has excluded NGOs from the list of organizations that are authorized to conduct adult education such as training courses, seminars and self-improvement activities. As the law does not specifically allow NGOs to carry out such activities, the authorities work on the assumption that it is forbidden. The Centre for Legal Transformation expressed concern in its report on Freedom of Association in 2012 that there was an alarming new trend to refuse registration on the basis that NGOs were breaching the Education Code.²¹ In December 2011, an NGO representing the interests of an ethnic group, the Litvins, was refused registration on the grounds that among its activities it listed training courses.

While it may be legitimate for states to ensure that certain activities, such as teaching or training, should be done only by those with relevant skills and qualifications, such regulations should not be used as a means of denying registration to NGOs, or otherwise obstructing the exercise of freedom of association.

3.1.3 ACCESS TO FUNDING

Civil society organizations should have the right to seek and secure funding and resources from domestic, foreign and international entities. The UN Special Rapporteur on the rights to freedom of peaceful assembly and association has underlined that the ability for associations to access funding and resources is an integral and vital part of the right to freedom of association and that any associations, both registered or unregistered, should have the right to seek and secure funding and resources from domestic, foreign and international entities, including individuals, businesses, civil society organizations, governments and international

organizations. While there may be specific rules regarding foreign donations for political parties to avoid undue influence of foreign interests in domestic political affairs, associations generally should be able to access foreign funding. While states do have a responsibility to address issues such as money laundering, such matters should be dealt with through other mechanisms such as banking laws or laws on transparency in accounting. States should not resort to tax pressure to discourage associations from receiving funds.²²

In Belarus, the past decade has seen repeated amendments to laws to increase state control over the activities of civil society, and in particular to limit their funding possibilities. In 2011, changes were made to the Administrative Code providing for administrative penalties to be applied to NGOs that accept foreign donations 'in violation of law', and the Criminal Code was amended, to establish criminal liability for receiving any foreign grants or donations 'in violation of the Belarusian legislation'. Additionally, since 2011 Article 21 of the Law on Associations prohibits Belarusian associations from keeping funds in banks and other financial institutions on the territory of foreign states. This restriction effectively singles out associations as there is no such restriction for individuals, commercial enterprises, foundations or institutes.

By contrast there are other Presidential Decrees that provide benefits and government support to organizations that support the regime such as the Belarusian Republican Youth Union, a public association and the successor to the communist youth organization, the Komsomol. Presidential Decree No.559 of 17 December 2012, "[o]n some questions of state support to the public association "Belarusian Republican Youth Union", states that members of the organization are included on the board (kollegiya) of the Ministry of Justice, the Ministry of Education and other ministries, and provides for financing from local government budgets.²³

Amnesty International calls on the Belarusian government to abolish the prohibition on keeping funds in banks in foreign countries which only applies to associations. The organization also calls on the government to lift the administrative and criminal liability for accepting foreign grants.

3.2 CRIMINAL PROSECUTION OF UNREGISTERED NGOS

The Special Rapporteur on the rights to peaceful freedom of assembly and association has pointed out that the right to freedom of association equally protects associations that are not registered, and that individuals involved in unregistered organizations should be free to carry out their activities and should not be subject to criminal sanctions. He has stressed that this is particularly important when the procedure to establish an association is burdensome and subject to administrative discretion.²⁴ However, in Belarus peaceful social activists face the threat of criminal prosecution merely for failing to register their organization. In most cases activists have applied for registration and been repeatedly refused for arbitrary reasons (see below). The Law on Associations states that "the activity of unregistered associations or unions is forbidden on the territory of the republic of Belarus." Until 2005, members of unregistered organizations could face an administrative fine or short administrative arrest of up to 15 days.²⁵ On 15 December 2005, Article 193-1 was added to the Criminal Code, and any activity on behalf of an unregistered organization, including political parties and religious organizations, became a criminal offence punishable by a fine or imprisonment for up to two years.

The introduction of Article 193-1 was followed by several convictions of young activists. Four members of the NGO Initiative Partnership, Mikalay Astreyka, Enira Branizkaya, Alyaksandr Shalayka and Tsimafey Dranchuk were arrested on 21 February 2006, and convicted in August for "organizing and running an unregistered organization that infringes the rights of citizens". They had planned to monitor the presidential elections that were due to take place that year. Mikalay Astreyka was sentenced to two years' imprisonment, Tsimafey Dranchuk to one year, and Enira Branizkaya and Alyaksandr Shalayka to six months each. Enira Branizkaya and Alyaksandr Shalayka were released on 21 August 2006, having served the full term of their six-month sentences. Mikalay Astreyka was conditionally released on 17 November, before the end of his two-year sentence, and Tsimafey Dranchuk was released on parole on 26 December 2006.

On 1 November 2006, Zmitser Dashkevich, a leader of the youth opposition movement Malady Front (Young Front), was sentenced to one and a half years' imprisonment for "organizing or participating in an activity of an unregistered non-governmental organization". He was released early in January 2008.²⁶

On 29 May 2007, five further members of Malady Front, Nasta Palazhanka, Boris Garetskii, Oleg Korban, Zmitser Fedoruk, and Aleksei Yanushevskii were prosecuted for "organizing or participating in the activity of an unregistered organization". Four of the accused were fined and the fifth member of the group received an official warning. On 4 September 2007, two further members of the organization, Ivan Shilo and Nasta Azarka, were also found guilty of the same offence in two separate trials. Nasta Azarka was fined, but in the case of Ivan Shilo the judge found him guilty, but did not impose a penalty.²⁷

Most recently, Article 193-1 has been used against religious organizations to restrict their freedom of religion as well as their freedom of association. On 1 June 2012, three members of an unregistered Protestant Church, were given an official warning for acting in the name of an unregistered organization (Article 193-1) and for inciting racial, national or religious hatred. The warning for inciting racial, national or religious hatred was rejected by the court, but the warning under Article 193-1 remained in force.²⁸

In 2011, the Council of Europe's Venice Commission stated that "by its very existence Article 193-1 has a chilling effect on the activities of Non-governmental organizations" and that "the restriction is so severe that it not only restricts freedom of association but also freedom of opinion and expression to an unjustifiable degree."²⁹

While registration may be a legitimate administrative requirement in order to be able to obtain legal personality as an organization, or to obtain benefits such as tax exemption for charities, the failure to register should not be reason to prohibit individuals from exercising their right to freedom of association. Amnesty International calls on the government of Belarus to immediately abolish Article 193-1.

3.3 THE NEED FOR STATE AUTHORIZATION – ONEROUS AND BURDENSOME PROCEDURES

States have a positive obligation to facilitate the right to freedom of association and this means that, as the Special Rapporteur on the Rights to freedom of Peaceful Assembly and of Association has stated, registration procedures should be simple, non-onerous and preferably

free of charge. The Special Rapporteur has also stated that “a ‘notification procedure’, rather than a ‘prior authorization procedure’ that requests the approval of the authorities to establish an association as a legal entity, complies better with international human rights law and should be implemented by States.”³⁰

In Belarus, all NGOs choosing to be “associations” must register with the Ministry of Justice. In addition to over-prescriptive legislation those wishing to register an organization face government officials who interpret the requirements in such a way as to prevent freedom of association rather than facilitate it. Article 15 of the Law on Associations states that the decision to refuse registration can be taken, in cases where there have been violations of the regulations for registration “if such infringements are irreversible.” As can be seen from the many examples in this report civil society organizations are frequently denied registration in violation of the legislation for minor faults in documentation which could be easily remedied.

Organizations that are refused registration can appeal to a court, but Amnesty International has been unable to find any examples of successful appeals against a refusal to register. The consequences for an organization that is denied registration are that it must cease to exist and cease its activities, or else its members face the possibility of prosecution for acting in the name of an unregistered organization.

HUMAN RIGHTS CENTRE VIASNA

The human rights organization Human Rights Centre Viasna (Spring), which was founded in 1999 was liquidated on 28 October 2003 by the Supreme Court on the recommendation of the Ministry of Justice which claimed that invalid documents had been presented for registration in 2003, and that the leaders of the human rights organization had violated Belarusian legislation while monitoring the presidential elections in 2001. On 24 July 2007, the UN Human Rights Committee ruled that the dissolution of the human rights organization in 2003 had been a violation of the right to freedom of association and that the organization was entitled to an appropriate remedy including re-registration and compensation.³¹ The organization decided to apply for re-registration on 23 July 2007, but the application was refused on 24 August 2007 for several reasons. These included the fact that 20 of the 69 founders had convictions for administrative offences for participation in unsanctioned demonstrations and the distribution of illegal publications, the name of the organization was the same as the organization that was liquidated in 2003 (Nasha Viasna), the goals of the organization were vague, and that there were spelling mistakes and errors in the list of founders. The members of Human Rights Centre Viasna appealed against this decision to a court, but were unsuccessful. On 26 January 2009 the organization, this time registering as Nasha Viasna, was again refused registration. The Ministry of Justice questioned the conduct of the founding conference and cited the previous convictions of the group’s members on administrative charges. It also claimed that there were inaccuracies in the list of founders, the mechanism for electing the Chair and the Secretary was not described, the name of the organization was missing from one document, and that the headquarters of the organization were too cramped. On the 22 April 2009, the Supreme Court supported the decision to liquidate the organization.

The Human Rights Centre Viasna continues to operate as an unregistered organization, but faces continuing pressure. On 4 August 2011 the chair of the organization, Ales Bialiatski was sentenced to four and a half years’ imprisonment for accepting funds for the organization in foreign bank accounts, because lack of registration meant that the organization could not open bank accounts in Belarus, and in November 2012 as a result of the conviction of Ales Bialiatski, the organization lost its office premises (see pp. 30-31).

In October 2010, the UN Human Rights Committee found that Belarus had violated the right to freedom of association when it refused to register the NGO Civil Initiative in Homel in 2003. Among the reasons given by the Belarusian authorities for the refusal were the following: the fact that the organization's goals included entering into association with other "local and international organizations" was incompatible with the Presidential Decree No.2 of 1999 which stipulated that organizations could only enter into association with organizations of the same type, the organization's stated purposes were described in one place as "humanitarian" and in another as "humanist", the application failed to specify in which room of the given building the head office would be located.³² An appeal to the regional court was rejected in May 2004, and the Supreme Court turned down their appeal in June 2004.

When local Amnesty International members attempted to register in Belarus as an international organization in 2003 they received a letter explaining that there were problems with the use of the Amnesty International symbol, but no other explanation. When they tried to register as a local foundation in 2005 they were told that they could register if they agreed all activities with state bodies in advance. As this threatened their ability to function independently they decided not to register.

Amnesty International calls on the Belarusian authorities to simplify procedures for registration and to ensure that officials registering NGOs do so in a way so as to facilitate the right to freedom of association and not to hamper that right.

The authorities should ensure that officials apply existing legislation correctly and do not order the liquidation of NGOs for apparently reversible infringements of the Law on Associations, or interpret the permissible activities of NGOs too narrowly.

The authorities should comply with all UN Human Rights Committee decisions to register organizations that have been arbitrarily deprived of their right to freedom of association such as Human Rights Centre Viasna and Civil Initiative.

3.4 CLOSURE AND SUSPENSION OF NON-GOVERNMENTAL ORGANIZATIONS

States have an obligation not to obstruct the exercise of the right to freedom of association, and members of associations should be able to decide on their statutes, structure and activities and make other decisions without interference by the state.³³

Once registered, NGOs in Belarus are subjected to a system of regular checks and controls, by the Ministry of Justice as well as by other official bodies, such as the tax authorities. The Presidential Decree No.510 of 16 October 2009 establishes a system of risk categories of high, medium and low-risk groups of NGOs, and a timetable of checks.³⁴ At any time, official bodies may register a complaint about some aspect of an organization's compliance with legislation, triggering a check. Any violations may lead to a warning, suspension or eventually to liquidation (permanent closure). In many of the cases that have come to the attention of Amnesty International, ministries have submitted complaints about NGOs after they have taken action suggesting improvements of directly challenging existing legislation or official policy.

