

2014



**[REPORT ON THE RESULTS OF
MONITORING PLACES OF
DETENTION IN BELARUS]**

Minsk, 2014

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GENERAL INFORMATION ABOUT PRISONERS AND PENAL FACILITIES

PRISONERS

In 2013 and 2014, Belarus continued to reduce the number of persons held in the country's prisons.

According to the National Statistics Committee of Belarus¹, there were 28,471 prisoners as of late 2013. The figure is slightly less than the statistics of late 2012 and is significantly lower than back in the nineties, when the prisons held over 60,000 people.

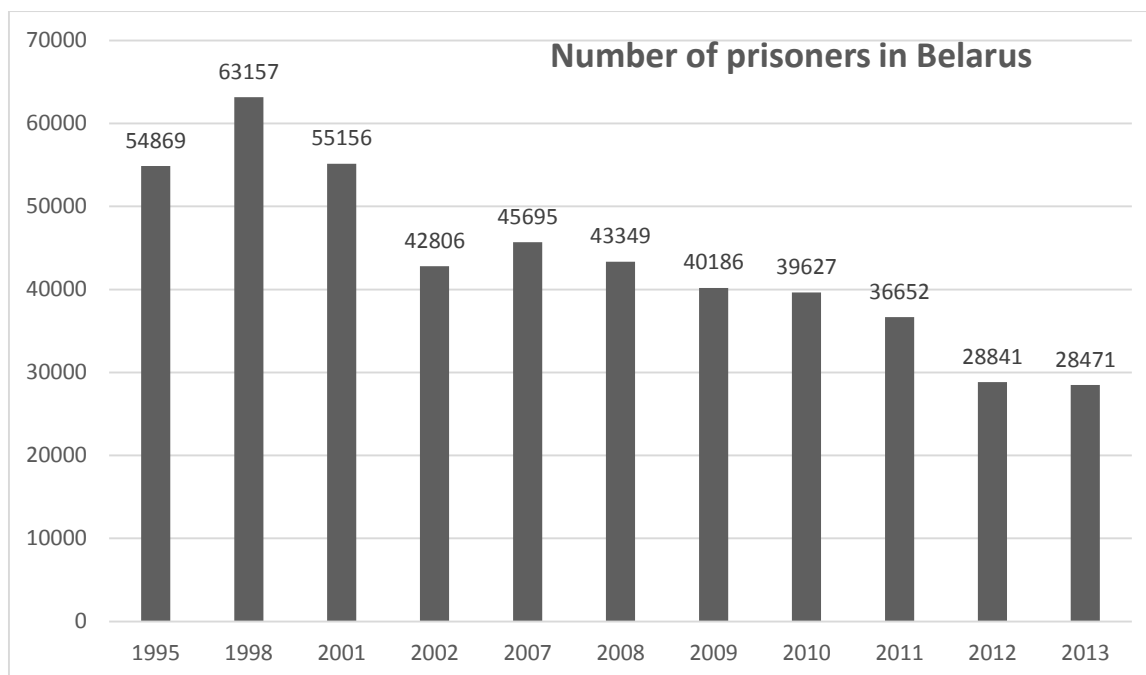
Obviously, reducing the number of persons sentenced to imprisonment is a good trend, which is indicative of the humanization of the entire sphere. It is even better when the reduction in the number of prisoners is not followed by a rise in crime rates, as this demonstrates the correctness of the chosen direction. However, one should not forget that this number did not include those who were sentenced to restricted liberty outside prisons, isolated in activity therapy centers (LTPs), sentenced to administrative detention, and forcibly treated under a verdict or judgment. Official statistics do not include minors held in special teaching and medical-educational schools.

Reducing the number of prisoners imposes on the authorities certain obligations, including to improve detention conditions, as no flaws can be explained by lack of budget funds.

Compared to other countries (with data of October 1, 2012 of 31,700 prisoners in total, i.e. 335 prisoners per 100,000 of population), Belarus confidently holds the second place in Europe, Russia being the first, with its 470 prisoners per 100,000 residents. In the world ranking, Belarus is 25th of 222 countries².

¹ National Statistical Committee of the Republic of Belarus. Statistical Yearbook. Minsk, 2014

² International Centre for Prison Studies, <http://www.prisonstudies.org>



Crime rates remained relatively low until Belarus gained independence in 1990. In 1971, there were 33,318 crimes, in 1980 – 45,404. In 1991, there were already 81,346 crimes, in 1995 – 131,761³. Crime rates peaked in 2005, the period that was marked by relative social stability: there were about 192,500 reported crimes then, and in 2006 – 191,468. By 2014, the number of reported crimes and identified persons who committed them has been steadily declining: in 2007, there were 180,427 registered crimes, in 2012 – 102,127, in 2013 – 96,676. The number of murders and attempted murders has decreased from 1,117 in 1995 to 410 in 2013⁴.

Improvement of quantitative indicators is obvious. However, one cannot clearly view this improvement as a positive development of the situation in general. There can be many reasons why certain parameters vary. For example, it is difficult to judge about the number of prisoners in the Soviet-time Belarus, as almost half of them served their prison terms abroad. In the late 50s, Belarus, for example, had 9-10 thousand prisoners⁵ with 7.7 million of population. After the country gained independence, convicts were sent to serve their sentences within Belarus. Simultaneously, some prisoners left post-Soviet countries to continue serving their terms in Belarus.

The same applies to crime rates. When rates are rising, it can mean both the improvement of the registration system and an actual increase in the number of crimes. In addition, reduced crime rates may be caused by mitigated criminal and procedural laws, when certain offenses simply migrate to the sphere of administrative offenses or are tolerated without government interference. In particular, since 2010 the Criminal Code and the Criminal Procedure Code have been successively

³ G.G. Shikhantsov. Criminology. Minsk, 2006.

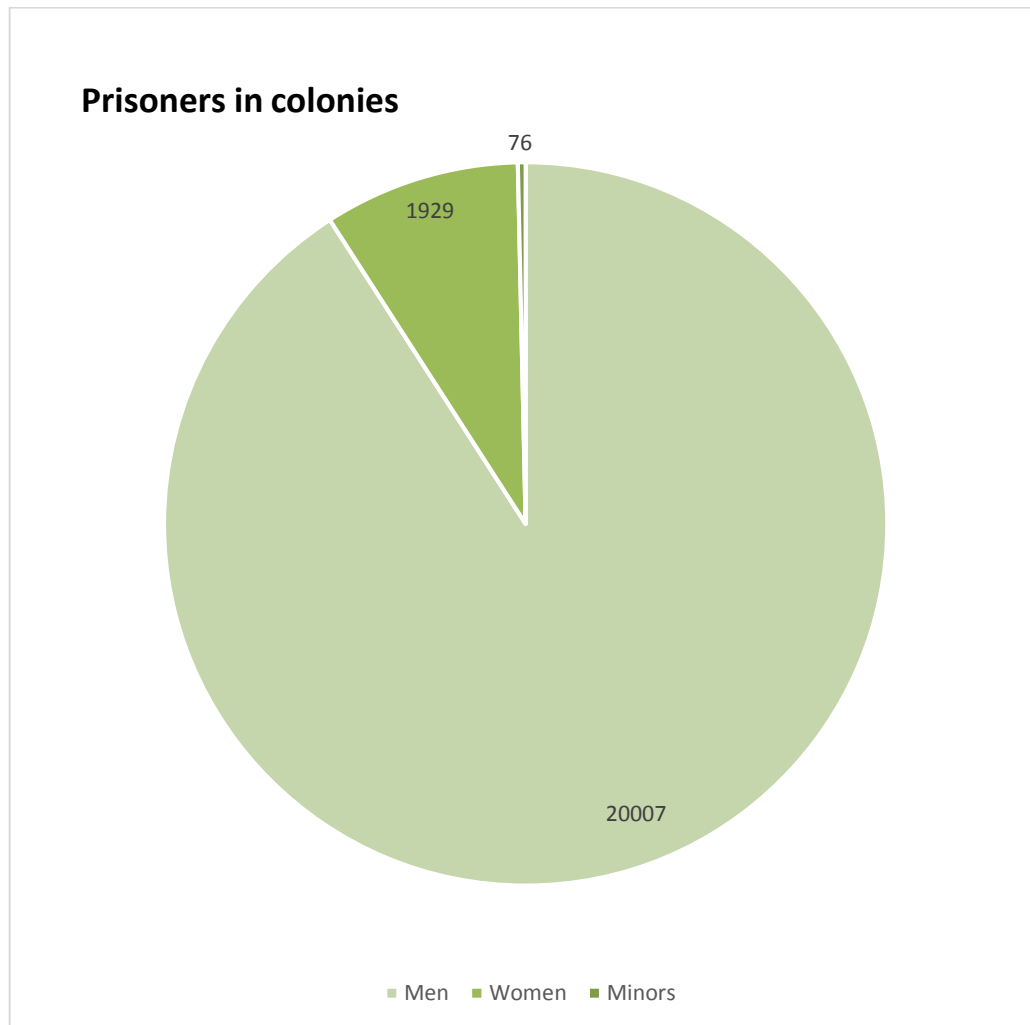
⁴ <http://mvd.gov.by>

⁵ G.G. Shikhantsov. Criminology. Minsk, 2006.

amended with provisions aimed to lift criminal liability for minor crimes in the case of reconciliation of the accused and the victim⁶.

Of the total number of prisoners, the correctional colonies for adults held 21,855 persons (including 1,929 women), and juvenile correctional facilities held 157* persons (including 76 minors). Another 79 juveniles were held in pre-trial detention centers.

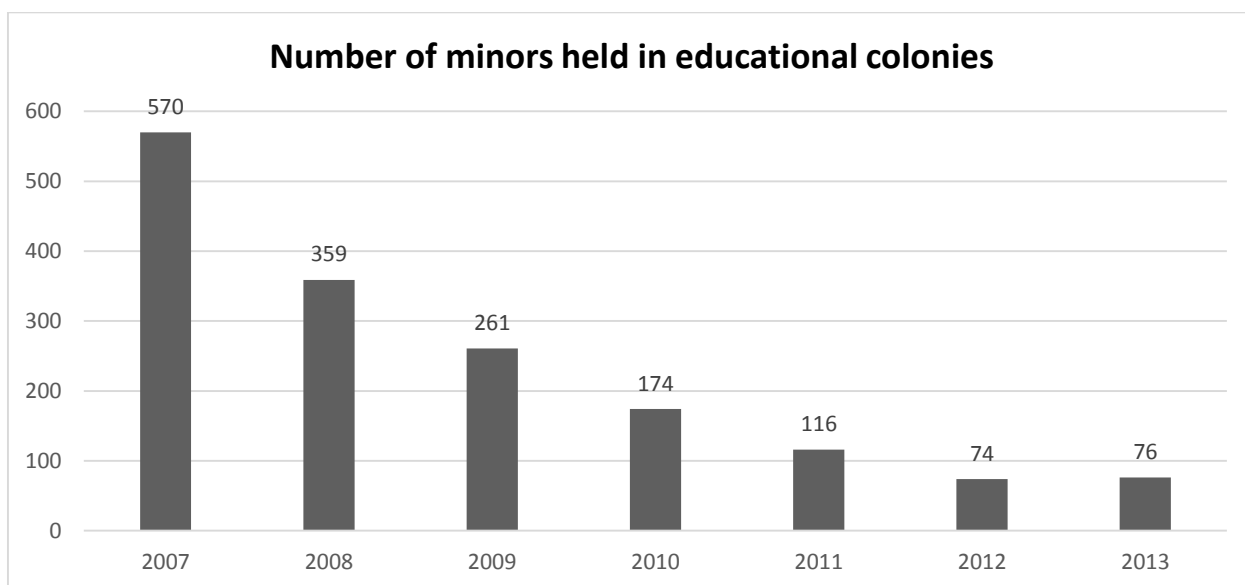
* In accordance with the law, convicts can continue serving their sentences in educational colonies for juveniles until they reach the age of 21



The number of juvenile prisoners has been steadily declining, which caused the closure in 2013 of one of the country's two correctional facilities. Juvenile female prisoners serve sentences in a separate division of the colony for women.

⁶ Such a criminal case cannot be opened, and in the case a case is instituted, proceedings shall be terminated for the reconciliation of the victim of the offense with the accused, except when initiating proceedings by the prosecutor in the absence of a statement of the victim of a crime, if they affect the essential interests of the state and society or committed in relation to a person in the service or other dependence on the accused or a person, who for other reasons is unable to protect his or her rights and legal interests.

This is a good indicator, as it is at the level of similar countries in terms of population, such as the Czech Republic (107 juvenile prisoners), Bulgaria (80), Austria (130), Belgium (82). However, these statistics do not include pupils of special closed educational and healthcare institutions, which hold offenders aged 11 to 18 years and minors in special remand centers. The exact number of such prisoners is not established. In particular, the Mahiliou special vocational school holds 116 pupils. As of January 1, 2013, the Kryvichy special vocational school had 34 students aged 11 to 18 years. Of these, 20% are children under 14. Meanwhile, the Mahiliou school has 58 pupils. Thus, the number of juvenile prisoners is at least three times higher.



Prisons hold 600 inmates, pre-trial prisons – 5,859 persons. Against the background of a general decline in crime rates, the number of prisoners in pre-trial detention centers remains almost unchanged, while in 2013 it even increased.



There is no information about the number of prisoners held in detention centers. In 2013, the courts of Belarus sentenced to arrest a total of 6,926 people, over the first six months of 2014 – 3,428 persons.

There are no data on the number of prisoners held in open-type correctional facilities. In 2013, a total of 2,277 persons were sentenced to imprisonment in open-type prisons, and 1,234 people over the first half of 2014.

In 2013, administrative arrest was imposed on 48,906 persons, and 18,163 persons were sentenced to arrest in the six months of 2014.

Against the background of a 150% reduce in the number of prisoners in 2007, the number of persons sentenced to imprisonment three or more times remains almost unchanged, indicating the relative growth of recidivism.



Over the past eight years, the proportion of convicts who are sentenced to imprisonment and other restrictions, as well as a fine, has remained nearly constant; there has been a threefold decrease in the number of persons sentenced to correctional labor; the number of convicts sentenced to other punishments has doubled (to 24.3%).

CORRECTIONAL FACILITIES

On May 28, 2014, the authorities closed penal colony No. 10 of the Ministry of the Interior's Department of Corrections in the Vitsebsk region and penal colony No. 19 of the Ministry of the

Interior's Department of Corrections in the Mahiliou region. Thus, Belarus now has 15 correctional colonies, one juvenile correctional facility and three correctional settlements, six pre-trial prisons and three prisons. Simultaneously, the Department of Corrections closed 21 open-type correctional institutions; as a result, there are 29 open-type prisons at the moment. However, this does not mean that the network of such institutions has been reduced: in fact, there was a reorganization of institutions, when two or more facilities were merged in one⁷.

On the same day, the Department created activity therapy center No. 7 in the Mahiliou region



on the basis of penal colony No. 19; activity therapy center No. 8 on the basis of penal colony No. 10 and activity therapy center No. 9 on the basis of a branch of LTP No. 4. In total, the Department operates nine activity therapy centers.

Ongoing activities are underway (to be completed in December 2014) aimed to implement the Law “On amnesty in connection with the 70th anniversary of the liberation of Belarus from Nazi invaders”.

According to the Department of Corrections, as of September 26, 2014, it considered the possibility of applying the law in respect of 6,783 convicts held in detention (the amnesty covers more than 8.1 thousand people). Heads of closed-type correctional institutions ordered the release of 1,639 convicts, of which 39 are minors. It was decided to reduce the sentence by one year in respect of 1,886 persons. Amnesty was denied to 3,258 prisoners, who had poor records, including penalties and willful violation of the order of punishment⁸.

⁷ Presidential Decree No. 242 of May 28, 2014 “On improvement of activity of the correctional system of the Ministry of the Interior”

⁸ <http://mvd.gov.by/main.aspx?guid=217473>

**«In May, my salary for seven hours of work a day
in six days was \$3.5...»**

LABOR RIGHTS OF PRISONERS

The structure of the Department of Corrections has twelve unitary enterprises based in correctional facilities and engaged in business activities (Republican Unitary Production Enterprise No. 4, Republican Unitary Production Enterprise “Penal Colony No. 8 – Poshuk”, Republican Unitary Production Enterprise “Seventeen”, Republican Unitary Production Enterprise “Penal Colony No. 2 in Babruisk, Republican Unitary Production Enterprise “Correctional Facility No. 5”, Republican Unitary Production Enterprise “Penal Colony No. 9”, Republican Unitary Production Enterprise “Eleven”, Republican Unitary Production Enterprise “Penal Colony No. 12 – VAL”, Republican Unitary Production Enterprise “Penal Colony No. 13 – Berazvechcha”, Republican Unitary Production Enterprise “Fourteen”, Republican Unitary Production Enterprise “Fifteen”, Republican Unitary Production Enterprise “Penal Colony No. 20”), two businesses based in activity therapy centers (Republican Production Unitary Enterprise “LTP-1”, Republican Unitary Production Enterprise “One”⁹). In addition, independent economic activities are carried out by the seven remaining LTPs.

97% of the people held in the country’s colonies, jails and prisons are of working age. Of the total number of persons held within the penal system, paid work involves almost two-thirds of the entire amount of prisoners¹⁰: in 2010 – 60%, in 2011 – 58.2%, in 2012 – 63.2% of prisoners.

Thus, most of the prisoners are involved in employment relationships.

In accordance with the requirements of the Executive Penal Code (Art. 98), each person sentenced to imprisonment shall work in places and jobs determined by the administration of correctional institutions. The prison administration is obliged to involve convicts in socially useful work with regard to their sex, age, disability, health status, and possible qualification. Convicts are obliged to work in enterprises or production workshops of correctional institutions, as well as other enterprises, regardless of ownership, provided they receive adequate guarding and isolation. When forcing convicts to work, no labor agreement (contract) is signed. Labor by persons sentenced to arrest is organized in the manner and under the conditions established in respect of persons sentenced to imprisonment. Convicts sentenced to life imprisonment are subject to conditions established for persons sentenced to imprisonment, taking into account peculiarities of serving a life sentence.

⁹ Presidential Decree No. 611 of December 4, 2007

¹⁰ Offenses in Belarus. Statistical Compendium. Minsk, 2013.

Refusal to work or unauthorized stoppage of work are viewed as willful violation of the established order of punishment and result in the application of penalties.

Articles 99 and 100 of the CEC define the conditions and wages of persons sentenced to imprisonment.

The working time of persons sentenced to deprivation of liberty, safety regulations are established in accordance with the laws of the Republic of Belarus on labor and labor protection. The start and the end of work are defined by a schedule set by the prison administration.

Given the nature of work performed by inmates in correctional colonies and prisons, summarized recording of working time is allowed.

Time spent by convicts to perform paid work is included in their seniority record in accordance with the legislation of the Republic of Belarus. Accounting for time spent is run by the prison administration and is performed on the basis of results as of the end of the calendar year.

Convicts who have worked no less than eleven months in a calendar year are eligible for an employment leave of eighteen calendar days – for inmates of educational colonies, twelve calendar days – for convicts serving imprisonment in other prisons. Convicts who are obliged to reimburse costs incurred by the State for the maintenance of children in public care are entitled to a paid leave of seven calendar days.

Persons sentenced to imprisonment are entitled to remuneration of labor in accordance with the laws of the Republic of Belarus.

Wage amounts paid to convicts who have met the monthly standard working time and performed their assigned production rates cannot be lower than those established by the laws of the Republic of Belarus for performing corresponding work.

Remuneration of labor for incomplete workday or workweek is made pro rata to the time worked or depending on the production rate.

Citizens held in activity therapy centers, taking into account their age, disability, health status and qualification are employed in activity therapy centers, in republican unitary production enterprises run by the Department of Corrections of the Ministry of Internal Affairs, and other organizations located near activity therapy centers, in accordance with the internal rules of activity therapy centers and other legislative acts of the Republic of Belarus.

Refusal to be employed in activity therapy centers or unauthorized work stoppage entail application of penalties in accordance with the Law of the Republic of Belarus “On the procedure and conditions of sending citizens to activity therapy centers and conditions of detention in them” (hereinafter - the Law on LTPs).

Remuneration of labor performed by citizens held in activity therapy centers shall be carried out in accordance with the legislation of the Republic of Belarus.

Wages to citizens held in activity therapy centers are transferred to their personal accounts.

Citizens held in activity therapy centers are provided with labor and social leaves in accordance with the legislative acts of the Republic of Belarus.

In the manner established for convicts sentenced to arrest and imprisonment, no labor contract is signed by inmates of activity therapy centers.

Analysis of the labor rights of prisoners leads to the conclusion that those rights unreasonably, arbitrarily emasculated as compared to the rights provided by the Labor Code for other employed citizens. It's illegal, as labor rights of convicts are equal to labor rights of other citizens, except for the rights arising from the fact that the convicts have the duty to work, while for the rest of the citizens is their right. In accordance with Article 23 of the Constitution, limitation of the rights and freedoms of the individual shall be allowed only in cases prescribed by law, in the interests of national security, public order, protection of morality, health, rights and freedoms of others. Provisions of Part 1, Article 23 suggest the principle of proportionality of restrictions on the rights and freedoms of the individual that meets the requirements of a law-governed state, social justice, and their social, legal and other protection (Part 1, Article 8 of the CEC the Republic of Belarus).

Under Article 2 of the CEC, penal legislation of the Republic of Belarus, in accordance with the purposes of criminal responsibility, has a task of control over the execution and serving of sentences and other measures of criminal liability, definition of means aimed to achieve the goals of criminal responsibility and the social adaptation of convicts during its implementation, the protection of the rights and legitimate interests of convicts. In accordance with the task, the Code establishes general provisions and principles of punishment and other measures of criminal liability under the Criminal Code of the Republic of Belarus, including the legal status of prisoners and the system of safeguards to protect their legitimate rights and interests.

The State guarantees the protection of the rights, freedoms and legitimate interests of convicts, provides law-governed conditions for the application of penalties and other measures of criminal responsibility.

The principles of criminal responsibility are the equality of citizens before the law, justice, and humanity (Article 3 of the Criminal Code). The Constitutional Court noted in one of its decision that the implementation of these principles applies both to the system of types of punishment stipulated by the Criminal Code and to the order of their execution¹¹. In accordance with Article 44 of the Criminal Code, criminal liability is aimed at the correction of the offender, and the prevention of new crimes, both by convicts and others.

Thus, neither the principles nor the purpose of criminal responsibility provide for the discrimination of convicts, unfair and unreasonable restriction of their rights, in particular labor rights.

These restrictions are not dictated by the interests of national security, public order, protection of morality, health, rights and freedoms of others (legitimate aims of restrictions under Article 23 of

¹¹ Decision No. P-681/2012 of the Constitutional Court of the Republic of Belarus of February 16, 2012 "On legal regulation of exemption from criminal punishment or replacing punishment with a milder sentence due to a disease"

the Constitution), are not proportionate and necessary to achieve the purposes of criminal liability and lead to discrimination of convicts in comparison with other citizens.

In accordance with Article 137 of the Constitution of the Republic of Belarus, the Basic Law has supreme legal power. In case of discrepancy between a law with the Constitution, the Constitution shall apply.

Article 59 of the Constitution establishes the duty of States to take all measures to create an internal order necessary for the full implementation of the rights of citizens of the Republic of Belarus under the Constitution.

The Labor Code prohibits discrimination, i.e. restrictions on labor rights or receiving of an advantage based on gender, race, national or social origin, language, religious or political beliefs, membership or non-membership in trade unions or other public associations, property or official status, age, place of residence, physical or mental disabilities that do not impede the execution of work duties and other circumstances not related to the qualifications and not arising from the specific functions of the employee.

Any distinctions, exclusions, preferences and restrictions are not considered to be discrimination in case they are:

- 1) based on the inherent requirements of the job;
- 2) due to the need of special care of the state of persons in need of social and legal protection (women, minors, persons with disabilities, persons affected by the Chernobyl nuclear disaster, and others).

Persons who believe they have been discriminated against in employment relations, have the right to apply to the court with a relevant statement on the elimination of discrimination.

Due to the fact that signing a labor contract is not provided for convicts, their rights and obligations are unjustifiably removed from the field of labor law: the Labor Code applies to all workers and employers who have signed a labor agreement in the territory of the Republic of Belarus, unless otherwise stipulated by the legislative acts or international treaties of the Republic of Belarus.

Meanwhile, the Labor Code established only a limited list of exemptions. The Code does not cover relations dealing with the implementation of: duties of members of supervisory and other boards, and the control bodies of organizations, if this activity is not beyond the performance of the respective orders; obligations arising from contracts provided for by the civil legislation.

The Republic of Belarus recognizes the priority of the generally recognized principles of international law, and ensures its compliance with the labor legislation. Under a general rule, if an international treaty of the Republic of Belarus establishes rules other than those contained in this Code, the rules of the international treaty shall apply.

As already noted, in accordance with the laws of the Republic of Belarus on labor and labor protection, prisoners can only enjoy set working hours, labor safety regulations and payment.

Other issues are regulated by normative acts in the field of criminal-executive law, in which the labor rights of prisoners are severely limited.

The scope of responsibilities of employers in the penitentiary and in labor law is described differently. In particular, during the organization of work, according to the Labor Code, the employer must, in particular, in cases provided for by law and internal regulations, provide timely guarantees and compensation in connection with harmful and (or) hazardous working conditions (reduced working hours, additional leave, preventive nutrition etc.); comply with the rules of labor protection of women, youth and persons with disabilities; provide training and retraining of employees in accordance with the law; create the necessary conditions for combining work with education in accordance with this Code; provide statistical data on labor, on the conditions and safety in the amount and manner prescribed by law.

Failure to perform or improper performance of their duties by employers (authorized officers of the employer) is subject to liability under the Labor Code and other legislative acts.

In accordance with Article 59 of the Labor Code, the minimum wage (monthly and hourly) is the state-guaranteed minimum social standard in the field of remuneration of labor, which the employer is obliged to use as the lower level of compensation for employees in normal conditions during normal working hours, when performing the duties arising from the legislation, local regulations and employment contract. Such a rule should definitely apply to prisoners. Meanwhile, 80% of those interviewed about the wages paid during imprisonment noted that the payment for full employment, and sometimes in excess of working time, did not reach the minimum wage level established in Belarus.

