

# 2<sup>nd</sup> cycle Universal Periodic Review of the Republic of Belarus

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- **Legal Transformation Centre (Lawtrend)**, <http://www.lawtrend.org/>
- **Assembly of Pro-Democratic NGOs of Belarus**, <http://belngo.info/>
- **Belarusian Association of Journalists**, <http://baj.by/>
- **Legal Initiative NGO**
- **Salidarnac (Solidarity) Committee**, <http://www.salidarnasc.org/>
- **Initiative for Free Exercise of Religion**
- **Office for the Rights of Persons with Disabilities**, <http://www.disright.org/>
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## TABLE OF CONTENTS

<b>General Policy in Human Rights and Rule of Law .....</b>	<b>3</b>
Cooperation with international mechanisms for protection of human rights .....	3
Recommendations:.....	4
<b>Right to Life .....</b>	<b>4</b>
The death penalty.....	4
Recommendations:.....	5
Enforced disappearances of political opponents of the regime .....	5
Recommendations:.....	5
<b>Prohibition of Torture and Inhuman Treatment .....</b>	<b>5</b>
Recommendations:.....	6
<b>Right to Fair Trial, Independence of Judges and Lawyers.....</b>	<b>7</b>
Recommendations:.....	8
<b>Privacy. Personal Data Protection.....</b>	<b>8</b>
Recommendations:.....	9
<b>Freedom of Expression .....</b>	<b>9</b>
Access to information .....	10
Recommendations:.....	10
<b>Freedom of Religion.....</b>	<b>10</b>
Recommendations:.....	11
<b>Freedom of Assembly .....</b>	<b>11</b>
Recommendations .....	12
<b>Freedom of Association .....</b>	<b>12</b>
Recommendations .....	13
<b>Equality of All Before the Law, Prohibition of Discrimination.....</b>	<b>13</b>
Recommendations:.....	14
<b>Rights of People with Disabilities .....</b>	<b>14</b>
Recommendations:.....	15
<b>Academic Freedoms.....</b>	<b>15</b>
Recommendations:.....	15

## General Policy in Human Rights and Rule of Law

1. The Belarusian authorities have failed to demonstrate the minimal required level of policy of support and respect to human rights. The UPR recommendations to release the political prisoners, to liberalize the law on freedom of expression and electoral law were declared inadmissible and have not been implemented; moreover, some of the existing legal restrictions have been further tightened. The country has no bodies responsible for formulation and promotion of human rights policy; no periodic comprehensive plans in this area have been adopted. Almost none is known about the activities of the parliamentary committee, responsible *inter alia* for the human rights issues, in the reporting period.
2. Following the UPR recommendations, the Foreign Ministry, in collaboration with the UN agencies, organized several international conferences, inviting the NGOs that are registered officially, to discuss the Ombudsmanship experience. However, the establishment of the National Human Rights Institution in Belarus did not appear in the government's public plans.
3. The recommendations formulated within the first round of the UPR, have neither been published by the government, nor discussed widely; nothing is known about preparation of any plans to take action to implement the recommendations. Meanwhile, in 2014, there were two meetings – national consultations – held to implement the recommendations of the first cycle, which were attended only by the registered NGOs. However, the public was not informed about any further steps taken to develop and implement any follow-up action plans.
4. Practically, Belarus is not involved in the modern international processes of human rights ideas development and searching for answers to the new challenges in such areas as, in particular, human rights and the fight against terrorism and extremism, human rights and privacy in the situation of the information society development.

### *Cooperation with international mechanisms for protection of human rights*

5. In its report about the implementation of the UPR recommendations, Belarus reported about cooperation with the human rights mechanisms within the UN system<sup>1</sup>. However, this information may not be a sufficient proof of the fact that Belarus is following the UPR recommendations and is willing to continue cooperating in good faith with the UN and other international organizations. In practice, Belarus implements the relevant UPR recommendations just partially or does not implement them at all. Thus, as of November 2011, Belarus implemented only 19 out of the 57 recommendations, which the country supported or recognized acceptable; 38 recommendations were either implemented in part, or not implemented at all. None of the 19 recommendations, that Belarus declared unacceptable, were implemented. As for the 15 recommendations, that Belarus declared to have been implemented, in fact, only one of them was implemented; 4 recommendations were implemented partially and 10 recommendations were not implemented at all<sup>2</sup>.

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<sup>1</sup> <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRImplementation.aspx>;

<sup>2</sup> Belarus' report on progress in implementation of the UPR recommendations [http://belhelcom.org/ru/upr\\_progres](http://belhelcom.org/ru/upr_progres);

6. Belarus continues to practice non-recognition of the UN Human Rights Committee's considerations that found violations of the International Covenant on Civil and Political Rights on the part of the Republic of Belarus.

**Recommendations:**

Belarus should cooperate in good faith with the international mechanisms for the protection of human rights, including the following:

- Submitting periodic reports to the relevant treaty bodies timely;
- Taking all the measures necessary for effective and efficient implementation of the considerations adopted in respect of Belarus by the UN Committee on Human Rights and other treaty bodies; and
- Cooperating effectively with the UN special procedures.