DOBRAYA VOLYA (GOOD WILL)

Dobraya volya is an NGO offering advice and support to foster parents and adoptive parents. The organization has existed and been registered since 1998 and has never had any difficulties with the authorities in the past.

However, during 2011 and 2012 the organization made a number of complaints about violations of procedures by the Ministry of Education which has jurisdiction over adoption. The NGO also facilitated public discussions about changes to legislation concerning the rules for fostering and adoption, and sent legislative proposals to the Ministry of Education.



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In June 2012, the NGO was informed by the Ministry of Justice that there had been a complaint made against the organization by the Ministry of Education. On 15 June, the Ministry of Justice issued an official warning to the NGO claiming that the organization had violated the Law on Associations because: a) they were using an emblem, and envelopes with an image that was not registered with the Ministry of Justice; b) the name of Dobraya volya on the rubber stamp of the organization (pictured on the left) was written with two capital letters whereas the name as registered with the Ministry of Justice was written only with a

capital “d” in the first word; c) the organization had an auditor rather than an auditing commission as stated in their statute; d) they had failed to inform the Ministry of a change of address. They were asked to rectify these mistakes within a month, and Dobraya volya rectified all but two of the faults: they were unable to clarify with the Ministry of Justice which emblem had been used incorrectly, and the new rubber stamps could not be made within a month. Despite their efforts to comply with demands from the Ministry of Justice, they received a notification that a court decision would be taken in their case, and on 26 November 2012, the Supreme Court suspended Dobraya volya until they rectified the remaining mistakes. They did so and resumed their activities at the end of January 2013, but as the Director of Dobraya volya told Amnesty International the volunteer members had spent months doing nothing but attempting to comply with the requirements of the Ministry of Justice.³⁵ Most recently, on 20 March the NGO received a notification from the Supreme Court that the Ministry of Justice had started a civil case calling for the liquidation of the NGO.

NGOs and human rights defenders are very frequently subjected to investigation by the tax authorities, sometimes in violation of international agreements on technical aid (see the case of Belarusian Helsinki Committee on p. 32), and sometimes for seemingly petty or arbitrary reasons as in the case of Platforma below. These investigations may lead to the immediate liquidation of organizations or to the criminal conviction of individuals (see the case of Ales Bialiatski pp. 30-31).

PLATFORMA

“All this bureaucratic red tape takes up too much energy and resources and in the end everybody is fed up with it. We don’t have enough small victories in Belarus and when you succeed in registering it is a victory.”

Andrei Bondarenko, founder and chair of Platforma

Platforma is a human rights organization that conducts monitoring and documents cases of torture and other ill-treatment in prisons and police stations, as well as supporting former prisoners. The organization chose to register as an institute in 2011. The procedure requires the organization to register a name with the local authorities of the district where they wish to operate, and once the name is registered the founders only need

to inform the local authorities of the foundation of the institute, rather than to ask permission. The only hurdle is finding a name that is acceptable; Platforma presented 79 possible names for the organization before the name was approved. Many names were rejected on the grounds that other institutes had the same name. Having predicted this problem, the chair, Andrei Bondarenko, included his name and passport details in some names, assuming that there could not possibly be another person of that name with an identical passport number, but was still told that an organization with an identical name already existed.

However, on 9 October 2012, the organization was liquidated by the decision of the Minsk Economic court for failing to present a declaration of income on time and for failing to inform the tax authorities of a change of address. The liquidation followed a number of outspoken statements by Andrei Bondarenko including a personal appeal to the International Ice Hockey Federation urging it to refrain from holding the 2014 Championship in Belarus unless all political prisoners are released. Andrei Bondarenko, the chair of the organization insisted that he presented the income declaration on time but that the tax office repeatedly lost the document, and the organization had not changed its legal address, but had been using a second additional premises for its work. In the run up to the liquidation, Andrei Bondarenko had been subjected to repeated threats and harassment by law enforcement officers because of the organization's outspoken criticism of the government (see p. 33). In December 2012, the organization re-registered as an institute under the name of Platform Innovation.

Amnesty International reminds the Belarusian authorities that liquidation of organizations is the most extreme sanction available, should only be used as a last resort and should never be imposed unless in the particular case such a measure could be considered proportionate and necessary in a democratic society. The liquidation of organizations, such as in the case of Platforma, for bureaucratic reasons is violation of the right of its members to freedom of association.

4. FREEDOM OF PEACEFUL ASSEMBLY

The Law on Mass Events which came into force in 1997 defines a mass event as a “gathering, meeting, march, demonstration, or picket”. A meeting is described as “a pre-planned joint gathering of citizens at a particular place, for the purpose of collectively discussing or solving questions of interest to them.” Furthermore, the definition of a mass event is not in line with international standards; picket is “the public expression by a citizen or a group of citizens of socio-political, personal or other interests or protest (without movement) including hunger strikes”. Although, the ICCPR does not include a definition of what constitutes a public assembly, it is generally agreed that a public assembly is “coming together of more than one person for a lawful purpose in a public place, and therefore consists of more than one individual.”³⁶ As will be seen below, even an action by a single person may fall under the Law on Mass Events. Despite the limitations on freedom of assembly some brave individuals continue to risk fines and imprisonment to make their views public.

4.1 OVER REGULATION – WHAT IS NOT PERMITTED IS PROHIBITED

The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association and the OSCE Guidelines on Freedom of Peaceful Assembly recommend that there should be a presumption in favour of holding assemblies and that “anything not expressly forbidden in law should be presumed to be permissible”.³⁷ In Belarus the Law on Mass Events takes the approach that anything not permitted by the law is prohibited, and provides detailed regulations for the conduct of public events. According to the Council of Europe’s Venice Commission “the Law is characterized by a detailed overregulation of the procedural aspects of holding assemblies.”³⁸

For instance, the organizers of a mass event of over 1,000 people can only be a political party, a professional union “or other organization”. Individuals may organize any gathering of under 1,000 participants, but they must be citizens of Belarus, permanently resident, over 18 years of age and registered to vote. These provisions are discriminatory because they effectively deprive children, foreigners, asylum-seekers, migrants and other non-citizens of their right to freedom of assembly.

The Presidential Decree No. 11 (7 May 2001) “[o]n Certain Measures for Improvement of the Procedure for the Conduct of Assemblies, Rallies, Street Processions, Marches and other Mass Events in the Republic of Belarus” requires organizers of public events to provide copies of certificates and contracts concluded with state service providers for public order and security, medical facilities and cleaning of the location at the end of the meeting. The Special Rapporteur on the rights of freedom of peaceful assembly and association has made it clear that the organizers of public events “should not incur any financial charges for the provision of public services during an assembly (such as policing, medical services and other health and safety measures)”.³⁹

Article 9 of the Law on Mass Events prohibits any assembly less than 200 metres from the President's residence, the National Assembly, the Council of Ministers, pedestrian subways, metro stations, and less than 50 metres from any state buildings, embassies, courts, prosecutors' offices, and any building connected with "defence, security and any public service, public transport, water, heat and energy provision, primary and secondary schools". The list of prohibited locations continues and includes hospitals, nuclear power stations, any buildings connected with arms production or storage of arms, radio and television stations, and dangerous industries. While it may be justified to limit demonstrations near factories or other locations that could pose a risk to the health or safety of the public, the list of prohibited locations is so detailed that it effectively prevents any demonstrations in the centre of large cities.

Further changes came into force in October 2011 requiring organizers to report "financial sources" used for each event. Simultaneous changes to other laws gave law enforcement officers wider powers to make audio and video recordings of demonstrations, limit participants' access to the event and carry out body searches of participants.

Article 15 of the Law on Mass Events provides for the immediate liquidation of any organization that fails to abide by the law or that organizes assemblies that cause "serious damage or violate the rights and legal interests of citizens, organizations, or state or public interest."

Amnesty International calls on the authorities of Belarus to amend the Law on Mass Events in line with the government's international obligations to ensure freedom of assembly by:

- reducing the restrictions on the location of events to only those which in the particular instance are demonstrably necessary for a permissible purpose recognised in international human rights law;
- removing the requirement on organizers to provide for services to cover the event;
- removing the extensive restrictions on who can organize events;
- removing the requirement to report financial sources of events; and
- removing Article 15 of the Law on Mass Events providing for the liquidation of any organization that fails to abide by that law.

4.2 NEED FOR PERMISSION

According to international human rights standards the exercise of the right to freedom of assembly should not be subject to previous authorization, but at the most should be subject to a prior notification procedure. It is understandable that the authorities may need to make arrangements for traffic and to take other measures to facilitate the right to freedom of assembly, but that should not require a notice period of more than 48 hours before the event. The Special Rapporteur on the rights to freedom of peaceful assembly and association has stated that even in cases where demonstrators fail to notify the authorities the organizers of peaceful events should not be subject to criminal or administrative sanctions.⁴⁰

In August 2003, changes to the Law on Mass Events came into force requiring organizers of demonstrations and events to apply for permission at least 15 days before the event. Local authorities are obliged to inform the organizers whether their application has been successful or not less than five days before the event and any publicity of the event before official permission is given is banned. Another change made any 'public call for initiating' an

unsanctioned gathering or a rally an administrative offence punishable by a fine or short period of detention.

Amnesty International reminds the Belarusian authorities that under international human rights law the right to freedom of peaceful assembly can only be subjected to restrictions which are demonstrably necessary in order to protect national security, public safety, public order, public health or morals or the rights and freedoms of others. The lengthy period of notice required, and the other provisions regulating public events, and requiring official permission are unnecessary restrictions that do not comply with Belarus' obligations to respect and ensure freedom of peaceful assembly.

4.3 SPONTANEOUS EVENTS

The European Court of Human Rights has stated that "in special circumstances when an immediate response, in the form of a demonstration, to a political event might be justified, a decision to disband the ensuing, peaceful assembly solely because of the absence of the requisite prior notice, without any illegal conduct by the participants, amounts to a disproportionate restriction on freedom of assembly.⁴¹ The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has specifically recommended that spontaneous assemblies should be recognised in law and exempted from prior notification.⁴²

There is no provision in Belarusian legislation for spontaneous demonstrations that may take place in response to political or other events. Just such a situation arose on 19 December 2010 when opposition activists and members of the general public decided to gather in the centre of Minsk to protest what they viewed as falsified election results (see pp. 24-27).

Amnesty International calls on the authorities to revise the Law on Mass Events to provide for exceptions to the requirement of advance notification for spontaneous events when advance notification is impracticable.

4.4 ADMINISTRATIVE PROSECUTIONS

Civil society activists are subjected to administrative sanctions when they violate the stringent requirements for public meetings, but they are also subjected to frequent administrative prosecution as a form of harassment.

The Administrative Code covers misdemeanours such as "Minor Hooliganism" (Art. 17.1), and "Violation of the order for public meetings of pickets" (Art. 23.34). In 2011, changes were made to Article 23.34, lowering the threshold for an offence by removing the requirement that it be repetitive, and that only the organizer of the event could be held liable.

4.4.1 HARASSMENT OF ACTIVISTS

In the course of 2012 at least 15 human rights activists, environmentalists, journalists and opposition activists were prosecuted under Article 17.1 of the Administrative Code for swearing in public. The punishments imposed range from a fine to 10 days' imprisonment.