Ales Bialiatski, a former political prisoner said:

“My salary in May (2014) for a six-day working week, with seven hours a day was \$3.5, \$2.5 of which were transferred to the account of prison for heating, water and so on. With such miserable wages, for example, obliged persons have debt that is always growing, and with the debt they cannot count on the amnesty. It’s a vicious circle, a desperate situation¹².”

¹² <http://spring96.org/ru/news/73343>



Former prisoner N. told about the working conditions in penal colony No. 8 in Orsha in 2013:

“I had a qualification, a welder. Therefore, in principle, I used to earn good money then. In the colony they have their own specifics, you work as much as they tell you and where they tell you. And they pay as much as they want. You can check how much has been transferred, but you can’t check for what. Anyway, I got ten times less than when I was free, although he worked as much, that is, was not kicking around. Good wages were for those who worked closely with the administration, now they are called “trusties”. They can be rich when they leave prison. And what I got was one million, plus or minus a hundred thousand. They took money for the bills, and I spent the rest on foodstuffs, so that my wife did not have to bring any parcels. No chance to help the family. I was OK: I have a good relationship with my wife, and she did not demand child support, although many do. I tried to save something to send it to my wife (we have a daughter of eight), but I realized that I’d have to save at the expense of my health, and these two hundred thousand would not help them. And those who come without a degree, earn just enough so that they could deduct for the bills and what’s left is twenty thousand.”

The law establishes unequal conditions for granting and duration of the leave for prisoners, as compared to ordinary employees. Both need a paid leave for rest and recreation, healthcare and other personal needs of the employee, and the procedure and conditions for granting it cannot vary significantly.

A clearly unjust is the rule which allows to ignore the peculiarities of the working records of convicts who have worked less than eleven months in a calendar year; as a result, this time of work is not taken into account and they do not receive any leave for the actual number of hours worked. Typically, this means that in the year of entry into prison and the year of release the prisoner does not receive any leave, nor does he receive compensation for it, because he has not worked the statutory minimum (eleven months), whereas for regular employees the working year for which a leave is provided is the period of time equal to the duration of the calendar year, but calculated for

each employee from the date of employment. Labor leaves (primary and secondary) for the first year are granted no earlier than after six months of work, except in certain cases (Article 166 of the Labor Code). Thus, all the time worked under an employment contract is taken into account for the purposes of providing of the already reduced leave.

In addition, the provision of Part 4, Article 99 of the CEC unreasonably and disproportionately limits the prisoners' rights to rest, guaranteed by Part 1, Article 43 of the Constitution.

In accordance with Article 23 of the Constitution, the limitation of the rights and freedoms of the individual shall be allowed only in cases prescribed by law, in the interests of national security, public order, protection of morality, health, rights and freedoms of others. The provisions of Part 1, Article 23 of the Constitution suggest the principle of proportionality of restrictions on the rights and freedoms of the individual that meets the requirements of a law-governed state. Failure to provide a leave for hours actually worked during the calendar year, if this period does not exceed eleven months (as required by Part 4, Article 99 of CEC), is not in the interest of national security, public order, protection of morality, health, rights and freedoms of others (legitimate aims of restrictions under Article 23 of the Constitution), is not proportionate and necessary to achieve the purposes of criminal liability, but result in discrimination of convicts in comparison with other citizens.

Additional leaves, special leaves (child care leaves, education leaves, and dealing with personal and family reasons) are not legally established for prisoners¹³.

Unpaid short leaves caused by family and domestic reasons, a need to work on a thesis, writing a textbooks and other valid reasons provided by an agreement between the employee and the employer, are not available for prisoners.

Provisions of the labor law promote employment combined with education; employees who receive general education, special education at the level of general secondary education, vocational education in the evening or part-time form of education commissioned by the employer or in accordance with the collective labor agreement, in case of successful performance of educational curricula, are entitled to a shorter working week or reducing the duration of daily work with preservation of at least 50 percent of the average wage, and they shall be granted leave in connection with education. The employer has the right to grant further unpaid leaves during the school year, without damage to the production activities at the request of such employees, unless otherwise provided in the collective agreement or contract of employment. Employees who receive general education, special education at the level of secondary education in the evening or part-time form of education are provided with a leave of not less than 20 calendar days for the period of the final certification during receiving the general secondary education, and in the preparation of general basic education – of at least 9 calendar days with the preservation of the average wage in the main job. Workers admitted to qualify as external students in the preparation for receiving general basic education are granted a leave of not less than 17 calendar days, and those admitted

¹³ Conditions of women with children under three years will be considered separately

to qualify as external students when receiving general secondary education – of not less than 20 calendar days with the preservation of the average wage in the main job.

Correctional institutions organize general secondary, technical and vocational education and training for convicts. Vocational education and training is organized for qualifications (specializations and professions), with which convicts, given their qualification, will be able to work in prison and after release from it. Local executive and administrative bodies shall create necessary conditions for receiving education in correctional institutions.

No privileges are established for inmates involved in retraining. The internal regulations declare that release from work for convicts enrolled in secondary schools for the sake of taking exams is performed in accordance with the labor legislation of the Republic of Belarus. However, the Labor Code (as stated above) and the penal law treat these rules in a different way: the prisoners, in accordance with the internal rules, are not entitled to the preservation of wages for the period of exams (certification), and they can only enjoy free meals.

Employee's right to protection of labor implies a wide range of workers' rights and guarantees of their implementation.

Thus, each employee, including the prisoner, has the right to:

- 1) workplace corresponding to safety regulations;
- 2) training in safe working methods and techniques, briefing on labor protection;
- 3) providing the necessary personal protective equipment, means of collective protection, sanitary facilities, equipped with the necessary equipment and facilities;
- 4) receiving from the employer of reliable information on the state of environment and safety in the workplace, as well as the means of protection against harmful and (or) hazardous working environments;
- 5) personal involvement or participation through one's representative in dealing with issues related to ensuring safe working conditions, performing of checks of compliance with legislation on the protection of labor at one's workplace by the bodies authorized to exercise control (supervision) in the prescribed manner, the investigation of an accident that happened in the working place and (or) its occupational disease;
- 6) refusal to perform assigned work in the event of immediate danger to life and health, and other people unless this danger is eliminated, as well as failure to provide with personal protection means that directly provide for labor safety. A list of personal protective equipment directly providing for labor safety is approved by the central governmental authority, which is carrying out state policy in the field of labor. Upon refusal to perform the assigned work on these grounds, the employee shall immediately notify in writing the employer or the authorized official of the employer of the reasons for such refusal, obey the rules of the internal labor regulations, except for the implementation of the above work.

In order to implement the right of workers to labor safety, the state carries out government administration in the field of occupational safety, control (supervision) over observance of legislation on labor protection and establishes liability for violation of labor protection legislation.

In case of refusal of the employee to perform the assigned work in the event of immediate danger to one's life and health, as well as other persons; failure to provide him with protective equipment that directly guarantees labor safety; suspension and prohibition of work by bodies authorized to exercise control (supervision), the employee pending correction of violations or unless a new job is created should be provided with other work corresponding to his qualifications, or, with his consent, work with payment not less than the average earnings for the previous work for up to one month. If necessary, the employer must provide the worker with a retraining course, with the preservation of average earnings during the period of studies.

Meanwhile, the penal law does not expressly provide for the possibility to refuse to work in these cases. None of the interviewed former prisoners knew about this possibility. All respondents believed that they were supposed to continue work in the existing conditions, if there was no visible threat to their lives; 60% of them stressed that they had the right to apply to the administration of the colony about improper working conditions; the same number of respondents attempted to address these issues without conflict; 96% of respondents find it unacceptable to submit a formal complaint, because this can be followed by the deterioration of their relationship with the prison administration.

The law provides that in case of deterioration of health of an employee due to working conditions, occupational disability due to an accident at work or occupational disease, the employer must provide the employee, with his consent, with other work in accordance with the conclusion of the medical advisory board or the medical rehabilitation expert committee or provide the funds allocated for the implementation of compulsory insurance against accidents at work and occupational diseases, as well as training and retraining with the preservation of average earnings during the period of studies, and if necessary – his or her rehabilitation.

It should be noted that other regulations defining the rights and obligations of prisoners do not mention any rules that could more deeply define the above relationship.

The “Labor of persons deprived of their liberty” part of the internal regulations of correctional facilities only contain rules about the peculiarities of assigning labor for convicts held in correctional settlements; peculiarities of the use of labor for convicts in prisons; provisions of economic activities in correctional institutions.

In more detail the rights of workers are enshrined in the internal regulations of activity therapy centers (LTPs). It is established that the working conditions of persons held in LTPs are regulated by labor legislation based on peculiarities related to their detention in the activity therapy center. These individuals are not covered by the legislation governing employment contracts, collective agreements, part-time work, preservation of wages after transfer to another permanent paid job, safeguards for workers at the time of exercise of state or public duties, disciplinary responsibility of employees. Forms and systems of remuneration and bonuses of persons detained in LTPs and employed at internal productions are established by the administrations of these businesses

independently, while the amount of payment must comply with the legislation of the Republic of Belarus. State guarantees include generally accepted rates, as well as certain types of bonuses and additional payments of compensatory character defined by the legislation. Receiving education is not provided for prisoners held in LTPs.

Summarizing, we can assert the existence of discrimination against labor rights of prisoners compared to conventional employees. Often, these limitations are not dictated by the interests of national security, public order, protection of morality, health, rights and freedoms of others, i.e. the legitimate aims of restrictions under the Constitution and the international obligations of Belarus, and are not by their nature proportionate and necessary to achieve the purposes of criminal liability, but lead to discrimination against convicts as compared to other citizens.

Legislators and the government should amend the legislation regulating the work of prisoners, including LTPs, with an aim to:

- eliminate inequalities in the provision of basic social guarantees;***
- establish equal conditions of payment, provision of leaves (including for combining work and education);***
- provide for non-departmental forms of monitoring the state of the labor rights of prisoners.***

“If prisoners are not in a position to raise complaints personally, it should be open to their family or representative to raise the issue on their behalf”

COMPLAINTS AND CORRESPONDENCE

CORRESPONDENCE

Imprisoned persons lose their right to free movement, but they must still enjoy all the other human rights. One of them is the right to have contacts with their families. It is not only the right of the prisoner, but also the right of members of his or her family who did not commit any crimes and were not punished by deprivation of liberty and restriction of their rights. They retain the right to have contacts their loved ones who have been sent to prison. The prison administration is responsible, under both national and international standards, for the support and development of family ties.

The main international human rights instruments clearly speak about the general and universal nature of these rights: the Universal Declaration of Human Rights, Article 12: “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence...” The International Covenant on Civil and Political Rights, Article 23: “The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”

Prison administrations should initiate and maintain the most favorable conditions for prisoners' contacts with members of their families. This is a consequence of the right to family life and the provisions of Article 10 of the International Covenant on Civil and Political Rights: “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”

All of the above reasons and arguments refer to the right of prisoners and their families to maintain a normal relationship whenever it is possible. “It is also in the operational interests of prison administrators to ensure that this happens. Prisoners who are able to maintain good contact with their families will have a greater incentive to observe the normal rules and regulations of prison life. They are also likely to be able to resolve practical and other domestic problems which cause them anxiety. Staff will also learn about aspects of the prisoner's behaviour, life and character beyond the confines of the prison which will help them to treat each prisoner as an individual. [...] There are other forms of communication with family and close friends in addition to visits. One of the most important of these is by letter. In many jurisdictions prisoners are allowed to send a minimum number of letters at state expense while paying the postage on any additional ones which

they wish to send. There is generally no operational need to place any restriction on the number of incoming letters which a prisoner may receive.”¹⁴

Until very recently, prisons outside Belarus preserved a tradition of censorship of all incoming and outgoing correspondence of prisoners. For this purpose, two main justifications were used. It was assumed that the prisoners could discuss escape plans or other violation of the prison rules with their correspondents. Another reason was the opportunity to “intercept” news that may be unpleasant for the prisoner.

“It is now generally held that there is no operational justification on security grounds for censoring all mail. It is extremely unlikely, for example, that a prisoner who is contemplating escape would be foolish enough to refer to this in a letter. At the same time, it is accepted that prisoners have the same right as other people to receive family news, good or bad, directly. For those prisoners who have been assessed as a high security risk it may be necessary to censor incoming and outgoing correspondence and also to have a list of approved correspondents. For other prisoners it should not be necessary to censor correspondence on a continuous basis. In most cases random or sample reading is likely to be sufficient. The authorities have a right to make sure that incoming correspondence does not contain any material which is forbidden such as weapons or drugs. Good practice in some countries is that all incoming correspondence is opened in the presence of the prisoner to which it is addressed. The member of staff checks that the envelope does not contain anything that is forbidden and then hands the letter to the prisoner without reading it¹⁵.”

In accordance with the Criminal Executive Code, persons sentenced to imprisonment are allowed to receive and send letters and telegrams in unlimited numbers. Sending letters and telegrams is covered by convicts themselves. Correspondence received and sent by convicts, except for proposals, applications and complaints addressed to the authorities in charge of exercising government control and supervision of the penal institutions, shall be subject to censorship. Correspondence between persons held in correctional facilities, who are not close relatives, is prohibited.

The procedure of receiving and sending letters, telegrams and money transfers by convicts is determined by the internal regulations of correctional institutions.

According to typical regulations, sending and receiving letters and telegrams by convicts is not subject to any restrictions as to its number and is carried out only through the administration of correctional institutions. For this purpose, mailboxes are installed in designated areas, from which letters are daily removed for sending, except on weekends and holidays, by authorized officials. In prisons and in cell-type penal colonies, prisoners should hand letters to representatives of the administration of correctional institutions. The letters put into mailboxes or handed to a representative of the administration must be unsealed. Correspondence of prisoners, as indicated above, is subject to censorship. Letters from prisoners and messages received in their name, written with the use of cryptography, a cipher or using other conventions or jargon, as well as bearing

¹⁴ A Human Rights Approach to Prison Management: Handbook for prison staff. Andrew Coyle. International Centre for Prison Studies. London. 2002.

¹⁵ Ibid.

traits of cynicism aimed at causing harm to legally protected rights of state bodies, public associations and individual citizens or containing information with a state or official secret shall not be forwarded to the addressee and are not returned to the convict. The violation is reported to the convict, then this correspondence is destroyed. This rule applies to telegrams with the same content.

The maximum period during which the message should go through censorship is not limited.

Such rules allow prison administrations to arbitrarily restrict the correspondence of prisoners, and the lack of effective mechanisms for appealing violations deprives both sides of the correspondence of any opportunity to challenge the administration's actions. The key aspect is the ability to destroy letters. Therefore, even going to court would not be an effective means of protection, because by the time of the trial the “subject of the dispute” itself would have been destroyed.

Another procedure is set for remand prisons of the Interior Ministry and the KGB. Delivery of letters and telegrams received on behalf of persons in detention, as well as sending their letters to addressees should be made by prison staff no later than three days from the receipt of the letter, with the exception of public holidays and weekends. If a translation of the letter in one of the official languages of the Republic of Belarus is needed, the period of delivery could be extended by the time required for the translation, but no more than seven days. Information on the death or serious illness of a relative or a close family member is reported to a person held in custody immediately after receiving the news.

Letters containing information that could prevent a preliminary criminal investigation or review by a court, as well as assist in the commission of the crime, made in secret writing, codes or containing state secrets or other secrets protected by law, are not sent to the recipient or persons held in custody, but handed over to a body conducting the criminal proceedings.

The convict's correspondence with a lawyer is governed by the same regulations, that is, is subject censorship. This violates the lawyer-client confidentiality, depriving the prisoner of opportunities to minimize costs in corresponding with the lawyer.

Of course, the control over correspondence of detainees may be determined by the national law, and the right to privacy of correspondence of convicts may be limited, but the limitation of this right must be based on the law, pursue a legitimate aim and be necessary in a democratic society. Cases of unjustified restrictions on the right should be excluded, but this requires a clear and simple procedure of administrative and judicial review of the administration of correctional institutions. In addition, there must be a clearly set maximum period during which correspondence should be sent or delivered to the addressee.

In Ukraine, the issue of censorship of prisoners' letters is regulated by the Ministry of Justice, which is in charge of correctional institution. Since 2013, there is a new Instruction on viewing the correspondence of persons who are in held in penal institutions and detention centers.

In contrast to the Belarusian prisons, in Ukraine, correspondence between prisoners who are not relatives is possible with permission from penal institutions and upon written request of the convicts.

Correspondence by convicts or persons taken into custody shall not be viewed in case it is addressed to the following bodies and authorities (it should be sent to the address within a day from the time of its writing):

- Commissioner on Human Rights of the Verkhovna Rada of Ukraine;
- European Court of Human Rights;
- Other relevant bodies of international organizations participated in by Ukraine;
- Authorized personnel of these international organizations;
- Prosecutors or defense counsel in criminal proceedings, which shall exercise their powers in accordance with the Criminal Procedure Code of Ukraine.

Correspondence received by convicts and persons taken into custody from these bodies and persons is not subject to viewing.

Letters made with the use of cryptography, encryption or using other conventions, written in illegible handwriting, as well as containing confidential information, will not be sent to the addressee, not handed over to the prisoner, but withdrawn. The violation is registered in a report and notified to the prisoner. The report, together with the seized letter, is stored by the administration of the correctional institution.

The period of delivery or sending of correspondence subject to inspection is limited to three days.

Letters with information about the death of family members or other communications concerning personal interests shall be immediately forwarded to the facility's psychologist with a note "Letter of traumatic content" for immediate reporting to the recipients and providing them with counseling.¹⁶

In the Russian Federation, correspondence received by and sent to convicted persons is censored by the prison administration. Correspondence with the court, prosecutors, the parent body of the correctional system, as well as the Commissioner for Human Rights in the Russian Federation, the Human Rights Commissioner in the region of the Russian Federation, the Public Oversight Commission, set up in accordance with the laws of the Russian Federation, the European Court of Human Rights is not subject to censorship. The convict's correspondence with the lawyer or other person providing legal assistance on legal grounds is not subject to censorship, except in cases when the prison administration has reliable data that information contained in the correspondence is aimed at the initiating, planning and organizing a crime or engaging in its commission of other

¹⁶ Instruction on organizing the viewing of correspondence of persons held in prisons and detention centers

parties. In these cases, inspection of mail, telegrams and other communications is made by order of the head of the correctional institution or his deputy.

The period of delivery of correspondence is limited to three days, and in respect to letters in a foreign language to seven days.

To date, the Russian Ministry of Justice has prepared new regulations for correctional institutions, which obviously will take into account, among other things, the position of the Constitutional Court of the Russian Federation on issues related to the extension of the right to privacy of correspondence of prisoners.

It is clear that a more progressive, as compared with Belarus, nature of the rules on prisoners' correspondence in the Ukrainian and Russian laws was the result of the implementation of European approaches and international standards of human rights in these countries.

COMPLAINTS

“The prison is a community with rules and regulations which apply in different ways to everyone concerned, staff, prisoners and visitors. Since it has a hierarchical structure it is especially important that its regulations should be understood and followed by everyone, not solely by prisoners. If there is a clear set of procedures to ensure that decisions are made properly there will be less need for complicated arrangements to deal with the consequences of poor decision making. Since prisoners are expected to obey the rules of the prison, and eventually those of the outside society to which they are to return, it is important that rules should be implemented fairly and equitably. From time to time prisoners are likely to perceive an element of unfairness in the way they are treated, either individually or in a group. This will happen even in the best managed prisons. It is important that there should be a set of procedures which allow prisoners to make special requests and to register any complaints which they have. These procedures should be clearly laid out in a way that can be understood both by prisoners and by the staff who deal directly with the prisoners.”

For every country the situation in the prison is characterized by the fact that those who complain about violations of the law are under the control of those against whom their complaints are directed. In such circumstances, as noted by the inmates of Belarusian prisoners and penal colonies, it appears that it is not in the interests of prisoners to file even a very reasonable complaint. Therefore, the law must not only declare, but also provide an appealing mechanism under which a prisoner cannot be punished for filing a complaint, even if it is found to be unreasonable.

“If prisoners are not in a position to raise complaints personally, it should be open to their family or representative to raise the issue on their behalf.”

Article 2 of the International Covenant on Civil and Political Rights states that:

“Each State Party to the present Covenant undertakes:

- (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
- (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
- (c) To ensure that the competent authorities shall enforce such remedies when granted.”

Principle 33 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provides that:

“1. A detained or imprisoned person or his counsel shall have the right to make a request or complaint regarding his treatment, in particular in case of torture or other cruel, inhuman or degrading treatment, to the authorities responsible for the administration of the place of detention and to higher authorities and, when necessary, to appropriate authorities vested with reviewing or remedial powers.

2. In those cases where neither the detained or imprisoned person nor his counsel has the possibility to exercise his rights under paragraph 1 of the present principle, a member of the family of the detained or imprisoned person or any other person who has knowledge of the case may exercise such rights.

3. Confidentiality concerning the request or complaint shall be maintained if so requested by the complainant.

4. Every request or complaint shall be promptly dealt with and replied to without undue delay. If the request or complaint is rejected or, in case of inordinate delay, the complainant shall be entitled to bring it before a judicial or other authority. Neither the detained or imprisoned person nor any complainant under paragraph 1 of the present principle shall suffer prejudice for making a request or complaint.”

Rule 36 of the Standard Minimum Rules for the Treatment of Prisoners:

“1) Every prisoner shall have the opportunity each week day of making requests or complaints to the director of the institution or the officer authorized to represent him.

(2) It shall be possible to make requests or complaints to the inspector of prisons during his inspection. The prisoner shall have the opportunity to talk to the inspector or to any other inspecting officer without the director or other members of the staff being present.”

It should be noted that the legislation of Belarus does not prohibit filing complaints about conditions in an administrative procedure by the prisoner’s family in his interests. Such restrictions are, however, provided by the Code for Criminal Procedures and they relate to the right to appeal

the sentence and subsequent court decisions, where complaints can be filed only by convicts, their counsel and the legal representatives of minors.

In prison, no procedures should be applied that can prevent prisoners from filing legal complaints or requests. Disciplinary rules should not contain provisions impeding prisoners' rights to file complaints, for example, by punishing them for allegations against the staff, which is subsequently proved to be unfounded.

There is reasonable assurance that the main factor that prevents prisoners from filing complaints is their belief that the staff is able to take revenge for it. Prison staff must also understand that if they face any accusations they can protect themselves from unfounded allegations by inmates in a manner prescribed by law.

“In China and some other countries, prosecutors in charge of investigating complaints from prisoners require that complaints should be put into locked boxes that can only be opened by the prosecutor.”

Many complaints of convicts most likely deal with matters relating to the daily routine, to a method used for the treatment of prisoners, the preservation of their everyday household rights. “Matters which will be of little importance to people in normal civil society can take on great significance in the highly disciplined world of the prison, in which there are likely to be regulations affecting almost every aspect of daily life. One of the main objectives of the prison administration in this area should be to prevent a simple request developing into a complaint, or a complaint developing into a formal grievance, or a grievance developing into an appeal to a higher body. However, Belarus is characterized by the brutal rupture of this chain at the first stage: “No complaints – no problems”, although there is obligation of the administration to meet the legitimate demands of the prisoners or to compromise in disputable cases.

In Belarus, in accordance with the national law, every convicted person may make a suggestion, request or complaint orally or in writing. Prisoners are entitled with a right to submit proposals, applications and complaints only on their own behalf. Written proposals, statements and complaints can be sent through the administration of the correctional institution. Unsigned complaints are not subject to consideration and thus cannot be sent. Proposals, applications and complaints addressed to the bodies in charge of exercising control and supervision over institutions executing criminal punishments are not subject to reading and censorship and shall be forwarded to the destination no later than within 24 hours, excluding weekends and public holidays. Other complaints by convicts are censored.

Proposals, applications and complaints related to receiving parcels and packages, providing meetings, spending money, salary, employment, health care, providing clothing and equipment, as well as other matters of similar nature (except for proposals, applications and complaints addressed to the bodies responsible for control and supervision over institutions executing criminal punishments), which can be solved by the prison administration, are resolved without waiting for the outcome of their consideration by the bodies or the person to whom they are addressed.

Proposals, applications and complaints to state agencies and public associations, as well as to state officers (except for proposals, applications and complaints addressed to the bodies responsible for control and supervision over institutions executing criminal punishments), shall be supplemented by the prison administration's letter, which summarizes its opinion on the merits. Applications and complaints to judicial bodies and prosecutors, which request a reduction of punishment, as well as applications for transfer to another penal facility, are sent together with short references.

Written proposals, applications and complaints are registered with the administration of the penal facility and forwarded to the destination not later than within a three-day period. Responses received upon the consideration of proposals, applications and complaints are announced to convicts upon receipt, but no later than within a three-day period. The wording is used by the prison administrations to only announce the text of replies without providing the prisoner with the paper itself, which complicates further correspondence of convicts, who are thus deprived of opportunities to use the text for the preparation of, for example, a repeated complaint.

Proposals, applications and complaints related to decisions and actions of the bodies and institutions executing punishments and other criminal sanctions do not suspend their execution.

Proposals, applications and complaints addressed to government agencies, newspapers and magazines, public associations and officials containing issues that these bodies, public associations or officials by virtue of the provisions about them or their legal authority are not competent to decide should be sent to recipients at the request of the convict. The latter is recommended to address the proposal, application or complaint to the appropriate authority, organization or official. If the convict insists on sending the proposal, application or complaint to the above public agency (NGO), official or other organization, he or she should be explained that his or her proposal, application or complaint considered by the administration of the penal facility, whose decisions are appealed by the convict, as well as other issues related to the execution of criminal penalties, in accordance with Presidential Decree No. 498 "On additional measures to work with appeals by citizens and legal entities" of 15 October 2007, should be initially sent to the Department's regional directorate or to the Department's directorate in Minsk and Minsk region and are subject to review on the merits in accordance with their competence, and in case of repeated disagreement with the outcome of the consideration the convict may apply to the Department, the Ministry of Internal Affairs of the Republic of Belarus. Decisions of the Ministry of Internal Affairs on requests or complaints can be appealed in court.

In other words, if the prisoner writes, for example, to a public organization or public monitoring commission at all levels to complain about conditions of detention, such a message is subject to censorship. As a result, the decision on its possible transfer to the destination will be made after two official considerations of the issue by the Department of Corrections ordered by a court's decision. Such a procedure unduly restricts the right of convicts to file complaints and reports of their condition, on the one hand, and that of the media and public organizations to obtain information on compliance with the rights of convicts, on the other hand.