**Right to Life**

*The death penalty*

7. Belarus has continued pronouncing the death sentences and executing the death penalties.

8. From 2010 till August 2014, nine people have been executed in Belarus (Andrei Zhuk, Vasil Yuzepchuk, Andrei Burdyka, Aleh Hryshkavets, Ihar Mialik, Uladzislau Kavaliou, Dzmitry Kanavalau, Rygor Yuzepchuk, and Pavel Sialiu). In late 2013, two more death sentences, against Aliaksandr Grunou and Eduard Lykau, were pronounced and entered into force; however, no information about the sentences enforcement is available at the time of the report submission<sup>3</sup>.

9. The Supreme Court of Belarus has pronounced the death sentences at first instance, in particular, against Uladzislau Kavaliou and Dzmitry Kanavalau, depriving the persons convicted of the right to appeal against the sentence. The death penalty against the last two persons mentioned was executed as little as two (2) months after the death sentences against them were pronounced.

10. In five cases (Uladzislau Kavaliou, Andrei Zhuk, Vasil Yuzepchuk, Andrei Burdyka, Aleh Hryshkavets, Pavel Sialiu) the death sentences were executed despite the fact that the persons sentenced to death had submitted individual complaints to the UN HRC and the relevant security procedures were initiated in respect of them in accordance with Rule of Procedure #92 of the HRC. The Government of Belarus was notified in writing about the initiation of these security procedures. In two cases, having considered the individual complaints submitted by Andrei Zhuk and Uladzislau Kavaliou already after they were put to death, the Human Rights Committee found a violation of Article 6 of the ICCPR – the right to life – committed by the Republic of Belarus<sup>4</sup>.

11. Under the law of Belarus, the death penalty is executed non-publicly, by a firing squad; the date and place of execution are not reported, dead bodies of the executed are not given to the relatives, and the burial place is not disclosed. The Human Rights Committee has repeatedly recognized these procedures as cruel and inhuman treatment against relatives of the executed<sup>5</sup>.

<sup>3</sup> <http://spring96.org/ru/news/67915>, <http://spring96.org/ru/news/70598>;

<sup>4</sup> <http://spring96.org/ru/news/32864><http://spring96.org/ru/news/67168> <http://spring96.org/en/news/50965>  
<http://spring96.org/en/news/59260>;

<sup>5</sup> <http://spring96.org/ru/news/39159><http://spring96.org/ru/news/32532> <http://spring96.org/en/news/63801>;

**Recommendations:**

The Republic of Belarus should:

- Accede to the Second Optional Protocol to the ICCPR and repeal the death penalty;
- Introduce a moratorium on the death penalty in the short term as an interim measure before joining the Second Optional Protocol;
- Prior to the repeal of the death penalty and introduction of the moratorium, introduce amendments to the Correctional Code guaranteeing that families of the convicted have an opportunity to say goodbye and bury the bodies in accordance with their family traditions.

***Enforced disappearances of political opponents of the regime<sup>6</sup>***

12. The Belarusian authorities have still not taken the necessary action to investigate the disappearances of the political opponents of the regime in 1999 – 2000: Yury Zakharka, the former Interior Minister; Viktor Hanchar, the former Vice-chairman of the Supreme Council of Belarus, the businessman Anatol Krasousky; the journalist Dmitry Zavadsky. Therefore, the State has failed to fulfil the relevant recommendations formulated in the 2010 Universal Periodic Review. The suspicions against the senior officials, allegedly involved in the above disappearances, have not been refuted in the manner prescribed by law. In addition to the above, having considered the case of Anatol Krasousky, the Human Rights Committee found that Belarus violated the International Covenant on Civil and Political Rights, as the country had failed to provide an effective remedy, a thorough and effective investigation into the relevant facts, prosecution and punishment of the perpetrators, the appropriate information about the investigation results and an adequate compensation<sup>7</sup>.

**Recommendations:**

The Republic of Belarus should:

- Ratify the International Convention for the Protection of All Persons from Enforced Disappearance;
- Take the necessary steps towards the full and impartial investigation of the disappearances of the political activists;
- Prosecute the alleged perpetrators through an independent tribunal and, if found guilty, to ensure the punishment in accordance with the international obligations of Belarus.

**Prohibition of Torture and Inhuman Treatment**

13. Belarus has just partially implemented only one of the six recommendations formulated by the UPR Working Group in 2010. Belarus ignores the recommendations adopted by the UN Committee against Torture at the 47<sup>th</sup> session in November 2011.

14. Belarus still fails to make declarations under Article 21 and Article 22 of the Convention against Torture (hereinafter the Convention<sup>8</sup>) and to accede to the Optional Protocol to the Convention.