Pavel Vinahradau, a member of the youth political movement Zmena (Change), spent a total of 66 days in detention between 30 December 2011 and 12 December 2012 on eight separate administrative convictions, all for minor hooliganism or violation of the order for

public meetings and pickets. For instance on 30 December 2011 he was called into the Moscow District police station in Minsk for an “educational preventative talk”, at the end of which he was sentenced by a judge under the administrative code to three days for swearing. He spent the New Year holiday in detention. On 2 March 2012 he was sentenced to seven days for swearing, and on 25 April five days for swearing. On 7 September 2012, police detained him near his home and took him to the Moscow District police station where they accused him of swearing in public. He was subsequently sentenced to five days’ detention. In all cases the witnesses to his swearing in public were police officers.

4.4.2 ADMINISTRATIVE PROSECUTIONS FOR HOLDING UNSANCTIONED MEETINGS

In Belarus, most applications for public events are refused. Many more people do not apply for permission knowing that they will be refused permission to organize events in city centres. Dozens of people a year are subjected to fines and imprisonment for peacefully exercising their right to freedom of assembly.⁴³

PROSECUTED FOR A ONE-MAN MARCH

Human rights lawyer **Roman Kisliak** was detained on 16 October 2011 after walking alone down the main street of Brest with a megaphone asking for the release of the human rights defender, Ales Bialiatski. He was charged with holding an unsanctioned picket despite his claim that his action did not fall under the definition of a picket as defined by the law, but could be defined as a “march” because he was moving down the street at the time. As a single individual he could have carried out a “march”, but as explained at the beginning of this chapter, the law prohibits pickets by single individuals. He was brought before an administrative court the following morning, and the judge returned the case to the police for further investigation. On 28 October the Lenin District Court in Brest imposed a fine equivalent to €3, and the appeal court upheld the judgement.



The UN Human Rights Committee has ruled in six cases against Belarus in 2012 that there were violations of the right to freedom of assembly or the right to freedom of expression in connection with freedom of assembly.

FINED FOR PRESENTING A GIFT

On 25 March 2008, the anniversary of the creation of the Belarusian People's Republic in 1918 which is celebrated as Freedom Day (Den' Volya) by the opposition in Belarus, **Antonina Pivonos** and two other women presented a local opposition activist with a tapestry embroidered with a religious text (the Lord's Prayer). They were standing in the centre of Vitebsk. When Antonina Pivonos unfolded her tapestry she was detained by police and accused of having violated the procedure on organizing or conducting pickets. In court, the same day she argued that there were no laws against giving presents, but she was found guilty under the Administrative Code of having violated the Law on Mass Events, because she had not applied for permission for the event. She was fined 70,000 roubles (€6.5),⁴⁴ and her tapestry was confiscated. She appealed against the fine to the District Court of Vitebsk which rejected her appeal on 16 April and on 11 June 2008 her appeal to the Supreme Court was rejected. She then applied to the UN Human Rights Committee and on 29 October 2012 the Committee found that her right to freedom of expression under Article 19 of the ICCPR had been violated, and ordered the government of Belarus to provide her with "an effective remedy, including the return of the confiscated property or its value, reimbursement of the present value of the fine and any legal costs incurred by [her], together with compensation." The Human Rights Committee also reminded the government of their obligation to take steps to prevent similar violations in the future. The government failed to explain to the Human Rights Committee why it had been necessary to limit Antonina Pivonos's right to freedom of assembly but stated simply that she failed to comply with the Law on Mass Events which "creates conditions for the realization of citizens' constitutional rights and freedoms and the protection of public safety and public order."⁴⁵ After the Supreme Court Decision in June 2008 Antonina Pivonos bought back her tapestry from the authorities because she had spent so much time on it.



© Human Rights Centre Viasna

Amnesty International calls on the government of Belarus to comply with the decisions of the UN Human Rights Committee where it has found violations of freedom of expression, association and assembly and to ensure redress and reparation, including the return of confiscated property and compensation as appropriate.

4.5 VIOLENT DISPERSAL - THE EVENTS OF DECEMBER 2010

Over the years Amnesty International has documented many incidents where participants in unsanctioned demonstrations have been arrested and detained and sometimes subjected to beatings by law enforcement officers.

During 2009 opposition and human rights activists held monthly demonstrations to mark the anniversary of the disappearance of two leading opposition figures, Viktor Hanchar and Yury Zakharanka, and a businessman, Anatol Krasouski in 1999, and a journalist, Dzmitry Zavadski, in 2000. On 16 September 2009, police officers in Minsk allegedly used unnecessary force to disperse demonstrators and detained 31 people for over three hours before releasing them without charge. The demonstrators reported that they had been standing silently holding portraits of the disappeared when approximately 40 men in plain clothes approached and started to beat them, closely followed by riot police who detained them and took them by bus to Tsentralny District police department. At the police station they were reportedly made to stand facing the wall for three hours and subjected to verbal abuse, threats and beatings.

Throughout May, June and July 2011, there were regular weekly "silent protests". Groups of people throughout the country would stroll wordlessly, applaud or use their mobile phone alarms simultaneously. The Human Rights Centre Viasna reported that the authorities had detained more than 2,000 people involved in "silent protests" throughout Belarus during this period, and some of them were beaten and subjected to other forms of unnecessary use of force by police. Up to 80 per cent of those initially detained were subsequently sentenced to between five and 15 days' administrative detention or fined. On 29 June 2011 a BBC correspondent was beaten by plain clothes law enforcement officers⁴⁶ and on 4 July there were reports that teargas was used against protestors.

However, the most shocking example of unnecessary use of force by the police occurred following the presidential elections in 2010.

"In my thirteen years as a human rights defender in Belarus I have never seen such beatings."

Aleh Volchek, Chair of the NGO Legal Assistance to the Population describing the violent dispersal of a demonstration on 19 December 2010 in Minsk.

On 19 December 2010, following the presidential elections the largest public demonstration in the recent history of Belarus took place, and was suppressed with unprecedented violence by law enforcement officers. When police moved in to disperse the huge demonstration in the centre of Minsk over 700 people were detained and many people including by-standers were beaten and wounded by law enforcement officers.

In the run up to the presidential elections in 2010, as fears mounted that they would not be conducted fairly, many of the opposition candidates called on their supporters to gather in October Square in the centre of Minsk at 8pm after voting stations closed on 19 December. The opposition leaders did not apply for permission to hold the demonstration on 19 December knowing already that such permission would certainly not be provided under the restrictive legislation, but they did ask for a meeting with the Minister of Internal Affairs and

the KGB to discuss the planned demonstration. On 17 December the Chair of the KGB told the press that leaders of the opposition had asked for a meeting to discuss the safety of the demonstrators, but “law enforcement officers cannot discuss such matters as the calls (for a demonstration) are illegal”.⁴⁷

According to observers from human rights organizations, up to 30,000 demonstrators gathered in October Square and then marched peacefully down the main street to Government House, the seat of Parliament and of the Central Election Commission, unhindered by law enforcement officers, who stopped traffic to allow the demonstrators to pass. An hour into the demonstration however, a group of about 20 masked young men standing by the doors of Government House, armed with batons, called on the crowd to storm the building and started to break windows. Following this, the police closed in on the demonstrators and started to detain and beat the people gathered in the square or standing nearby.

Amnesty International recognises the duty of law enforcement officers to prevent crime and to protect the safety of the public and the right to protect themselves if they are attacked. However, under international law enforcement standards, notably, the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on Use of Force and Firearms by Law Enforcement Officials (UN Basic Principles),⁴⁸ they must at all times carry out their duties in a way that ensures full respect for the right to life, liberty and security of all persons, including those suspected of crime. In particular Principle 4 of the UN Basic Principles states that law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty. They should as far as possible apply non violent means before resorting to the use of force. With regard to policing assemblies, the UN Basic Principles underline the right of peaceful assembly. Principle 13 states that in “the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary.” Furthermore, Principle 7 requires governments to ensure that any arbitrary or abusive use of force by law enforcement officers is prosecuted as a criminal offence.

The Law on Internal Troops of the Ministry of Internal Affairs states that law enforcement officers may use force only when unavoidable to stop mass disorder and destruction of property and to arrest suspects who resist the police. They must take all possible measures to ensure the safety of citizens and “to cause as little damage to their health, honour, dignity and property as necessary.” The law also allows law enforcement officers to use force “in other circumstances determined by the President”.

MAJA ABRAMCHIK

"I do not understand why, or for what we were beaten."

Maja Abramchik



Maja Abramchik in hospital on 22 December 2010

© Aliaksandr Piletski

Maja Abramchik, a 21 year-old student, told Amnesty International that she had not been present during the demonstration on 19 December 2010. However, at about midnight on 19 December she and her friends decided to go and see what was happening. They were passing near the Independence Square, which was cordoned off by the police and a few people were walking outside the cordon. Suddenly Maja and her friends found themselves surrounded and confronted by three law enforcement officers who looked very angry. One of them said: "Now we are going to show you what you have come to see" and started beating one of Maja's friends with a baton while shouting "Go to the police van!". When Maja asked the officer to stop beating her friend, one of them started to hit here with his baton. She fell and was unable to get up. When the officer ordered her to stand up and go to the police van she was carried there by her friends. Despite asking for medical help, Maja spent the next two and a half hours in the police van being driven from one detention centre to another. Eventually, an ambulance was called, and Maja was taken to the hospital. She had a crushed tibia and was operated on the following day. It took her a year to fully recover and she underwent three operations. Maja's parents complained immediately to the Prosecutor General about the beating of their daughter, and in April 2011 the prosecutor of the Maskouski district of Minsk informed her that a criminal case had been opened against an unidentified person – the police do not figure in the case, although according to a forensic examination, carried out on the request of the prosecutor's office, the injuries could have been inflicted by something like a police baton. The case is currently pending with the UN Human Rights Committee.

Amnesty International urges the Belarusian authorities to ensure that all allegations of unnecessary or excessive use of force by law enforcement officers are promptly and

impartially investigated, and that those responsible face appropriate disciplinary and criminal proceedings. Any law enforcement officer who is reasonably suspected of being responsible for arbitrary or abusive use of force should be prosecuted in proceedings which comply with international fair trial standards with penalties commensurate with the gravity of the offence, without resort to the death penalty. Superior officers should be held responsible if they knew or should have known that those under their command were resorting to unlawful use of force and they did not take all measures in their power to prevent, suppress or report such use. Victims of unlawful use of force by law enforcement officers, irrespective of whether the perpetrators are identified or prosecuted, must be given reparation, including compensation.

4.6 POLITICALLY MOTIVATED CRIMINAL PROSECUTIONS

Following demonstrations in Minsk after the Presidential elections in 2010, about 40 people were charged with criminal offences. Among the 40 people charged were six of the seven opposition presidential candidates, many leading journalists and opposition activists were charged with “organizing mass disorder” and “grossly violating public order” and were sentenced to prison terms of up to six years. Some were given suspended sentences, and some were released before the expiration of their sentences. Two years on four people, Mykalau Statkevich, Pavel Sevyarynets, Eduard Lobau and Zmitser Dashkevich, remain in prisons and labour colonies for their connection to these events, others are still serving suspended sentences and live under constant surveillance and travel restrictions, and some have fled the country after serving their sentences, and claimed asylum abroad.

The OSCE Guidelines on Freedom of Peaceful Assembly state that organizers of assemblies should not be liable for unlawful actions of individual participants, or *agents provocateurs* but that any individual who commits an offence should be held liable.⁴⁹ The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association also states that assembly organizers and participants should not be held responsible and liable for the violent behaviour of others.⁵⁰

Amnesty International has found no evidence that the opposition presidential candidates who were sentenced for organizing mass disorder had either resorted to or incited the use of violence before or during the demonstration. Most of the politicians were standing at some distance from the group that were smashing the doors and windows of the parliament building. One eyewitness reported that one of the detained presidential candidates, Mykalau Statkevich, who was speaking at the time, called on the crowd to stop breaking down the doors of the parliament building. Video footage shows presidential candidate, Vital Rymasheuski, apparently attempting to stop the men from causing damage to the building.

