



## *Efficiency of the Use of International Human Rights Mechanisms in Respect of Belarus.*

### *Summary of the Report*

*The study project carried out by a group of experts and graduates of the Human Rights House Network Program "International law in Advocacy» at the initiative of the Barys Zvozkau Belarusian Human Rights House, the Human Rights Center "Viasna", the Belarusian Helsinki Committee, International Consortium "EuroBelarus", the Committee for the Protection of the Repressed Solidarnasts, the Belarusian Association of Journalists, and The Assembly of Pro-Democratic NGOs of Belarus.*

*Minsk - 2014*

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## Introduction

The concept of "international human rights mechanisms" (IHRM) for the study purposes is defined as the bodies and procedures for protection and promotion of human rights established by international treaties and other international instruments in the field of human rights.

**The study aims to** assessment of the effectiveness of the use of IHRM in relation to Belarus and covers the following tasks:

- systemic review of decisions / recommendations of IHRM in relation to the Republic of Belarus for the period from 1991 to date;
- analyze the effectiveness of using IHRM considered the measures to implement (de jure and de facto) their decisions / recommendations made by the State and by individuals appealed to the mechanisms; effects resulted from the fact of applying IHRM, as well as the impact of IHRM decisions / recommendations for human rights situation in Belarus;
- identify the factors affecting the effectiveness of IHRM;
- submit recommendations regarding the potential of the use of these mechanisms as to influence the solution of the problem of systemic human rights violations in Belarus, as to improve human rights protection in certain fields.

For the purposes of the study, the concept of effectiveness was taken as an indicator of the impact of actions and activities on the use of IHRM on achieving the result desired.

The outcomes of the use of IHRM - restoration of the right, amendment in law, implementation<sup>1</sup> of recommendations, etc. (depending on specifics of a mechanism and the intentions of the subject used it) - were exposed to the analysis. However, the analysis was not limited to issues of achieving the final outcome, but carried out in relation to other social effects those lead to the changes in the human rights situation (in the case of an individual or systemic) and significantly impact on the formation of legal awareness and legal culture of society.

In the course of interviewing human rights community representatives, as well as through expert assessment the following types of effects were picked out which can become apparent as a result of particular actions to use IHRM:

1. Communication effects – providing stable communications or interaction between the actors involved in a certain IHRM work;
2. Preventive (deterrent) effects - elimination of a violation at the stage of communication with IHRM; "blocking" such violations in the future;
3. Institutional effects - permanent transformation of IHRM practices, international structures, human rights organizations, government agencies, that is, any actor in certain areas of the process;
4. Cumulative effects:
  - 4.1. fixing violations as a result of the use of the IHRM, accumulation of cases becoming the basis for monitoring, databases, reviews of the situation, which in turn may be used as instruments for the protection of human rights;
  - 4.2. international legal expert assessment of domestic law and law enforcement practice, expressed in the decisions / conclusions / recommendations of IHRM as the potential to be used for future reforms;

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<sup>1</sup> Implementation means hereinafter not only fixing international standards of human rights in the domestic law (de jure implementation), but real applying these standards domestically through transformation of law enforcement practice, taking judicial, organizational, administrative and other measures both for implementation of specific recommendations of the Committee and for improvement of human rights situation in general (de facto implementation).

5. Awareness-raising effects - getting of the use of IHRM cases or summarized information about them in a public space (both inside the country and abroad) affected the level of awareness about human rights situation in Belarus or became an occasion for public debate as on the situation in general, as on the implementation of specific rights;
6. Political effects - impact of fixed results of the use of IHRM on political practice and international system;
7. Empirical effects (increase of competence) - acquiring theoretical knowledge and practical experience by human rights defenders owing to the use of one or another IHRM.
8. Satisfaction - international protection of the right, a violation of which was not recognized and eliminated at the national level, the recognition of the right and moral satisfaction of the victim.

***Range of the studied procedures:***

- 1) UN mechanisms:
  - Individual communications to treaty bodies (the Human Rights Committee (HRC), the Committee on the Elimination of Discrimination against Women (CEDAW));
  - Examining regular reports of the State and shadow reports by human rights treaty bodies (HRC, CEDAW, the Committee against Torture (CAT), the Committee on Economic, Social and Cultural Rights (CESCR), the Committee on the Rights of the Child (CRC), the Committee on the Elimination of Racial Discrimination of the Child (CERD));
  - special procedures (special rapporteurs, working groups);
  - Universal Periodic Review;
- 2) The Venice Commission (Council of Europe): opinions on the issues of the Belarusian legislation and law enforcement;
- 3) OSCE: election legislation, trial monitoring.

The findings of this report can serve as a basis for further work on setting priorities, forming strategies for the human rights movement, strengthening capacity for the better protection of violated rights and pro-active policy to promote human rights in Belarus.