<sup>6</sup> More information about enforced disappearances in a report by the Belarusian Documentation Centre: <http://spring96.org/files/misc/individual-submission-to-the-universal-periodical-revue-of-belarus-bdc.pdf>

<sup>7</sup> <http://www1.umn.edu/humanrts/russian/hrcommittee/Rview1820sess104.html>;

<sup>8</sup> Report by the Belarusian NGOs and HRDs about Belarus' compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, related to the report of Belarus at the 47<sup>th</sup> session of the UN Committee against Torture (October 2011): <http://protivpytok.org/doklad-beloruskix-nepravitelstvennyx-organizacij-i->

In the reporting period, a definition of torture, consistent with Article 1 of the Convention, was not included in the national legislation. The relevant draft amendments to the Criminal Code were submitted to the Parliament as early as in 2013; however, by the time of the report submission they have not been adopted.

15. Lawyers are still not admitted to prisoners or detainees. The country lacks an effective mechanism for investigation into complaints of torture or ill-treatment filed with the state authorities. The officials under investigation into complaints of torture are not suspended from their office for the investigation period. It is problematic to record injuries inflicted on prisoners in the custodial institutions because structurally the medical services are a part of the prison system.

16. There is no effective mechanism in Belarus to appeal against the improper conditions of administrative detention. The prosecutor's office forwards these complaints to the agencies against which they are filed. The complaints are not considered on merits, and formal run-around responses are given, claiming that the detention conditions comply with the legislation<sup>9</sup>.

17. During the reporting period, the trial proceedings of torture cases have not become more fair and efficient. The courts have not issued a single decision to punish the perpetrators and to recompense the victims for the harm<sup>10</sup>.

18. In Belarus, there are public monitoring commissions established to monitor the activities of the bodies executing the punishments; but these commissions are totally dependent on the Ministry of Justice and fail to monitor the punishments effectively. A monitoring commission may visit a prison facility only with the prior approval of the Department for Execution of Sentences of the Interior Ministry. Although, the legislation was amended so that to provide for the right of the commission members to meet with detainees in private, without the presence of the penitentiary administration, in practice this right is often violated.

19. The legislation does not provide for public control over other closed institutions (pre-trial detention facilities, administrative detention facilities, temporary detention facilities and police stations, psychiatric hospitals)<sup>11</sup>.

#### **Recommendations:**

Belarus should bring the law and practice regulating the freedom from torture and ill-treatment in accordance with international standards, which includes the following:

- Strictly obeying the absolute prohibition of torture;

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pravozashhitnikov-po-soblyudenyu-respublikoj-belarus-konvencii-protiv-pytok-i-drugix-zhestokix-beschelovechnyx-ili-unizhayushhix-dostoinstvo-vid;

<sup>9</sup> Interim overview of Belarus' compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: <http://protivpytok.org/nashi-dostizheniya/obzor-po-soblyudenyu-respublikoj-belarus-konvencii-protiv-pytok>;

<sup>10</sup> *Ibid.*

<sup>11</sup> Alternative information provided in the follow-up to the concluding observations of the Committee against Torture, adopted at the 47<sup>th</sup> session (March 2014): [http://protivpytok.org/alternativnaya-informaciya-predstavlyayushhayasyav-ramkax-posleduyushhej-deyatelnosti-po-zaklyuchitelnyh-zamechaniyam-komiteta-protiv-pytok-prinyatyx-na-47-sessii-podgotovlena-belorusskoj-obshhestve?preview=true&preview\\_id=1869&previ](http://protivpytok.org/alternativnaya-informaciya-predstavlyayushhayasyav-ramkax-posleduyushhej-deyatelnosti-po-zaklyuchitelnyh-zamechaniyam-komiteta-protiv-pytok-prinyatyx-na-47-sessii-podgotovlena-belorusskoj-obshhestve?preview=true&preview_id=1869&previ);

- Incorporating a definition of torture consistent with the definition in Article 1 of the Convention in the domestic law;
- Acceding to the Optional Protocol to the Convention against Torture;
- Ensuring prompt, impartial and full investigations into all allegations of torture and ill-treatment of individuals subjected to arrest, detention or imprisonment;
- Suspending all officials under investigation from their office for the period of investigation into a complaint of torture;
- Revising the procedure for the formation of public monitoring commissions who monitor the penitentiary institutions, so that to provide for the participation of representatives of independent civil society organizations, including human rights organizations, in such commissions;
- Cancelling the notification procedure for visits to prisons; to legitimize the possibility for public control over other closed institutions.

## **Right to Fair Trial, Independence of Judges and Lawyers<sup>12</sup>**

20. In 2011, the Presidential Decree was adopted on measures to improve the operation of common law courts in the Republic of Belarus. This Decree outlined a number of positive measures to develop the system of courts of common law, such as the introduction of appealing elements in the criminal proceedings with the further wider use of them in the criminal and civil proceedings; the mediation procedure for the certain categories of cases; considering the possibility of introducing jury trials and others. However, most of the Decree provisions have remained just plans.

21. The executive authorities continue to play a crucial role in the appointment of judges. The dependence of judges from the executive power is even exacerbated by the short tenure periods (in 2013 – 2014, only 15% of judges were appointed for an unlimited period).