As controversial is a provision stating that proposals, applications and complaints containing obscenities, as well as degrading the honor and dignity of the staff of penal facilities should not be

sent to destination. Such letters are attached to the materials of the convict's personal file, and the persons who have submitted them shall be liable in accordance with the laws of the Republic of Belarus. However, the question arises: is the prison administration competent enough to independently determine what expressions are obscene and defamatory against its employees. It seems that that such communications should be considered by the addressee, as they may contain important information, while the question of the protection of personal rights of persons whose honor and dignity has been humiliated should be decided in accordance with the general rules of civil law, regardless of whether these persons are prison staff or not.

Therefore, the Belarusian legislation governing the rights of convicts should be amended, aimed at ensuring the real rights to file petitions or other communication of their conditions to the government agencies and other institutions, e.g. public organizations and the media. In this part, the rights of prisoners cannot be different from those common to all, since no restriction of this right is grounded.

Prisoners' correspondence with the lawyer should be secured with a protection procedure that would be equal to the protection of correspondence with the bodies exercising control and supervision over institutions enforcing criminal penalties, when censorship of correspondence is limited only to control of prohibited attachments.

HEALTHCARE

Under the Criminal Executive Code, provision of healthcare, sanitation and anti-epidemic work in correctional institutions are organized and conducted in accordance with the laws on healthcare of the Republic of Belarus, as well as the internal regulations of correctional institutions and other regulations of the Ministry of Internal Affairs. Prison authorities are responsible for implementation in prisons of established sanitary and epidemiological requirements to ensure the health of prisoners.

Providing medical assistance to convicts, as well as the state sanitary supervision in correctional institutions, are carried out in accordance with the laws of the Republic of Belarus.

If there is no possibility to provide emergency or routine medical care, including specialized (oncology, cardiology, TB and other assistance) in correctional facilities, the necessary medical aid is provided to convicts in healthcare organizations.

The Law “On Healthcare” recognized the rule which provides the citizens of the Republic of Belarus with a right to affordable healthcare that is provided through:

the provision of free medical care under the state-guaranteed minimum social standards in the field of healthcare in public healthcare facilities;

the provision of medical care in public health organizations, non-governmental health organizations and by individual entrepreneurs engaged in medical activities under the legislation of the Republic of Belarus, from their own funds, corporate funds and other sources not prohibited by the legislation of the Republic of Belarus;

the availability of medicines;

the implementation of measures for the sanitary-epidemic welfare of the population.

Discrimination of citizens in the area of healthcare is unacceptable.

Presidential Decree No. 587 of September 28, 2006 determined the fate of penal colony No. 1 in Minsk and, accordingly, of the Republican Hospital of the Department of Corrections. The Decree, whose text is yet not available, provided for the construction of a residential quarter on the land within the boundaries of Kalvaryiskaya, Skryhanava and Biruzova Streets, and the Minsk-Maladechna railroad, i.e. on the site of the former penal colony No. 1 and the republican hospital. Presidential Decree No. 288 of June 7, 2010 “On the construction of buildings and facilities of the detention facility and the republican general hospital” provided to implement in 2010-2015 the construction and commissioning in the industrial zone Kaliadzichy of a complex of buildings of the detention facility and the republican general hospital, as well as engineering and transport infrastructure necessary for its maintenance. It was assumed that the construction of the complex would be implemented in two phases in parallel with the design, examination and approval in accordance with established procedure of necessary project documentation: the first stage (2010-2011), the republican general hospital, as well as engineering and transport infrastructure to it; the

second stage (2012-2015), building the detention center, as well as engineering and transport infrastructure to it.

The project was presented at the national architectural festival “Minsk-2011” by architects L. Zhuk, D. Liavitsin, A. Prakharenka and others of the institute “Minskgrazhdanproekt”.



On April 1, 2011, the republican general hospital of the Department of Corrections of the Ministry of Internal Affairs of Belarus ceased to operate on its former location. Officially, it still exists, but in a truncated form (according to unconfirmed data, 145 beds) in the territory of Minsk detention center No. 1. As previously, the treatment of prisoners with active TB is carried out in penal colonies Nos. 12 and 4.

Presidential Decree No. 607 of December 27, 2011 changed the timing of construction of the prison hospital: the first stage (2010-2013), the republican general hospital, as well as engineering and transport infrastructure to it; the second stage (2012-2015), buildings and structures of the detention facility, as well as engineering and transport infrastructure to it. As it turned out, it was not in the last time the completion of the project was delayed: Presidential Decree No. 494 of November 1, 2013 moved the date to 2017: the first stage (2010-2015), the republican general hospital; the second stage (2012-2017), construction of the detention center.

In October 2014, the complex (the jail and the hospital), as well as the transport infrastructure, looked far from being complete:



It is surprising that the construction of the hospital is carried out in the industrial area, where manufacturing companies are concentrated; at a distance of about two kilometers, there is a huge town dump.

In contrast, the urban areas, which previously housed the hospital and the colony, have been almost completely transformed into residential buildings¹⁷:



The only thing that reminds about the colony and the prison hospital is a high fence.

According to Article 2 of the Constitution, the individual, his rights, freedoms and guarantees of their implementation shall be the supreme goal and value of society and the state.

In accordance with the Constitution of the Republic of Belarus, citizens are guaranteed the right to healthcare, including free treatment at public health facilities; the state shall create conditions for healthcare available to all citizens; the right of the citizens of the Republic of Belarus to healthcare is also provided by the development of physical culture and sports, measures to improve the environment, opportunity to use fitness institutions, improvement of labor protection (Article 45).

According to paragraph 1 of Article 25 of the Universal Declaration of Human Rights, everyone has the right to a standard of living adequate for the health and well-being of himself and of his family.

In accordance with the International Covenant on Economic, Social and Cultural Rights, which is ratified by the Republic of Belarus, “each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and

¹⁷ <http://www.kaskadminsk.by>

technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

Measures to be taken for the implementation of this right shall include steps, including those necessary for the creation of conditions, which would guarantee medical service and medical attention in the event of illness for everyone.

International obligations of the Republic of Belarus on the recognition and enforcement of the right to healthcare, the use of modern healthcare services of the healthcare system and the means of treatment of illness and rehabilitation of health also stem from a number of other international instruments, as well as agreements of a regional nature, concluded in the framework of the Commonwealth of Independent States and the Eurasian Economic Community, including the Agreement on Cooperation in the Field of Public Health of June 26, 1992, the Agreement on Cooperation in the Field of High-Tech Medical Care to Citizens of Member States of the Eurasian Economic Community of September 28, 2012, and others.

The Constitutional Court of the Republic of Belarus believes “that the right to healthcare is one of the most important constitutional rights by virtue of the special nature and importance of the protected good. According to the Constitutional Court, the value of health, which is an inherently inalienable good, is that its loss results in the loss or diminishment of value of many other goods and values. This predetermines the nature of duties of the Republic of Belarus as a social state, which recognizes its responsibility for preserving and improving the health of citizens and ensuring proper legal regulation of relations connected with the realization of the constitutional right to healthcare.”¹⁸

There is confidence that the economic situation in Belarus in general and of the Department of Corrections in particular at this stage allows to bear the costs for the construction of facilities at the expense of the budget in order to ensure respect for the social rights of prisoners.

In 2013, first deputy head of the Interior Ministry’s Department of Corrections, Colonel Siarhei Pratsenka, when building a list of priorities in the spending of budgetary funds by the Department, expressed the following thought, “not only should not we save, but must protect employees and their families, be engaged in the improvement of their living conditions, in particular, by providing with accommodation. In particular, in May and August of 2012, two 64-apartment residential houses were completed to accommodate employees of penal colony No. 11 (Vaukavysk) and prison No. 1 (Hrodna). Two more houses are being constructed in Mahiliou and Zhodzina, which are expected to accommodate 25 employees of penal colony No. 15, and 35 employees of prison

¹⁸ On the conformity with the Constitution of the Law “On Amendments and Additions to the Law of the Republic of Belarus “On Healthcare”, decision No. P-924/2014 of the Constitutional Court of the Republic of Belarus of June 5, 2014

No. 8. In addition, in February last year, Minsk authorities launched the construction of a residential building for employees of the Department of Corrections' Minsk garrison. The construction of the 126-apartment building was expected to begin in late 2013. And we intend to continue following such a social policy in the future.”¹⁹ Unfortunately, these costs are of higher priority for the Department of Corrections than the cost of building a hospital for prisoners.

Former prisoners described their experiences of receiving medical care in different ways. In large part, the prisoners believe that in the case of serious illness they will receive appropriate assistance, as the administrations of colonies and prisons are afraid of decreasing statistics on the mortality of prisoners. However, prevention of diseases is virtually nonexistent. Prisoners have to take care as far as possible about their health: take food with onions, garlic etc. Those who have a chronic illness take medicines obtained from their relatives. In the colonies, there are only the most basic medical supplies. Severe troubles are faced by those who suffer from some specific or chronic diseases that are unobtrusive during remission and do not interfere with the prisoner's ability to work. Such people almost do not receive any treatment, as they reportedly have no need in such assistance and there is no possibility to transport each prisoner to a medical facility. In poor condition is dental care. Even paid treatment and prosthetics are difficult to obtain: this treatment are not provided by institutions run by the Department of Corrections and prisoners are treated by local doctors.

The Criminal Code provides for the possibility of the release of prisoners suffering from serious illnesses preventing the execution of a sentence, or the punishment may be replaced by a milder sentence. However, the severity of the offense, the personality of the convict, the nature of the disease and other conditions are taken into account. Thus, the impossibility of serving the sentence for health reasons is not an unconditional basis for the prisoners' release from punishment.

¹⁹ <http://www.mvd.gov.by/main.aspx?guid=108383>

“...bleach powder has not been used for disinfection purposes in the penal colony for a long time already”

CRUEL, INHUMAN AND DEGRADING TREATMENT OF PRISONERS.

CASE OF PIOTR KUCHARA

Human rights defenders keep receiving information on instances of cruel, inhuman and degrading treatment of prisoners, including torture reports. Often, these crimes involve prisoners who cooperate with the administration to improve their detention conditions. Typically, the victims categorically refuse to disclose these facts with details of the officials involved in the crimes, as well as information about the victims themselves. This is due to fears of prisoners for their safety.

In April 2014, the Human Rights Center “Viasna” received information about convicts Ch. and H., who were transferred from prison and penal colony No. 20 of Mazyr respectively to serve their sentences in penal colony No. 9, which holds prisoners who have earlier served a sentence of imprisonment. Both prisoners were not praised for good behavior, so they could not claim amnesty or parole; for the same reason they did not consider it necessary to sign a commitment of law-abiding behavior. Until now, this situation has not bothered both of them: for example, Ch. has spent more than three decades behind bars, without even trying to reform, for which the administrations of correctional institutions repeatedly initiated tightened his detention rules.

However, the administration of penal colony No. 9 showed quite a different approach to correcting the prisoners. According to the convicts, each of them, after refusing to sign a commitment, was brought into a “storeroom”, where they were brutally by several prisoners who called themselves “blatnois”. Prison officials watched the scene, not allowing anyone to disrupt the “educational process”. It is necessary to add that the “blatnois” in Horki differ from other prisoners not only for their wish to maintain by law and order among other inmates, also but for their strong physique ... The “correction” was supervised by someone named Papovich, who continues to serve his sentence, according to available information, in the colony of Vaukavysk.

As the prisoners say, such rules have been used in Horki since 2008. The administration promotes violence against prisoners who are brutally punished for both illegal actions, such as the possession of a phone, and a refusal to sign a commitment, or writing complaints against the administration. Surprisingly, the ban is even applied to writing supervisory appeals in criminal cases! At the same time, the administration can always find an excuse: persons acting in an official capacity do not

infringe the law, all that happened is a private conflict; but an unbiased check would certainly revealed if not abuse of power, then a criminal inaction of officials of the prison administration.

Prisoners Ch. and H. were not held in penal colony No. 9 for a long time, having left for prison. As Ch. said, analyzing his rich experience, "I did not know that Belarus has its own "White Swan" (also known as VK-240/2, the informal name for an infamous colony of special regime in Solikamsk, Perm Krai, Russia. It is a maximum-security prison for convicts sentenced to life imprisonment. The prison is known for its severe conditions.)

A similar situation is reported by prisoner Z., who was sent to penal colony No. 9. He also refused to sign a commitment of law-abiding behavior, and voiced his opinion about the criminal world of Belarus. His opinion did not coincide with that of the prison administration, and the incident ended, just like in the case of Ch. and H., with a "storeroom".

In July 2011, Ramiz Mamedov, prisoner of penal colony No. 5 in the town of Ivatsevichy, was beaten by the prison guards. This case was reported by human rights defenders of the Platforma NGO²⁰. However, the prisoner still reports harassment.

"Prior to the abolition of the first sentence Ramiz was held in the penal colony No. 5 in Ivatsevichy. After the second trial, I applied to the Corrections Department with the request to send him to another colony, as he had problems with the administration in that one," says the prisoner's mother, Halina Mamedava. According to her, none of the inspectors, to whom she addressed, didn't see any tendentiousness in the imposition of penalties on the prisoner in order to implement the order of the deputy head of the colony I Khudzinski to put the surname of her son on the list of the people who were to be given at least two penalties a month. "Strangely enough, nobody was surprised with the number of penalties for sleeping in the daytime. The matter is that Ramiz suffered from severe pain due to a duodenal ulcer. Anyone with abdominal pain tries to lie down and curl up..."

Despite the request of the mother, the convict was sent back to the PC 5. As it is stated in the reply of the deputy head of the Corrections Department P. Shakola of September 18, 2013, the place of punishment for Ramiz Mamedau was determined on a common basis in accordance with the legislation in view of his conviction under Article 139 of the Criminal Code and there are no reasons to change this decision.

Upon his arrival in the penal colony, the prisoner again faced with groundless punishments and was soon placed in the cell-type facility for five months. As it became known from the answer of the head of the Corrections Department in the Brest region M. Sukhadolski of November 13, 2013, Ramiz Mamedau received six penalties for two weeks, and was given the status of "malignant violation of the prison regulations" at the sitting of the board of educators of the prison brigade on October 16, 2013. This fact eloquently witnesses the biased attitude of the personnel of the PC 5 to Mr. Mamedau. However, in his answer to Halina Mamedava M. Sukhadolski states: "There weren't discovered any facts of biased attitude towards Your son, prisoner R. Mamedau, on the part of workers of the penal colony No. 5, as well as groundless imposition of penalties."

²⁰ http://naviny.by/rubrics/society/2011/10/04/ic_news_116_377718

Disagreeing with such an answer, Halina Mamedava appealed it to the MIA Corrections Department with the assistance of the human rights defenders. “Who are they trying to convince that R. Mamedau, who came to the PC-5 without any violations and admonitions on October 5, 2013, turned into a “malignant violator of the prison regime” on October 16, 2013?”

“Irrespective of his behavior, my son is given disciplinary punishments. I believe this is a continuation of the conflict between the R. Mamedau and the shift of inspectors who were present during the use of physical force and police gear towards my son on July 26, 2011. After this, R. Mamedau was taken to the Ivatsevichy hospital and was put under a drip. His direction to the PC-5 in Ivatsevichy doesn't correspond to the aims of criminal punishment, because it will not contribute to his correction,” reads the appeal.

According to Halina, Ramiz wants to serve his term without any penalties, and work and study at the PC-5. He explains the need to work with the fact that he has an under-aged daughter and he needs to pay alimony. He also needs to compensate the cost of services of a lawyer from the Hrodna Regional Bar Association. However, he was again denied the opportunity to work and study. That's why in her appeal Halina Mamedava asks the relevant authorities to put the situation under control and prevent all further attempts of pressurization of her son at the PC-5, and facilitate his employment.

The woman also set out her requests at an audience with the administration of the Corrections Department. According to her, First Deputy Head of the Corrections Department Siarhei Pratsenka promised to contact the administration of the PC-5 in order to solve the situation.

As a result, a court order sent Ramiz Mamedov to continue serving his sentence in prison.

The case of Piotr Kuchura was important, since the prisoner and his wife agreed to publicly disclose the facts of pressure on the prisoner, including cruel treatment, as well as the results of appeals against the administration of the colony to the authorized investigating bodies.

Psychological pressure on Piotr Kuchura began after the publication on the website of the human rights organization "Platform Innovation" in June this year of an article alleging extortions in penal colony No. 15 in Mahiliou, the appearance of which was attributed to the prisoner and his wife. One after another, Kuchura received punishments, for example, for “sleeping in forbidden time”, which allows to deprive him of seeing his wife, so that he could not tell her how prisoners are treated in the colony.

The penalties were followed by solitary confinement and then cell-type imprisonment.

A glaring fact, which Liudmila says should result in a punishment for the administration and staff of colony No. 15, took place in the punishment cell on September 19.

Piotr Kuchura saw that the wash basin and the toilet were sprayed with chlorine. As soon the water started running, chlorine dissolved in water. As a result, the prisoner could neither see nor breathe because of a strong irritation of the eyes and the mouth; he started knocking on the door. It should

be noted that in such premises have extremely poor ventilation. The plumber appeared only after the prisoner fainted. After the sewage was cleaned, the inmate was given a cloth the size of a handkerchief and told to clean it up. Despite all this, he was transferred to another cell only when his health had deteriorated significantly. This is how Piotr Kuchura described the poisoning in a letter to his wife: “everything was burning inside”, “for three days after September 19, I had fluid coming from my nose... after a while, this “water” was replaced by phlegm, and it’s still there [February 2014] running all the time... After all this, it was hard for me to breathe and I started having headaches.”

Piotr Kuchura is disabled, he has a heart disease, which he acquired in prison. In connection with the disease he must take daily medication, but he could not do this regularly because of the numerous penalties. There were also instances when the doctor replaced the heart medication with cough pills, but no explanation on this matter could be obtained. Delays in taking drugs can end up with a heart attack, a stroke or a sudden cardiac arrest.

All this is described in detail in a complaint about unlawful actions of the administration and staff of penal colony No. 15, which was sent on November 5 to the head of the Investigative Committee’s Mahiliou regional department. The prisoner’s wife demanded to open a probe in order to confirm the fact of chlorine poisoning and consequences of this poisoning and to initiate criminal proceedings against those responsible for causing harm to the health of her husband. However, head of the IC’s office did not A. Rakusau chose not to address the matter and forwarded the complaint to the Mahiliou regional office of the Department of Corrections. However, the Department is not authorized to consider statements and reports on crimes. Indeed, in accordance with the Criminal Procedure Code, decisions on applications or reports of crimes committed by officials of the Interior in connection with their official or professional activities are within the exclusive competence of the preliminary investigation agencies.

In this regard, Mrs. Kuchura sent her next complaint prepared by the human rights defenders of the Human Rights Center “Viasna” to the Deputy Chairman of the Investigative Committee of the Republic of Belarus. The complaint states that the decision by Mr. Rakusau is illegal and violates the rights of both the convict and the applicant.

In particular, the complaint cites a number of binding international treaties: “Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities” (Article 13, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the UN General Assembly Resolution 39/46 of December 10, 1984).

Legislation of Belarus has no rules on liability of officials for torture, cruel and inhuman treatment, but it is possible to qualify their actions under the Criminal Code which provides for liability for crimes against human rights and against the interests of the service,” among other things is stated in the complaint.

Liudmila Kuchura requested to conduct checks and to adopt a procedural decision aimed at protecting the rights of her husband.

In his reply to the complaint, head of the board for the procedural control of the Investigative Committee of the Republic of Belarus Mikhail Alioshkin told Mrs. Kuchura that “there are no grounds for the inspection on your appeal by the Investigative Committee on the basis of criminal procedural legislation”. While taking this decision, the Investigative Committee held no inspection, despite the fact that the applicant had asked for it, and referred to the attached ruling of the Mahiliou Regional Prosecutor's Office from 13 November 2013 in which it is stated that “an inspection of the conditions of serving the penalty by Kuchura P.K. and the conditions of his detention in the penitentiary No. 15 was held on your appeal. There weren't found any violations including facts which confirmed the commitment of a crime against Kuchura P.K. by officers of the correctional institution.”

In this case, the Investigative Committee shifted the emphasis, as the earlier prosecutorial examination wasn't aimed at determining whether Piotr Kuchura was poisoned with chlorine, and what were the conditions of this poisoning.

In addition, the officer of the Investigative Committee of the Republic of Belarus Mikhail Alioshkin ignored in his answer the applicant's arguments that the Corrections Department of the Ministry of Interior (to which the Investigative Committee in the Mahiliou region forwarded the previous appeal) was not authorized to consider reports of crimes committed by officers of the Ministry of Interior related to their official duties.

The human rights defenders from the HRC “Viasna”, who helped Liudmila Kuchura to prepare the complaint, believe that any further correspondence with the Investigative Committee on this case is senseless, that's why the next appeal will be sent to court. In the complaint, the applicant referred, inter alia, to the provisions of the International Covenant on Civil and Political Rights, and pointed to the state's obligation to ensure that any individual who alleges he has been subjected to torture, has the right to complain to the competent authorities of that State and to a prompt and impartial consideration of such complaints. However, in December 2013, the Court of Mahiliou's Leninski district refused to institute a civil case on the complaint against the decision by the head of department of the Investigative Committee's regional department due to the fact that the examination of the complaint was beyond the court's jurisdiction and explained that actions of the department head could be appealed to officials of the Investigative Committee and the Prosecutor.

The Court of Mahiliou Region dismissed on February 3, 2014 the complaint against the decision of the Leninski District Court, in which Liudmila Kuchura requested to cancel the ruling of on December 19, 2013 and to forward the case to the trial court. Her complaint and all the attachments were returned by the Leninski District Court of Mahiliou.

Simultaneously, the prisoner faced the negative effects of his struggle for justice. On December 30, 2013, Piotr Kuchura was sentenced to three years in maximum security prison No. 4 in Mahiliou.

As Liudmila Kuchura told the HRC "Viasna", the trial of her husband passed very quickly and without much explanation.

According to her, the lawyer who visited the colony on December 20 to study the case Piotr Kuchura and the penalties received by him, wasn't allowed to do it, as the case was allegedly "for official use only". Of course, the prisoner wasn't allowed to study his case either. After both of them filed applications requesting to familiarize them with the case, the lawyer was informed that the decision would be sent to him by mail.

On December 23, the lawyer received a fax note that the trial would start on December 26. This is a violation, since by law the interested parties are to be informed about it at least five days before trial. "The administration of the penal colony hurried to transfer my husband to prison", says Liudmila Kuchura. The trial was held very hastily. The husband's motion for familiarization with the case was denied, he was told that there wasn't a great need for it. The lawyer was just allowed to look through it before the trial. Even when he asked to read an extract from the medical record, he was told that it was confidential. Of course, all this is ridiculous. As a result, the trial was very short."

The judge granted the request of the colony administration and sentenced Piotr Kuchura to three years in maximum security prison No. 4 in Mahiliou.

From this prison Liudmila Kuchura received a letter by which she was informed about the prison rules, according to which she could see her husband once a year and pass him one parcel, weighing two kilograms.

"They created terrible conditions for a person who is disabled by heart disease, the terrible conditions. You know, that with such diseases one needs to be outdoors as much as possible and have a good nutrition. However, now I won't be able to pass my husband any honey or dried fruit, dried apricots and raisins or nuts, which are useful for those who have heart diseases. It turns out that the judge and the prosecutor (though it is a question whether there was a prosecutor at the trial, as there wasn't anyone in the prosecutor's uniform there) deprived him of the right to health, which is guaranteed to all citizens by our Constitution," said the woman.

Liudmila Kuchura believes that the leadership of colony No. 15 wanted to get rid of her husband in any way, even by means of physical destruction. To prove her words, she told about the content of one of the letters from her husband, which wasn't let through by the prison censorship for a while.

"In December, he sent me a letter in which he described how he was being driven in the forbidden zone and constantly threatened. The letter wasn't let out of the colony. They destroyed it and composed an act saying that my husband allegedly insulted me with four-letter words in this letter. Of course, this is nonsense. However, after the arrival of the lawyer, whom the husband informed about this glaring fact despite the presence of the administration during the talk, they had to send his next letter, as the fact was already known anyway."

Piotr Kuchura, who was held in a cell-type facility in penal colony No. 15 at the time, wrote to his wife: "Each time I am lead to the headquarters or to the medical unit by the forbidden band. At 8 p.m. and at 7.30 a.m. in the morning on December 18 one guard started posing open threats. He said that they were bored of having to lead him here and there all the time, and it would be better

if they took him to the forbidden band and shot there with a machine gun. The guard said that if he had to lead me again, they would throw my hat on the barbed wire, then a guard would shoot me with a machine gun, after which they would throw my body over one row of barbed wire, and no one would discriminate on which side I had been before. He said that as a result he would have a rest, everyone would have a promotion and they would get rid of Kuchura, and, as said by Makhankou (S. Makhankou, head of colony No. 15, — Ed.) all will be under the law – a prisoner's escape was prevented.”

Subsequently, the judge's ruling to send the convict to prison was reversed as a result of the prisoner's appeal, but after another trial P. Kuchura was sent back to prison.

Having exhausted all legal remedies at the national level, in March she filed a complaint with the UN Human Rights Committee.

In her complaint, prepared with assistance from human rights defenders of the HRC “Viasna”, the prisoner's wife asked the Committee to establish “a violation by the state of Piotr Kuchura's right under Article 7, paragraph 2 of Article 10 and the general legal obligations under Article 2 of the International Covenant on Civil and Political Rights, and to appoint a fair compensation”.

The ongoing efforts of Viasna's human rights defenders and Piotr Kuchura's wife finally brought certain results. In late May, the prisoner's wife received a notification from the Office of the Investigative Committee in the Mahiliou region saying that a probe had been launched to determine the fact of chlorine poisoning and the alleged consequences of this poisoning, including a forensic medical examination. Liudmila Kuchura's complaints will also be investigated in accordance with Article 174 of the Criminal Procedure Code of the Republic of Belarus, as she requested to initiate criminal proceedings against those responsible for causing harm to the health of her husband.

According to Mrs. Kuchura, the news was for her a complete surprise, because almost nine months has passed since her husband was allegedly tortured in jail. “During this time I have written a lot of complaints both to the Investigative Committee and the Prosecutor General's Office, which were unreasonably denied. I also appealed to the court, which sided with those who do iniquity. Back on May 13, the Investigative Committee's Office in Mahiliou said all these proceedings were dismissed. Besides, me and my husband received answers from the Prosecutor General's Office saying the same thing – that I could not appeal to the higher authorities. And suddenly this message...”