**I. Assessment of the effectiveness of the use of international human rights mechanisms by human rights defenders of Belarus (survey results)**

Within the framework of the present study interviewing Belarusian human rights defenders, who work in human rights organizations or individually<sup>2</sup> was conducted, using a standard questionnaire drawn up by the experts of the study. As for participation in the survey those human rights defenders have been invited who use international human rights mechanisms in their work or aim to use them, this survey seems to reflect the opinion of the most competent and active part of the human rights community.

In general, this range of respondents demonstrates an understanding of specifics of IHRM consisting in its subsidiary nature in relation to the national protection (except for cases requiring an immediate response). It is also noted that the scope of these mechanisms is limited to a specific mandate and procedure specified in the international instruments established them and there is no enforcement mechanism for the implementation of their decisions.

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<sup>2</sup> The respondents were human rights defenders of the Human Rights Center "Viasna", the Belarusian Helsinki Committee, International Consortium "EuroBelarus", the Committee for the Protection of the Repressed Solidarnasts, the Belarusian Association of Journalists, and The Assembly of Pro-Democratic NGOs of Belarus, the Belarusian Documentation Centre, the Awareness-Raising Institution "Platforma", the Gomel Centre of Strategic Litigation, experts and graduates of the Human Rights House Network Program "International law in Advocacy».

The view about a protective function of IHRM prevails – it is necessary to resort to them in a case of a right violation. Only a few respondents indicated other purposes of resorting to IHRM, those are attracting attention of international community, using as a platform for dialogue between the State and civil society.

The majority of respondents characterize the effectiveness of the use of IHRM as implementation of their decisions and recommendations, recognition of a right violation, restoration of the violated right and compensation, systemic transformation of legislation and practice, that is, as a final outcome and a long-term effect. From this point of view, the effectiveness of resorting to IHRM is estimated by human rights defenders as very low.

However, a lot of respondents point to the other effects (see Introduction) that arise or may arise from resorting to IHRM, obviously due to their personal experience. In this case, there is a pattern in the responses: the more actively a human rights defender (or organization) uses IHRM in its activity, the more effects are named by her or him and the more positive is outlook on her or his work with these mechanisms.

Among the factors impacted on effects and an outcome of resorting to IHRM, in the respondents` opinion, were specialized:

- the fact of communication of an international body / procedure with the State concerning the resort;
- media support of a case;
- additional political lobbying;
- qualitative reasoning of submissions.

In addition, it was noted as helpful for work with IHRM:

- interaction with representatives of IHRM;
- cooperation between human rights organizations;
- increasing the level of competence of human rights defenders through their participation in educational programs and acquiring skills.

The following **reasons for the ineffectiveness** of IHRM in Belarus were detected by the respondents in the actions of human rights defenders:

- failure to use all the mechanisms to the full extent;
- one-sided use of IHRM (e.g., complaints to the HRC of a single type, not on all the spectrum of violations of the ICCPR);
- lack of systematic and coordinated efforts aimed at the implementation of decisions and recommendations of IHRM;
- too high expectations from a decision of IHRM followed by the impression of its ineffectiveness.

However, all the respondents state the problem consists not so much in certain human rights defenders` actions, but in blocking implementation of decisions and recommendations of IHRM by the State, pointing to the lack of political will to implement these decisions, low responsibility of the State to its obligations.

The least resistance of the State, according to human rights defenders` opinion, is caused by the mechanisms that "have not expressed negatively according to Belarus"; the mechanisms for the rights of women and children, for some social and economic rights, for issues concerning human trafficking and domestic abuse.

***Recommendations and proposals of human rights defenders-respondents: what should be done to improve the effectiveness?***

1. Work with the State:
  - changing the attitude of the State towards IHRM;
  - creating platforms for dialogue between the state and civil society to promote changes;
  - more active human rights defenders` activities aimed at the interaction with the State, at the search of ways for this.

2. Work with society:
  - Increase public awareness about IHRM, including through dissemination of the information about the activities of IHRM not only on human rights organizations` sites, but also in the broader information field;
  - promote human rights defenders` work, receive support of society;
  - take efforts to educate a new generation in the spirit of respect for human rights, change people's consciousness.
  
3. Human rights organizations` work:
  - broad the range of activities;
  - define strategies for resorting to IHRM, common priorities, coordinate activities, not duplicate each other's actions;
  - consolidation, joint statements, applications;
  - solidarity with international human rights organizations to share experiences and apply their groundwork;
  - development of networks in the regions.
  
4. Tactics for resorting to IHRM:
  - increase the number of communications to the HRC on systemic violations, expanding the range of violations to be submitted to the HRC;
  - strengthen legal activities through other tactics and human rights practices;
  - focus the work not only on receiving decisions of IHRM, but also on implementing them;
  - work directly with the mechanisms in the process of considering the submissions by them.
  