22. It should be noted that on November 29, 2013, Presidential Decree #6 was adopted on improvement of the judicial system in the Republic of Belarus. According to this Decree, since January 1, 2014, the organization, logistics and staffing of courts' activities have been devolved from the Ministry of Justice to the Supreme Court, which formally reduces the dependence of courts and judges from the executive authorities. At the same time, the Presidential Administration still includes the General Directorate for Relations with Legislative and Judicial Bodies and Issues of Citizenship and Pardon<sup>13</sup>. This Directorate, among other things, submits for the President's consideration its proposals for appointment and dismissal of judges, conferring qualification classes on judges; it prepares the relevant Presidential acts, develops the draft Presidential acts on the matters related to the work of the judicial authorities. In fact, it performs the functions that, in most countries, fall within the competence of a body, which is mainly composed of judges and is referred to as the Judicial Council, Council of Judges or Supreme\ High Council of Justice.

23. There is a persistent problem of politically motivated court decisions (e.g. the judgments against the defendants in the criminal investigation into the riots in Minsk in December 2010, the verdict

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<sup>12</sup> For more details about the judicial independence problems see the report of the Belarusian Helsinki Committee: <http://belhelcom.org/ru/sud>

<sup>13</sup> <http://www.pravo.by/main.aspx?guid=12551&p0=P31300264&p1=1&p5=0>

against the human rights defender Ales Bialiatski, the judgements against the anarchists; as a result the convicts were recognized as political prisoners).

24. The adoption of Order #11, dated December 20, 2013, on ensuring transparency in the administration of justice and on dissemination of information about work of courts, adopted by the Plenum of the Supreme Court and aimed at ensuring the publicity of trials, should be recognised as a positive development. However, in practice, the provisions of the Order, in terms of ensuring the transparency and openness of the court proceedings, are often ignored by the courts<sup>14</sup>.

25. On January 1, 2013, the Law on the Bar and Legal Profession came into force, having increased the dependence of lawyers and lawyers' self-government bodies on the executive branch, in particular, on the Ministry of Justice<sup>15</sup>.

26. The rate of acquittals remains extremely low – in 2013 acquittals made 0.44%<sup>16</sup>.

27. The national legislation does not provide for the possibility of cassation of the sentences (including the death sentences) and decisions in the cases heard by the Supreme Court at first instance.

#### **Recommendations:**

To improve the administration of justice and the independence of judges, Belarus should:

- Devolve all the functions, in terms of the selection, appointment, dismissal from office and disciplining of judges, from the executive bodies to the judges' self-government bodies;
- Expand the practice of appointment of judges for unlimited periods by making the appropriate amendments to the legislation;
- Eliminate the practice of using the court as a tool of persecution of dissidents;
- Reform the legal profession in accordance with the international standards, in particular, by eliminating the excessive control over the legal profession on the part of the Ministry of Justice and giving greater powers to lawyers' self-management bodies.

### **Privacy. Personal Data Protection**

28. In Belarus, there is no law on the protection of personal data<sup>17</sup>.

29. The legislation regulating personal data protection lacks consistency. The Law on Population Register and the Law on Information, Informatization and Protection of Information contain inconsistent definitions of "personal data", which results in the impossibility of a uniform approach to the legal regulation of protection of personal data.

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<sup>14</sup> <http://belhelcom.org/sites/default/files/analytical%20report%20jan%20apr.pdf>;

<sup>15</sup> [http://by.prava-by.info/wp-content/uploads/2014/07/advokat\\_itoh.pdf](http://by.prava-by.info/wp-content/uploads/2014/07/advokat_itoh.pdf);

<sup>16</sup> [http://www.court.by/justice/press\\_office/press\\_release/a699dc51159a2cf5.html](http://www.court.by/justice/press_office/press_release/a699dc51159a2cf5.html);

<sup>17</sup> Reference document "Free Access to Internet: Political Principles and Rule of Law. Belarus in Global Context: [http://www.lawtrend.org/wp-content/uploads/2014/06/SVOBODNYJ-INTERNET\\_F\\_CHG\\_ITOG.pdf#viewer.action=download](http://www.lawtrend.org/wp-content/uploads/2014/06/SVOBODNYJ-INTERNET_F_CHG_ITOG.pdf#viewer.action=download);



30. The legislation fails to specify who is responsible for the personal data flow, as well as the liability for a breach of the rules for handling personal data. In practice, this results in impunity. In 2012, due to “a technical failure”, the personal data of a number of politicians, human rights defenders and journalists were entered into the database registering individuals for whose right to leave Belarus is temporarily restricted, and they were banned from leaving the country. Later, the Interior Ministry acknowledged the mistake and removed all the persons erroneously included in that database, but none of the perpetrators were held liable.