MYKALAU STATKEVICH

Mykalau Statkevich, who ran as an independent opposition presidential candidate was sentenced to six years' hard labour on 26 May 2011 for “organizing mass disorder”, and remains in prison.

In January 2012, he was transferred from Penal Colony No. 17 in Shklou, where he had worked in a saw mill, to the stricter regime of Prison No. 4 in Mahiliou for allegedly violating the penal colony rules. The authorities there also claimed Statkevich was inclined towards violence and liable to attempt escape. From 6 to 16 July 2012 he was put in the punishment cell allegedly for refusing to request a Presidential pardon. Marina Adamovich, his wife, has her right to visit restricted to only one visit of up to four hours per year, and the right

to only one phone call a month.

“These calls are always unexpected even though I am constantly waiting for them,” she said. “Last time the lawyer warned me but it was still a shock. You talk about unimportant things – he tries to say that he is fine or tries to pass on information that is important for other prisoners... It is a sea of emotion and enormous joy.”

More than two years after the events of December 2010 Mykalau Statkevich, Pavel Sevyarynets, Eduard Lobau and Zmitser Dashkevich are still serving prison sentences in connection with the events. Amnesty international considers them to be prisoners of conscience who have been sentenced on politically motivated charges in violation of their right to freedom of expression and freedom of peaceful assembly and calls for their immediate and unconditional release.

5. HUMAN RIGHTS DEFENDERS

“Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.”

Article 1, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms

Of specific relevance to organizations and individuals working in the field of human rights is the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders), Adopted by General Assembly resolution 53/144 of 9 December 1998, which requires governments to protect the rights that are essential to the work of human rights defenders. While not itself a legally binding instrument, the Declaration contains rights that are recognized in many legally binding international human rights instruments, including the ICCPR, and was adopted by consensus by the General Assembly, representing States' strong commitment towards its implementation. The ability to exercise the rights to freedom of expression, including both the right to receive and impart information, and of peaceful assembly, and the ability to undertake collective action and peaceful advocacy for change, and to communicate with national and international organizations, are all essential for the defence of human rights.

Human rights defenders often put themselves at risk by criticizing the state or other powerful actors. Governments are therefore obliged to ensure that human rights defenders can carry out their work without interference, obstacles, discrimination or fear of retaliation. Any human rights defender whose rights are violated has the right to complain to and have the complaint reviewed by an independent, impartial and competent judicial or other authority and, where a violation is found to have taken place, to obtain redress.

Human rights defenders in Belarus work in extremely difficult circumstances. They may be subjected to criminal prosecution for their work, or for failing to register their organization, and they face various forms of harassment including searches, confiscation of property and questioning by the KGB, as well as administrative prosecutions and tax investigations which make it very difficult to carry out their work.⁵¹ Despite these difficulties they continue to play

an invaluable role in documenting human rights violations, offering legal assistance to the public, and doing their best to influence official policy and practice on human rights.

5.1 CRIMINAL PROSECUTION

The lack of impartial prosecution and independent judiciary facilitates the conviction and imprisonment on politically-motivated charges of high profile human rights defenders. Ales Bialiatski, the Chair of the Human Rights Centre Viasna, has paid a very high price for his human rights activities.

ALES BIALIATSKI

“Why did you sign the Declaration? If only you hadn’t signed! Leave the UN, leave the OSCE! Then everything will be clear.”

Ales Bialiatski in his closing statement to the Court on 24 November 2011, referring to the UN Declaration on Human Rights Defenders.



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Ales Bialiatski, Chair of the unregistered human rights organization Human Rights Centre Viasna and Vice-President of the International Federation for Human Rights, was arrested in central Minsk on 4 August 2011. On 24 November, he was sentenced to four and a half years on charges of “concealment of income on a large scale” (Article 243.2 of the Belarusian Criminal Code). The trial violated international fair trial standards in several respects and Amnesty International believes the charges and his imprisonment are politically motivated and intended to obstruct his legitimate work as a human rights defender. Amnesty International considers Ales Bialiatski to be a prisoner of conscience, imprisoned solely because of his work for human rights.

Ales Bialiatski was arrested over the use of his personal bank accounts in Lithuania and Poland to support his organization's human rights work in Belarus. Since its derecognition (see p. 15) the Human Rights Centre Viasna had been barred from opening a bank account in its name in Belarus, and its members had no choice but to use bank accounts in neighbouring countries to fund their human rights work.

There were a number of procedural violations which point to the political nature of the trial. The questioning of witnesses frequently did not relate to the charges, but instead to the human rights activities of Ales Bialiatski and the witnesses themselves. Several prominent human rights activists and Human Rights Centre Viasna employees were interrogated in relation to the case. The evidence presented by the prosecution included copies of bank statements that were not authenticated, and some documents were presented as coming from anonymous informants, in violation of Belarusian trial procedures. Furthermore, state prosecutors in Belarus had requested information from Polish and Lithuanian banks before the criminal case against Ales Bialiatski had been opened, in violation of the agreement between those countries regarding the exchange of information in criminal cases. The Lithuanian Ministry of Justice and Polish authorities supplied to the Belarusian authorities the bank information they requested. However, both Polish and Lithuanian officials have since publicly apologized to Ales Bialiatski and his family for giving the information to the Belarusian authorities. The two countries have also suspended bilateral legal assistance treaties with Belarus over its use of the information.

The sentence included the payment of a fine and confiscation of property, including the apartment, where Ales Bialiatski's wife and son live and of which they are co-owners, and the apartment where the office of Human Rights Centre Viasna is located. The office was confiscated on 26 November 2012.

On 29 November 2011, Ales Bialiatski's lawyer filed an appeal against the sentence with the Minsk City Court, and on 24 January 2012, the Court upheld the decision of the lower court and turned down the appeal.

Other human rights defenders have been threatened with criminal prosecution for the legitimate exercise of their right to freedom of expression. Following an appeal by the NGO Platforma to the International Ice Hockey Federation urging it to refrain from holding the 2014 Championship in Belarus unless all political prisoners are released, Andrei Bondarenko was issued a warning by the Minsk City Prosecutor's Office that he could face criminal prosecution under Article 369.1 for "having discredited the Republic of Belarus by spreading intentionally false information about the political and social status of the Republic of Belarus and/or legal status of the citizens of the Republic of Belarus that brings discredit on the Republic of Belarus or its bodies." In July Andrei Bondarenko was informed by the KGB that he had been included on a list of potential offenders within the KGB's sphere of influence.⁵²

5.2 HARASSMENT

In addition to criminal and administrative prosecution, and threats of prosecution, human rights defenders face various other forms of harassment including tax demands and travel restrictions.

5.2.1 TAX DEMANDS

Amnesty International recognizes that governments have a legitimate need to receive reports of income or other taxable assets and to investigate them. However, the frequency with which human rights defenders have been investigated by the tax authorities would suggest that the demands were linked to their human rights activities rather than to legitimate tax demands.

Article 12 of the 'Law on tax declarations by physical persons' of the Republic Belarus states that requests for tax declarations can be made at the insistence of the KGB.⁵³ This means that tax authorities can make demands for tax declaration that would otherwise not be required under tax regulations. The number of human rights activists who were subjected to time consuming demands from the tax authorities in 2012 is striking. In September 2012, three leading human rights activists were asked to present tax declarations covering many years. Aleh Volchek, former director of Pravovaya Pomoshch Naseleniyu (Legal Aid to the Population), a human rights organization that was liquidated in 2003, received a request from the Ministry of Taxes and Dues to submit personal tax declarations for the last 10 years. On 21 September 2012, Tatyana Reviako, a member of the board of the Human Rights Centre Viasna was asked to present tax declarations for the last seven years. On 27 September, Leonid Sudalenko, a human rights activist from Homel was asked to present tax declarations covering the past four years. His wife and son were also subject to similar demands. Leonid Sudalenko believed that the attention of the tax authorities was linked to the fact that he was very active during the parliamentary elections in assisting candidates who had been refused registration. The last time he had been asked for a declaration had been after the 2008 parliamentary elections when he had been similarly active.

BELARUSIAN HELSINKI COMMITTEE

"It is all hanging over us and at any moment they can come to us with tax demands."

Aleh Hulak, Chair of Belarusian Helsinki Committee

The Belarusian Helsinki Committee (BHC) continues to be pursued by the tax authorities for payment of a fine of 284 million Belarusian rubles (\$180,000) that was imposed in January 2004. The tax authorities accused BHC of using a grant provided by the European Union TACIS programme without registering the foreign humanitarian aid and not paying taxes on it in accordance with the regulations of the 1999 Presidential Decree No.8. In fact international technical assistance is regulated by an international agreement between the government of Belarus and the European Commission which state that such assistance is not liable for tax. The BHC appealed against the request from the tax authorities and on 23 June 2004, the Minsk Economic Court overturned the request. This was supported by the appeal court and a prosecutor's review of the case. However, on the eve of the presidential elections in 2006 the Deputy Head of the Higher Economic Court (Заместитель Председателя Высшего Хозяйственного Суда) protested against the previous court decision on the case in 2004, and the council of the Higher Economic Court granted the protest. The Ministry of Taxes and Dues then confiscated property from the BHC to the value of 255 million roubles (€23,000 at the time). On 28 August 2007 the BHC started a civil case against the Council of Ministers of Belarus in the Higher Economic Court claiming reimbursement for lost property amounting to 255 million roubles. They referred to the international agreements which stated that technical assistance from the EU is not liable for tax. Their case was closed on the grounds that the Council of Ministers is not a legal entity.

In June 2011, the Ministry of Justice issued a written warning to the BHC for "continuing violations of tax laws". On 25 February 2013, officers from the Ministry of Taxes and Duties visited the BHC office in Minsk without prior notification, and handed the head of the organization, Aleh Hulak, a warrant to seize property in payment of the outstanding tax. However, as all furniture in the office was on loan from the OSCE and the computers were all personal laptops the officials were not able to find any property in the office to confiscate.

Amnesty International calls on the Belarusian government to ensure that these tax investigations are not carried out in an oppressive manner so as to effectively restrict the

exercise of the right to freedom of association. They should be carried out in conformity with existing legislation and in line with international obligations to ensure the right to freedom of association.

5.2.2 TRAVEL RESTRICTIONS

In March 2012 at least 15 human rights activists, political activists and journalists were put on a black list of those forbidden to leave the country. The list included the Chairs of all major human rights groups in the country – Valentin Stefanovich, Human Rights Centre Viasna; Aleh Hulak, BHC; Andrei Bondarenko, Platforma; Aleh Volchek, Legal Assistance to the Population - as well as prominent opposition politicians and journalists such as Zhanna Litvina, the Chair of the Belarusian Association of Journalists and Andrei Dynko, Editor of the independent newspaper, Nasha Niva.⁵⁴ All the bans were successfully overturned on appeal to the courts, and were explained as having been due to a “computer error”.

COMPUTER ERROR

“I don’t have any illusions that we won’t come across other “computer errors”, but sooner or later the punishment for such acts will be unavoidable. Personally, I am not prepared to resign myself to instances of such obvious lawlessness.”