Liudmila also said that two weeks ago she was summoned to the Investigative Committee of the Maskouski district of Minsk, at the request of the Investigative Committee's Office in Mahiliou, for explanations. “In my explanations I said that I did not trust that probe and that the examination, which will now be carried out, had meaning only for them. I doubt that after nine months it is possible to establish the presence of chlorine in the body. Yes, there may be some changes in the lungs, but again, these changes may be interpreted as they wish – a cold, or something else... It is clear that the probe under Article 174 of the CPC is carried out only now in order to conceal the criminal acts of the administration of penal colony No. 15,” she said.

Human rights defenders of the HRC “Viasna” believe that in this case not only the administration of PC-15, but also representatives of those entities, which have for a long time hampered objective investigation, should be held responsible.

In its message, the Investigative Committee’s department promised that the inspection would include a forensic examination in order to determine the effects of poisoning in the body of Piotr Kuchura.

As a result, a decision of June 27 signed by senior investigator Skavarodkin refused to institute criminal proceedings. The decision enumerates the persons interviewed during the probe, including the staff and convicts of penal colony No. 15, as well as the medical records examined during the investigation. Mr. Skavarodkin says the prison administration staff were not involved in any actions constituting an offense under Article 426 of the Criminal Code “Abuse of power or official authority”.

In her complaint to the prosecutor of Mahiliou sent on July 17, Liudmila Kuchura says that the decision not to open a criminal case is illegal, arbitrary and subject to cancellation.

“Certainly, if the probe had been carried out in due time, it would be easier to find out the circumstances of the case. However, this does not mean that now they only needed to simulate activity rather than taking all legal measures in order to establish the full circumstances of the incident. I consider it necessary to supplement the materials of the probe with a forensic medical examination, which would not examine the medical records, but the victim himself in order to find any traits his exposure to the chemical. The fact that he was not provided with necessary medical assistance and was not examined in due time became the subject of my complaints. Therefore, it seems improper to justify the lack of records of injuries with absence of damage itself. Significant contradictions between the explanations of those interviewed needed to be eliminated. This can be done through confrontations, which is not provided by the law on criminal procedure at the stage of preliminary inquiries. Therefore, it is only possible to fully verify the arguments of the victim and the applicant after a criminal case is opened and an investigation is underway,” argued Ms. Kuchura.

In addition, when citing in her complaint the Principles for Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (known as the Istanbul Protocol), the prisoner’s wife states that during the probe by the Mahiliou interdistrict department of the Investigative Committee these conditions were not fulfilled.

Liudmila Kuchura asked the prosecutor to cancel the decision of Mahiliou investigators. As a result, Mahiliou City Prosecutor cancelled the order of the Investigative Committee’s interdistrict department.

“The Mahiliou City Prosecutor’s Office has examined the materials of the investigation; the decision not to institute criminal proceedings was cancelled on July 22, 2014; the materials have been forwarded to the Mahiliou interdistrict department of the Investigative Committee for an additional investigation,” said Prosecutor Mikalai Vulvach.

Liudmila Kuchura learned new details from a letter she received on September 3, 2014. Piotr Kuchura wrote that he had received the decision of investigator Skavarodkin of August 25, 2014, which reported on another refusal to open a criminal case against the administration of penal colony No. 15. The convict was surprised to learn about an “additional forensic examination” that was reportedly held on August 21, 2014.

“As my husband wrote, investigator Skavarodkin came to interview him on my complaint on September 3. And during the interview my husband pointed out that there was no examination ever made. The investigator told him that there was a re-examination underway and the response to my complaint was going to be ready in October. But in the beginning of September, there came the answer (it wasn’t sent to me, but to my husband) saying that no criminal case would be opened, and that the fact of poisoning was not confirmed. It turns out that a forensic examination was carried out, but we don’t even know about it – in reality, such an examination was never carried out.”

“Arguments of investigator Skavarodkin about the “examination” are absolutely absurd and have no credibility. For example: “According to the additional forensic examination No. 2293 of 08/21/2014, there is no information about any injuries at Kuchura’s body that can be related to the circumstances of 19.09.2013. If poisoned, including through the inhalation of chemicals fumes, there cannot be any injures on the skin, therefore, they cannot be found”. Or, “Interviewed convicts Biazruchka V.N. and Pishchala E.A. of PC No. 15 explained that convict Kuchura didn’t express any complaints on chlorine poisoning during his stay in PC No. 15.”

“Can you see how absurd it is! Why did this investigator Skavarodkin decided that my husband had to complain about it to those particular two convicts – Biazruchka and Pishchala,” says outraged Liudmila Kuchura. “According to my husband, he even did not communicate with them. And we must understand that not a single convict would want to have problems by giving testimony against the prison administration. Especially considering that Mahiliou PC No. 15 is known for cruelty of its administration, and numerous suicides among prisoners. That’s why how it can be expected that the convicts will do something against the administration? But to be honest, we are not surprised having such a response. When they have nothing to respond, they just write what they like.”

The woman believes that such answers of the investigative bodies are just another proof of the guilt of the administration of PC No. 15. “From all that is happening, it is clear that the Investigative Committee (I think they were given such an order) just covers criminal actions of the PC No. 15 and, most likely, of all those who gave formal replies to our complaints without conducting inspections. After all, we initially applied for a forensic medical examination. And if it had been carried out, there wouldn’t be further questions. I think that if Kuchura was not poisoned that would mean that we had slandered decent people. And then we would have been convicted to a criminal liability for libel. But why do they keep stringing it along?”

The application of Liudmila Kuchura was dismissed by the investigating authority. However, she intends to seek access to the materials of the forensic examination and says that she will have to go to court in order to further appeal against the illegal decision of investigator Skavarodkin.

As of mid-October 2014, the investigator has three times ruled to refuse to open a criminal case. His decisions were twice overturned by the prosecutor.

“He cried asking for help”

CRUEL, INHUMAN AND DEGRADING TREATMENT OF PRISONERS.

CASE OF ALIAKSANDR AKULICH

The staff employed in places of detention do not possess the sense of responsibility for the lives and health of prisoners. The limits on the use of physical force and special means by members of the Interior are unjustly expanded. The most vulnerable position is that of the prisoners suffering from various diseases and addictions. Deaths of prisoners are not uncommon, but the statistics on this type of accidents are not available, and medical reports usually mention natural causes of deaths.

The victims of abuse are often those whose social status allows police officers not to fear principled and unbiased prosecution using all means provided by the law.

In August 2013, prisoner Ihar Ptsichkin died in the Minsk-based pre-trial prison No. 1. His relatives prevented the accident from going unnoticed. The prisoner's death is still being investigated by the Investigative Committee. Until now, there have been no findings on the possible perpetrator, although the circumstances of the case allow the investigators to take a procedural decision before the expiration of statute of limitations in respect of persons from the prison staff.

In 2013, the Human Rights Center “Viasna” received a complaint from Valiantsina Akulich, whose son Aliaksandr Akulich died in the detention center in Svetlahorsk on May 26, 2012. The death was reportedly caused by police officers and came on the fourth day of his stay in the detention center.

“My son was drinking, and we wanted to put him in a medical labor dispensary for some treatment. On May 22, I phoned the district police officer and asked for instructions in order to place him in the detention center, so that he may quit that booze. He replied: dial 102, they will come and collect him. So I phoned them. And he was taken to the detention center for five days. On the fourth day he fell ill, but the employees refused to call for an ambulance. Although the inmates asked them to call for an ambulance, because he was too bad. When he started running around the cell, he was taken out; they made him a "swallow", fastened his handcuffs to the bars and started beating him. Moreover, surveillance cameras recorded only to the point where he was taken out of the cell, and when they began to beat him - there was a "break." He received 18 blows. When he started to have seizures and his breathing was interrupted, they put him on the floor and called for an ambulance. When the doctors came he was already dead,” says Valiantsina Akulich.

She was told about the death of her son only the next morning on the phone. When Valiantsina came to the morgue, they refused to show the body of her son, they just told to bring his clothes, “But I wanted to see the body, because I did not believe my ears. He was not sick and he did not complain of anything, he only had the flu. However, he used to drink. But I was not let inside the morgue.”

Aliaksandr’s mother could only see the body of her son when they brought him home. “I saw that he was covered with bruises, all cut up, both his hands and feet, his face was black. I called 102 and said, “You, murderers! You killed my son, I will not believe that he just died. Then two police officers came to me, I asked them to take a photo of the body, but they refused. The next day I called my friend, she brought a camera and we took the pictures. The same evening I wrote a statement.” In her statement, Valiantsina Akulich requested a check on the death of her son, and about the appearance of numerous injuries on his body.

The materials of the probe refer to the results of a forensic examination, “The examination of the corpse revealed the following injuries: multiple bruises on the scalp, face, in the area of the right shoulder joint, the elbow, wrist joints, the left leg, beneath the mucous of the vestibule of the mouth (upper lip). The bruises on the back of the chest emerged from a blunt solid object like a baton or a stick. All of the enumerated injuries resulted from the action of blunt solid objects shortly before death (during 24 hours) and belong to minor bodily injuries, not having a cause-and-effect relationship with the death. Formation of the complex injuries as a result of falling on a flat surface is excluded because multiple injuries were located in different anatomic areas and cavities of the body.”

Mrs. Akulich said that after the funeral she had a conversation with the medical examiner Mikalai Haliuzau, “I am very sorry that I did not take with me a witness or a tape recorder to record his words. Because now I can’t prove it. He told me that my son was severely beaten, that the results of the examination of his internal organs were sent to Homel, but when they received an answer, a criminal case would be dismissed. He promised to help me with finding a good lawyer and told to write a complaint. But, apparently, the police talked to him, because when I came to him again, he would not even talk to me.”

In his decision not to institute criminal proceedings, investigator Piatochanka told Valiantsina Akulich that the need for the use of physical force and special means against her son was caused by the fact that he “behaved aggressively, resisted the policemen, failed to obey their legitimate demands”. “The actions of the police officers Stsiashenkau and Bachko, who were on duty, comply with the Law of Belarus “On the Bodies of Internal Affairs” and were within the limits of their powers. In this regard, there are no grounds for a criminal case,” said the investigator of the Investigative Committee.

Valiantsina Akulich believes that the inquiry into the death of her son lacked thoroughness and needed to be supplemented, therefore the decision of Senior Investigator Uladzimir Piatochanka of Svetlahorsk district department of the Investigative Committee is premature and should be repealed. This is reported in her complaint to the Prosecutor of Svetlahorsk district.

“The findings of the investigator about the legality of the use of physical force and special means by the employees of the detention center are erroneous because Aliaksandr Akulich needed medical treatment, acting in the state of a disease, instead of showing resistance or disobedience as an act of volition. It is clear that this fact should have been obvious to Stsiashenkau and Bachko. However, these employees, instead of providing timely medical care or calling for a doctor, just beat the person with a temporary mental disorder for half an hour (from 00.30, according to the log of using physical force and special means, till the time an ambulance was called at 01.05). Is not it obvious that for a person in such a state blows with a rubber truncheon may not be the means of prevention? The only question in this case is yet to explore – it’s the question of how could timely medical help change the course of the disease and save the life of Aliaksandr Akulich.

This issue has so far been groundlessly outside the attention of the persons who conducted the check, while the actions of the detention center employees were not evaluated in terms of timeliness of medical care received by Aliaksandr Akulich, but received formal and therefore incorrect assessment from the point of view of compliance with the law in the application of physical force and special means.”

In her complaint, Valiantsina insisted on an additional forensic examination to be followed by a decision on bringing the perpetrators to justice. “Why did they beat him? After all, a person is sick, he had to receive treatment instead. I have repeatedly requested to call witnesses who at the time were in the cell together with my son, but they called me, while these people are being intimidated. They told me that they were threatened with the same as my son,” says Mrs. Akulich.

Having considered the complaint, on August 1, 2013 head of the Svetlahorsk district department of the Investigative Committee, Aliaksandr Prykalotsin, overturned the decision of June 9, 2013 not to initiate criminal proceedings, and ordered to reopen the investigation. In addition, at the request of Valiantsina Akulich the official ruled to launch an additional forensic examination.

Aliaksandr Akulich’s mother asked to open an additional examination for solving the question whether there was a directed relation between the death of her son and the non-timely rendering of medical aid by the officers of the Svetlahorsk District Police Department A. Bachko and R. Stseshankou, who kept duty in the detention center that day. However, again refusing to bring a case “due to the absence of corpus delicti in the actions of the police officers”, investigator Viachaslau Petachenka failed to assess their actions. He issued his ruling on August 10, without waiting for the results of the examination, which was completed on August 21.

Meanwhile, there are enough facts he could pay attention to, as it follows from the materials of the check-up, the questioned paramedic of the ambulance station explains that on 26 May 2012 she received a call from the police station at 1.05 a.m., and on arriving at the DPD at 1.10 a.m. she saw a man who was lying dead in the corridor of the detention center. The questioned duty policeman of the detention center Stseshankou explained, that he and his partner Bachko decided to lead Akulich out of the cell “in order to bring him to the investigation office and call an ambulance in the case of necessity, because his behavior was characteristic for an alcoholic psychosis”. They also decided to use physical force towards Akulich. According to Stseshankou, it took place at about 1 a.m., 5-10 minutes before the death of the detainee. However, as it is

indicated in the case materials, according to a record in the register of the use of physical force and police gear, they were used towards Mr. Akulich starting from 0.30 a.m. What hides behind such discrepancies in the time? Probably the fact, that Stseshankou and Bachko could beat a man in an inadequate state for half an hour instead of rendering him timely medical aid. It's quite interesting that his mother and the human rights defenders pointed at this circumstance in their appeal, but neither the investigator Petachenka, nor the DPD officers who gave explanations during the check-up, paid any attention to it.

In her statement, disagreeing with the refusal to open a criminal case, Valiantsina Akulich asked to put concrete questions for additional examination:

1. Was the medical aid rendered to A. Akulich timely? If not, what were the consequences of the untimely medical aid to him?
2. Were there any opportunities to prevent the illness A. Akulich was diagnosed with, or its exacerbation?
3. What urgent medical aid did A. Akulich need since 10 p.m. on May 25, 2012?
4. Could such urgent medical aid be rendered to A. Akulich by an ambulance brigade or in a medical institution?
5. Was the death of A. Akulich inevitable if the medical aid was rendered timely?
6. Did A. Akulich have any contraindications to medical treatment?

It should be noted that in the presentation of its findings the commission of experts has demonstrated a great cynicism. They answered the first question in the following way: “No medical aid was rendered to A. Akulich as his biological death was registered on the arrival of the ambulance brigade”. What concerns the remaining questions, the answer was as follows, “The forensic expert commission doesn't deal with any prognoses, but just assesses objective facts, that's why it is not possible to answer these questions”. Meanwhile, questions 1, 2, 4 and 5, as well as 3 and 6, did not require any prognoses.

Having read the conclusion made by members of the expert committee, Kuzmichau, Davydau, Novikau and Husakou, all of whom possess the highest qualification category, Valiantsina Akulich argued that their conclusion could not be taken into account. She told about that in her next request sent to the prosecutor of Svetlahorsk district: “The experts' opinion cannot be taken into account because, first, apparently, the experts meant the actions of ambulance medics, when answering question No. 1. I asked for expert advice regarding when medical assistance to A. Akulich should have started in order to treat him for delirium and brain edema. Otherwise, it looks somehow illogical: if some abstract detainee died bleeding in front of police officers and the doctor would subsequently pronounced him dead, would the expert also say that there was no need to provide medical aid, as the death had already been pronounced? Or should there be someone who has to stop the bleeding and bandage the wound?!

Answers to questions 2-6 confuse me, too, since I assume the following: there are morbid conditions that can be cured or alleviated by an appropriate treatment, and there are those that cannot be cured by modern medicine...”

The woman further mentioned her demands to the prosecutor: “Therefore, I insist on questioning the experts in order to obtain clarification of their findings with due respect for my arguments.

I am still interested in the question of when the treatment of my son should have started – with the first signs of the disease or after prison staff beat him and “crucified” him on a lattice using handcuffs, with what means – beating with a rubber truncheon or medication, as well as about how could the timeliness of treatment have changed the development of the disease.”

In addition, Aliaksandr Akulich’s mother cites the demands stated in her previous complaint about the refusal to institute criminal proceedings, “The decision failed to assess the contradictions between the testimony of the prison staff and an entry in the registry concerning the time of application of special means and physical force, despite the fact that I paid attention to this in my previous appeal.

The investigator’s reference to the documents defining the rights of law enforcement officers in the application of physical force and special equipment cannot justify the beating of poorly oriented prisoner. The only legitimate purpose, immobilize the patient, could have been achieved using only the necessary amount of physical force aimed at overcoming his resistance and binding him.”

Svetlahorsk district prosecutor Uladzimir Tarasenko agreed with the arguments of the human rights defenders of “Viasna” stated in the appeal against the refusal to open a criminal investigation into the death of Aliaksandr Akulich in the Svetlahorsk detention center.

When canceling the aforementioned decision of the Investigation Committee, the district prosecutor agreed with the arguments set out in the complaint. “The conducted examination was incomplete, the available materials are insufficient for making a lawful and reasonable decision. The decision not to institute criminal proceedings was issued prematurely and shall be abolished,” said the prosecutor in his ruling. Enumerating the actions, which are necessary during the examination, he stressed the necessity to “question the experts of the State Committee of forensic examinations in order to obtain explanations concerning their conclusion No. 57 of August 21, 2013” and to “eliminate the contradiction between the testimony of the officers of the detention center and the entry in the registry about the time of the use of the police gear and physical force, and to re-interrogate the officers of the Svetlahorsk detention center about it.” These are the demands Valiantsina Akulich insisted on.

However, refusing to open criminal proceedings by his decision of October 24, 2013, the investigator of the Svetlahorsk department of the Investigative Committee didn’t consider these demands. This forced Valiantsina Akulich to send another complaint to the prosecutor.

“As it is stated in the ruling, during the additional examination the police officers were questioned and some documents were attached to the case by the investigator. This indicates the incomplete

implementation of the prosecutor's requirements, who also demanded to interview experts of the State Committee of forensic examinations.

The conclusion about the absence of *corpus delicti* in the actions of the officers of the detention center was made without analysis of the data: the ruling provides no assessment of the inconsistencies between the testimony of the officer of the detention center and the entry in the log about the time the use of the police gear and physical force.

The investigator again referred to the documents defining the rights of law enforcement officers in the use of physical force and the police gear, excluding the fact that these rights of law enforcement officers cannot be used to justify beating “inadequate” detainees, which don't understand the situation. “It was possible to achieve the legitimate aim, to immobilize the patient, only with the use of physical force, aimed at overcoming his resistance, and binding”, read the complaint for the abolishment of the ruling of the Svetlahorsk department of the Investigation Committee of October 24, 2013.

The latest response traditionally argued that “the decision to dismiss the criminal case was legal, the inspection was comprehensive, and there are no grounds for cancellation of the decision.”

However, the response probe was “comprehensive” when the next paragraph says that “on 25.11.2013 the materials of inquiry into the death of A.A. Akulich was sent to the Prosecutor's Office of Homel region in order to study and verify the legality of the decision, where it currently is.” This response is dated 13.12.2013, while Valiantsina Akulich's complaint was received by the Prosecutor's Office on December 12. It turns out that the prosecutor replied to the woman without reference to the materials of the investigation.

However, the order was issued one month before the experts were interviewed. The experts were interviewed, of course, formally. However, one of them disclosed a huge medical secret: “timely and appropriate assistance in delirium tremens cases in a large part of instances allows to save the life of the patient”.

But can one claim that the probe was “comprehensive” when the next paragraph says that “on 25.11.2013 the materials of the inquiry into the death of A.A. Akulich were sent to the Prosecutor's Office of Homel region in order to study and verify the legality of the decision, where it currently is”? This response was dated 13.12.2013, while Valiantsina Akulich's complaint was received by the Prosecutor's Office on December 12. It turns out that the prosecutor replied to the woman without reference to the materials of the investigation.

In case of disagreement, Uladzimir Tarasenko offered to appeal his decision to the Prosecutor's Office of Homel region. However, activists of the Human Rights Center “Viasna”, who have assisted Mrs. Akulich in appealing procedures, insisted that the case should be sent to the court.

For a long time, Valiantsina Akulich did not have the opportunity to see the materials of the probe, as the investigator informed her that these materials were supposedly somewhere in the Prosecutor's Office. Therefore, the complaint to the court was filed without studying them.

In her complaint, drafted with the help of lawyers of the HRC “Viasna”, the woman argued that the findings of the investigator about the legality of the use of physical force and special means by prison employees were erroneous, since Aliaksandr Akulich needed medical care, while the police officers, instead of timely assistance and calling for an ambulance, “reassured” with clubs a person with temporary mental disorder.

Such actions, according to the lawyers of the HRC “Viasna”, definitely constitute an act of prohibited cruel and inhuman treatment, whereas each party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction, shall undertake to prevent other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture.

On April 18, Judge Pradun of the Svetlahorsk District Court dismissed the appeal.

Lawyer Pavel Sapelka, who attended the trial, told about the court session:

“Applicant in such cases have a chance to restore justice, because the decision is taken by the court, which is to a lesser extent depends on a false interpretation of the desire to preserve the “esprit” inherent in former police officers and prosecutors, who make up the staff of the Investigative Committee. The court can objectively assess the efforts of investigators and, as we had hoped, in this case, forward the case to the Investigative Committee for further verification. After all, several key issues raised in the previous appeal remained unanswered.

However, the hope for justice began to vanish as soon as the judge started questioning the mother of the deceased: she was interested only in information about the degree of moral decline of the deceased: how long he had abused alcohol, what was his personal life like and what were his relationships with his family, though, it seemed that the investigators had collected all the “compromising” facts about the victim. How crucial is this in investigating the legality of actions of the police officers? Yes, Akulich was repeatedly convicted; yes, he abused alcohol, and his personal life did not go well... But he was not killed in a drunken brawl or in an alcoholic stupor, but in the walls of the detention center, where the responsibility for his life, health and safety is adopted by the state in the face of police officers.

During the announcement of the investigation materials, there appeared several interesting details that were previously unknown, since Aliaksandr Akulich’s mother had not been allowed to see the results before filing her complaint to the court.

As it turned out, Akulich’s aggressive behavior, which was cited by police officers to justify the use of violence, was manifested mainly by the fact that he was hiding behind his cellmates’ backs and calling for help... by the police.

An ambulance paramedic, who arrived after Akulich’s death, saw him lying with his face down and his hand twisted behind his back, which did not correspond to explanations by the policemen who said that they had been doing cardiopulmonary resuscitation. The investigator failed to receive a clear answer from the police officers on this strange method of emergency procedures.

The same principle underlined a check of a sudden failure of the video surveillance system installed in the detention center: it ceased to work in the recording mode at the crucial moment. The interviewed employee, who is responsible for the operation of the system, explained that the trouble was fixed on the following day. The question “How?” was not even asked; the answer was obvious: perhaps, he simply switched on the recording mode...

An interesting discussion arose between the investigator and the detention center employee: what exactly, blood or mud, was discovered during the inspection of the room, where A. Akulich had been beaten. An examination, which could have put an end to the dispute, was for some reason considered improper.

After a year and a half after the death of A. Akulich, in the fall of 2013, the investigator finally attempted to resolve the contradiction between the explanations of the detention center employees and the entry in the register on the use of physical force and special equipment concerning the time and duration of the use of physical force and rubber batons, but the employees had already forgotten these circumstances by the time!

As explained by a representative of the Investigative Committee, the contradictions between the explanations of the other interviewees could not be eliminated, because it is impossible to conduct confrontations... without launching a prosecution. But it was this, opening a criminal case, that has been requested by Aliaksandr Akulich’s mother for almost two years!

Eighteen traumatic contacts – this is the result of legitimate, according to the investigation, actions by the guards of the detention center. These actions of the police were found legal under the Law “On Bodies of the Interior of the Republic of Belarus”. None of the law enforcement officials questioned the legality of beating a prisoner as such.

“Justice” triumphed! But the court ruling did not give an answer to the questions raised in the complaint.

Just like the investigators, the judge “forgot” to evaluate the actions of the guards in terms of fulfillment of requirements provided in paragraph 76 of the Internal Regulations of Special Institutions of the Interior executing administrative penalties in the form of administrative detention: “with overt signs of a disease, an employee on duty should immediately call an ambulance”.

Actions of the police were found corresponding the Law “On Bodies of the Interior of the Republic of Belarus”. But this very law expressly states that an employee of the Interior should take immediate measures to provide medical and other necessary assistance to persons in a helpless condition or in a state that endangers their lives or health.

The act further states: in all cases, when it is impossible to avoid the use of physical force or special means, an employee of the Interior must strive to cause the least harm to the life, health, honor and dignity of citizens, and to take immediate measures to provide the victims with medical and other necessary assistance.

The decision is final and can be appealed only by way of supervision. That is, a full review of the case will never happen, as it is not provided by the law of criminal procedure.”

Chairman of the Homel Regional Court, Siarhei Shautsou, dismissed the review appeal of Svetlahorsk resident Valiantsina Akulich.

“On May 26, 2012, Akulich A.A. died in the detention center of the Svetlahorsk District Police Department. The cause of his death was established by forensic examinations, including a comprehensive one, No. 169, of May 20, 2013. It appears to be chronic alcohol intoxication, complicated by the development of alcohol withdrawal state with delirium and brain edema. In addition, some injuries were found in the form of numerous abrasions and bruises, which belong to the category of light and have no causal connection with the death of Akulich A.A.,” said Chairman of the Regional Court.

By the way, none of the “inspectors” paid attention to the fact that the initial medical examination concluded that the cause of death was pulmonary embolism, the so-called pulmonary infarction, which is an absolutely peaceful cause...

On September 22, 2014, Deputy Chairman of the Supreme Court lodged a protest to the presidium of the Homel Regional Court against the decision of the Court of Svetlahorsk district.

The protest was satisfied, and October 6, 2014 the case was forwarded to the Court of Svetlahorsk district, Homel region.