31. Presidential Decree #60 on measures to improve the use of the national segment of the Internet, is still in force. The Decree provides for a number of restrictions on the rights to privacy. It requires identification of customers’ devices when providing the Internet services, as well as obtaining information about the online services provided and storing this information within a year, which is an arbitrary interference with an individual’s private life and correspondence within the meaning of Paragraph 1, Article 17 of the Covenant. This interference is committed through the total control over the customers’ Internet connections and visiting the customers’ webpages. The purpose of storing information about the online services provided within a year is also unclear, as this provision fails to comply with the provisions of the Covenant and to pursue the lawful purposes of a democratic society.

**Recommendations:**

- The legislation should provide for sufficient guarantees for the protection of personal data in the course of commercial use, as well as for an authorized state body responsible for the implementation of the guarantees.

## **Freedom of Expression**

32. Belarus continues to violate the right to freedom of expression and freedom of information<sup>18</sup>.

33. The Law on Mass Media provides for the mandatory registration of the media on the permissive principle and enables the government to close the media even for minor violations. Accreditation is used to restrict journalists’ access to information; correspondents of the foreign media also face additional restrictions. Criminal prosecution for libel and slander, as well as the anti-extremism law, along with other laws, are used to restrict the freedom of the media and harass independent journalists and publishers.

34. The state media receive substantial budgetary subsidies, more favourable conditions for the distribution and advertising clientele. Meanwhile, independent newspapers are faced with economic discrimination and barriers to the distribution.

35. The Prosecutor’s Office and the State Security Committee (the KGB) issue warnings to the Belarusian journalists for their cooperation with the media registered in other countries; some journalists have been persecuted and hold administratively liable for their cooperation with the foreign media.

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<sup>18</sup> [http://baj.by/sites/default/files/monitoring\\_pdf/belarus\\_media\\_freedom\\_eng\\_web.pdf](http://baj.by/sites/default/files/monitoring_pdf/belarus_media_freedom_eng_web.pdf);

36. The police often detain journalists using violence. This problem is particularly acute for reporters covering the mass street protests.

37. Despite the constant pressure on the part of the international organizations and bodies, the national authorities are unwilling to discuss the recommendations about the amendments to the law on the mass media and its application in practice, that could bring the situation of the freedom of the media in Belarus in line with the international standards.

38. The cases when the Belarusian authorities applied the anti-extremism laws, which sometimes took the form of censorship, including against the works of art, literary works, etc., provoke particular concern.

### ***Access to information***

39. In Belarus, the legislation does not provide for an effective mechanism for individuals' access to the public sector information. The Law on Information, Informatization and Protection of Information<sup>19</sup> enables the authorities to limit the access to the public sector information arbitrarily, while the tools to appeal against the administrative decisions are not effective.

40. Since 2010, according to the Presidential Decree, the access to a number of websites containing "the information forbidden for distribution in accordance with the legislative acts"<sup>20</sup> is forbidden for the public authorities and institutions, as well as for organisations in the education and culture sector. The appeals against these restrictions were not satisfied.

### **Recommendations:**

In order to improve the situation of the freedom of expression, Belarus should:

- Take steps for creation of the social broadcasting media and a competitive media market;
- Ensure the equal access to the national media distribution system for all the political mass media;
- Stop the practice of arbitrary detention of journalists, including when they cover mass events;
- Ensure equal opportunities for professional activities for any media journalists, including freelancers;
- Ultimately simplify the procedure of registration for the mass media;
- Decriminalize defamation;
- Stop using the accreditation to limit the access to information.

## **Freedom of Religion**

41. The legislation prohibits and criminalises religious activities carried out without the state registration of a religious community. Article 193-1 of the Criminal Code of Belarus provides for the

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<sup>19</sup> <http://www.pravo.by/main.aspx?guid=3871&p2=2/1552>;

<sup>20</sup> Regulation on the procedure for restriction of the access to information, forbidden for distribution in accordance with the legislative acts, for the Internet services users; accessible via: <http://providers.by/zakony/ob-utverzhdanii-polozheniya-o-poryadke-ogranicheniya-dostupa-polzovatelej-internet-uslug-k-informacii-zapreshhennoj-k-rasprostranenyu-v-sootvetstvii-s-zakonodatelnymi-aktami/>;

criminal liability for organizing of or participating in the activities of a religious organization which has not been registered. For the reporting period, the Prosecutor's Office has issued warnings under this article; also a criminal case was initiated, but later it was discontinued.

42. It is permitted to conduct religious events in the premises which do not have the status of worship premises only with a permit obtained in accordance with the Law on Mass Events.

43. In Belarus, the foreign nationals cannot be leaders of religious organizations and can carry out other religious activities only after the relevant permission has been obtained.

44. The right to distribute a religious materials through creation of their own media is limited by the fact that it is ensured only for religious associations, while the registration of a religious association is problematic for many confessions.

### **Recommendations:**

The legislation and practice in the field of freedom of religion or belief should be brought in line with the relevant international standards; this implies:

- Abolishing the mandatory state registration of religious communities;
- Abolishing the requirement to obtain permits for conduct of religious activities in the premises possessed lawfully by religious organizations;
- Removing the legal restrictions on creation of the media by various religious organizations;
- Enabling the foreign nationals, lawfully residing in Belarus, to implement their right to freedom of religion in full, without obtaining additional permits (i.e. to be founders and leaders of religious organizations, to carry out legitimate religious activities, including teaching in religious schools);
- Excluding from the legislation the provisions, which limit religious organizations' activities to the territory specified in their statutes.