Andrei Bondarenko, founder and chair of Platforma

On 5 March 2012 Andrei Bondarenko was forced off a train on the Polish border at Brest and told that his right to travel abroad had been temporarily restricted. He was told that this was because of his failure to present himself for military service despite the fact that he was beyond the age for military conscription. His laptop was seized at the same time by customs officials, who claimed they needed to make an assessment of its contents for any information posing a threat to the Customs Union [between Belarus, Kazakhstan and Russia]. Andrei Bondarenko appealed against the ban and at the court hearing on 22 June, he was informed that the ban had been issued because of a “computer error”. Andrei Bondarenko was unofficially shown his file which documented that his name had been removed from the travel ban list on 5 March (i.e. immediately after he had been stopped), however he was not informed of this fact. Andrei Bondarenko’s laptop was returned to him in March 2013 just over a year after it had been confiscated.

Amnesty International calls on the Belarusian authorities to recognize the legitimacy of human rights defenders’ work, and to ensure an environment in which it is possible to defend human rights without fear of reprisal or intimidation. It asks the authorities to cease harassing human rights defenders through such measures as travel restrictions, and unnecessary and oppressive tax investigations. The organization asks the Belarusian government to stop using the criminal justice system to prevent human rights defenders from carrying out their work as in the case of Ales Bialiatski, and asks for his immediate and unconditional released.

6. INDEPENDENT TRADE UNIONS

“Setting up an independent Trade Unionis not a protest, it is our right, but in fact it turns out to be a protest.”

Aleh Stakhaevich who lost his job for trying to set up an independent trade union.

Workers in Belarus face low wages, poor conditions and job insecurity, yet their ability to fight for their rights is severely restricted.

In 1999, the Presidential Decree No. 29 gave employers the right to draw up year long contracts with employees. In reality what this meant was that those working for state controlled enterprises and institutions (about 90% of the workforce) were put on temporary contracts. As Alyaksandr Yaroshuk, the Head of the Belarusian Congress of Democratic Trade Unions, told Amnesty International: “this was not an economic measure, but a political act intended to increase state control over the population”.⁵⁵ This conclusion is supported by the fact that Amnesty International has since documented cases where workers have not had their contracts renewed having taken part in unsanctioned meetings.

Most recently the 2012 Presidential Decree No. 9, “On Additional Measures to Develop the Timber Processing Industry” stated that contracts could only be terminated with the permission of the employer, and will be indefinitely prolonged during investment projects. The decree was intended to combat the problem that the timber processing industry in Belarus is not able to retain workers who leave to work in Russia for higher wages. It could potentially amount to a violation of workers' rights under Article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESR) which guarantees the right to work and includes “the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts.”

Belarus joined the International Labour Organization (ILO) in 1954 and is a state party to all major ILO conventions. In particular it has been a state party to the Convention on Freedom of Association and Protection of the Right to Organize and the Convention on the Right to Organize and Collective Bargaining since 1956.

The ILO has repeatedly drawn attention to violations of the rights to freedom of assembly and association in Belarus. In 2004 the ILO published a report of a Commission of Inquiry appointed following numerous complaints by Belarusian trade unionists.⁵⁶ The report called for wide-ranging changes to the system of industrial relations in Belarus to ensure the equal participation of independent trade unions, and suggested measures to overcome violations of

the rights to freedom of association and assembly including changes to the Law on Mass Actions and to the Presidential Decree No.2 which tightened requirements for the registrations of trade unions. On 21 June 2007, following an ILO assessment that Belarus had failed to adequately respond to the recommendations of the Commission of Inquiry, the European Commission withdrew Belarus from the European Union's Generalized System of Preferences (GSP).⁵⁷ As a result of this, customs tariffs for Belarusian goods being imported into the EU increased by about three per cent.

There are two main trade union bodies in the country: the Federation of Trade Unions of Belarus with four million members, and the Belarusian Congress of Democratic Trade Unions (BCDTU) which was set up in 1993 to unite the growing number of independent trade unions, and which has a membership of 10,000. The Federation of Trade Unions of Belarus is the successor to the Soviet Belarusian Republican Council of Trade Unions, and the ILO has commented that "the industrial relations system in Belarus and the practice of trade unions still retain many of the characteristics of the Soviet period, particularly as to the participation of managers and government representatives, including ministers and deputy ministers, directly in the decision-making of trade union bodies."⁵⁸ Independent trade unionists have commented that, while it is not true that official trade unions do nothing for workers' rights, they are not outspoken enough about official policies that violate workers' rights, and they do not effectively defend workers' rights at enterprise level. As in Soviet times the percentage of employees joining the official trade union movement is extremely high. According to its website, the Federation of Trade Unions of Belarus counts among its members 99 per cent of workers in consumer corporations, 98.4 per cent of tax and finance workers, and 98.2 per cent of oil and gas workers.⁵⁹

The independent trade union congress, BCDTU, is a member of the International Trade Union Confederation, and since 2007, in large part due to international pressure from the ILO and the European Union, the BCDTU has taken part in the tri-partite National Committee on Labour and Social Questions. This is quite an achievement in a country where anyone considered to be an opponent of the government is excluded from the political process.

ONE PERSON PICKET DENIED PERMISSION



© Human Rights Centre Viasna

Alexander Denisenko, a member of the independent Trade Union of the Radio and Electronics Industry (Белорусский профсоюз работников радиоэлектронной промышленности) (REP), was refused permission by the local authorities in Brest to hold a one man picket on 17 March 2012 to protest against the cost of housing. The refusal was made on the grounds that he did not have contracts with the police, the ambulance service and the local authorities to provide cleaning and hygiene facilities. Alexander Denisenko appealed against the decision of the local authorities to the court of first instance, the appeal court, the district court and the Supreme Court, all of which supported the decision of the local authorities. The case is now pending with the UN Human Rights Committee.

6.1.1 THE DIFFICULTY OF REGISTRATION

"It is very important for us that this Decree should go and that Trade Unions should be able to function normally",

Gennady Fedynich, Belarusian Trade Union of the Radio and Electronics Industry

The official trade unions in Belarus work very closely with employers and the government as in Soviet time, and some employees seek to set up independent trade unions that they feel better represent their interests. Those who attempt this, find that their attempts are blocked by hostile employers and local authorities as well as by the very demanding registration procedures for registering associations. Independent Trade Unions attempting to set up within large state-run enterprises face particular pressure from employers and local authorities. The 1999 Presidential Decree No. 2 required all previously registered trade unions to re-register and introduced the requirement for a legal address for registration of a trade union which had not be required previously. State-run enterprises are usually very reluctant to provide premises for independent trade unions, and trade union activists who try to find premises elsewhere in the town find that private landlords are under pressure from the authorities to refuse them. In its report on the situation in Belarus the ILO Committee on Freedom of Association called on the government of Belarus to amend the 1999 Presidential Decree No.2 "to ensure that the right to organize is effectively guaranteed."⁶⁰

Even when an independent trade union is registered at the national level it may face other obstacles. For example, the Trade Union of the Radio and Electronics Industry (REP), which is part of the BCDTU, is registered at the national level but since 2004, 41 applications for registration by regional branches have been turned down by local authorities.

6.2 DISCRIMINATION AGAINST UNION MEMBERS

The story of how workers at the state-owned "Granit" quarry in Mikashevichy attempted to set up a branch of an independent trade union illustrates not only the discrimination that independent trade union members face, but also the degree to which employers, local authorities and the courts work together to apply pressure on independent trade unions.

GRANIT

"Everything is linked from top to bottom and you can't do anything without permission from the powers above."

Member of independent trade union at Granit gravel quarry⁶¹

On 24 December 2011, 200 workers at the Granit gravel quarry in Mikashevichy, in Brest region in south western Belarus held the founding meeting of an independent trade union organization as part of the BCDTU and Aleh Stakhaevich, a driver for the company, was elected President of the local branch of the trade union. As Aleh Stakhaevich explained to Amnesty International, the meeting would have been prevented if the founding members had not anticipated the reaction of the authorities and made alternative secret plans:

"We first planned to hold the meeting in the central house of culture, but when we got there the factory administration and police were waiting for us. We had already planned for this and we put everybody in cars and drove to the village. They thought we had just gone home. We didn't tell anybody what we had planned and they didn't know where we were going."

They held their founding meeting and, in accordance with legislation, sent a request to the employer informing them of the establishment of the primary union and asking for a legal address. The company refused to provide an address claiming that it had not received the complete set of documents. The union then wrote to the Ministry of Architecture and Construction and the Ministry of Justice asking for their assistance in finding a legal address, but with no success. The union also tried to rent premises from private landlords, and from the property office of the local council. The council property office informed them that they would never provide them with premises, and private landlords refused to rent to the union telling the union members that they feared their businesses would come under pressure from the authorities.

On 6 January 2012, the governor of Brest Region, Kanstantsyn Sumar, attended a meeting with the workers at the quarry to announce that he had asked the Director of the enterprise to retire. Members of the independent trade union asked the governor to intervene to prevent harassment of those joining the independent trade union. The governor was ambiguous in his response. While saying that workers had the right to join a free trade union he also said that there should be only one union (the official trade union) at the enterprise. As he left the room he was heard to say in front of all: "There will not be an independent trade union here."⁶²

Following the attempt to set up the trade union, and the visit of the governor, Aleh Stakhaevich, was prosecuted for careless driving in what, he believes, was a fabricated case. He was called to the local police station by the traffic police on 10 January and told that he would lose his licence for dangerous driving because he had failed to stop for an elderly woman at a crossing. On 14 January, at a hearing at the headquarters of the traffic police in the district centre of Luninets, he was fined and deprived of his licence as a heavy goods vehicle driver for six months. The pedestrian did not testify and was unidentified. The video on the basis of which he was convicted showed a pedestrian crossing the road undisturbed after his car had passed. On 16 February 2012, he was informed by Granit management that he had been dismissed, but was not given any written notification. On 17 February when he arrived for the night shift he was shown off the premises by the company lawyer and armed guards. Only on 20 February was he shown the written dismissal letter which stated that he had been dismissed because he "[was] not suitable for carrying out the duties for which he or she was hired". His request to be redeployed as an assistant drill operator was unsuccessful. On 11 April 2012 his appeal to Luninets district court against his dismissal was rejected, and on 31 May 2012, a further appeal to the Brest regional court was also turned down. To date four members of the union have been dismissed from their jobs at Granit. Others have been intimidated or left the union for fear of losing their jobs and the union now has only two paid-up members.

In a report to the ILO Committee on freedom of association, the ILO Governing Body asked the government of Belarus "to provide its observations on the alleged anti-union dismissals."⁶³

Amnesty International calls on Belarus to fulfil its obligations as a state party to the ILO Convention on Freedom of Association and Protection of the Right to Organize and the Convention on the Right to Organize and Collective Bargaining by respecting and ensuring the right to establish and join independent trade unions, ensuring that conditions applicable to the establishment and registration of independent trade unions and the application of national law, do not effectively restrict this right. The Belarusian authorities should amend the 1999 Presidential Decree No. 2 to modify the requirement for a legal address so that it does not prevent independent trade unionists from exercising their right to freedom of association. In particular Amnesty International asks the Belarusian authorities to ensure that trade unionists are not subjected to discriminatory treatment and calls on the government to investigate the alleged dismissal of Aleh Stakhaevich for his union activities.

7. ENVIRONMENTAL CAMPAIGNERS

“We need free discussion – if we could discuss these issues society would be completely different.”

Tatyana Novikova, Ekodom environmental organization.

