

STATEMENT UPR Pre-session on Belarus

Geneva, 03/04/2020

Delivered by Vasil Sankovic on behalf of the Belarusian Helsinki Committee

1. Presentation of the Organisation

BHC is an independent, non-profit public human rights association founded on November 1, 1995. BHC has participated in UPR processes at the national level since 2009. We have coordinated the preparation of joint alternative reports by Belarusian human rights organizations starting from 2014.

2. National consultations for the drafting of the national report

National consultations on the UPR were organized by the Ministry of Foreign Affairs of Belarus, with the active participation of the UN office in Minsk. They were held in late 2019 - early 2020 and included 2 sessions on civil and political rights and socio-economic and cultural rights. However, these events can hardly be called consultations, since they covered a very limited range of issues and did not provide for a wide discussion of the UPR agenda.

3. Plan of the Statement

This statement addresses the following issues: (1) General policy on human rights and the rule of law (2) Equality and non-discrimination (3) Independence of the judiciary and legal profession.

(1) General policy on human rights and the rule of law

An analysis of the preparation of the alternative report showed that Belarus has implemented 12 recommendations, 2 recommendations are being implemented, 111 recommendations partially implemented (including 29 from the list of unsupported recommendations), 130 recommendations not fulfilled (including 73 from the list of unsupported recommendations).

Since 2015, no substantial change has been observed in the legal and institutional human rights framework. On a positive note, the National action plan on human rights (NAPHR) for 2016–2019 was adopted.

Several meetings were conducted to discuss legislative changes in the field of human rights with the participation of civil society representatives. However, specialized CSOs were not always invited to such events. Moreover, no permanent platforms for discussing relevant human rights issues have been established.

A number of human rights legislative acts have been amended. However, they are very far from full compliance with international human rights standards and obligations.

The authorities have not demonstrated significant progress in establishing a national human rights institution.

Recommendations

- a. Strengthen cooperation with civil society on protection and promotion of human rights, provide an institutional framework for cooperation with human rights organizations.
- b. Develop and adopt a National Action Plan on Human Rights including progress indicators, with broad participation of civil society.
- c. Create a national human rights institution in accordance with the Paris Principles.
- d. Take all measures necessary for the effective and efficient implementation of the Views of UN treaty bodies adopted in relation to Belarus.

(2) Equality and non-discrimination

The State has not taken sufficient steps to develop comprehensive anti-discrimination legislation. As part of the implementation of the National Action Plan on Human Rights, the responsible state authorities conducted the feasibility analysis of adopting anti-discrimination legislation.

One of the significant problems in the implementation and protection of the right to equal treatment and non-discrimination is the lack of effective mechanisms for handling discrimination complaints. In the absence of a national human rights institution, one of the few ways to protect the right to equal treatment is appealing to courts. In practice, however, legal positivism makes it difficult to use a court appeal as a means to protect the right to equal treatment.

After being submitted to the Parliament, the existing comprehensive draft law on domestic violence was criticized by the President and its consideration and adoption were stopped.

The Government has not taken additional measures to reduce instances of racial discrimination; no separate statistics on such cases are available. There are still incidences of discrimination against Roma. The information was revealed about departmental acts in the MI, providing for measures of ethnic profiling in relation to the Roma. Belarus does not have a state program for social integration of the Roma population, which makes it virtually impossible for the Roma to exercise their rights.

There are no separate statistics on hate crimes; instead of a bias motive, sentences on hate crimes often refer to hooliganism.

Recommendations

- a. Adopt comprehensive anti-discrimination legislation defining direct and indirect discrimination, as well as other forms of its manifestation.
- b. Create an effective mechanism for protection and prevention of discrimination, including mandatory anti-discrimination assessment of draft regulatory legal acts.
- c. Adopt a program for social integration of Roma, providing for positive actions to ensure their equality in different spheres of public life.
- d. Based on a comprehensive anti-discrimination law, develop legislation on the Rights of Persons with Disabilities driven by anti-discrimination and human rights approaches.

(3) Independence of the judiciary and legal profession

In 2016, the Code on the Judicial System and the Status of Judges was amended to provide delegation to the Supreme Court of authority for organizational and logistical support of general jurisdiction courts, as well as the transfer of internal control over the compliance of general jurisdiction courts activities with legal requirements. Thus, these functions were excluded from the ambit of executive authority, i.e. the Ministry of Justice, which is a positive change.

However, judicial reform failed to solve the key issues of judicial independence. As before, final decisions on key judiciary issues are made by the President and the administration.

The legislation does not provide clear criteria for appointing judges for an indefinite term.

The President has an extremely vast range of opportunities to dismiss judges or bring disciplinary proceedings against them. The Judicial Code contains no provisions for judges to appeal the President's decisions on imposing disciplinary sanctions, including dismissal.

There is no freedom to exercise the profession of lawyer. Bar associations lack actual independence and self-government. The procedure for access to the legal profession does not comply with international standards.

Lawyers defending civic activists and opponents of the current government are being prosecuted.

Recommendations

- a. Delegate the responsibilities for selection, appointment, dismissal and disciplining of judges from the executive authorities, including the President, to judicial self-government bodies.
- b. Expand the practice of indefinite appointment of judges by making appropriate changes to the law.
- c. Strengthen the role of the Constitutional Court in protecting constitutional rights and freedoms, including providing citizens with the right to directly appeal to the Constitutional Court with individual complaints.
- d. Ensure independence of the bar following the international standards, inter alia eliminate excessive control over the bar by the Ministry of Justice and give wider powers to the self-government bar bodies.
- e. Release lawyers Maksim Znak and Ilya Salei, who were imprisoned for their professional activities, as well as for the legitimate exercise of the rights guaranteed under the International Covenant on Civil and Political Rights.