## **Freedom of Assembly**

45. None of the UPR recommendations about the implementation of the right to peaceful assembly was considered acceptable by Belarus. The Belarusian legislation still provides for excessive restrictions on peaceful assembly. The amendments to the Law on Mass Events, adopted in 2011, seriously worsened the legal framework for the exercise of the freedom of peaceful assembly and were criticized by the European Commission for Democracy through Law, together with the OSCE ODIHR, as failing to meet the relevant international standards<sup>21</sup>.

46. The law provides for the authorization procedure of any public events. It is prohibited by the law and local authorities' decisions to hold meetings in public places or near buildings housing the authorities and executive bodies. The same rules apply to meetings held indoors and single-person pickets, as well as to any advertising and commercial promotion events.

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<sup>21</sup> [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2012\)006-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2012)006-e);

47. Any peaceful assemblies, held without a permission from the authorities, are immediately dispersed, often with a disproportionate use of physical force and special means. From January 2010 to August 2014, more than 1,200 people were sentenced to short-term arrest and fines for their participation in peaceful assemblies, demonstrations and pickets<sup>22</sup>.

### Recommendations

- Belarus should bring the law, governing the procedure for the conduct of mass events and establishing the responsibility for its violation, in accordance with the international standards on freedom of assembly.

### Freedom of Association

48. Despite the fact that, following the results of the previous UPR, Belarus declared admissible a number of recommendations to improve the situation of the freedom of association and the conditions for activities of the civil society organizations<sup>23</sup>, no significant changes in this area have occurred.

49. The amendments, made to the Law on Social Associations in 2013, somewhat softened the technical requirements for establishing of associations, but the registration procedure remained difficult, and a wide range of the possible grounds for refusal enables the Ministry of Justice to arbitrarily deny the registration on the basis of technical violations or minor flaws in the documents design<sup>24</sup>. In 2010 – 2014, the Ministry of Justice refused to register dozens of associations, including human rights associations<sup>25</sup>. The Law provides for appeals against these decisions, but in practice the courts never satisfy the claims<sup>26</sup>.

50. The actual conditions for creation of political parties make it impossible to implement the right to establish a new political party. Last time a new party was registered was in 2000<sup>27</sup>.

51. In the autumn of 2011, Article 369-2 was added to the Criminal Code of Belarus to establish liability for violation of the procedure for receiving donations from abroad, which seriously complicated the conditions for NGOs' activities<sup>28</sup>. It is required to obtain the consent from the state in

<sup>22</sup> <http://spring96.org/persecution?JDateFrom=2010-01-01&JDateTo=2014-08-01&ArticleID=26&page=37>;

<sup>23</sup> These include the recommendations of Belgium, Bolivia, Canada, Indonesia, Lithuania, Netherlands, Norway, Poland, Spain and Switzerland which were considered acceptable;

<sup>24</sup> Freedom of Association and the Legal Status of Non-Profit Organizations in Belarus in 2013, published by the Assembly of Pro-Democratic NGOs and the Legal Transformation Center. <http://belngo.info/2014.the-assembly-of-pro-democratic-ngos-and-the-legal-transformation-center-lawtrend-analyzed-the-situation-in-the-civil-sector.html>;

<sup>25</sup> In particular, see: Freedom of Association and the Legal Status of Non-Profit Organizations in Belarus in 2012, published by the Assembly of Pro-Democratic NGOs and the Legal Transformation Center: <http://belngo.info/2013.freedom-of-association-and-legal-status-of-non-commercialorganizations-in-belarus.html>;

<sup>26</sup> Monitoring freedom of association and the status of non-profit organizations in Belarus for the second quarter of 2014, published by the Assembly of Pro-Democratic NGOs and the Legal Transformation Center: <https://docs.google.com/file/d/0Bwh6rJZ1JOWsQmZTM1BzUGh2a28/edit>;

<sup>27</sup> See the official website of the Ministry of Justice:

[http://minjust.by/ru/site\\_menu/about/struktura/obschestv/registr/politpart](http://minjust.by/ru/site_menu/about/struktura/obschestv/registr/politpart);

<sup>28</sup> Analysis of Amendments Initiated to be Introduced into the Legislation of the Republic of Belarus. Analytical Note by Belarusian Human Rights Defenders. October 17, 2011, published by the Assembly of Pro-Democratic NGOs, Belarusian Helsinki Committee, Human Rights Center "Viasna", Legal Transformation Center. <http://www.belhelcom.org/en/node/14434>;

order to receive foreign donations. Corporate donations can only be obtained for an exhaustive lists of purposes<sup>29</sup>.