The protection of the environment is a key issue of public interest that impacts on people's rights and quality of life, and the issue is of particular importance in Belarus which was one of the countries most severely affected by the Chernobyl nuclear disaster. Yet environmental campaigners face detention and harassment for exercising their legitimate rights to receive and distribute information about the environment. The disaster at the Chernobyl nuclear power plant in 1986, which was located in northern Ukraine close to the border with Belarus, was one of the most severe in the history of the nuclear power industry, directly affecting hundreds of thousands of people. The exact number of people whose physical health was affected by the disaster is disputed to this day, and many more suffered psychological effects. The trauma and fear engendered by the accident was exacerbated by failure to keep the public adequately informed about the accident.⁶⁴ The government of the USSR did not publicly acknowledge that the accident had happened until several days after the event, and subsequent information was severely restricted. Almost thirty years later, environmental campaigners in Belarus still struggle to find information about projects that directly affect their lives, and are unable discuss their concerns publicly.

A number of UN Treaties and Declarations acknowledge the importance of the environment, and not only impose responsibilities on states to protect the environment, but also underline the importance of public participation in environmental issues.⁶⁵ Principle 10 of the Rio Declaration on Environment and Development states:

Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

In particular the 1998 Aarhus Convention underlines the human rights aspects of environmental protection. It requires public authorities to hold environmental information in the public interest, and places an obligation on states parties to guarantee the rights of

access to information, public participation in decision-making and the right to have access to a review by the courts or independent and impartial body established by law for any refusal to provide information. States parties must provide for appropriate recognition of and support to associations, organizations or groups promoting environmental protection and ensure that individuals exercising these rights are not penalized, persecuted or harassed in any way.⁶⁶ Belarus ratified the Aarhus Convention on 9 March 2000, and it entered into force on 30 October 2001. However, despite the lessons of the Chernobyl nuclear disaster, Belarus has been found in violation of its obligations under the Aarhus Convention to facilitate the participation of the public in environmental decision-making. At a meeting of the states parties to the convention in Chişinău, Moldova, in June-July 2011, the participants found that Belarus had failed to consult and inform the public in relation to two projects with significant environmental impact - a hydroelectric project on the river Neman and a nuclear power plant in Astravyets.

7.1 ASTRAVYETS NUCLEAR POWER PLANT



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In 2007 the decision was made to construct a nuclear power plant at Astravyets. The Presidential Decree No. 565, “On Some Measures to Construct the Nuclear Power Plant” of 12 November 2007, set up the Directorate for the Construction of the Nuclear Power Plant. It was decided to locate the power plant at Astravyets, a town in a rural area on the Lithuanian border famed for its natural beauty. Tatyana Novikova from the environmental organization Ekodom (Ecohome) attended the public hearing organized by the Directorate on 9 October 2009:

“The hearing about the project was held in Astravyets, 180 km from Minsk. It was difficult to get there and many people were stopped on their way there by traffic police for vague reasons and detained for an hour or two. We took a back road and managed to get to Astravyets, but when we tried to enter the hall we were told there was no room. The room was full of workers from the plant site and people from the Directorate. They had been bussed in an hour before the registration time.”⁶⁷

By the time the public hearing was held work on the development of the nuclear power plant had been under way since 2007. The developers had made the environmental impact

assessment report available at their offices in Minsk, but had not allowed any copies to be made.

At a meeting of the Compliance Committee of the Aarhus Convention during the meeting of the states parties in Chişinău in June-July 2011, the Committee found that public consultation on the Astravyets nuclear power plant was inadequate because the public were not involved in the decision as to whether to build the nuclear power plant or not, and could only discuss how to mitigate possible environmental effects, and because the public had not been given adequate access to the Environment Assessment Report. Furthermore, the consultation process was organized by the developer which was found to be inappropriate because the developer was an interested party.

Environmental activists who attempted to participate in the public hearing and to subsequently make their concerns known were subjected to administrative detentions and confiscation of their informational materials in violation of their rights to peaceful assembly and freedom of expression.

7.1.1 ADMINISTRATIVE DETENTIONS

On 9 October 2009, Andrei Ozharovski, an environmental expert from Russia, was detained when he was attending the public hearing in Astravyets. He was charged with minor hooliganism, after police accused him of creating a public nuisance by shouting and waving his arms. He was interrogated for four hours by the local police, and spent seven days in detention when he tried to enter the meeting with booklets about the project.

“Somebody from the organizing committee came out and said: ‘You can’t go in with the materials, but without them, please, it is your right.’ I didn’t have much choice so I left the package and followed him into the room. I had only taken a few steps when I heard the order: ‘Get him down!’ My right arm was twisted and I was pushed into the blue van. They shouted ‘Sit quietly! Hands on your knees! Don’t move’. I sat. What else could I do? There were eight of them.”⁶⁸

Despite having indicated well in advance his intention to attend the hearing, Andrei Ozharovski was initially prevented from attending the meeting by organizers. When he arrived he was told that the meeting was by invitation only, and he and other environmental activists were only let in at the last moment just as the meeting room was announced to be full.

On 18 July 2012, Andrei Ozharovski was detained again along with Michael Matskevich and Tatyana Novikova from Ekodom as they were on their way to deliver a letter to the Russian embassy in Minsk on the occasion of the visit of Dmitry Medvedev, the Russian Prime Minister, to sign the contract for the construction of the nuclear power station.

Tatyana Novikova and Andrei Ozharovski had been working on their letter together at her home and were just leaving the building when they were approached by law enforcement officers who claimed that they looked like particularly dangerous criminals who had been carrying out burglaries in the area. The officers took their passports and insisted that Tatyana Novikova and Andrei Ozharovski come with them to the police station. When they asked what would happen if they refused, the officers told them that they would use force. They were taken to the Moscow District police station in Minsk, where their passports and possessions

were confiscated, and they were told that they were charged with minor hooliganism for swearing in public under article 17.1 of the Administrative Code. They were sentenced by a judge a few hours later. Tatyana Novikova told Amnesty International that the trial lasted only one and half minutes. Tatyana Novikova was sentenced to five days' detention, and Andrei Ozharovski received a 10 day sentence for the same offence. Tatyana Novikova described the conditions in which she was held during her detention:

*"I spent three days sleeping on boards without a mattress, in a completely cold and damp cell, and that was quite difficult for me. The conditions that people are in here, are inhuman. They are not given bedding, they sleep on a stage in the cell, where there is a small wooden platform, and where you can lay your head, but it is impossible to sleep. There was an open toilet, causing the whole cell to stink, and prisoners had to pay 5 euros a day for food except for bread and water which was provided for free."*⁶⁹

On 29 July, Andrei Ozharovski was deported to Russia and banned from entering Belarus for 10 years.

7.1.2 RESTRICTIONS ON FREEDOM OF MOVEMENT TO THE EUROPEAN UNION

In September 2012, Tatyana Novikova and Nikolai Ulasevich, the Coordinator of the Belarusian Anti-Nuclear Campaign, were both refused entry to Lithuania. They had been invited to a conference on nuclear power at the Lithuanian parliament. The Lithuanian border guards told them that they had been put on a black list by the Ministry of Foreign Affairs of Lithuania because they represented a danger to the national security of Lithuania and other EU countries. In October 2012 they appealed against this decision to a court in Lithuania. In January, the travel ban against Nikolai Ulasevich was lifted, and the ban against Tatyana Novikova was lifted on 18 March 2013. When he asked the reasons for his ban, Nikolai Ulasevich was told by the judge that the reason was a state secret.

Amnesty International calls on the Belarusian authorities to uphold their obligations as a state party to the Aarhus Convention to guarantee the rights of access to information, public participation in decision-making and the right to have access to a review by the courts or independent and impartial body established by law for any refusal to provide information. Belarus has an obligation not only to support associations, organizations or groups promoting environmental protection, but also to ensure that individuals exercising these rights are not penalized, persecuted or harassed in any way.

The organization also calls on the Belarusian authorities to investigate the administrative detention of Andrei Ozharovski, and Tatyana Novikova, who were allegedly detained in violation of their right to freedom of assembly in July 2012. If it is found that they were arbitrarily detained they should be offered compensation in line with Belarus' obligations under Article 9 (5) of the ICCPR.

8. LGBT GROUPS

Belarus was the third republic of the former USSR to abolish criminal sanctions for homosexuality in 1994, however, there have been no other efforts to ensure that legislation protects the rights of lesbian, gay, bisexual and transgender (LGBT) individuals in Belarus. They face very high levels of negative stereotyping and social prejudice as in other post Soviet societies, and these attitudes are supported at the highest level by President Lukashenka. In March 2012, following a statement by the German Foreign Minister, Guido Westerwelle, explaining that Germany was withdrawing its ambassador in protest at human rights violations in Belarus, Lukashenka retaliated: "When I heard him – whoever he is, gay or lesbian – talking about dictatorship, I thought – it's better to be a dictator than gay."⁷⁰

Under international law Belarus has an obligation to ensure that everyone can exercise their human rights to freedom of expression, peaceful assembly and association, as well as all other rights, without discrimination on the grounds of gender identity or sexual orientation.

8.1 RESTRICTIONS ON FREEDOM OF PEACEFUL ASSEMBLY

Amnesty International has been documenting violations of the right to peaceful assembly of LGBT activists over many years:

BANNING SLAVIC PRIDE

In 2008 LGBT activists in Homel and Minsk applied for permission to hold small street actions on 4 and 10 May respectively to celebrate Slavic Pride, but both were refused permission by the respective city administrations. The Minsk activists were told that their action would block traffic. The Homel activists were told that they had not proved that they would provide adequate medical assistance or stewarding for the event, or that they would clean up afterwards, although they had demonstrated this in their application.

On 12 February 2009, an application by a group of 20 people to hold a small public awareness action about LGBT issues was refused by the Homel city administration. They said that the application did not include copies of contracts with the local police department, the health clinic and the waste disposal services to cover the expenses of ensuring public order, safety and for cleaning up after the action. The Homel District Court held that the application had been refused in accordance with the Law on Public Events and turned down the appeal.

On 8 May 2010, the Minsk City Executive Committee refused permission for a march to celebrate Slavic Pride on 15 May because the proposed route was within 200m of underground stations and pedestrian crossings. A group of demonstrators organized a peaceful march on 15 May regardless of the ban. Eight of the demonstrators were detained over the weekend and five of them were charged with taking part in an unauthorized demonstration and fined.

In October 2011 a request to hold a march for Slavic Pride on 22 October in the centre of Minsk was refused by Minsk city council on the grounds that the march would have passed within 50 metres of public buildings. An appeal to the Moscow District Court in December was turned down.

In October 2012, a request to hold a Slavic Pride march was turned down on the grounds that the local

authorities were planning an event at the same time and place. However, the activists were able to successfully hire a tram and on 11 October held a LGBT party on board a tram.

8.2 RESTRICTIONS ON FREEDOM OF ASSOCIATION - REFUSAL TO REGISTER LGBT ORGANIZATION

"This was more like a special operation against criminals. Of course, this action was intended to frighten and intimidate those who dared to proclaim their homosexuality publicly in Belarus."

Syarhei Androsenka, Coordinator of Gay Belarus.⁷¹

There are currently no registered LGBT organizations in Belarus. In 2011, the organization, Gay Belarus, attempted to register under the name of Alternativa Plyus. The application was rejected by the Ministry of Justice on 19 December 2011 on the grounds that one of the founding members was not officially registered in Hrodna region meaning that the organizations failed to achieve the minimum number of 10 founders from a majority of the regions in the country. The Ministry of Justice also found inaccuracies in the writing of the address of one founding member and the date of birth of another. In December 2012, Gay Belarus applied again for registration, this time registering under the name of Human Rights Centre Lambda. The Ministry of Justice wrote refusing registration in February 2013. This time the reason for turning down their application was that the organization did not include in its statute any activities "supporting social maturity and comprehensive development of the Belarusian youth."