“The visit to the facility included conversations with the prisoners and the controlled persons. No complaints and remarks concerning the prison administration work, conditions of accommodation were reported”

PUBLIC CONTROL

The Criminal Executive Code of the Republic of Belarus provides for control and involvement of public associations in the work of correctional institutions (Article 21 of the Code).

On the basis and in the manner prescribed by law, associations may exercise control over the activities of agencies and institutions executing punishment and other criminal sanctions.

The Code stipulates another specific form of involvement in the work of correctional institutions: NGOs can participate in the correction of convicts, and also assist in the work of agencies and penal institutions.

The correction of convicts, as well as the implementation of public control over the bodies and institutions executing punishment, can involve monitoring committees created by local executive and administrative bodies, and for juvenile convicts – juvenile commissions. The operating procedures of monitoring committees and commissions for minors are determined by the laws of the Republic of Belarus.

What is the meaning of the phrase “on the basis and in the manner prescribed by law” included in the rule of the Code providing public associations with the right to control the activities of prisons?

The procedures of exercising control by international, national and local public associations, as well as their involvement in the activities of prisons are governed by a Regulation approved by the Council of Ministers of the Republic of Belarus on September 15, 2006. The Regulation says that control can be implemented through participation of NGOs in public monitoring commissions (PMCs). The right to exercise public control over correctional facilities is granted exclusively to members of these commissions.

This means, according to the government, that public associations themselves, including whose statutes directly provide for protection of the rights of others, or human rights defenders as individuals, cannot be involved in public scrutiny.

In accordance with the Regulation, the PMC system includes:

- the National Public Monitoring Commission of the Ministry of Justice, which is formed of representatives of international and national NGOs and which operates on the entire territory of the Republic of Belarus;

- regional and Minsk city public monitoring commissions created by the chief departments of justice of regional executive committees, which are formed from representatives of local NGOs, local offices of international and national NGOs and carry out their activities in the respective administrative-territorial units of the Republic of Belarus.

Commissions can include citizens of the Republic of Belarus, aged 25, who are representatives of properly registered associations, whose statutory purpose or activity is to protect the rights of citizens, including the promotion of the protection of the rights of convicts, and other public associations. Representatives of unregistered associations, initiatives and citizens' groups, as well as non-profit organizations established and registered in the form of foundations and agencies cannot be members of PMCs.

Commissions are composed of three to eleven members. Members of the commission receive certificates in accordance with the procedure established by the Ministry of Justice.

A member of the commission is nominated by the governing body of a public association.

The public association nominating a commission member shall submit to the Ministry of Justice (Chief Department of Justice of the regional [Minsk city] executive committee) a proposal for approval of the nominations and submits for approval personal characteristics of the candidate under procedures approved by the Ministry.

This means that the formation of a body for public control is entirely under the authority of the executive power.

The nomination shall be considered within a period not exceeding thirty days and decides whether to approve it or reject the proposed candidate.

The Regulation does not provide for a specific procedure for selecting members of the PMCs, as well as criteria for inclusion of applicants in the PMCs. There only exist formal grounds for refusal: commissioners cannot be individuals with valid conviction or recognized incapable or partially capable by the court as, as well as judges and defense lawyers.

Procedures for the formation of the National PMC, regional and Minsk city MPCs, as well as the organization of their activities, are defined by the Regulations on the procedure for the formation and activities of public monitoring commissions, approved by the Ministry of Justice of the Republic of Belarus on December 15, 2006.

Members of the National Commission are approved by order of the Minister of Justice. Members of regional commissions and the Minsk city PMC approved by head of the Department of Justice of the respective regional or Minsk city executive committee.

The Commission is headed by a chairperson elected among its members in consultation with the Ministry of Justice or local justice departments.

The Commission is authorized to take decisions in the presence of more than half of its members. Decisions are taken by simple majority. In case of equal votes, the Commission supports the decision voted for by the chairperson.

The progress of the commission's meeting, as well as its decisions, are reflected in minutes, which may be accompanied by proposals, the commission's findings, or a recommendation. Minutes of a meeting of the National Commission is sent, together with applications, to the Ministry of Justice and the Ministry of Internal Affairs. Minutes of regional and Minsk city commissions are forwarded to the Justice Department and the Department of Internal Affairs of the regional and Minsk city executive committees and, if necessary, to the National Commission.

Is control by the PMCs efficient?

Important is the fact that the scope of control activities by the PMCs is limited to open prisons, arrest houses, and penal inspections of local bodies of the Interior. Control of pre-trial prisons is limited to convicts left in detention centers to perform work. Thus, control of rights in prisons and other places of detention is not within the competence of the PMCs.

In accordance with the Regulation, in order to visit the institution the commission should submit a written request to the chief of the local office of the Department of Corrections of the Ministry of Internal Affairs, indicating the purpose of the visit and the number of commission members who are expected to be involve in the inspection.

After receiving permission to visit the institution the commission shall inform the head of the institution of the date and time of visit, and when visiting the penal inspection – head of the territorial authority of the Interior.

Access of the commission members to the protected area of correctional institutions is governed by the procedure established by normative legal acts of the Ministry of Internal Affairs.

Thus, prison visits cannot be considered an effective means of control, as they are carried out only with the approval of the Department of Corrections, on the date and with the purpose known to the penal institution.

The commission and its members are entitled to:

- having permission, visit the territory of penal facilities, observing the internal rules of these bodies and institutions;
- converse with persons held in institutions, except those in custody, with the consent of the said persons;
- contact the director of the institution or his deputy, as well as other officials of state bodies in charge of issues related to the rights and legitimate interests of persons held in institutions;
- request from the administration of the institution any information and documents necessary for the sake of public control and drawing conclusions, except for materials of operational activities, personal files of convicts and other documents relating to the execution of punishments and other measures of criminal liability in respect of the prisoner;
- conduct a survey of persons in institutions in the form approved by the Ministry of Justice, in consultation with the Ministry of the Interior.

It should be noted that the Regulation does not provide for private conversations (or in circumstances where prison staff can see, but not hear the conversation) with the convict. The Regulation also limits the amount of information provided to members of the PMC, which means that they may be refused, for example, to see the materials of a disciplinary action challenged by the convict.

The monitoring commission members are prohibited to:

- impede the performance of official duties of officers of institutions executing punishment and other criminal sanctions;
- study the materials of operational activities, personal files of convicts and other documents relating to the execution of sentences and other measures of criminal liability in respect of the prisoner;
- have access to a range of technical means of ensuring the safety and supervision of inmates in correctional facilities;
- deliver correspondence, cash and other property to prisoners confined in correctional institutions;
- film, photograph, record audio and video;
- receive written appeals from prisoners serving sentences in the form of arrest, imprisonment, life imprisonment.

Two recent bans dilute opportunities of the commissioners to monitor the activities of correctional facilities. In particular, finding the violation, a member of the PMC is unable to record it in photo and video. In addition, in case members of the PMCs receive information about torture and ill-treatment of prisoners, there is no opportunity to register bruises on the spot by receiving a written evidence or explanation from the prisoner.

Finally, the prisoner is not entitled to enter into a confidential correspondence with the PMC.

Guarantees of activities of the PMCs and associations assisting correctional institutions set out in the Regulations are small in scope and content: public associations that nominated their members to the commissions are entitled to reimburse the member of the commission costs associated with the implementation of its activities; administrations of correctional facilities should assist commissions in the implementation of public control.

In the case of provision to a foreign state, foreign or international organizations, and the media, of false information about the organs and institutions executing punishment and other criminal sanctions, the commission member may be expelled from the PMC by decision of the Minister of Justice, or head of the Chief Department of Justice of regional (Minsk city) executive committees.

Thus, the scope of rights of PMC members and restrictions they face make this control purely formal.

Information on the activities of the PMCs at various levels is published on the website of the Ministry of Justice. In 2013, it posted only a summary of activities by the commissions.

In 2013, regional PMCs visited: an open type institution No. 1 in Brest, penal colony No. 3 “Vitsba” in Vitsebsk, penal colony No. 15 in Mahiliou, penal colony No. 19 in Mahiliou, penal colony No. 16 in Horki, prison No. 8 in Zhodzina, and audited the work of “conditionally executive inspection of the department of the interior of Tsentralny district of Homel”. No conclusions on the visits were published, and it is no good expecting unbiased approach from “conditionally public” commissions when exercising equally “conditional”.

During their visits, the commissions saw the conditions of life of convicts, the organization of their leisure, employment, health care system, as well as held preventive talks with the prisoners.

On August 19, 2013, representatives of the National PMC visited pre-trial prison No. 6 in Baranavichy to verify compliance with rights of the convicts by the correctional institution administration.

The objectivity and effectiveness of public control can be assessed by the PMCs’ conclusions: “A conversation with representatives of the prison administration included a detailed discussion of the functioning of institutions, the terms and conditions of detention of controlled persons and the punishment of convicts, conditions of work of the arrest house, as well as an inspection of the detention center. Commission members visited the premises of the prison, library, kitchen and other objects placed on the territory of the prison. Reviewing the work of the institution included conversations with the prisoners and controlled persons. No complaints about the work of prison administration, detention conditions were reported. The commission concluded that the conditions of accommodation and nutrition meet all the requirements of the prison system and detention,” says the website of the Ministry of Justice. Meanwhile, the majority of inmates of the prison noted the common problems for all jails: overcrowding, especially for prisoners waiting to be sent to a correctional facility, or “transit” convicts, poor nutrition, lack of comfortable temperature, fresh air and proper lighting.

One cannot say PMCs did hard work: during the entire 2013 seven PMCs visited only 8 correctional institutions out more than 90 places of detention, not including the penal inspections in each territorial division of the Interior existing in Belarus.

In 2014, the Republican Public Monitoring Commission visited two prisons.

On August 19, 2014, representatives of the Republican Public Monitoring Commission and the Minsk City Public Monitoring Commission visited detention facility No. 1 in Minsk.

Representatives of the Commissions examine issues related to living conditions and healthcare of persons serving sentences (persons sentenced to deprivation of liberty and left in the detention centers to perform household activities).

During their visit to the institution, the commissioners examined the organization of medical care of inmates in the detention facility, visited rooms for short and long visits.

The visit included conversations with persons serving sentences²¹.

The website of the Ministry of Justice chose to ignore the results of the inspection. The PMCs failed to report on the overcrowded cells where prisoners often have to share one bed and the places for eating just two steps away from the toilet. Nor did they publish any new information about the cause of death of the inmate in the medical insulator in 2013.

On June 19, 2014, representatives of the Republican Public Monitoring Commission of the Ministry of Justice of the Republic of Belarus and the Minsk Regional Public Monitoring Commission of the Directorate-General for Justice of the Minsk Regional Executive Committee (hereinafter – the Commission) visited detention facility “Penal Colony No. 14” of the Interior Ministry’s department in Minsk and Minsk region (hereinafter – PC No. 14) in order to verify implementation of the rights of prisoners by the prison administration.

During a conversation with representatives of the administration of PC No. 14, the inspectors discussed in detail the functioning of the institution, the conditions of inmates, and inspected PC No. 14.

Members of the commission visited premises of PC No. 14, workshops, library, kitchen and other facilities located on the territory of the institution.

The visit included conversations with the prisoners, no complaints and remarks about the work of the administration of PC No. 4 or detention conditions punishment were reported.

Following the visit, the commission concluded that the conditions of detention and nutrition in the facility met all the requirements of the penitentiary system²².

What are the forms provided by law for NGOs’ involvement in the work of correctional facilities bodies?

Participation of NGOs in the activities of the penal system is limited to certain areas and a few forms. These areas include:

- improvement of living and health care conditions for prisoners held in institutions;
- participation in the organization of work, leisure, education of convicts;
- participation in the moral, legal, cultural, social, labor, physical education and development of convicts;
- ensuring freedom of conscience and freedom of religion of convicts;
- assisting prisoners in preparation for release, addressing issues of living conditions, employment, health care and social services, psycho-social rehabilitation and adaptation;

²¹ http://minjust.by/ru/site_menu/control/work

²² Ibid

- strengthening the material and technical resources of agencies and institutions executing punishment and other criminal sanctions.

Possible forms of participation of public associations are:

- assistance to correctional facilities through gratuitous (sponsor) donations;
- financing of programs of assistance to penal institutions;
- other forms not prohibited by legislation.

In practice, this means that an association wishing to improve the conditions of detention of prisoners must refuse to protect their rights by the state, and provide sponsorship or funds to a program aimed to improve the living conditions of prisoners.

It is proposed to amend the legislation with the following provisions:

- free access of PMC members to prisons, with no limits on the number of visits, and without notice of the impending visit;
- right of PMC members to converse with prisoners in private;
- immunity for correspondence of prisoners with the PMC;
- right of members of public organizations to visit prisons with the permission from the Department of Corrections;
- new principles of formation of PMCs, which will allow representatives of human rights organizations to participate in the activities of the PMCs;
- prohibition on any signs of PMCs' accountability to the Ministry of Justice; the powers of the Ministry of Justice and its divisions should be limited to the function of technical support to the activities of PMCs.

“You see, this is just a crowd of teenagers who lost control, physically strong and healthy, with adrenaline in the blood, which is alien to the rules and limits”

CONFINEMENT OF JUVENILE OFFENDERS

Monitoring places of detention will be incomplete if limited to studying only those prisons, which are listed as such in the criminal-executive legislation.

In Belarus, alongside with the traditional prison system with its prisons, colonies and detention centers there is its counterpart adapted for the purposes of holding juvenile offenders. There exist specific “colonies” – special educational or medical institutions, “pre-trial prisons” – remand houses, and “punishment cells” – rehabilitation rooms.



Below is the analysis of the conditions of placing minors in special education and medical institutions, as well as reception centers for minors.

HISTORICAL ASPECT

Special schools were opened in the USSR in 1964 to serve as closed educational institutions for educating and correcting minors aged 11 to 14 years who persistently and systematically violate the rules of social behavior or committed socially dangerous acts before the age of criminal responsibility. Teenage offenders were sent to special schools by decision of juvenile committees as the most important measure of impact on minors in need of special education conditions and a strict pedagogical discipline. To partially compensate for the cost, the pupils' parents were charged. The special schools were run by educational authorities; training and educational work in them were based on a consecutive combination of training with socially useful work (taking into account the age and physical peculiarities of inmates); general education was based on regular curricula. Pupils could be kept in special schools until they reached 14 or 15. If by that time the pupil could not be recognized as reformed, he was transferred to a special vocational school.

Special vocational schools were established in the USSR in the same year for educating and correcting minors (aged 14 years) who willfully and systematically violate the rules of social behavior. The special schools also received teenagers who committed crimes of no great public danger, if the nature of the offense and the identity of the perpetrator allowed releasing him from criminal punishment and replacing it with other measures of treatment. Juvenile offenders were sent to these schools by decision of special juvenile commissions or a court ruling. Under a general rule, pupils could be held in the special schools for no more than 3 years and in the case of exemplary conduct and conscientious attitude to work and study they were transferred to a general type school or assisted in employment. Methodology of educational work, as well as a system of rewards and punishments respected the offenders' identities and the need to correct them. During their stay in the special schools pupils received a profession (specialty), were employed as interns and took a qualifying exam under general requirements of vocational education; they were also provided with an opportunity to continue their general education. The pupils could fully enjoy the benefits of legislation governing the employment of minors. Supervision of law enforcement in the schools was entrusted to the prosecuting authorities²³.

GROUNDS FOR CONFINEMENT

In accordance with the Law of the Republic of Belarus No. 200-3 "On Principles of Prevention of Juvenile Delinquency" of May 31, 2003, special educational institutions should admit juveniles in need of special education aged eleven to eighteen. Special medical institutions receive juveniles in need of special education aged eleven to eighteen, who have special needs or who suffer from diseases approved by the Ministry of Healthcare, or who are, in accordance with the laws, on drug treatment records. The special educational and special medical institutions cannot hold minors suffering from diseases that hinder their confinement, training and education in these institutions.

A minor is in need of special education conditions, if he or she has been sentenced to the use of compulsory educational measures in a special educational institution or a special medical-

²³ Big Soviet Encyclopedia. Moscow, 1969-1978.

educational institution, or sent to a special educational institution or special healthcare institution by a court's decision.

A teenager can be sent to a special educational institution or a special medical-educational institution if:

1) he or she has been freed from criminal liability or the case was closed because of failure to reach the age of criminal responsibility, or if as a result of mental retardation, that is not associated with mental disorder (disease), while committing a socially dangerous act, he or she was not able to realize the actual nature or social danger of his or her actions;

2) during one year he or she has been three times held administratively liable for the intentional infliction of bodily injury, or petty theft or intentional destruction or damage of property, or disorderly conduct, or drinking alcohol, soft drinks or beer in a public place or appearance in a public place or at work intoxicated, or prostitution, or knowingly false report or driving while intoxicated or driving without license and after individual preventive activities was once again brought to administrative responsibility for committing one of these administrative offenses and demonstrated unwillingness to pursue a law-abiding life;

3) during one year he or she has three times committed acts that contain signs of administrative offenses referred to in the preceding paragraph, but has not reached at the time of committing such acts the age of administrative liability, and after individual preventive activities was once again brought to administrative responsibility for committing one of the administrative offenses listed in the previous paragraph and demonstrated unwillingness to pursue a law-abiding life.

The measures can be applied to minors by a court decision.

The confinement in special educational or special medical educational institutions may be terminated early in accordance with the Criminal Code, in case the teenager has mastered the content of education of children in need of special education conditions.

Otherwise, the confinement may be extended for up to two years (in aggregate).

After the period set by the court is over the minor should be discharged from the institution.

Alternatively, the minor can at his own request and with the consent of parents or guardians stay in the institution to complete training for up to six months, regardless of age, having the right to leave the institution at any by an ordinary application and with the consent of parents or guardians. Such minors should not be subjected to measures of pedagogical influence.

Thus, a minor aged 11 can be placed in a correctional institution after committing an offense or several offenses. Besides, he or she can be sent to an institution after committing a socially dangerous act before the age of prosecution or being not aware of its actual nature.

CONFINEMENT PROCEDURES

In accordance with Article 117 of the Criminal Code of the Republic of Belarus ("Conviction of a minor with the use of compulsory educational measures"), if as a result of a trial it is discovered

that the correction of a minor who committed an offense that does not pose great danger to society, or who has committed a less serious crime is possible without the use of criminal penalties, the court may rule to apply to that person coercive educational measures. Compulsory education measures may also be applied to a minor in the case of an uncollectible fine with no signs of payment evasion.

The court may order compulsory educational measures in a special institution for up to two years, as long as the juvenile offender is under eighteen. The detention may be discontinued by a court, if the minor has reformed and there is no need for further application of the specified compulsory educational measures, as well as in cases of circumstances preventing the convict from being held in these institutions.

In this case, placement in a special institution is an alternative to criminal punishment, which is a common practice and does not violate the rights of juvenile offenders. Moreover, the criminal proceedings are administered in compliance with, at least, formal guarantees of a fair trial: a court consisting of three people with two lay judges), with obligatory participation of the defense – a professional lawyer, a representative of the guardianship and wardship authority.

Control over the application of corrective measures is exercised by the provisions of the Criminal Executive Code.

Monitoring the implementation by juvenile convicts, institutions and individuals of the claims resulting from the use of compulsory educational measures against juvenile offenders, as well as preventive surveillance are run by juvenile inspections (a division of the Interior Ministry) at their place of residence or at special educational or medical institutions.

Juvenile inspections keep records of juveniles sentenced to compulsory educational measures, explain to them the procedure and conditions of execution and serving these measures, monitor the implementation of their duties, including those related to the execution of the relevant compulsory educational measures, apply incentives and reprimands.

Within ten days after the entry into force of the sentence, a juvenile convict is invited to the inspecting authority for registration.

When placing the juvenile offender in a special educational or medical institution, he or she should be transported there by the state agency and accompanied by an employee of the juvenile inspection.

The period of detention in a special institution is calculated in months from the date of arrival in the said institution.

Discontinuation of compulsory educational measures in connection with attaining majority does not imply an expiry of conviction, if its period has not expired, as established by Article 121 of the Criminal Code.

A juvenile convict may be awarded a commendation for good behavior and attitudes to learning.

For offenses related to public order, educational and labor discipline, for leaving the special educational institution or special medical and educational institution without permission from these institutions, juveniles may receive an official warning, and the second formal warning after committing these violations may result in a written reprimand.

In 2001, compulsory education measures (in various forms provided by Art. 117 of the Criminal Code) were applied in relation to 5.2 % of the convicts. In 2002, these measures were applied to 4.8% of convicted juveniles, in 2003 – to 7.1 %, in 2004 – to 10.8%, in 2005 – to 14.6%, in 2006 – to 17.3%, and in 2007 – to 19 % of the total number of under-aged convicts²⁴.

In other cases, minors are placed in a special institution on the basis of a court decision handed down by the rules of civil procedure. The legitimacy of such measures will be discussed below, after analyzing the provisions of the law governing the procedure for confinement and conditions of detention in these institutions.

In accordance with the Code of Civil Procedure of the Republic of Belarus, the statement about putting a minor in a special educational or medical-educational institution is filed to the court by the juvenile commission; similar statements are required for the transfer to another special educational or medical institution and the termination of a minor's stay in these institutions before the expiration of the term ordered by the court, as well as the extension of the time of detention.

Placement in a reception center for juveniles is requested by the local authority of the Interior; the statement is considered by the court within fifteen days from the date of receipt. Attached to the application are materials provided by the legislation and supporting the need for the minor's detention in a special educational or medical care institution or in a reception center. Such statements are considered by the court within three days of their receipt.

When considering an application, the court is obliged to call on the convict's case or materials on the refusal to institute criminal proceedings.

The involvement of the minor facing special proceedings, his or her legal representative, a representative of the juvenile commission, who initiated the criminal case, as well as representatives of the prosecutor and the guardianship authority is mandatory.

Minors under the age of sixteen, as well as legal representatives of minors who refuse to appear in court, can be subjected to detention by a court's decision.

In accordance with the Code of Civil Procedure, minors who have reached the age of fourteen have the right to appeal personally to the court to protect their rights and interests protected by law and use at any time assistance from their lawyers and other representatives in court without the

²⁴ Analysis of practices of criminal sentences by the courts of the Republic of Belarus in 2007 (according to court statistics)

consent of parents, adoptive parents or guardians. The question of involvement of parents, adoptive parents or guardians of minors to assist them is resolved by the court.

The rights and legitimate interests of minors under the age of fourteen, as well as citizens adjudged incapable, shall be protected by their legal representatives – parents, adoptive parents or guardians.

Participation of a professional lawyer is allowed on general grounds stipulated in civil proceedings, but is not binding. In accordance with the Law “On the Legal Profession and Lawyers’ Activities in the Republic of Belarus”, legal assistance to minors – in their interests, to their parents (guardians, trustees) – is provided at the expense of the bar associations. However, a lawyer’s involvement in the trial requires an initiative of the court or persons involved in proceedings, which in practice leads to the fact that the cases in this category are usually considered without a lawyer.

Having considered the application on the merits, the court shall issue a reasoned decision, and in the cases provided by law – a definition to either meet the application or reject it.

The decision that entered into force is the basis for sending the minor to a special educational or medical-educational institution for a period specified by the court, or to transfer to another special institution, or to terminate his or her stay in these institutions before the expiration of the term of sentence, as well as for its extension.

The court ruling on placing a juvenile in a reception center, on extension of the term of detention in a reception center or the release are subject to immediate execution.

LEGAL STATUS OF INMATES IN SPECIAL INSTITUTIONS

The Law of the Republic of Belarus No. 200-3 of May 31, 2003 “On Basic Principles of Prevention of Child Neglect and Juvenile Delinquency” defines the rights of juveniles placed in institutions in charge of prevention of child neglect and juvenile delinquency.

Juveniles held in these institutions are entitled to:

- notification of parents or guardians of minors on their detention in the institutions;
- appealing against decisions of bodies and institutions engaged in the prevention of child neglect and juvenile delinquency to higher authorities, the prosecutor's office or the court;
- humane treatment with no signs of degrading their dignity;
- contacts with the family through phone calls and visits that are not limited in their number;
- receiving parcels, packages, sending and receiving letters and telegrams in unlimited numbers;
- free food, clothing, footwear and other essentials at the rates approved by the Government of the Republic of Belarus.

In accordance with the law, heads of special educational and medical and educational institutions:

- organize educational and training processes, create and implement special conditions of education;
- inform the bodies of internal affairs on the cases of leaving special institutions without the permission and, together with the internal affairs authorities, take steps to return the inmates to these institutions;
- send to the juvenile commissions and the bodies of internal affairs a notice of termination of detention in these institutions no later than one month prior to their release, as well as the characteristics of such pupils and their recommendations on the need of individual preventive work and assisting them in employment and providing living conditions;
- arrange personal inspection of pupils, inspection of their belongings, received and sent letters, parcels or other mail messages, inspection of these institutions, residential and other premises and property contained therein, identification and removal of items in accordance with the law;
- submit applications to the court to transfer the inmates from special educational institutions to special medical institutions, on early termination of detention in these institutions before the expiration of the term of the court's ruling, and the extension of this period;
- use measures of pedagogical influence;
- exercise other powers to prevent child neglect and juvenile delinquency, as provided by the legislation.

Measures of pedagogical influence, apart from the measures provided by the legislation on education (remark and reprimand) are:

- prohibition of leaving the territory of the special educational institutions, special medical and educational institutions;
- placement in a readaptation room.

Prohibition of going beyond the territory of a special institution suggests a ban on leaving it in an organized group to attend cultural or sporting events.

Readaptation confinement is placing a pupil in a separate premises for his or her isolation from the rest of the inmates in order to ensure his or her personal safety or the safety of others.

The pupil cannot be placed in the readaptation room for more than two days. The room shall provide conditions ensuring continuous monitoring of the inmate. The room's sizes, lighting and temperature shall comply with the requirements of the applicable legislation. The inmate shall receive food under the general rules in accordance with the order of the day.

In accordance with the Code on Education, the decision on the application of disciplinary measures to the pupil may be appealed by the inmate, the minor's legal representative to a higher organization or the court within one month.

Conditions for placing juveniles in special educational institutions, special medical institution and the conditions of their detention are determined by regulations on the specific form of special educational institutions, special medical and educational institutions.

Governmental bodies, within their competence, shall exercise control over the activities of subordinate bodies, institutions and other organizations engaged in the prevention of child neglect and juvenile delinquency, in the manner prescribed by law.