52. The opportunities for NGOs to collaborate with the authorities have deteriorated. In September 2011, the Public Advisory Council under the Presidential Administration was dismissed<sup>30</sup>. In the autumn of 2013, significant amendments were made to the Electoral Code without the preliminary publication of the draft law and discussing it with the political parties and NGOs<sup>31</sup>.

53. Despite the numerous recommendations of the previous round of the UPR regarding Article 193-1 of the Criminal Code<sup>32</sup>, which provides for up to two years in prison for activities carried out within an unregistered NGO, this article has not been repealed<sup>33</sup>. Criminal cases are still initiated under this article<sup>34</sup> and the Prosecutor's Office and the KGB regularly issue warnings about the possible criminal liability against the members of unregistered associations<sup>35</sup>.

## Recommendations

Belarus should:

- Bring the law and practice related to the freedom of association and the legal regulation of the civil society organizations in line with the international standards, that is to decriminalize the organization of and participation in activities of unregistered associations, and to lift the ban on unregistered associations;
- Simplify the procedure for registering of political parties and other public associations and foundations;
- Abolish the requirement for pre-registration of the foreign donations by the public authorities, as well as the exhaustive lists of the purposes for which the foreign donations and donations from the Belarusian entities may be received;
- Empower the civil society organizations to attract donations, and provide tax incentives for donations made by the Belarusian business; develop a non-discriminatory and open system of financing of NGOs from the state budget on a competitive basis;
- Legislate the mechanisms of consultations between the government and the civil society organizations, and discuss with the civil society organizations the draft laws that affect them.

## Equality of All Before the Law, Prohibition of Discrimination<sup>36</sup>

<sup>29</sup> Assessment of the Legal Framework for Non-Governmental Organizations in the Republic of Belarus, September 2013, International Center for Not-for-Profit Law under Belarus Reforms and Media Assistance Program (BRAMA), p. 76 [http://www.icnl.org/programs/eurasia/Belarus\\_Assessment%20of%20NGO%20Legislation.pdf](http://www.icnl.org/programs/eurasia/Belarus_Assessment%20of%20NGO%20Legislation.pdf);

<sup>30</sup> Makey dissolves Public Advisory Council: [http://naviny.by/rubrics/english/2011/09/23/ic\\_articles\\_259\\_175213/](http://naviny.by/rubrics/english/2011/09/23/ic_articles_259_175213/);

<sup>31</sup> Report of the Special Rapporteur on the situation of human rights in Belarus (A/68/276), point 35: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N13/420/01/PDF/N1342001.pdf?OpenElement>;

<sup>32</sup> The recommendations of Belgium, the Czech Republic, France, Israel, the Netherlands and Poland.

<sup>33</sup> Assessment of the Legal Framework for Non-Governmental Organizations in the Republic of Belarus, September 2013, International Center for Not-for-Profit Law under Belarus Reforms and Media Assistance Program (BRAMA), p. 93 [http://www.icnl.org/programs/eurasia/Belarus\\_Assessment%20of%20NGO%20Legislation.pdf](http://www.icnl.org/programs/eurasia/Belarus_Assessment%20of%20NGO%20Legislation.pdf);

<sup>34</sup> Shchuchyn resident faces criminal charges under Art. 193.1: <http://spring96.org/en/news/64021>;

<sup>35</sup> New Wave of Warnings Under Article 193.1: <http://belngo.info/2013.new-wave-of-warnings-under-article-193-1.html>

<sup>36</sup> For more information see the report *Half an Hour to Spring: Addressing Discrimination and Inequality in Belarus*, published by the Equal Rights Trust (ERT), in partnership with the Network for Equality and Non-Discrimination in

54. The Belarusian legislation has established only the general equality and non-discrimination principles. A definition of discrimination is found only in the Labour Code. No special anti-discrimination mechanisms have been provided for, therefore, in practice, there is no effective remedies against discrimination.

55. The studies show the occurrence of discrimination on various grounds, such as age, gender, religion, ethnicity, sexual orientation, political beliefs, disability, and language.

56. The Government has taken some measures to protect vulnerable groups and minorities, especially to eliminate domestic violence and to protect women's rights, to support people with disabilities, to widen the inclusion of the ethnic minorities. An international conference has been held in cooperation with the OHCHR on the issue of hate speech.

### **Recommendations:**

Belarus should develop and promote an inclusive system of measures to ensure the actual equality and to develop anti-discrimination remedies; this implies the adoption of a special comprehensive anti-discrimination law, which would be based on the international standards and prohibit discrimination on a non-exhaustive list of grounds, including race, colour, ethnicity, gender, marital status, language spoken, religion and beliefs, political or other views, national and social origin, nationality, sexual orientation, gender identity, age, disability, and health condition.

## **Rights of People with Disabilities**

57. In 2013 – 2014, the official sources continued to report about the preparation of a draft law on the accession of Belarus to the Convention on the Rights of Persons with Disabilities<sup>37</sup>. Despite the repeated statements about the country's readiness, including the expert opinion about the compliance of the Belarusian law provisions with the Convention<sup>38</sup>, the Parliament is not going to discuss the Convention in 2014<sup>39</sup>.