Following the application to register Human Rights Centre Lambda in December 2012, LGBT activists were subjected to a series of police raids and investigations which included incidents of ill-treatment. Syarhei Androsenka, the coordinator of Gay Belarus, told Amnesty International that he believed these raids and investigation were linked to the attempt to register. On the night of 11 – 12 January 2013, police officers entered a Minsk night club "6A" where an LGBT party was taking place. They blocked the exit and interviewed everybody in the club checking their identity documents. The police claimed to be looking for an escaped convict. On the following night a similar incident occurred in Vitebsk at the 21st Century Club. At about 11pm two duty policemen entered and said that they knew there was a "sexual minorities action" going on at the club. They stayed and watched what was going on for about an hour and then left. Half an hour later a group of police and special police forces entered. They immediately asked everybody to stand facing the wall – men on one wall and women on another. They wrote down everybody's details, and filmed everybody. Syarhei Androsenka told Amnesty International: "They were quite brutal to the boys. They made homophobic jokes and some indecent comparisons."⁷²

Following these events about 60 people whose names were on the list of the founding members of the Human Rights Centre Lambda were invited for questioning by the police in 10 different cities. They were called for questioning in connection with various crimes including drug trafficking and rape, but according to Syarhei Androsenka, the questions were not related to the alleged crimes, but to the founding members' sexual activity. In many cases the police arrived at places of work or phoned up relatives causing embarrassment.

Finally, on 19 January 2013 Syarhei Androsenko was returning from Poland at the border

crossing at Brest. He was told that there was a cross against his name because his passport had been reported stolen. As he had his passport on him, the official on duty allowed him to pass and told him it was probably a mistake. On his return to Belarus, however, his passport was confiscated, and he was told that his passport had been cancelled in Minsk.

IHAR TSIKCHANYUK

"I don't want to hide myself. I live openly. It is not easy in Belarus, but I want to show people that I am a person like everybody. Maybe with my example I want to show that it is possible to live openly."



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Ihar Tsikchanyuk, an openly gay man and drag performer, was one of those questioned by police following the attempt to register Human Rights Centre Lambda in January 2013. He was held in a police station for one hour, beaten and subjected to threats and abuse for being gay before being released without charge. He told Amnesty International that he was undergoing treatment in hospital in Hrodna for a stomach ulcer when on 6 February 2013 two plain-clothes policemen entered the hospital ward and asked him to accompany them to the October District police station. He was taken to a third floor office where the police asked him a series of questions about the make of his mobile phone, car and shoes. Not understanding the reason for the seemingly pointless questions Ihar Tsikchanyuk refused to answer. He consented to bend down and find out the make of his shoes at which point he was punched in the chest and fell down. He was asked to stand up and police punched him again a total of six times. The police officers then left the room and two different police officers then entered and asked him what he had been doing in Minsk in December 2012 when he had gone to attend a meeting of Gay Belarus. Ihar Tsikchanyuk refused to answer and then a female police officer entered and knowing Ihar Tsikchanyuk, she started to scroll through the photographs of Ihar Tsikchanyuk in drag that were on his mobile phone and showed the policemen who then started to mock him for being gay and threatened him with violence. The director of the ward on which Ihar was being treated then phoned the police station and demanded that he be sent back to the hospital. The police officers released him and drove him back to the hospital. Ihar Tsikchanyuk complained about the ill-treatment he had experienced at the police station and on 13 March the Prosecutor's office informed him that there was not enough evidence to start an investigation. He has appealed against that decision, and at the time of writing was waiting for a response.⁷³

Amnesty International calls on the government of Belarus to respect the right to freedom of assembly of LGBT individuals. The organization also calls on the government of Belarus to respect the right to freedom of association of LGBT individuals by enabling them to register Human Rights Centre Lambda. Amnesty International reminds the authorities that as a state party to the ICCPR Belarus has an obligation to respect and ensure the rights of all those on its territory without discrimination on any of the grounds prohibited under international law, including gender identity and sexual orientation.

Furthermore as a state party to the UN Convention against Torture, Belarus has an obligation to prevent torture, or other cruel, inhuman or degrading treatment or punishment, and to ensure that allegations of torture and other ill-treatment are promptly, thoroughly and impartially investigated. Amnesty International calls on the authorities to ensure that there is a prompt, thorough, independent and impartial investigation into the allegations by Ihar Tsikchanyuk that he was beaten by police and targeted because of his sexual orientation. The officers responsible should be subject to disciplinary and criminal proceedings as appropriate.

9. CONCLUSIONS AND RECOMMENDATIONS

Through current legislation and practice the Belarusian authorities are seriously restricting freedom of peaceful assembly and association. Individuals and NGOs are prevented from helping groups in their society, and from making a positive contribution to their communities, society in general and government policy. Amnesty International calls on the government of Belarus to make the following changes to legislation and to ensure that officials apply legislation so as to facilitate freedom of peaceful assembly and association. By making these changes the Belarusian government will unleash the potential of Belarusian civil society to the benefit of all.

9.1 TO THE BELARUSIAN AUTHORITIES

Amnesty International calls on all relevant Belarusian officials, including the President, the General Prosecutor, the Minister of Interior and the Minister of Justice:

- to ensure the implementation in practice of all Belarus' international human rights obligations, including the ICCPR, the ILO Convention on Freedom of Association and Protection of the Right to Organize and the ILO Convention on the Right to Organize and Collective Bargaining and the Aarhus Convention, and to adhere to the principles of the UN Declaration on Human Rights Defenders;
- to respect and ensure the rights of all those on its territory without discrimination on any of the grounds prohibited under international law, including gender;
- to comply with all UN Human Rights Committee decisions where it has found violations of freedom of association, expression and assembly and to ensure redress and reparation, including the return of confiscated property and compensation as appropriate;
- to cooperate with other UN bodies including the Special Rapporteur on Belarus;
- to stop the use of criminal law in such a way as to stifle criticism of state authorities or to intimidate those who voice their peaceful dissent;
- to ensure that peaceful demonstrators are not imprisoned, harassed or ill-treated by police for exercising their rights to freedom of expression, peaceful assembly and association;
- to put an end to the pattern of obstruction, harassment and intimidation of NGOs directly and indirectly engaged in the promotion and defence of human rights in Belarus including trade unions, environmental groups, LGBT groups, as well as human rights groups;

- to release immediately and unconditionally all those who are detained solely for the peaceful expression of their political or other opinions, identity and sexual orientation.

Freedom of Association

Amnesty International calls on the Belarusian authorities review presidential decrees and laws relating to the registration and activities of non-governmental organizations to ensure the effective exercise of the right to freedom of association in accordance with Belarus' international human rights obligations. In particular:

- to immediately abolish Article 193-1 of the Criminal Code;
- to modify the application of the requirement for NGOs to provide a business address to ensure that they are not denied registration because they have found it impossible to obtain a business address;
- to abolish the administrative prohibition and criminal liability for accepting foreign grants;
- to lift the prohibition on associations keeping funds in banks in foreign countries;
- to ensure that existing laws are applied in a manner that ensures and facilitates the exercise of the rights to freedom of association and assembly rather than hampering these rights, by providing training to officials responsible for registering and monitoring the activities of NGOs so that they are fully informed of relevant Belarusian legislation and of Belarus' international obligations to guarantee the rights to freedom of association and assembly.

Freedom of Assembly

Amnesty International calls on the Belarusian authorities review presidential decrees and laws relating to public events to ensure the effective exercise of the right to freedom of peaceful assembly in accordance with Belarus' international human rights obligations. In particular:

- to make the following amendments to the Law on Mass Events:
 - reduce the restrictions on the location of events to only those which in the particular instance are demonstrably necessary for a permissible purpose recognised in international human rights law;
 - remove the requirement on organizers to provide for services to cover the event;
 - remove the extensive restrictions on who can organize events;
 - remove the requirement to report financial sources of events; and
 - remove Article 15 of the Law on Mass Events providing for the liquidation of any organization that fails to abide by that law;
 - amend the definition of pickets to exclude actions by single individuals.
- to ensure that police comply with international law enforcement standards in regard to policing demonstrations and avoid the use of force or, where that is not practicable, restrict such force to the minimum extent necessary;
- to ensure that all allegations of unnecessary or excessive use of force by police officers are promptly and impartially investigated, and that those responsible face appropriate

disciplinary and criminal proceedings. Any law enforcement official who is reasonably suspected of being responsible for arbitrary or abusive use of force should be prosecuted in proceedings which comply with international fair trial standards with penalties commensurate with the gravity of the offence, without resort to the death penalty. Victims of unlawful use of force by the police, irrespective of whether the perpetrators are identified or prosecuted, must be given reparation, including compensation.

9.2 TO THE INTERNATIONAL COMMUNITY

Amnesty International calls on the relevant members of the international community, particularly the European Union and the OSCE:

To the European Union:

- call on Belarus to make the necessary changes to legislation to ensure the effective exercise of the rights to freedom of peaceful assembly and association;
- call on Belarus to implement the decision of the UN Human Rights committee, the ILO and the Aarhus Convention;
- exert pressure for the immediate and unconditional release of all prisoners of conscience in Belarus.

To the OSCE:

- call on Belarus to respect international standards for freedom of assembly, including those of the OSCE.

ENDNOTES

- ¹ See “Лукашенко предупредил бизнес о недопустимости финансирования оппозиции” (Lukashenka warned business about unacceptability of funding opposition), Nasha Niva, 26 February 2013, <http://nn.by/?c=ar&i=105586&lang=ru>.
- ² Chatham House Briefing Paper, Orysia Lutsevych, How to Finish a Revolution: Civil Society and Democracy in Georgia, Moldova and Ukraine, January 2013, REP BP 2013/01, http://www.chathamhouse.org/sites/default/files/public/Research/Russia%20and%20Eurasia/0113bp_lutsevych.pdf.
- ³ Human Rights Council Resolution 15/21, The rights to freedom of peaceful assembly and of association, 6 October 2010, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/166/98/PDF/G1016698.pdf?OpenElement>.
- ⁴ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai, Human Rights Council Twentieth session, 21 May 2012, para. 56, p. 14 http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf.
- ⁵ See UN Human Rights Committee General Comment 31 (General Comment 31), <http://tb.ohchr.org/default.aspx?Symbol=CCPR/C/21/Rev.1/Add.13>.
- ⁶ See General Comment 31, para. 6, and cited in Report of the Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai, Human Rights Council Twentieth session, 21 May 2012, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf, para. 17.
- ⁷ See UN Human Rights Committee General Comment 27, para. 13, <http://www.unhcr.ch/tbs/doc.nsf/%28Symbol%29/6c76e1b8ee1710e380256824005a10a9?Opendocument>
- ⁸ See OSCE Guidelines on Freedom of Peaceful Assembly, second edition, <http://www.osce.org/odihr/73405?download=true>, and ODIHR Note Outlining Key Guiding Principles of Freedom of Association with an Emphasis on Non-Governmental Organizations www.osce.org/odihr/73405?download=true.
- ⁹ See ODIHR Note Outlining Key Guiding Principles of Freedom of Association with an Emphasis on Non-Governmental Organizations://www.osce.org/odihr/73405?download=true
- ¹⁰ Belarus is not a member of the Council of Europe and has not ratified the European Convention on Human Rights. However, while its rulings are not directly or formally binding on Belarus, they incorporate standards which are reflected also by numerous other bodies such as the UN Human Rights Committee, the OSCE, and the Special Rapporteur on rights to Freedom of Assembly and Association. See for instance: CASE OF THE SUNDAY TIMES v. THE UNITED KINGDOM (Application no. 6538/74) Judgment of 26 April 1979, para. 59; CASE OF EĞİTİM VE BİLİM EMEKÇİLERİ SENDİKASI v. TURKEY (Application no. 20641/05), judgment of 25 September 2012, para. 68.
- ¹¹ See UN Human Rights Committee General Comment 34, para. 11, <http://www2.ohchr.org/english/bodies/hrc/comments.htm>.