Supervision of the correct and uniform application of the legislation on prevention of child neglect and juvenile delinquency by officials and citizens is exercised by the Prosecutor General's Office of the Republic of Belarus and subordinate prosecutors within their competence.

RECEPTION CENTERS FOR MINORS

Special units of the Interior system in charge of implementing measures to prevent child neglect and juvenile delinquency are:

- juvenile inspections;
- reception centers for minors.

Reception centers for minors within its competence:

- provide round the clock reception and temporary detention of minors in order to protect life, health and prevent re-offending;
- carry out individual preventive work with detained minors, identify the causes and conditions that contribute to neglect, homelessness, or crime committed by juveniles, and inform the concerned authorities, institutions and other organizations;
- transport minors to special educational institutions, special medical and educational institutions, as well as carry out other measures to accommodate juveniles in these institutions.

The reception centers for minors may receive minors who:

- were sent by a court ruling to special educational institutions, special medical institutions;
- await trial to consider the question of placing them in special educational institutions, special medical institution – on the basis of the court's ruling when necessary to protect life or health; to avoid repetitive socially dangerous acts; in case they have no place of residence; in case of failure to appear in court or to undergo a medical examination;
- willfully left special educational institutions, special medical and educational institutions; being neglected or homeless – to establish their identity and to transport them to special educational institutions, special medical and educational institutions, or to their parents or legal guardians;
- in respect of whom criminal charges were dropped or criminal proceedings were terminated due to failure to reach the age of criminal liability, or who, because of mental retardation, that is

not associated with mental disorder (disease), at the time of committing a socially dangerous act were not able to realize the actual nature or social danger of his or her actions; – in cases where it is necessary to protect the life or health of minors or prevent the commission of socially dangerous acts, as well as in cases where their identity is not established, or they have no place residence or permanent residence in the Republic of Belarus;

- committed acts punishable under the Code of Administrative Offences; - in cases where their identity is not established, or they have no place of residence or permanent residence in the Republic of Belarus.

Minors may be placed in reception centers under a court's decision.

In exceptional cases, juveniles may be placed in reception centers for minors on the basis of an order by head of the body of the Interior or his deputy. In this case, materials related to these minors within three days after they were placed in reception centers for minors shall be submitted to the court to decide on their future detention or release.

The detention of minors in reception centers shall be within 24 hours reported to the prosecutor and the local juvenile commission.

Minors awaiting a court's decision on placing them in special institutions may be held in a reception center for the minimum period of time necessary for their accommodation, but not more than 30 days, if their identity is not established, or they have no place residence or permanent residence in the Republic of Belarus – no more than 60 days. In exceptional cases, this period may be extended on the basis of a court's decision for up to 15 days.

The period of detention in the juvenile reception center does not include:

- quarantine period declared by the health care authorities or a public health care organization;
- the minor's illness documented by a public health care organizations and prevents his or her return to the family or transportation to a special institution;
- period of appealing against the sentence of the court on the placement of a minor in a special educational institution, or a special medical-educational institution.

TYPES OF SPECIAL EDUCATIONAL INSTITUTIONS

In accordance with the Education Code, regulations on the specific type of educational institution are approved by the Government of the Republic of Belarus or by the authorized state body. Special educational institutions and special medical institution can only be public.

Special educational institutions can be of the following types: closed special schools, and closed special vocational schools.

The Code stipulates that a special school of the closed type is a special educational closed institution that implements a program of educating children in need of special education, using

educational curricula of general secondary education, special education and additional education, and is created for children aged eleven to fifteen.

A special vocational school of the closed type is a special educational institution that provides vocational training and a secondary education or additional education for children with special needs aged eleven to eighteen.

A special medical-educational institution is an institution providing general secondary education and vocational education for children with intellectual disabilities, as well as additional education in compliance with the principle of separation of living, training and education of both sexes; the list of disorders is approved by the Ministry of Health Care – this includes minors who are registered as drug addicts.

In accordance with the Code, special medical institutions can be of the following types: special medical-educational schools of the closed type, and special medical and educational vocational schools of the closed type.

Special medical educational schools of the closed type provide education to persons with mental disabilities, suffering from diseases or drug addiction aged eleven to fifteen.

Special medical-educational vocational schools of the closed type provide vocational training to the above categories of minors aged eleven to eighteen. Children with special education needs aged eleven to fourteen are accommodated in separate premises.

LEGAL ASPECTS AND COMPARATIVE ANALYSIS

Analysis of conditions of detention in special educational and health care institutions suggests viewing this type of confinement as a form of liability and imprisonment; at the same time it is characterized by the following conditions:

- minors cannot leave the institution without permission;
- minors are subject to personal inspection;
- the inmates' personal belongings, their correspondence or other messages are subject to inspection;
- the territory of institutions, residential and other premises and all property contained therein are subject to examination aimed at identifying and seizing prohibited items;
- in case of violation of the established rules, the period of detention in the facility may be extended;
- inmates can be subjected to interventions, including separation from the rest of the pupils.

Therefore, decision to enforce detention in such institutions must be accompanied by the observance of all the conditions that guarantee a fair trial. Given the peculiarities of civil procedures in relation to juvenile offenders, they should be entitled to, at least, no less scope of rights process when deciding on placing them in an educational institution than in criminal

proceedings, namely: to provide for a collective review of these cases, to allow the mandatory participation of a professional lawyer representing a minor and exemption from court costs in an appeal against a court decision; it is also necessary to lower the age of civil procedural capacity to 11 years.

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“the Beijing Rules”)²⁵ provide that “restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum; deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response;”

“The well-being of the juvenile shall be the guiding factor in the consideration of her or his case,” further reads the document.

“No juvenile shall be removed from parental supervision, whether partly or entirely, unless the circumstances of her or his case make this necessary. Separation of children from their parents is a measure of last resort, it may be resorted to only in cases where the facts of the case clearly warrant this grave step (e.g. child abuse).”

The quasi-criminal liability of minors established by law in Belarus is unique as compared to the legislative regulation of this issue in Russia and Ukraine.

In accordance with Federal Law of June 24, 1999 No. 120-FZ “On the Basics of the System of Prevention of Child Neglect and Juvenile Offences” (with amendments), the special educational institutions of the closed type can receive minors aged eleven to eighteen in need of special conditions of education, training or special pedagogical approach in cases where they:

- 1) are not subject to criminal liability in connection with the fact that at the time of committing a socially dangerous act they have not reached the age of criminal responsibility;
- 2) have reached the age stipulated by Para. 1 or 2 of Article 20 of the Criminal Code of the Russian Federation, and are not subject to criminal liability in connection with the fact that due to mental retardation, that is not associated with mental disorder, at the time of committing a socially dangerous act they could not full realize of the actual nature and social danger of their actions (inaction) or to control them;
- 3) have been convicted of a grave crime and released from punishment by the court in the manner prescribed by Par. 2 of Article 92 of the Criminal Code of the Russian Federation.

The detention of juveniles in special educational institutions of the closed type can only be ordered by judgment or decision of a judge.

In accordance with the Ukrainian Law of January 24, 1995 No. 20/95-VR “On Bodies and Services for Children and Special Facilities for Children”, rehabilitation schools for children with special

²⁵ UN general assembly resolution 40/33 29/11/1985

education needs are subordinate to the central body of executive power, which ensures the formation of state policy in the sphere of education and science. These institutions may receive perpetrators of a criminal offense under the age of 18 or an offense allowing to apply criminal responsibility.

Thus, in these countries juveniles can be placed in special institutions only for committing a crime or socially dangerous act, which is not considered a crime only because of the failure to reach the age of criminal responsibility.

PRACTICE

In the monitoring of places of confinement of juvenile offenders human rights defenders pointed at the lack of proper legal regulation of closed educational-correctional and medical-correctional institutions, which would guarantee the observance of human rights in them.

Therefore, attempts were made to obtain permission from the Ministry of Education for a visit of lawyer Pavel Sapelka to one of these institutions, special vocational school, in order to investigate the actual situation of its students. However, the Ministry of Education stated it didn't see any reasons for the visit: "Analysis of the actual situation of the students of special educational and health care institutions and the adequacy of the regulatory order is carried out within the premises of prosecutorial supervision and is the responsibility of the prosecution. The Ministry of Education has sufficient resources of the state scientific-educational and training institutions to conduct research on the issues you have mentioned... so, there are no reasons for your visit to Kryvichy special vocational schools," stated Deputy Minister of Education.

There are no doubts in the role of the prosecutors and scientific-methodological capacity of the Ministry. However, the effectiveness of these means is doubtful. At this stage there are no reasons to suspect the staff of these institutions in abusing their rights. However, the study helped to find some problem points in of special boarding schools. Public scrutiny would doubtlessly improve the situation.

Here is an example:

The Decrees of the Council of Ministers republic of Belarus "On approval of the Model Charters of special educational institutions", "On approval of the Model Charters of specialized institutions for juveniles in need of social assistance and rehabilitation" and "On approval of the Model Charters of special medical and educational institutions" were abrogated by the regulation of the Council of Ministers for November 23, 2012 № 1077 "On Amendments to Certain resolutions of the Council of Ministers and the invalidation of certain decisions of the Council of Ministers of the Republic of Belarus and their structural elements". These regulations provided more details on issues concerning the prevention of child neglect and juvenile delinquency and the legal status of students of closed boarding schools, compared to laws of the Republic of Belarus.

Only now – more than a year later, the Ministry of Education has adopted the regulation "On approval of provisions on special educational-correctional and medica-correctional institutions" which is currently undergoing a mandatory legal expertise in the Ministry of Justice of the

Republic of Belarus. It means that during more than a year the educational institutions operated on the basis of the charters, which did not wholly correspond to the law.

For example, the Charter of the educational establishment "Mahiliou state special boarding school" does not take account of changes and additions to the Law of the Republic of Belarus "On Principles of Prevention of Juvenile Delinquency", and, in violation of the Education Code, does not provide for judicial review of disciplinary penalties.

In accordance with the Law "On Principles of Prevention of Juvenile Delinquency", measures of pedagogical impact, apart from the measures envisaged by the legislation on education, include: the prohibition to leave the educational-correctional or medical-correctional institution; placement in the rehabilitation room. A student can be placed in the rehabilitation room for no more than two days.

According to the school Charter, the following disciplinary actions may be applied to a student for gross or repeated violation of the internal rules of the regime and the Charter of the special school: admonition; reprimand; limitations on leaving the territory of the special school in the manner prescribed by the Charter; placement in the room to the disciplinary room for up to three days.

The Charter provides for the regulation of certain issues of school activities, rights and responsibilities of students by internal regulations. However, the legal status of these regulations is unclear: they weren't been adopted by any Ministry or the Government. The right of the Ministry of Education or the right of educational institutions to adopt and publish such regulations is not provided by the Law of the Republic of Belarus "On Principles of Prevention of Juvenile Delinquency". In accordance with the response to the appeal to the Ministry of Education, "the Ministry of Education does not develop departmental regulations governing the standards of accommodation, schedule, provision with showers, etc. in individual institutions".

Thus, the conditions of keeping of juveniles in special educational and special medical institutions and the conditions in them are not regulated by the Law of the Republic of Belarus "On Principles of Prevention of Juvenile Delinquency" and are left to the discretion of the staff of the educational institutions, which is unacceptable. Local regulations of educational institutions contradict the law in the part concerning the rights of the students. However, these violations are not detected either by the Ministry of Education or the prosecutor's office, which is responsible for monitoring of the implementation of the laws.

The food standards and cash allowance for meals of students of closed institutions are established by the Council of Ministers. These standards have significant differences from those established for children in orphanages and boarding schools: expenditures for meals of students of closed institutions depending on the age are as follows: in the age of 11-13 years – 36,000 rubles, 14-17 – 38,700 rubles a day; the expenditures for meals of children in orphanages and boarding schools are 42,250 and 45,160 rubles a day respectively. Students of closed schools, unlike their peers from educational institutions, do not receive 200 g of juice daily, receive 50 grams less fruit (150 g instead of 200), twice less dried fruits (10-12 g instead of 15-25), cheese (5 g instead of 8-10) and confectioneries (15 g instead of 30). The norm of meat, poultry, fish and sour cream for them is 10-40% less than normal.



It is difficult to justify such a difference: students of closed institutions have no physiological differences from students of open educational institutions. Most of the inmates of closed educational institutions, as well as their peers who are without parental care, do not receive supplementary food from relatives and have to rely only on the food provided by the state.

According to the data provided by the Ministry of Education, there are three educational-correctional institutions and one medical-correctional institution in the Republic of Belarus: educational establishment "Mahiliou state special closed school", "Mahiliou state special closed vocational woodworking school No. 2", "Petrykau state special closed vocational light industry school No. 1" and medical-correctional establishment "Kryvichy state special closed vocational school № 3".

Educational establishment "Mahiliou state special closed vocational woodworking school No. 2" was established on the basis of All-Belarusian agricultural commune for homeless and young offenders No.1, which was organized in 1924 near the railway station. In 1944, after the liberation of Belarus from the Nazi troops, Mahiliou juvenile penitentiary was created on the site of the commune. On August 1, 1964 Mahiliou juvenile penitentiary of the Ministry of Internal Affairs was passed to the Ministry of higher, secondary specialized vocational education and renamed the Mahiliou city vocational school No. 51. In 1968 Mahiliou city vocational school № 51 in Mahiliou was renamed special vocational woodworking school № 2. In 2004, Mahiliou special vocational woodworking school № 2 was renamed the Educational Institution "Mahiliou state special closed vocational woodworking school No. 2".

The institution meets the visitors of its website with the words:

"Welcome!

The vocational school is a special closed educational institution for solving the tasks of social rehabilitation, correction and retention of juveniles who have committed socially dangerous acts

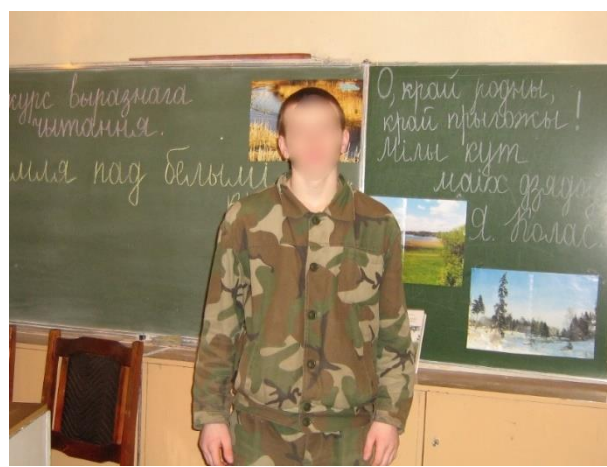


or acts contrary to the rules of social behavior. Teenagers (boys) aged 14 to 18 years, are sent to the school for up to two years".

The teenagers wear paramilitary uniform everyday, during festivities and when going beyond the institution.



The teenagers also wear this uniform at classes.





Medical-correctional institution "Kryvichy state special closed vocational school № 3" is located in Miadzel district, Minsk region.

As of January 1, 2013, there were 34 students aged 11 to 18 years. 20.8% of them were children up to 14 years, 79.2% – 14 to 18 years.



Mahiliou state special closed school is the only school of such kind in Belarus. The school is designed for 140 students and is located in a brick building built in 1967. There are six classrooms, rooms of computer science, physics, chemistry, mathematics and geography, 4 work shops for employment training, a gym, a sports room, an assembly hall, information and library center, relaxation room, office of social educator and a games room.

According to the statistic analysis, published by the school, each student repeatedly committed wrongful acts.

57 out of 58 students (98%) committed theft or embezzlement, 8 used toxic substances, 3 – alcohol, 6 – committed acts of hooliganism, 2 - sexual assault, 28 evaded from studies, 12 were engaged in vagrancy, 4 – in extortion of money from minors, 6 – in beating of minors.

Teenage students, 11-15 years old, wear uniform. Outside the educational establishment they wear the same uniform or identical tracksuits.



Currently, the school has about 60 students (six classes), only boys. Teaching and education is provided by 33 teachers, 24 of them have the first or the highest qualification category.



According to the established rules, the students get up at 7 a.m. and go to sleep at 10 p.m. After getting up they do morning exercises, washing, cleaning of the rooms and have breakfast. Classes last from 9 a.m. to 3 p.m. There is a break between the classes for an afternoon snack and a walk. After the end of the classes, there begins the work of various circles, sections (sports, music, crafts and science); special time allotted for homework. Then - dinner, after

which educational activities are conducted in groups. Every day at 9 p.m., the students watch the news on Belarusian television.



The Petrykau-based state special vocational school of closed type No. 1 holds girls aged 11 to 18. The system of education at the school is based on so-called “point system”, the essence of which lies in the fact that each of the pupils should receive a certain number of points in order to reach a certain stage, between “0” and “4”. This allows them, depending on the behavior and the achieved

stage, to write letters, to use the telephone, to leave the school for walks, to attend mass cultural and spiritual activities, to go on trips, to meet with relatives and to leave the school for vacation²⁶.

On September 18, 2014, came into effect a decree of the Ministry of Education “On approval of provisions on special educational institutions, special medical and educational institutions”. After three (!) years from the date of entry into force of the Code of Education and almost four years – from the moment of its adoption, the authorities developed and adopted documents that were expected to determine the detailed legal status of students of closed institutions.

In reality, the documents reiterated the provisions of the Code and the Law “On principles of prevention of neglect and juvenile delinquency”.

²⁶ <http://tcminsk.by/stati/mir-bez-granits>

The aims and objectives of special education and healthcare institutions are:

prevention of crime or other antisocial acts committed by juveniles;

ensuring the right of students to receive an education in accordance with the implemented educational programs;

social rehabilitation of inmates in need of special education;

protection of rights and legitimate interests of the pupils;

provision of socio-pedagogical support and psychological care to inmates;

implementation of the program of education of children in need of special education;

ensuring the conditions for obtaining a general secondary education and qualification of the worker (employee);

formation of the pupils' civic culture, hard work, responsibility, independence, creativity, self-improvement;

meeting the needs of the individual in the intellectual, moral and aesthetic development;

social protection of pupils.

Pupils of special educational institutions, in addition to the rights under the Code of Education and the Law of the Republic of Belarus "On principles of prevention of child neglect and juvenile delinquency", have the right to:

take part with permission of the head of the educational institution in competitions, tournaments, festivals and other educational activities, social activities, as well as health and fitness, sports and sporting events;

legal assistance for the exercise and protection of their rights and freedoms;

short vacation in the event of the death or serious illness of the legal representatives, close relatives (hereinafter – short vacation) in the manner prescribed by the internal rules of special educational institutions;

receiving money transfers, meetings with the legitimate representatives, close relatives and other persons in accordance with the internal rules of the special educational institutions.

It is established that the rights and obligations of employees of special educational institutions, their working conditions are determined by law, the charter of the special educational institutions, their job descriptions, as well as internal regulations of special educational institutions.

Procedure for searching inmates is determined by the internal regulations of special educational institutions.

Class size (study groups) in special educational institutions should not exceed 14 students. Educational process in special educational institutions is based on the program of education of children in need of special education, in groups or individually. The size of the group shall not exceed 12 students.

In the healthcare institutions, the purposes include medical rehabilitation of students.

In case of success in training, socially useful and productive work, exemplary behavior, and active participation in public life, pupils in special education and medical-educational institutions may enjoy the following incentives:

gratitude;

awarding a diploma;

early withdrawal of the disciplinary sanction;

message to legal representatives of exemplary behavior and success in school and work;

leaving on a vacation to the legal representatives in accordance with the rules of the special medical and educational institutions;

granting the right to leave the territory of the special medical and educational institution to participate in cultural, sports and recreation, sports and sporting events, accompanied by employees of the special medical and educational institution or legal representatives.

One of the problems of educational process are regular escapes of students from special schools. There is no public information about any non-departmental objective probes into these facts; representatives of educational institutions traditionally attribute escapes to a love for travel and a desire to see the family.

On June 1, 2014, eight teenagers escaped from the Kryvichy state special vocational school No. 3. Their search was conducted by the police, who posted their photographs and personal data in the media: "Miadzel district police department is searching for eight minors who in the morning of June 1 willfully left the Kryvichy state special vocational school No. 3, located in the village of Kryvichy, Miadzel district.

Appearance of persons wanted:

All teens of 17-18 years old in appearance, of medium build and height, straight hair, medium or short. Most have tattoos on different parts of the body, mainly on the shoulders, arms and wrists, some also on the legs. The majority have scars on their heads, hands, arms and shoulders.

01. Aliaksei N., born 1996, registered in the village of Druya, Braslau district, Vitsebsk region.

02. Ihar T., born 1996, native of the town of Pastavy, Vitsebsk region, registered in the agro town of Druya, Braslau district, Vitsebsk region.

03. Artsiom K., born 1997, registered in the village of Staraya Rudnya, Zhlobin district, Homel region.

04. Aliaksandr F., born 1997, registered in the village of Udarnaye, Lelchytsy district, Homel region.

05. Zakhar V., born 1997, native of the city of Minsk, registered at Hintaut Street, Minsk.

06. Ryhor D., born 1996, registered at Brest region, Pinsk, Revalyutsyinaya Street.

07. David B., born 1999, native of the town of Aktsiabrski, Homel region, registered at Salihorsk district, agro town Douhaye.

08. Dzmitry K., born 1997, native of the village of Ladkava, Shumilina district, Vitsebsk region, registered at Vitsebsk region, Shumilina district, agro town Mikitsikha.

The teens can travel both together or having split into small groups and individually. Can beg, look untidy.

If you have noticed persons with similar signs or suspicious young people, contact the police by dialing 102, phone numbers in Minsk (8-017) 229-05-90 or by cell (8-029) 356-62-81.

Department of Information and Public Relations of the Internal Affairs Department of the Minsk Regional Executive Committee.”²⁷

Four days later, they were detained in the Smolensk Oblast of the Russian Federation, and one of the teenagers managed to reach Lyubertsy, 20 kilometers away from Moscow. All of them were returned to Belarus.

On July 30, five more pupils escaped from the same special school. Three of them stole a car in August 2014 and were detained by police in Asipovichy.

On June 27, five teenagers escaped from vocational school No. 2, located in the city of Mahiliou. The escape took place at about 03.30 a.m. Searching was conducted through the media: “Citizens who have seen teenagers can immediately report this to the police by phone: 8 (033) 666-60-33, 8 (033) 666-68-56 or 102”. Police officers posted signs of wanted teenagers and their personal data:

1. Maksim C., born 04.03.1998. Was wearing: black shirt with the inscription DUBSTEP on the chest, gray sweat pants with an Adidas logo on the left-side pockets. Was carrying a black backpack with green accents.

2. Mikhail D., born 12.02.1998. Was wearing: blue flannelette sweatpants with buttoned pockets, black shirt with a hood and an Adidas logo and inscription on the chest.

3. Aleh V., born 03.05.1997. Was wearing: blue windbreaker with a hood, blue jeans, worn on the front pockets.

²⁷ http://www.uvd-mo.gov.by/news/events/~page__m12=1~news__m12=6426

4. Uladzislau S., born 18.05.1998. Was wearing: yellow T-shirt with short sleeves, blue jeans with side pockets worn on the front.

5. Ruslan P., born 10.07.1997. Was wearing: a white shirt with the inscription Adidas, with a zipper on the chest, black sneakers with white accents, dark blue jeans.

There were reports that there were escapes in the same closed school back in 2014.

On September 26, 2014, 34 (according to other sources, 32) pupils aged 16-18 years, which is nearly a third of all the 116 inmates, willfully left the same Mahiliou-based state special vocational school No. 2. The escape was reported by the school management. Measures taken by the police department helped locate most students within 24 hours and return them to the institution of education.

As of September 28, three teenagers were still wanted by the police. As reported by the police in the media, “they have no coats on (in tracksuits), can travel by public transport or hitchhike.

- Uladzislau B., born 18.06.1997, resident of Mahiliou;
- Uladzislau L., born 02.04.1997, resident of Minsk;
- Valiantsin K., born 19.08.1998, resident of Vitsebsk.

According to the Department of Investigation of the Department of Internal Affairs of the Mahiliou Regional Executive Committee, as a result of the initial search operations it was found that on 09.26.2014 during a break between lessons the teenagers voluntarily escaped from the special school through a central checkpoint and entrance gates.

The staff of the Mahiliou garrison were involved in the search operations, in seven districts of the region the Interception plan was announced, personnel of agencies and departments of the Interior of the region were instructed to conduct search activities in mobile and hiking groups.

As a result of operational and professional actions of law enforcement officers, in the shortest time the teenagers were spotted: most of them in the evening of 09/26/2014 in Mahiliou, then on 09/27/2014 - two in Mahiliou, three in Mahiliou district, and four in Homel. During interrogation of detained students it was established that some of them wanted to go home, and most of them decided to escape from special school No. 2 spontaneously, seeing other students running to the door.

We kindly request anyone who has information on their whereabouts to immediately inform the nearest department of internal affairs or dial 102!”

The circumstances of the escape are as follows: at 6 p.m., the teenagers simultaneously jumped over the fence and the gate and fled in different directions.

“All the employees and teachers were at this time performing their job duties, were on the territory of the special school. You see, this is just a crowd of teenagers who lost control, physically strong and healthy, with adrenaline in the blood, which is alien to the rules and limits. We have no

specially trained guards with special means,” said the school’s deputy director Valery Baravik. According to him, the danger of escape was in the air for a long time. This was reportedly reported to the police. The escape happened after school admitted sent a number of teenagers who were previously in the Kryvichy medical and educational special vocational school No. 3. There, they were not “substantially engaged, did not receive an education and committed unauthorized escapes”. This influenced the students in the Mahiliou vocational school. In addition, many wanted freedom after the summer vacation.

Most runaway teenagers were arrested by police officers in Mahiliou and around the city. Some returned by themselves, after they realized this was a mistake as it was cold, dark, and the guys did not know the city. “Even now, many are smiling and do not realize that they made a very serious misconduct, grossly violated the rules. For them, it was a bit of an adventure.”

Age of escaped teenagers ranged between 16 and 18. The motive, according to the offenders, was simple: they wanted to go home²⁸.

Similar cases happened several years ago in the Mahiliou special school. “They send the guys to us for up to two years, no one does any harm to them here, but they really miss their families,” says the school’s deputy director, Mikalai Zaitsau. “Most of the inmates saw no good from their mothers and fathers in the past life, only endless drinking, foul language and battery. Indeed, almost all of them are from disadvantaged families. Many are afraid to go home, but it’s like a magnet for them.”