58. Despite the representative seminar held by the Council of the Republic of the National Assembly<sup>40</sup>, the draft law on the accession to the Convention has not been presented and publicised. At present, Belarus is not even considering the question of signing the Optional Protocol to the Convention.

59. Despite the official claims about bringing the domestic policy in compliance with the provisions of the Convention, the opposite reaction has been recorded in Belarus for a number of indicators. The policy of segregation on the grounds of disability has been steadily expanding<sup>41</sup>.

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Belarus: [http://belhelcom.org/sites/default/files/belarus%20cr\\_russian\\_4web.pdf](http://belhelcom.org/sites/default/files/belarus%20cr_russian_4web.pdf)

<sup>37</sup> [http://www.belta.by/ru/all\\_news/society/V-Belarusi-dorabatyvaetsja-zakonoproekt-O-prisoedinenii-Belarusi-k-Konventsii-o-pravax-invalidov\\_i\\_616658.html](http://www.belta.by/ru/all_news/society/V-Belarusi-dorabatyvaetsja-zakonoproekt-O-prisoedinenii-Belarusi-k-Konventsii-o-pravax-invalidov_i_616658.html), [http://www.belta.by/ru/all\\_news/society/Belarus-gotova-prisoedinitjsja-k-Konventsii-OON-o-pravax-invalidov\\_i\\_661182.html](http://www.belta.by/ru/all_news/society/Belarus-gotova-prisoedinitjsja-k-Konventsii-OON-o-pravax-invalidov_i_661182.html);

<sup>38</sup> <http://center.gov.by/reportPROON.html>;

<sup>39</sup> <http://house.gov.by/index.php/,7034,,,0,,,0.html>;

<sup>40</sup> <http://www.sovrep.gov.by/index.php/1.9043.2..0.0.0.html>;

<sup>41</sup> [http://www.mintrud.gov.by/ru/news\\_ru/view/informatsija-o-sistemeministerstvatruda-i-sotsialnoj-zaschitynbsprespubliki-belarus\\_2259](http://www.mintrud.gov.by/ru/news_ru/view/informatsija-o-sistemeministerstvatruda-i-sotsialnoj-zaschitynbsprespubliki-belarus_2259);

60. In Belarus, people with disabilities do not have the legal capacity on an equal basis with others in all aspects of life. They are often incapacitated without sufficient grounds; at the same time, people with disabilities cannot initiate restoration of their legal capacity themselves. Often the cases on incapacitation are heard without the participation of the persons deprived of capacity. This practice has formed the basis for the decision of the Constitutional Court about the need for reform this institution<sup>42</sup>, but no reform has ever happened.

**Recommendations:**

Belarus should:

- Sign and ratify the Convention on the Rights of Persons with Disabilities and the Optional Protocol to the Convention on the Rights of Persons with Disabilities;
- Bring the Belarusian legislation and practice into conformity with the Convention on the Rights of Persons with Disabilities.

## Academic Freedoms

61. Violations of academic freedoms in Belarus' universities remain systematic and widespread.

62. In the education system, there is evidence of restrictions and violations of the fundamental freedoms, such as the freedom of association, freedom to elect and to be elected, freedom of movement and travel; the right to participate in the University management is limited, improper disciplinary actions are taken and forced labour is used. Therefore, the students are under pressure on the part of the administration of educational institutions; the pressure still increases when important public events occur<sup>43</sup>. The pressure has increased against the students participating in the activities of the civil society organizations, despite the fact that the Education Code prohibits the use of educational and training processes for political purposes.

63. There is evidence of illegal persecution of lecturers for their political views and the implementation of their right to freedom of expression. Thus, one of the remarkable examples is the prosecution and dismissal of the lecturers and scholars at the Grodno State University.

64. The authorization procedure remains for the students travelling abroad during the academic year. An increase has been recorded in the number of students expelled for political reasons<sup>44</sup>.

**Recommendations:**

Belarus should:

- Abide strictly by the prohibition to use the educational and training processes for political purposes as stipulated by the Education Code;
- Repeal all restrictions of freedom of movement, including the authorization-based procedure for

<sup>42</sup> <http://www.kc.gov.by/main.aspx?guid=32173>;

<sup>43</sup> [http://bolognaby.org/wp-content/uploads/2014/07/Monitoring\\_academic\\_freedom\\_Belarus\\_Jan-May-2014\\_RU.pdf](http://bolognaby.org/wp-content/uploads/2014/07/Monitoring_academic_freedom_Belarus_Jan-May-2014_RU.pdf),  
<http://salidarnasc.org/en/content/отчет-о-результатах-деятельности-мониторинга-нарушений-академических-свобод-в-вузах-беларуси>;

<sup>44</sup> <http://www.salidarnasc.org/content/адлічэнне-студэнтаў-па-палітычных-матывах-павялічылася>;

the students and teachers travelling abroad;

- Discontinue the practice of politically-motivated expulsions of students and dismissals of teachers and professors.