¹² See *Handyside v. the United Kingdom*, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57499#%7B%22itemid%22:%5B%22001-57499%22%7D>.

¹³ See *Handyside*.

¹⁴ See UN Human Rights Committee General Comment 34, paras. 18-19.

¹⁵ Ministry of Justice figures quoted in *Freedom of Association and Legal Status of Non-Commercial Organizations In Belarus, Annual Review 2012*, Legal Transformation Center, Assembly Of Pro-Democratic NGOs of Belarus, p. 5, <http://lawtrend.org/en/content/foundation/news/Annual-review-of-freedom-of-association-in-Belarus/>.

¹⁶ Legal Transformation Centre, *Гражданское общество Беларуси становится спортивным (Civil Society becomes Sporty)*, 26 February 2013, <http://lawtrend.org/ru/content/about/news/grazdansкое-objestvo-belarus-stanovitsa-sportivnim/>.

¹⁷ Information provided by the Belarusian Christian Democratic Party by e-mail.

¹⁸ Presidential Decree No2, 1999 “Concerning some measures to regulate the activities of political parties, professional association and other public associations”.

¹⁹ See Ministry of Justice website:

http://minjust.by/ru/site_menu/about/struktura/obschestv/registr/politpart.

²⁰ 366th Report of the Committee on Freedom of Association, ILO 316th Session, Geneva 1 – 16 November 2012, http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_193261.pdf.

²¹ See *Freedom of Association and Legal Status of Non-Commercial Organizations In Belarus, Annual Review 2012*, Legal Transformation Center, Assembly Of Pro-Democratic NGOs of Belarus, p. 6, <http://lawtrend.org/en/content/foundation/news/Annual-review-of-freedom-of-association-in-Belarus/>.

²² See *Maina Kai*, paras. 67-71.

²³ See *Freedom of Association and Legal Status of Non-Commercial Organizations In Belarus, Annual Review 2012*, Legal Transformation Center, Assembly Of Pro-Democratic NGOs of Belarus, p. 11, <http://lawtrend.org/en/content/foundation/news/Annual-review-of-freedom-of-association-in-Belarus/>.

²⁴ *Maina Kai*, p.14, para 56.

²⁵ In most post Soviet countries minor offences and misdemeanours are prosecuted under the Administrative Code. Under the Administrative Code in Belarus punishments range from fines to 15 days' imprisonment.

²⁶ At the time of writing this report Zmitser Dashkevich was again a case of concern for Amnesty International. He was sentenced to two years' imprisonment in March 2011 in connection with the mainly peaceful demonstration in December 2010. His sentence was increased by a further year in August 2012 for allegedly violating prison rules.

²⁷ An Amnesty International delegate attended the trial of Ivan Shilo. Observers from human rights organizations and embassies were initially not allowed in on the basis that the court room was full - local teachers had been instructed to attend the trial as Ivan was a minor at the time – but were allowed in after some negotiation. Ivan Shilo insisted on speaking in Belarusian and was provided with poor quality interpretation.

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- ²⁸ The details of the case are being concealed to protect the members of the church who fear that publicity may cause reprisals.
- ²⁹ Opinion on the Compatibility with Universal human rights standards of Article 193-1 of the Criminal Code on the rights of non-registered associations of the Republic of Belarus, Adopted by the Venice Commission at its 88th Session, Venice, 14 – 15 October 2011, <http://www.venice.coe.int/webforms/documents/?opinion=633&year=all>.
- ³⁰ Report of the special rapporteur on the rights to freedom of peaceful assembly and association, Maina Kai, Human Rights Council Twentieth session, 21 May 2012, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf paras 57-8.
- ³¹ UN Human Rights Committee, Communication No. 1296/2004, Adopted 24 July 2007, Aleksander Belyatsky v. Belarus, <http://daccess-dds-ny.un.org/doc/UNDOC/DER/G07/434/87/PDF/G0743487.pdf>.
- ³² Report of the Human Rights Committee, Vol. 2, part 1, p.42, http://www2.ohchr.org/english/bodies/hrc/docs/A.66.40_vol.II_partI.pdf.
- ³³ See Maina Kai, p.16 paragraph 64.
- ³⁴ Centre for legal transformation.
- ³⁵ Interview with Leanid Skarahabaty, Director of Dobraya Volya, 17 January, 2012.
- ³⁶ See UN Human Rights Committee, Communication No. 412/1990 Kivenmaa v. Finland, point. 7.6, Selected Decisions Of The Human Rights Committee Under The Optional Protocol, vol 5, p. 55, <http://www.ohchr.org/Documents/Publications/SDecisionsVol5en.pdf>.
- ³⁷ See Maina Kai, para 26 and OSCE Guidelines 2.1.
- ³⁸ The European Commission for Democracy through Law, the Venice Commission, is the Council of Europe's advisory body on constitutional matters. It was established in 1990, and provides legal advice to countries as well as cooperating with constitutional courts and ombudspersons and commissioning transnational studies, reports and seminars. In 2012 the Commission provided its opinion on the Law on Mass Events, see Joint Opinion on the Law on Mass Events of the Republic of Belarus, 20 March 2012, <http://legislationline.org/countries/country/42>.
- ³⁹ See Maina Kai, p.9 paragraph 31, and also OSCE Guidelines 5,2.
- ⁴⁰ See Maina Kai, p. 9 paragraph 29.
- ⁴¹ See European Court of Human Rights, Bukta and Others v. Hungary, <http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#%7B%22fulltext%22:%5B%22Bukta%22%2C%22documentcollectionid%22:%5B%22COMMITTEE%22%2C%22DECISIONS%22%2C%22COMMUNICATEDCASES%22%2C%22CLIN%22%2C%22ADVISORYOPINIONS%22%2C%22REPORTS%22%2C%22RESOLUTIONS%22%7D>.
- ⁴² See Maina Kai, para 91.
- ⁴³ See list of administrative punishments compiled by Human Rights Centre Viasna: <http://spring96.org/persecution/?DateFrom=2012-01-01&DateTo=2012-12-31&Page=0>.
- ⁴⁴ At that time, in 2008, Antonina Pivonos was receiving a monthly pension of approximately 400,000 Belarusian Roubles.

⁴⁵ UN Human Rights Committee, Communication No. 1830/2008, Antonina Pivonos v. Belarus, <http://www.cccprcentre.org/wp-content/uploads/2012/12/18302008-Pivonos-v.-Belarus-en-.pdf>.

⁴⁶ Belarus: Silent protests frighten regime, 30 June 2011, <http://www.bbc.co.uk/news/world-europe-13975788>.

⁴⁷ Quoted in http://www.belta.by/ru/all_news/politics/Otdelnye-predstaviteli-oppozitsii-pytalis-zakupit-elektroshokery-i-petardy---KGB_i_535954.html.

⁴⁸ <http://www.unrol.org/files/basicp~3.pdf>.

⁴⁹ OSCE Guidelines On Freedom of Peaceful Assembly, Guideline 5.7, <http://www.osce.org/odihr/73405?download=true>.

⁵⁰ See Maina Kiai, Para 93.

⁵¹ Amnesty International documented the pressure faced by human rights organizations immediately following the demonstrations in December 2010, "Belarus: "Security, Peace and Order" Violations in the wake of elections in Belarus", EUR 49/003/2011, 2 February 2011, <http://www.amnesty.org/en/library/info/EUR49/003/2011/en>.

⁵² Article 15 of a new law on the KGB passed in June 2012 gives the KGB the powers to "register and keep a record of citizens investigated on suspicion of have committed crimes." <http://www.kgb.by/okimitete/legaltexts/law04/>.

⁵³ See article on website of Front Line Defenders, *Belarus: Harassment of human rights defender Mr Oleg Volchek*, 1 November 2012, <http://www.frontlinedefenders.org/node/20551>.

⁵⁴ See <http://spring96.org/ru/news/51510>.

⁵⁵ Skype Interview with Alyaksandr Yaroshuk, Chair of the Belarusian Congress of Democratic Trade Unions, 30 January 2013.

⁵⁶ ILO Commission of Inquiry Report, published 2004 http://www.ilo.org/dyn/normlex/en/f?p=1000:50012:0::NO:50012:P50012_COMPLAINT_PROCEDURE_ID,P50012_LANG_CODE:2508289,en:NO.

⁵⁷ Under the EU's Generalised System of Preferences, countries may benefit from custom reductions and additional preferences can be granted under a special incentive arrangement for sustainable, development and good governance if the beneficiary country is (economically) vulnerable and complies with certain international conventions on human rights, environment and governance principles.

⁵⁸ Commission of Inquiry report, 2004.

⁵⁹ Website of Federation of Trade Unions of Belarus, http://www.fpb.by/ru/menu_left/about.

⁶⁰ 366th Report of the Committee on Freedom of Association, ILO 316th Session, Geneva 1 – 16 November 2012, http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_193261.pdf.

⁶¹ Interview with Amnesty International, 15 March 2013.

⁶² *Канстанцін Сумар: На «Граніце» незалежнага прафсаюзнабудзе*, RFE, 6 January 2012, <http://www.svaboda.org/content/article/24444110.html> and interviews with members of the independent trade union on 15 March 2013.

- ⁶³ See The Committee's Recommendations, 366th Report of the Committee on Freedom of Association,
- ⁶⁴ Chernobyl's Legacy: Health, Environmental and Socio-economic Impacts and Recommendations to the Governments of Belarus, the Russian Federation and Ukraine, The Chernobyl Forum: 2003–2005, p. 40 <http://www.iaea.org/Publications/Booklets/Chernobyl/chernobyl.pdf>.
- ⁶⁵ Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration) <http://www.unep.org/Documents.Multilingual/Default.asp?documentid=97&articleid=1503> and Rio Declaration on Environment and Development, <http://www.unep.org/Documents.Multilingual/Default.asp?documentid=78&articleid=1163>
- ⁶⁶ Convention on Access to Information, Public Participation in Decision-making and Access to Justice in environmental matters, <http://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf>.
- ⁶⁷ Interview with Tatyana Novikova, 8 March 2013.
- ⁶⁸ http://www.bellona.ru/articles_ru/articles_2009/ozharovsky-aftermath.
- ⁶⁹ Interview with Tatyana Novikova, March 2013.
- ⁷⁰ <http://www.spiegel.de/international/europe/better-to-be-a-dictator-than-gay-germany-slams-lukashenko-over-slur-a-819458.html>.
- ⁷¹ <http://www.guardian.co.uk/world/feedarticle/10660774>.
- ⁷² Interview with Syarhei Androsenko, 23 January 2013.
- ⁷³ Interview with Ihar Tsikchanyuk, 18 March 2013.

WHAT IS NOT PERMITTED IS PROHIBITED

SILENCING CIVIL SOCIETY IN BELARUS

This report examines the state of the rights to freedom of peaceful assembly and of association in Belarus and documents violations of these rights faced by human rights defenders, trade unions, environmental campaigners, and lesbian, gay, bisexual and transgender individuals.

Civil society activists in Belarus face constant bureaucratic hurdles, harassment and prosecution. Any form of public action, even a one-person picket, is subject to permission which is rarely granted, and peaceful demonstrators face fines or prison sentences. Four people remain in prison and labour colonies in connection with their participation in the mainly peaceful demonstration in December 2010.

As a result of restrictive legislation, and the way it is implemented, individuals and NGOs in Belarus are prevented from helping groups in their society and from making a positive contribution to their communities, society in general and government policy.

The report concludes with a list of recommendations for amendments to law and practice that could assist the government of Belarus to live up to its international human rights obligations, in particular with regard to ensuring the right to freedom of peaceful assembly and association.

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