However, there is no information on whether the facts have been investigated, which could objectively establish the causes of the escapes. For example, a series of probes conducted in the Russian Federation helped to establish that the actual causes of escapes from closed schools are the abuse by the administration and violence from other inmates²⁹.

CONCLUSIONS

The existing system of confinement of juvenile offenders in Belarus requires prompt attention and legislative improvements. Restrictions on the freedom of the child is legally possible not only in relation to a crime, but also for repeatedly committed administrative offenses. Minors are not guaranteed a fair trial when considering their sending to institutions in civil proceedings. There is the possibility of a non-judicial detention of minors in the correctional facilities run by the Ministry of the Interior.

²⁸ <http://mogilevnews.by/news/27-09-2014-20-48/13820>

²⁹ <http://www.rfdeti.ru/display.php?id=1762>



Photos by lvukrivichy.unibel.by, sptu2.mogilev.by, mogschzt.edu.by, mirbezgranic.by. The teenagers' faces have been retouched for moral reasons.

“Occupational therapy is one of the most effective methods of rehabilitation of people with addictions to alcohol and toxic substances. Controlled persons are subjected to work at both local production and at counterparty objects”

ACTIVITY THERAPY CENTERS (LTPs)

The Human Rights Center “Viasna” has for a long time researched the practice of holding citizens in the so-called LTPs (activity therapy centers) and analyzed the relevant legislation.

The first activity therapy center appeared in the USSR in 1967 on the territory of the Kazakh SSR. Afterwards, the LTP system was actively used for forced isolation of those suffering from alcoholism and drug addiction who violated the public order and rules "of the socialist way of life". Citizens were sent to the LTPs by order of the district courts for a period of 6 months to 2 years. The court's decision was final and without appeal. The escape from LTP was a crime under the Criminal Code. Human rights activists in the Soviet Union called LTPs a part of the Soviet penal system.

On October 25, 1990, the Committee of Constitutional Supervision of the USSR adopted a Conclusion, in which some norms of the then Soviet Union legislation in this area, including the Soviet republics were recognized as inconsistent with the Constitution of the USSR and international standards of human rights. The Committee came to the conclusion that, according to the law, compulsory treatment in LTPs (i.e. the restriction of freedom, which is close to the criminal conviction) applied to persons who have not committed any crimes.

After the collapse of the USSR the system of LTPs was abolished in most former Soviet republics. Activity therapy centers were eliminated in Russia by a Decree of the President of Russia Boris Yeltsin, which entered into force on July 1, 1994. Currently, LTPs are used only in Belarus, Turkmenistan and the unrecognized Transnistrian Moldovan Republic.

In Belarus, the LTP system wasn't used since 1991. Revival of the practice began in the late 90-ies, and has become widespread in recent years. LTPs are subordinated to the Ministry of Internal Affairs (MIA). Isolation of citizens in the LTPs is regulated by the Law of the Republic of Belarus No. 104-3 of January 4, 2010 “On the procedure and conditions for sending citizens to activity therapy centers and the conditions of stay in them”, the Code of Civil Procedure of the Republic of Belarus (paragraph 12 of Chapter 30 (special proceedings) and the internal regulations of LTPs, approved by the ruling of the Ministry of Internal Affairs No. 264 of October 9, 2007.

An activity therapy center is an organization which is part of the system of internal affairs of the Republic of Belarus, established for isolation, medical and social rehabilitation with compulsory labor of citizens suffering from chronic alcoholism, drug addiction or substance abuse, as well as

the citizens who are obliged to reimburse expenses spent by the state for the maintenance of their children in public care, in the case of systematic violations of labor discipline by these citizens due to the consumption of alcoholic beverages, narcotics, psychotropic or toxic substances.

Persons, who are not subject to sending to LTPs:

Citizens who have not attained the age of 18; men over 60 years old; women over 55 years old; pregnant women; women who are raising children under the age of one year; people with 1-2 rate disabilities; citizens who have been diagnosed with diseases preventing them from being kept in LTPs.

The legal status of the people isolated in LTPs remains unclear. They are not sentenced to deprivation or restriction of liberty or punished with administrative arrest.

The law stipulates that persons detained in activity therapy centers have the same rights as the citizens of the Republic of Belarus, but with some restrictions, which stem from the need for isolation and medical and social rehabilitation with the use of forced labor, as provided by the law. In practice, this means that those kept in the LTP have no right to arbitrarily leave it, must abide by the internal regulations and are subject to control and supervision. According to Art. 47, The persons who are kept in LTPs are obliged to work, the refusal from employment or refusal to work ensue disciplinary action against such persons (placement in a disciplinary cell for up to ten days). After receiving several disciplinary punishments, the stay of the person in the LTP can be prolonged for six months on a court decision. The isolated persons are subject to personal examination and searches of personal belongings. They are not allowed to keep personal documents, money or other prohibited items; the safety of their personal documents and money is ensured by the administration of the LTP.

Article 16 of the Law provides for the use of physical force and special gear by the personnel of the LTPs and the interior troops against isolated individuals in accordance with the legislative acts of the Republic of Belarus.

In accordance with Article 26 of the Constitution, no one can be convicted of a crime unless his guilt is proved in the manner prescribed by law and the court verdict, which entered into force. Imprisonment can only apply to a person who has been found guilty of a crime, that is, if the guilt was confirmed by the court verdict. However, the duration and conditions of isolation in LTPs are in many ways comparable to the deprivation of liberty and are nothing but a deprivation of liberty according to the international standards in the sphere of human rights.

Article 14 of the Constitution establishes the work as a right, not as an obligation. Thus, the forced labor of citizens stipulated by the Law of the Republic of Belarus "On the procedure and conditions of sending citizens to activity therapy centers and the conditions of stay in them" is in complete contradiction with the Constitution, being applied outside of the execution of the court verdict in connection with a crime committed by the individual.

The forced treatment of persons suffering from alcoholism or drug addiction is contrary to the Law of the Republic of Belarus "On Health Care". According to this law, medical treatment in Belarus is voluntary and not compulsory. Article 46 provides for one exception: the involuntary treatment

of persons who suffer from diseases that pose a threat to public health and refuse from treatment. In this case, compulsory treatment is appointed by the court within the framework of special civil proceedings (Articles 391-393 of the Civil Procedure Code). The official list of diseases that pose a threat to the public was adopted by the Ministry of Health in 2002. Alcoholism and drug addiction are not included in it.

The legislation of the Republic of Belarus provides for two more exceptions to the voluntary nature of medical care. First, it allows for compulsory treatment on a court sentence relating to the prosecution for an offense. This kind of compulsory medical measures is regulated by the Criminal Procedure Code of the Republic of Belarus. Another exception relates to compulsory psychiatric treatment of persons who suffer from mental illness and present a threat to themselves or others.

The compulsory medical measures used in the LTPs are outside of the existing provisions stipulated by the legislation of Belarus, referred to above. The practice of forced medical measures established by the Law of the Republic of Belarus "On the procedure and conditions of sending citizens to activity therapy centers and the conditions of stay in them" is contrary to the Law of the Republic of Belarus "On Health Care" and violates the legal rights of citizens and their personal integrity.

Such utterly expressive policy of "medical and social rehabilitation" is of particular concern in a country where the work of law enforcement causes a lot of criticism. In the case of LTPs such "rehabilitation" is used towards thousands of ill people (about 4,000-5,000 people per year), which are in need of a real medical or social assistance.

The Law of the Republic of Belarus "On the procedure and conditions for sending citizens to activity therapy centers and the conditions of stay in them" and the practice of sending citizens to LTPs, their involuntary treatment and forced labor are also serious violations of international treaties on human rights ratified by the Republic of Belarus. In particular, they are contrary to Article 8 and Article 9 of the International Covenant on Civil and Political Rights (prohibition of forced labor and the right to personal liberty), Article 6, which guarantees "the right to work, which includes the right of everyone to the opportunity to gain a living by work which he freely chooses or accepts" and Article 12 of the International Covenant on Economic, Social and cultural Rights (the right to the highest attainable standard of health, which includes the right to freedom from forced treatment). Likewise, the practice includes forced labor, which is prohibited by the ILO Convention No. 29, signed by Belarus, which defines forced labor as "all work or service which is performed by a person under the menace of any penalty and which that person does not take voluntarily". Exceptions are provided for in the case of forced labor sanctioned by a court verdict. However, in this case the isolation in the LTP is imposed by the court in a civil rather than criminal proceedings – that is, not in connection with a committed offense, which is not provided for in the Belarusian legislation.

Thus, the Human Rights Center "Viasna" believes that the current practice of forced isolation of people suffering from alcoholism and drug addiction is in contradiction with international standards of human rights and violates the rights guaranteed to citizens by the Constitution of Belarus.

LEGAL AMENDMENTS

This spring, Belarusian legislators announced changes in a number of legal acts dealing with sending individuals suffering from alcoholism or drug addiction to activity therapy centers (LTPs).

On June 29, the changes took legal effect as part of the Law of the Republic of Belarus “On the procedure and conditions of sending citizens to activity therapy centers and conditions in detention in them”. In accordance with the new version of Part 1, Article 4 of the Act, LTPs can admit the following categories of people:

citizens suffering from chronic alcoholism, drug addiction or substance abuse, who during one year have been three times and more brought to administrative responsibility for administrative offenses committed while intoxicated or in a condition caused by the consumption of drugs, psychotropic substances, their analogues, toxic or other intoxicating substances, have been warned in accordance with this Law about the possibility of being sent to activity therapy centers and during one year after this warning brought to administrative responsibility for administrative offense committed while intoxicated or in a condition caused by the consumption of drugs, psychotropic substances, their analogues, toxic or other intoxicating substances;

citizens obliged to recover costs spent by the state for the maintenance of their children in public care who have twice during the year violated labor discipline due to the consumption of alcoholic beverages, abuse of drugs, psychotropic substances, their analogues, toxic or other intoxicating substances and in connection with this have been warned about the possibility of being sent to activity therapy centers and during one year after this warning have violated labor discipline because of consumption of alcoholic beverages, abuse of drugs, psychotropic substances, their analogues, toxic or other intoxicating substances.

The main difference from the previous version of the article was an indication that that the decision about sending to an LTP, given the formal grounds, has become a right, not an obligation of the court. Until now, the Act used the wording “detention in activity therapy centers shall be applied to”, which limited court procedures to mere stating and verifying the existence of legitimate reasons for sending a person to an LTP and executing by the requesting authority of a number of formalities related to the detention.

The Law expands the range of persons covered by its action: now the citizens suffering from chronic alcoholism, drug addiction or substance abuse include both the citizens of the Republic of Belarus and foreign citizens and stateless persons permanently residing in the Republic of Belarus, who, as a result of a medical examination, were diagnosed with chronic alcoholism, drug addiction or substance abuse.

The Act introduced a new provision allowing to appeal against a warning about the possibility of detention in an LTP issued by the head of the territorial authority of the Interior or his deputy to a superior territorial authority of the Interior, prosecutor or the court.

The procedure for preparation and submission of materials to the court for sending a citizen to an LTP has not changed significantly.

In particular, the head of the territorial body of the Interior or his deputy within ten days after receiving information about the bringing the citizen, who was warned about the possibility of detention in an activity therapy center, to an administrative responsibility for an administrative offense committed while intoxicated or in a condition caused by the consumption of drugs, psychotropic substances, their analogues, toxic or other intoxicating substances, should during one year after the warning send the citizen for a medical examination.

The head of the territorial authority of the Interior or his deputy within ten days after receiving a medical report certifying that the citizen specified in the first part of this article is suffering from chronic alcoholism, drug addiction or substance abuse, and that he does not suffer from a disease preventing him from being held in an LTP, should submit a statement to the court about the citizen's detention in an activity therapy center.

The statement should include:

a medical report certifying that the citizen is suffering from chronic alcoholism, drug addiction or substance abuse, and the absence of diseases preventing his detention in activity therapy centers;

copies of decisions on the imposition of administrative penalties for administrative offenses committed by a citizen while intoxicated or in a condition caused by the consumption of narcotic drugs, psychotropic substances, their analogues, toxic or other intoxicating substances;

a warning about the possibility of detention in an activity therapy center;

data on the marital status of the citizen and the existence of dependent minor children.

The head of the territorial authority of the Interior or his deputy within three days after receiving the medical report certifying that the citizen obligated to reimburse the expenses spent by the state for the maintenance of children in public care, who has been warned about the possibility of detention in an activity therapy center and within one year after this warning violated labor discipline due to the consumption of alcoholic beverages, use of narcotic drugs, psychotropic substances, their analogues, toxic or other intoxicating substances, does not suffer from a condition that can prevent him from detention in an activity therapy center, should submit a statement to the court about sending the citizen to an activity therapy center. The statement should include:

a medical report about the absence of a disease preventing the detention in an activity therapy center;

information from the employer who entered into an employment agreement (contract) with the citizen on account of working time, violations of labor discipline, including those that entailed reduction of his salary (tables of working time, orders on the dismissal of performance and other documents confirming the facts of violations of labor discipline), due to the consumption of alcoholic beverages, use of narcotic drugs, psychotropic substances, their analogues, toxic or other intoxicating substances;

a copy of the decision of the court order for the recovery of costs incurred by the State for the maintenance of children in public care, the court's decision on deprivation of parental rights, on

removal of the child without deprivation of parental rights, or for the recovery of costs incurred by the State for the maintenance of children in public care.

Changes also were made to the Civil Procedure Law of the Republic of Belarus of July 1, 2014 “On amendments and additions to certain laws of the Republic of Belarus on the improvement of civil proceedings”: Section VII of Chapter 29 (Proceedings in cases arising from administrative relations) was supplemented by para. 6-2 – “Peculiarities of consideration and resolution of citizens’ complaints against warnings about the possibility of detention in an activity therapy center and complaints by citizens detained in activity therapy centers against the decision about the use of corrective measures”.

Citizens’ complaints against a warning about the possibility of detention in an activity therapy center should be considered by the court according to the territory jurisdiction (place of residence) of the applicant.

Complaints of citizens held in activity therapy centers against a decision on the use of corrective measures should be considered by the court according to the territory jurisdiction of the activity therapy center.

Citizens’ complaints issued against a warning about the possibility of detention in an activity therapy center can be filed in court within one month starting from the date of issuance of the warning, or from the date of receipt of a refusal of the appeal against the warning to a higher official (prosecutor), or after the expiration of one month after the submission of an appeal to a superior official (prosecutor) if the applicant did not receive a response. The complaint shall include a copy of the warning.

Complaints of citizens held in activity therapy centers against a decision about the use of correctional measures can be filed in court within one month starting from the date of familiarization of the citizen with the decision on the application of penalties, or from the date of receipt of dismissal of the appeal against the decision from a superior official (prosecutor), or after the expiration of one month after the submission of the appeal to the superior official (prosecutor) if the applicant did not receive a response. The complaint is filed through the administration of the activity therapy center. The activity therapy center attaches to the complaint documents describing the identity of the citizen held in the facility, his behavior, copies of the documents based on the materials of the contested decision. Filing an appeal does not suspend the execution of the contested decision until the resolution of the complaint. The complaint must be examined by the court not later than ten days after its receipt.

The complaint is considered by the court involving the applicant only if the court finds that his appearance for a hearing is mandatory. Otherwise, the court is restricted to studying written requests and materials. Accordingly, the applicant is not entitled to hear the explanations of the facility’s representative involved in the process, and to enter motions and objections during the trial.

Without doubt, this provision violates the applicant’s right to a fair trial, however, the Constitutional Court of the Republic of Belarus by its decision of June 20, 2014 No. R-930/2014

“On the conformity with the Constitution of the Law “On Amendments and Additions to Certain Laws of the Republic of Belarus on the Improvement of Civil Proceedings” recognized the Act consistent with the Constitution of the Republic of Belarus.

The Constitutional Court drew attention to the provision of the paragraph 2 of Article 358 [5] of the CCP stipulating that a complaint of the citizen held in an LTP should be considered by the court not later than ten days from the date of its receipt by the court with the participation of the applicant, in the event that the court finds his appearance in court mandatory, and a representative of the LTP.

“This provision, which allows a court session without the participation of the applicant, refers to his detention in the LTP – an organization created for forced isolation and medico-social rehabilitation with compulsory labor of citizens suffering from chronic alcoholism, drug addiction or substance abuse, and citizens obliged to reimburse resources expended by the State for the maintenance of children in public care, in case of systematic violation of labor discipline by these citizens due to consumption of alcoholic beverages, drugs, psychotropic, toxic or other intoxicating substances.

According to the Constitutional Court, this legal regulation does not violate the constitutional right to judicial protection of a person held in LTP, since, in accordance with Article 70 of CCP, based on Part 1 of Article 62 of the Constitution, citizens have the right to administer their cases in court in person and with the help of a proxy.”

Such a position of the Constitutional Court is surprising: the Court cites an article of the Constitution which directly provides the right of citizens to personally administer their case in court. In accordance with Article 22 of the Constitution, everyone is equal before the law and is entitled without any discrimination to equal protection of their rights and legitimate interests. In accordance with Article 23 of the Constitution, the restriction of rights and liberties shall be permitted only in cases prescribed by law, in the interests of national security, public order, morality, health, rights and freedoms of others.

The Court failed to investigate either the alleged breach of the principle of equality of parties nor the ability of LTP inmates to exercise in practice their right to conduct their cases through a representative.

Upon review of citizens’ appeals against warnings issued to them about the possibility of detention in an activity therapy center, complaints of citizens held in activity therapy centers about decision on the use of corrective measures, the court shall make one of the following motivated decisions:

to dismiss the contested warning about the possibility of being sent to an activity therapy center or the contested decision to apply penalties;

to confirm the validity of the appeal and to reverse the warning about the possibility of being sent to an activity therapy center or a decision on the application of penalties.

The court's decisions to confirm the validity of appeals and to cancel the warnings about the possibility of being sent to an activity therapy center or a decision on the application of penalties shall take effect immediately.

The Law has substantially clarified the procedure for execution of the court ruling on the detention of citizens to activity therapy centers.

Citizens are still transported to activity therapy centers by local bodies of the Interior.

One of the new provisions says that in order to be brought to an activity therapy center a citizen can be detained by the territorial authority of the Interior for up to three days on the basis of an enforceable court decision on his detention in an activity therapy center. The detained citizen expected to be sent to an activity therapy center should be held in the temporary detention facility of the territorial body of the Interior in the manner and on the terms established by the legislation of the Republic of Belarus for the detention of persons serving administrative detention.

Citizens diagnosed with chronic alcoholism, drug addiction or substance abuse treatment and dispatched labor rehabilitation within fifteen days from the date of entry into force of a court decision on his direction in health labor rehabilitation.

The citizen obliged to reimburse the costs spent by the state for the maintenance of children in public care is sent to an activity therapy center not later than the day following the day of entry into force of a court decision on his detention.

Here is a media story describing a person being sent to an LTP in Dziarzhynsk:

“The emphasis here is on occupational therapy. Many of those who for the first time pass through the checkpoint, do not remember when they last crossed the gate of a production company. During a private conversation, the detachment chief finds out what the man's occupation was, trying to approach each individually.

The daily routine is strict. “Rise!” sounds every day at six o'clock in the morning. In fact, there is only 15 minutes to wake up, get dressed and line up for a roll call. After that it's time for breakfast and washing. At eight thirty, distribution of work: chiefs come and start recruiting the teams. Some remain in the shops on the territory, others are sent to work in urban enterprises. It all depends on the skill of the worker.

The working day for the inhabitants of the LTP lasts no more than seven hours and usually ends at 16.45. That's because a person must have a minimum of three hours of free time daily. With the eight-hour day, the schedule is not possible to observe. And so people come to work on Saturdays, but no more than five hours. There is no special training here. It is dominated by the principle of “do as I do”. They have their day-off only once a week, on Sunday.

Each month, products worth about three billion rubles leaves the gates of the activity therapy center. It produces cabinet furniture, paneling for Belarusian tractors, sew seats, birdhouses, gazebos, timber, metal ware... In a word, the LTP is somewhat like a universal factory.

Just like in a conventional plant, the workers receive their payment twice a month. The calculated amount minus certain percentage of fee for accommodation – it is now (in 2013) 891 thousand rubles³⁰.”

The wages and other similar income of citizens held in activity therapy centers are subject to deduction of the cost of meals, clothing and footwear (except for the cost of special food, special clothing and footwear, other personal protection equipment), utilities, and other deductions in accordance with the legislative acts of the Republic of Belarus.

The cost of food, clothing and footwear, utilities costs is deducted during the term of detention of a citizen in an activity therapy center until their full payment. In case of termination of detention of a citizen in an activity therapy center, the undeducted costs of food, clothing and footwear, utilities costs are charges off as estimated expenses for the maintenance of the activity therapy center.

Procedure for calculation and reimbursement of deducted costs of food, clothing and footwear, utilities and other costs is determined by the Ministry of Internal Affairs in consultation with the Ministry of Finance of the Republic of Belarus.

Reparation (compensation) of damages caused to an activity therapy center and expenses related to the search of citizens held in activity therapy centers, in case of absence without leave, is carried out by an enforcement inscription.

On this occasion, the Constitutional Court in its decision “On the conformity with the Constitution of the Law “On amendments and additions to certain laws of the Republic of Belarus on detention of citizens in activity therapy centers and the conditions of detention in them”, recognizing it as consistent with the Constitution, however, pointed out: “The Constitutional Court notes that the provision of paragraph 16 of Article 2 of the Act, which provides for reparation (compensation) of damages through an enforcement inscription, does not fully take into account the legal position of the Constitutional Court expressed in the above-mentioned decisions, and offers the legislators in the process of improvement of legislation to proceed from the legal positions set out in these decisions of the Constitutional Court regarding the judicial protection and the provisions of Article 60 of the Constitution, which guarantees everyone the protection of rights and freedoms by a competent, independent and impartial tribunal in the period provided by the law”.

In accordance with Article 8 of the Act, a citizen may be sent by the court to an activity therapy center for a period of up to twelve months.

Detention of a citizen in an activity therapy center may be extended by the court for up to six months if he has a specific set of legal penalties, in case of absence without good reason in the activity therapy center for more than one day, absence without good reason in the activity therapy center for less than one day in case of repeated violation during three months, and in case of delayed return from social leave without a valid reason.

³⁰ <http://www.old.zviazda.by/ru/archive/article.php?id=112064&idate=2013-05-21>

The new version of the article has provided a rule by which detention of a citizen in an activity therapy center can be reduced by the court for up to six months on the basis of a decision of the administration of the activity therapy center on the possibility of reducing the period of detention.

A decision of the administration of the activity therapy center on the possibility of reducing the period of detention should contain information on the provision to the citizen held in the activity therapy center of medical and psychological care, on completed professional training and retraining courses, his attitude toward labor, on an adequate perception of educational influence, on maintaining his family ties and other information indicating the possibility of reducing the period of detention. The citizen held who is in an activity therapy center, facing the possibility of reducing the term of detention, should not have penalties, his period of stay in the activity therapy center should be at least six months.

A decision of the administration of the activity therapy center on the possibility of reducing the period of detention should contain conclusions on the basis of information specified in Part 2 of this Article, that the citizen does not need forced isolation and is ready to adapt to society. These findings are approved by the head of the activity therapy center.

Having approved the conclusions, the head of the activity therapy center sends a statement to the court to reduce the term of detention. The statement shall include the conclusion of the administration of the activity therapy center on the possibility of reducing the period of detention, reference of the citizen held in the activity therapy center, and his personal file.

In accordance with Article 393-11 of CCP, a request to extend the term of the citizen's detention in the activity therapy center, reducing the period of detention should be submitted by the activity therapy center to the court according to the territory of jurisdiction.

Thus, the initiative to reduce the term of detention is the exclusive right of the administration of the activity therapy center; bringing civil proceedings on the initiative of the citizen held in the activity therapy center is not provided by the law.

In accordance with the Code of Civil Procedure, a request to extend the term of the citizen's detention in the activity therapy center, reducing the period of detention should be considered by the court within three days after their receipt by the court with the obligatory participation of a representative of the activity therapy center.

This rule does not provide for participation in the hearing and taking into account the positions and explanations of the citizen held in the activity therapy center when deciding on the extension of the citizen's detention in activity therapy centers and reducing the period of detention.

The grounds for termination of a citizen's detention in the activity therapy center include entry into force of the verdict of conviction the citizen held in the activity therapy center, punishment in the form of arrest, imprisonment, life imprisonment, the death penalty, restrictions on freedom providing for detention in an open-type correctional institution. Previously, this question was not settled by law.

In connection with the provision allowing law enforcement bodies to detain for up to three days citizens sent to activity therapy centers, amendments were introduced to the Law of the Republic of Belarus “On the procedure and conditions of detention”. The new version of the relevant rule establishes that:

temporary detention facilities are designed for short-term detention of detainees in accordance with the Criminal Procedure Code of the Republic of Belarus.

The temporary detention facilities of the territorial bodies of the Interior also hold:

persons detained in accordance with the Criminal Code of the Republic of Belarus;

detained citizens awaiting sending to activity therapy centers of the Ministry of Internal Affairs of the Republic of Belarus.

The temporary detention facilities can hold for up to three days persons subjected to a preventive measure of detention before sending them to a remand center.

The temporary detention facilities can admit persons held in custody in remand centers, where it is necessary for the performance of procedural actions outside the settlements where the remand are located, from which their daily delivery is not possible, for the period of proceedings. The basis for such a transfer are a ruling of the prosecuting authority or the decision (ruling) of the court.

Separate premises of the temporary detention facility of the territorial body of the Interior can hold administratively arrested persons and persons subjected to administrative detention for administrative offenses, which may entail an administrative penalty in the form of arrest or deportation, as well as persons subjected to an administrative detention for committing administrative offenses while intoxicated, which may entail an administrative penalty in the form of administrative arrest (after sobering up), in the absence of a detention center in the structure of the territorial authority of the Interior or possibilities of detention of these persons in the center of the insulation of offenders of the body of the Interior.

The provision saying that that detained citizens awaiting sending to an activity therapy center of the Ministry of Internal Affairs of the Republic of Belarus should be held in the temporary detention facility of the territorial body of internal affairs in the manner and on the terms established by the legislation of the Republic of Belarus for the detention of those serving administrative detention was not reflected in the Act.

The Human Rights Center “Viasna” received a complaint from a resident of Minsk who told about the artful ways in which police officers seem to be following a plan for filling the activity labor centers of Belarus.

“It all happened this month [July 2014]. They grabbed after work right at the entrance to the enterprise in front of my colleagues. When they saw a phone in my hands they began to wring my hands behind my back, very high – it was painful. Meanwhile, I did resist. The mobile phone was taken away, and when I asked to return it to me, they said they would not let me make a call, so that no one knew where I was. There were threats to handcuff me and all my colleagues heard it.

As it turned out, before my detention they called my boss to find out when I finished work. Explaining nothing, fraudulently, with the words “it is a mere formality, but you just do not tell him anything”... And now, they were waiting for me at the exit after work.

After the detention, I was taken to the drunk tank and they said, “Now we’ll write another violation report”. They brought me in, asked to breathe into a tube – it showed nothing. After that, they took me to a police station that had no signs, nothing at all, just like an apartment. There, they put me on an iron bench, handcuffed me to it and left. In two or three hours, late in the afternoon, they brought another man. After some time, they brought the third. They took off the handcuffs when I asked for it.

The three of us were held in the station all night until the morning. We could not sleep very well, as one man was rowdy, so they constantly entered the room to use physical force. Not against all, I was only threatened.

Incidentally, in this room, where we were kept, there was alcohol – wine in liter bags. And I knew that I was going to be taken for a medical examination, so I did not drink it. Other detainees drank it, so the next day, when we were taken for examination, it was much easier for the commission to diagnose them. Also, another detainee, who earlier was in an LTP, said that in another police department the policemen wine them in front of the commission.

The commission where we were taken in the morning was a pure formality. That is, the doctors are asked if there were any health complaints, spinal or head injuries. When I said that there might be injuries, they asked: “Are these the injuries that can help you go to hospital?” When I said that I did not have these, they said that everything was fine. I was diagnosed with “moderate alcohol dependence” and told that my health problems would be solved in the LTP. After the medical examination, which took place in Tarkhanau Street, I was again taken to the police station, where I was held until the evening.

In the evening, I was taken to court. All this time I was not allowed to phone, they did not let me tell anyone where I was. So, in the court I was alone. There a judge, a prosecutor, a representative of the Ministry of Internal Affairs and me. I did not have an opportunity to invite a counsel or my relatives. The court sentenced me to twelve months of treatment in the LTP.

I’m employed, I have positive references at work, I have no violations of labor discipline...

Having come through all this, I realized that the policemen feel their impunity. They never gave their names during the whole time. I learned the names of these officers only from photographs in social networks. I heard their names only when they talked to each other. There were no badges on them, they were in civilian clothes. And the detention was carried out in civilian clothes, and the minibus in which I was taken was usual, unmarked. So at work many people thought that I was seized by some gangsters. And some colleagues who watched the arrest thought that I had committed a very serious crime, because I was detained as a hard-core criminal.”

It is worth noting that neither the appearance nor the conduct of the person, who was convict for a year of detention in an activity therapy center, have signs an alcohol abuser, or even a person with chronic alcoholism.

People may find themselves in LTPs without even passing all the mandatory formalities: a court ruling ordered the “medical and social rehabilitation with compulsory labor” of citizen K. Here’s an excerpt of his appeal:

“I was not warned about the possibility of being sent to an LTP. My signature in the document was forged by another person.

I did not commit the administrative offense. In the medical examination record, the signature and the note “I have read and understood” in the field “record of the examined person” were filled by the doctor, not me.

I only learned about the existence of the above documents during the proceedings.

Thus, the court did not check the facts that it accepted as a basis for the decision, warning me about the possibility of being sent to an LTP and bringing me afterwards to administrative responsibility for offenses in the state of intoxication.”

The police and the courts often take into account the facts of drinking beer and soft drinks in public as an offense committed while intoxicated. In particular, among other offenses, citizen P. was sent to an LTP for such an offense. This was stressed in his supervisory complaint:

“On June 12, 2014, I committed an offense, drinking beer in a public place, but I was not in a state of intoxication. The judgment did not specify that I was drunk, I was punished only for the fact of drinking beer.

The decision did not disclose the essence of the committed administrative offenses, there is no reference to the evidence proving that the above offenses were committed by me in a state of intoxication, namely the results of a medical examination that was aimed at identifying the influence of alcohol on each occasion of bringing me to administrative responsibility.

According to the decision, during the court hearing, I agreed to being sent to an LTP and considered it necessary to undergo compulsory treatment in an LTP.

This statement is a lie. I did not give my consent to being sent to an LTP, nor do I consider it necessary to undergo compulsory treatment.

I could not object these parts of the minutes, because I was not informed of its status and did not provide an opportunity to review the minutes.”

A similar situation was reported by citizen P., who described it in his appeal:

“I did not commit the three administrative offenses while intoxicated or in a condition caused by the consumption of narcotic drugs, psychotropic, toxic or other intoxicating substances

On xx/xx/2012, I was not drunk, did not pass the medical examination. A judgment in the case was made in my absence.

On xx/xx/2013, I was not drunk, I was drinking alcohol the night before, which I reported to the court.

On xx/xx/2013, I committed an offense – drinking beer in a public place, but I was not in a state of intoxication. The judgment did not specify that I was drunk, I was punished only for the fact of drinking beer.

Thus, the facts accepted by the court as a basis for the decision were not supported by sufficient and reliable evidence.

I did not file a cassation appeal in due time, since on xx/xx I was brought to administrative responsibility and subjected to administrative arrest, which I serving in the detention center of the Interior Affairs Department, from where I was sent to the LTP. In the LTP, I could not write a complaint myself and pay legal costs in a timely manner. So I am forwarding my complaint now and I hope that it will be considered.”

Certainly, forced isolation activity therapy centers (LTPs) for medical and social rehabilitation with compulsory labor to a minimum extent solves the problem of treatment of chronic alcoholism, drug addiction or substance abuse. As noted in an interview by the Deputy Chairman of the House of Representatives’ Standing Committee on National Security Valery Haidukevich, “unfortunately, when a man returns from the LTP, he starts behaving the same way”. The MP stresses that there are yet no statistics on how many people are cured after detention in activity therapy centers or at least do not abuse alcohol for a long time. Thus, LTPs still perform mostly punitive functions. The planned increase in the amount of LTPs will probably entail an increase in the number of prisoners.

The results of isolation in LTPs can be judged, to some extent, by the statistics of LTP No. 1: “We are making good progress. In particular, we constantly send inquiries about all persons who were released from the facility a year ago, where we put three questions: “Does he drink? Are the family ties restored? Does the person work or not?” Based on the results of responses, we can arrive at the following conclusions: 16-18% of the released persons show a steady remission, 32-36% are unstable, and the rest are relapse cases³¹.”

Here are the methods of “treatment” according to chief inspector for training activity at activity therapy center No. 1, Captain Haiko: “Occupational therapy is one of the most effective methods of rehabilitation of people with addictions to alcohol and toxic substances. Controlled persons are subjected to work both at local productions and counterparty objects. These are metalworking shops, shop for cleaning copper wiring and the woodworking shop of the republican unitary enterprise “LTP-1”. The metalworking shop produces the necessary components and parts for “Homselmash”, metal containers and other products. The woodworking shop assembles pallets, cylinders for such companies as JSC “Keramin”, “Khimvalakno”, “Belaruskabel” and so on. Also, we offer a variety of molded products and hardscape. Citizens working outside the protected area help various organizations of Svetlahorsk and the district in solving their problems: street cleaning, cargo handling, working on farms, landscaping, and much more.”³²

³¹ <http://www.mvd.gov.by/main.aspx?guid=106263>

³² *Ibid*

CONCLUSIONS

Summarizing the above, we should note the following:

- The state represented by the legislative bodies supports the existence of a punitive institution, which is fundamentally flawed in terms of compliance with its international obligations in the area of prohibition of forced labor and arbitrary deprivation of liberty;
- Compulsory isolation in activity therapy centers (LTPs) for medical and social rehabilitation with compulsory labor adds more features characteristic of imprisonment;
- constitutional control ignores violations of fundamental human rights by applied legislation and its practical application.

“Food was insufficient, sometimes of poor quality. I did not receive any cooled boiled water. There was no cold water in the cell... Medical care was provided to me more than 12 hours after I complained to the officer on duty”

CONDITIONS OF SERVING ADMINISTRATIVE ARREST

The legislation on the execution of administrative penalties consists of the Procedural Executive Code of the Republic of Belarus (PEC) and other legislative acts defining the procedure and conditions for the execution of administrative penalties.

The legislation on the execution of administrative penalties should take into account the generally recognized principles and standards of international law, international treaties of the Republic of Belarus relating to the treatment of persons subjected to administrative arrest.

In accordance with the PEC, execution of an administrative penalty in the territory of the Republic of Belarus is carried out in accordance with this Code and other legislative acts. The procedure and conditions for the execution of an administrative penalty is determined by the law in force at the time of its application. A decree on administrative detention is enforced by the police.

The execution of an administrative arrest is carried out under the rules established by the PEC and other legislative acts. The state guarantees the rights, freedoms and legitimate interests of administrative detainees, provides the statutory conditions for the application of the administrative penalty.

In accordance with the PEC, administrative detainees have the right, including the right to receive information about their rights and responsibilities, procedures and conditions of serving the administrative penalty. Information on the rights and responsibilities, procedures and conditions of serving an administrative penalty shall be provided to administrative detainees by the administration of the special institution executing an administrative penalty in the form of administrative arrest.

Institutions executing an administrative penalty in the form of administrative detention, which are designed to hold administrative detainees, are subject to internal regulations approved by the Minister of Internal Affairs in consultation with the Prosecutor General of the Republic of Belarus.

There arises a significant problem that hinders the implementation of the rights of prisoners. The current PEC was amended by Act No. 64-3 of July 12, 2013. Meanwhile, the latest version of the Rules of internal procedure of special agencies of internal affairs bodies executing administrative penalties in the form of administrative detention was amended by decision No. 263 of the Ministry

of Internal Affairs of August 15, 2012. Thus, the Rules do not take into account the amendments made in the Code, which improved the situation of prisoners in terms of their material and social security.

Earlier, administrative detainees were not allowed to receive parcels, except for those that contained essential items, clothes and shoes.

In accordance with the PEC, with the entry into force of amendments of July 12, 2013, administrative detainees are allowed to receive parcels and small packages with no limit as to their number. The maximum weight of the parcel and small package is determined by the Rules of Postal Services, approved by the Council of Ministers of the Republic of Belarus. Parcels and packages received from non-relatives are allowed with special permission of the head of the institution executing an administrative penalty in the form of administrative arrest. Administrative detainees are allowed to send and receive letters and telegrams in unlimited amounts. Sending letters and telegrams is the expense of administrative detainees. Correspondence received and sent by administrative detainees is subject to censorship.

In order to avoid problems arising from the implementation of this law, the order of receipt and sending of packages, parcels and small packets, their examination, as well as a list of objects and things allowed for receipt, storage and sending by administrative detainees must be, in accordance with the PEC, defined by the internal rules of special institutions executing an administrative penalty in the form of administrative arrest. The same applies to the right to correspondence. The internal rules should also be amended to provide for the limits of the discretion by heads of places of isolation with respect to the receipt of parcels from persons who are not close relatives of administrative arrestees.

However, the current version of the Rules of August 8, 2007 still has the provision saying that administrative detainees are allowed to receive parcels and packages that contain only the essentials, clothing and footwear. Possession of other items is considered a violation entailing responsibility.

Accordingly, the questions dealing what products may be sent to an administrative arrestee under the new rules, in what quantity, as well as a list of items and items prohibited for receipt by administrative detainees, are not defined by the legislation. This situation has lasted for nearly a year, but the Interior Ministry seems to be in no hurry to adopt the new version of the Rules, though it is not a big problem to complement the Rules with several new paragraphs and annexes. This uncertain situation is obviously beneficial for the MIA, since it extends the powers of heads of places of isolation; they can both authorize unlimited number and contents of parcels, including a variety of food, cigarettes and other essentials for imprisoned persons and completely isolate them from this support. On the other hand, it gives you the opportunity to argue with any, even reasonable restrictions established by the administration, as their use is possible only when they are provided by law.

A general trend is as follows: the prison administration does not apply to the post office and does not collect the received parcels, which negates the positive effect of these innovations.

Here are some rules of administrative detention of arrested persons enshrined by the Rules:

For general use, the cells, in accordance with established standards and based on the number of prisoners, are equipped with laundry and toilet soap, toilet paper; board games (checkers, chess, dominoes); articles for cleaning the cells; sewing needles, scissors, knives for cutting food (can be issued for a short period under the control of employees of the special institutions).

The cells are equipped with a table and benches with the number of seats corresponding to the number of beds in the cell; a sanitary unit; a washbasin (if possible), and a tap with running water (drinking water tank); a bedside table for storage of toiletries; a radio-set; a waste bin; ventilation equipment; a TV-set (subject to availability).

For daily needs, prisoners should receive cooled boiled water for drinking.

At least once a week, administrative detainees are given the opportunity of taking a shower for not less than fifteen minutes.

Shaving items are given to the detainees upon request at the set time at least twice a week under the supervision of the administration of a special institution.

Board games are provided at the rate of one set per cell.

For writing proposals, applications and complaints, administrative arrestees and administrative detainees at their request can receive pens and paper.

Prison head may authorize telephone conversations. The territory of the special institution should be equipped with payphones. Use of office phones and mobile communications to conduct telephone conversations by administrative detainees is prohibited.

Administrative detainees are obliged to carry out the cleaning of the cells and other premises of the special institution in the order established by a schedule.

Administrative detainees with their consent may be subjected to work. Obligated persons serving administrative detention are subjected to work on a mandatory basis in accordance with the legislative acts of the Republic of Belarus.

In the case of complaints of poor health or with obvious signs of a disease an employee on duty should immediately call an ambulance. It is prohibited to hold in institutions persons with symptoms of acute mental, infectious and other acute diseases requiring emergency medical care.

Administrative detainees are provided with food sufficient to maintain health and strength. Food is given three times a day. While distributing, hot dishes must have a temperature not lower than 75 °C, the second course – not lower than 65 °C, beverages – between 7 and 14 °C. Food should be given in a period not exceeding two hours from the time of cooking, storage of cooked food in excess of the periods is allowed as an exception. In the case of forced storage of remaining food, it should be completely cooled and stored at a temperature no higher than + 6 °C and for not more than twelve hours. Before distributing, cooled food undergoes repeated heating.

Food costs are reimbursed by administrative detainees in the manner prescribed by law. Legislation on this aspect is rather controversial: instead of reimbursement of actual expenses, detainees have to pay a fixed amount, the size of which is set by the government. Currently it is 75,000 rubles. All interviewed prisoners expressed doubt that this amount is actually spent on the meals they receive. Even more difficult is the case of those who are refusing to take food: the law does not establish a procedure how the prison authorities should behave in this case. So often such prisoners are required to pay funds for food, citing the fact that food is purchased and cooked.

The premises of special institutions, equipment and tools should be kept clean. Wet cleaning should be done daily, and more frequently if necessary, using a detergent (2% soap-soda solution) and disinfectant (1% solution of bleach, chlorine bleach). At least once a month, all the premises are subject to general cleaning.

Cells for administrative detainees and other rooms must have natural lighting. Artificial lighting is allowed in larders, lavatories and showers. Cells and other rooms are equipped with a system of forced ventilation, and exhaust ventilation with a natural draft.

Administrative detainees are provided with daily walks. The walk duration is established by heads of special institutions, taking into account daily routine, weather conditions, number of prisoners in the special institutions and other circumstances, and shall be not less than one hour.

Communication with a lawyer or other person having the right to legal assistance is carried out privately and confidentially, without limiting the number and duration of conversations. Communication is carried out under conditions that allow employees of special institutions to see but not hear them.

Prisoners should receive: a wool blanket, a cotton mattress, a pillowcase, a cotton cushion, two pillowcases, sheets, a towel, a hygienic towel (provided to female prisoners).

Personal hygiene standards for administrative detainees are as follows: (for one person for three days) laundry soap – 20 grams, toilet soap – 5-10 grams, toilet paper – 2.5 meters, feminine pads (in case of necessity) – 6 pieces.

Since November 2013, the procedure and conditions of detention of an individual in respect of whom administrative detention is used for more than three hours have been governed by the Rules of detention of the natural person under administrative detention.

These regulations eliminated certain gaps in legislation (the detainees were supposed to be in possession of a certain list of things and objects, but there was no established order of their receipt, i.e. parcels to detainees awaiting trial were, as a rule, rejected).

The rules establish requirements for detention conditions, which are virtually the same as those for administrative arrestees. Detainees subjected to administrative detention for a period not exceeding 12 hours may be held in the rooms for detainees of the operational and security department of the Interior.

Detainees are allowed to receive parcels with a total weight of not more than 5 kilos in three days. Detainees can possess, store and receive: food (except for that requiring heating, short-lived foodstuffs and expired food, as well as yeasts, alcoholic drinks and beer). It is prohibited to limit the weight of transfers for minors, persons with chronic diseases (provided there is a certificate from a healthcare employee of the place of detention or a public healthcare organization), pregnant women.

Food and things accepted for transfer are subject to inspection prior to their receipt by the detainee. Meat, fish and sausages are cut into several pieces, liquid products are poured into dishes, canned food is opened and poured into another bowl, bulk foods (sugar, etc.) are poured, chocolates, waffles, cookies are accepted without packing, pack of cigarettes, cigarettes, tobacco are opened. Parcels are handed to the detainee not later than one day after its arrival, and in case of his temporary departure outside the place of detention – after returning.

Detainees under administrative detention for over 12 hours are entitled to daily walks for at least two hours, and minors, pregnant women – at least three hours.

Lawyers of the HRC “Viasna” assisted in filing several complaints about conditions in different detention facilities.

As stated in the complaint by activist Illya Dabratvor after serving administrative detention in the detention center of the Interior Affairs Department of the Minsk City Executive Committee,

“Arrested persons, including myself, were kept in custody in violation of the established rules – the PEC of the Republic of Belarus and the Internal Rules of special institutions of the Interior executing administrative penalty in the form of administrative arrest. In particular, in the cell where I was held, the number of arrested persons repeatedly exceeded the number of beds. The room was not equipped with a functioning network radio, board games were not given; the window did not provide regular natural lighting. The cell lacked both natural and forced ventilation. The toilet was located next to the beds and tables. Food was poor, sometimes of poor quality. No cooled boiled water was given to me. There was no cold water in the cell, it was off due to a malfunction of the sanitary equipment. I was not provided with walks. I received medical care more than 12 hours after I called an employee on duty (during evening inspection).

I was not taken to the Minsk City Court on August 8, 2014 to participate in the hearing of my complaint against the order of an administrative offense.

In connection with the above, I experienced physical and mental suffering, I suffered from a lack of fresh air, I had headaches; I felt a sense of shame and disgust at the fact that I could not properly maintain personal hygiene, and the persons next to me were also in poor hygienic condition; I could not relieve myself without the humiliation of my dignity and the dignity of others; daily meals next to the toilet humiliated my honor and dignity; I experienced the feeling of hunger and suffering related to it.”

Yauhen L. served his administrative detention in the detention center of the Barysau district police department.

“Between November 10 and November 12, 2013, I did not receive food and was starving. There was no medical examination after my arrival. Rights and duties of administrative detainees were not explained to me. Personal hygiene means and bedding were not provided. The cell, where I was held, lacked certain equipment: water tank, bedside table for storage of toiletries, network radio, ventilation, TV-set, board games. The cell did not have enough fresh air, it was dark, with a bad odor, the ceiling had mold, the temperature was very low. The design of the toilet did not allow to relieve myself in decent conditions. I was not given the opportunity to use the shower. I was never taken out for a walk. The food that was given was insufficient and unsatisfactory in quality. Administrative detainees were involved in food distribution. All the above is a violation of the rules defining the conditions of administrative detainees, it caused physical pain, humiliating and degrading my dignity.”

Dzmitry Kremenetski told about conditions of serving administrative arrest in the detention center of the police department of the Minsk city executive committee:

“When brought to the facility, rights and duties of administrative arrestees were not explained; personal hygiene means were not given to me. Linens were of inadequate quality. The cell lacked certain equipment: radio network, ventilation equipment, TV-set, board games. There was no boiled drinking water. One of the cells (I think, No. 19, the second one where I kept) was damp, there was mold on the walls. The cells lacked fresh air and ventilation was inadequate; it was dim because not all the lights worked. I was never taken out for a walk. Meals were insufficient and unsatisfactory in quality, not enough drinking was provided. All the above caused me physical pain, humiliating and degrading my dignity.”

Earlier, Dzmitry Kremenetski served administrative arrest in the detention facility of the Yelsk district police department:

“When brought to the facility, no medical examination was conducted. Rights and duties of administrative detainees were not explain. My family was not informed of my arrest. Personal hygiene means were not given. The cell, where I was kept, lacked certain equipment: water tank, network radio, TV-set, board games. The small cell of about 5 square meters contained three persons. Bedding was in improper condition. The cell did not have enough fresh air, it was dark, with a bad odor. The toilet was in the vicinity of the beds and tables. I was never been given the opportunity to use the shower. The food was not sufficient, which forced to me starve. All the above is a violation of the rules defining the conditions of administrative detainees, it caused me physical pain, humiliating my honor and dignity. I shared the cell with persons contained convicted in a criminal case.”

All the arguments mentioned in the complaint (except that the administration failed to inform the prisoner's family, which, according to the prosecutor, is not their responsibility) were confirmed, and the prosecutor of Yelsk district, Homel region, after conducting an investigation, issued to the police department an order to eliminate the violation. Thereafter, D. Kremenetski filed a lawsuit

against the police department of the Homel region and the Ministry of Finance for compensation of damages. However, the court rejected his claim, citing the fact that he failed to prove the fact of moral damage, and that the defendants were not required to cover the damage because their guilt was not established.

On the other hand, all prisoners held in the detention center of the police department of the Minsk city executive committee say that detention conditions have improved as compared to the conditions that existed before the facility was closed for repairs when the prisoners did not have individual beds and there were other violations of the rules.

In 2013, the Salihorsk temporary detention was also redecorated after a number of complaints filed by opposition activists. Local human rights activists of the Belarusian Helsinki Committee attempted to assess the changes. The authorities, however, did not allow them to visit the detention facility.

Civil society activist Uladzimir Lemesh served administrative arrest there. According to him, some changes actually occurred. The cells are now equipped with wash basins and toilets, which are separated by a small wall. Membranes in the windows were replaced with double-glazed windows. However, the redecoration did not affect the overall situation. The cells still lack separate beds for each prisoner in the cells. As before, people are forced to sleep on a wooden platform, so-called “scene”.

*“The cell accommodated up to 15 people, and the “scene” could take no more than eight persons. The rest lie below or even on the concrete floor. Most could not sleep all night. Moreover, there were only three mattresses. The washbasin and the fenced toilet is OK, but the toilet flush is not working. We had to carry water from the sink in some cropped plastic bottle. Later, we poured tea in the same bottle, because we had no cups. The overcrowded cell was full of cigarette smoke, ventilation was either not working at all or simply could not cope with that. The windows were replaced, but the tiny windows remained the same in size. The level of natural lighting is critical in the daytime. I was there only two days, and the people are held there for fifteen and twenty-five days in such conditions.”*³³

³³ <http://spring96.org/en/news/73487>

LEGAL ASSISTANCE TO PRISONERS

In accordance with the Constitution, everyone has the right to legal assistance for the exercise and protection of their rights and freedoms, including the right to use at any time assistance of lawyers and other representatives in court, other state agencies, local government, enterprises, institutions, organizations, public organizations and in relations with officials and citizens. In the cases provided by law, legal assistance is provided by public funds.

Opposition to legal aid in the Republic of Belarus is prohibited.

The right to legal aid should be provided with real opportunities for prisoners to receive such assistance in a reasonable time at an affordable price. Providing legal assistance to prisoners should guarantee compliance with the attorney-client privilege.

The actual situation is depressing.

A large number of prisoners find themselves in prisons as a result of appealing against sentences. Legal aid can be only claimed by those whose relatives are able to pay for the lawyer's visit to the detention facility. However, all the interviewed lawyers without exception argued that the colonies (to a lesser extent it relates to prisons) do not offer conditions for the lawyer-client communication, when the staff of the colony can only see but not hear the content of conversations. Typically, prisoners and lawyers are offered to talk in offices of prison staff in their presence.

Lawyer P. was offered to talk with his client in penal colony No. 13 in the premises for short visits, where there are several open booths, and prisoners loudly discuss family problems with relatives. He had to discuss the details of a supervisory appeal with his client in that situation. After the lawyer complained to the administration, they were offered a larger room, where there were several prison officers observing the conversation from a distance of about 10 meters.

Prisoner Y. told that his every meeting with the lawyer occurred in the presence of an officer. All complaints were dismissed: prison staff said that the meeting could only look like that or it would not be held at all.

Penal colony No. 14 provides space for attorney-client meetings in a room for short visits in the form of a booth. However, this booth is not soundproofed.

The interviewed lawyers from small towns, where colonies are located, argue that there are few cases when prisoners ask for legal advice themselves.

It is worth noting that prisoners usually do not have access to legal literature for self-study; prisoners do not have the possibility of obtaining legal knowledge on the Internet.

Meanwhile, there are numerous cases when prisoners are in need of legal assistance: besides appeals against sentences, prisoners appeal against the actions of the prison administration or act as parties in civil cases, etc.

CONCLUSION

Torture, and cruel, inhuman and degrading treatment are still used in places of detention in Belarus. Such reports do not receive unbiased investigation by an independent authority. In addition to colonies and prisons, Belarus has a number of institutions where inmates are subjected to conditions that can be equated with imprisonment. Both penal facilities and other detention places should be excluded from the system of the Ministry of the Interior. Public monitoring of places of detention is virtually absent in Belarus. There are numerous cases, both in practice and in law, of discrimination against prisoners in the spheres of labor and social guarantees.

In this regard, the legislators and the public authorities are invited to:

take measures to prevent acts of torture and cruel, inhuman, degrading treatment in places of detention; for each such case, guarantee a timely and objective investigation, including subsequent criminal liability;

ensure the right of prisoners to receive legal assistance;

eliminate the system of activity therapy centers (LTPs);

take measures to prevent discrimination against prisoners' labor rights;

consistently improve to an acceptable level the conditions of detention in prisons and colonies;

create conditions for the operation of public control over places of detention.