5. Professionalization of activities, improvement of the quality of appeals:
  - create a data bank on the use of IHRM to take into account lessons learned;
  - expand training, including in it a whole range of mechanisms.

Also among the proposals: changing work of mechanisms themselves, accelerating procedures, consistency in considering cases.

## **II. Assessment of the effectiveness of the use of international human rights mechanisms (expert study)**

### ***1. Universal Periodic Review of the Human Rights Council***

The Universal Periodic Review (UPR) is a mechanism of UN Council on Human Rights and represents a complex and comprehensive review of the human rights situation in all 193 countries - members of the United Nations, which ensures universality of coverage and equal treatment of all States. The UPR is a mechanism for international cooperation in the field of human rights. On the one hand, it is an obligation for Member states of the United Nations. Its goal is to improve the situation of human rights in each country. On the other hand, the UPR mechanism is interactive - it involves all UN countries, each country separately, passing another cycle, makes for public review the human rights situation, receives from other countries questions and recommendations.

The UPR mechanism has started to function since 2008. The Republic of Belarus passed the first cycle of the UPR in 2010. From 93 recommendations made during the UPR 74 were accepted in general, relating to promotion and protection of economic and social rights mainly, as well as the rights of women, children, disabled persons, refugees and migrants. 55 recommendations were supported by the Government in May 2010. In September 2010, 2 more recommendations were recognized acceptable, 1 recommendation – acceptable partly, 15 recommendations were announced to have been implemented, 1 - under implementation, and 19 recommendations were recognized unacceptable. In 2012, Belarus submitted to the Office of the High Commissioner for Human Rights an interim report on the implementation of the recommendations of the first cycle of the UPR.

In March 2014, national consultations on the implementation of the recommendations of the first cycle of the UPR to Belarus were held in Minsk. Belarus will pass the second cycle of the UPR in May 2015.

In 2010, as well as in 2014, Belarusian NGOs prepared and submitted shadow reports. In addition, there were consultations on the implementation of the UPR recommendations took place with the participation of representatives of human rights organizations initiated by the Ministry of Foreign Affairs and the UN / UNDP Office in Minsk. Shadow Report 2010 was prepared by the Belarusian Helsinki Committee, “Center for Legal Transformation”, Human Rights Center "Viasna" and the Belarusian Association of Journalists. The list of partner organizations involved in the preparation of the report in 2014 was extended and included the Assembly of Pro-Democratic NGOs of Belarus, "Legal Initiative", the Committee for the Protection of the Repressed Solidarnasts, Expert-legal association “Initiative FORB”, Office for the Rights of People with Disabilities, Belarusian Documentation Center, the Barys Zvozkau Belarusian Human Rights House. This practice of human rights organizations` cooperation is positive, integration of information about the human rights situation in different fields was made thanks to this.

Up to date, there are two reports of the Government (2010, 2012 - interim report on the implementation of the recommendations of the first cycle of the UPR; report on the second cycle of the UPR has not yet proclaimed) and three shadow NGOs reports.

Analysis of quantitative and qualitative parameters of the first cycle of the UPR procedure in the context of interaction of the State, human rights NGOs, as well as the recommendations of other countries revealed the following features:

1. The rating of human rights topics, in correlation with the number of the recommendations received by the Belarusian authorities, is as follows (in descending order): gender equality, death penalty, improvement of living conditions, the rule of law, human trafficking, cooperation with UN institutions, freedom of association, freedom of speech. Gender equality topic is the most rating, despite the situation with the rights of this range is quiet good, compared to other clearly non-rating, but more burning topics: freedom of speech, freedom of association and so on. The recommendations, concerning the topic field of enforced disappearances, keeping in places of detention, freedom of assembly, human rights violations in relation to journalists and civil society activists were made by European countries mainly.

2. It is obvious that some of the recommendations are of “agreed” nature, particularly in those topic fields in which the Republic of Belarus has already reached a good result: improvement of living conditions, social and economic rights, human trafficking, racial discrimination. 27% of the recommendations accepted by the Belarusian authorities were made by the countries of Europe, and remaining 73% - mainly by the countries of Africa, Southeast Asia, Central and South America – the countries leading in human rights violations. 73% out of the countries those recommendations have been not accepted, are the developed countries of Europe. Their recommendations concerned the topic fields: general policy in the field of human rights and the rule of law, physical integrity, freedom of association, freedom of speech.

The UPR is a **mechanism of megapolitics**, affecting by different factors: the specificity of bilateral and regional international relations, the quality of expert work of all institutions,

submitting information, the extent of lobbying certain recommendations by international human rights networks, the extent of including national NGOs in international human rights networks, credibility to such networks in the system of international politics and others.

All the respondents-Belarusian human rights defenders interviewed during the preparation of this study, named the UPR as one of the most complex, mediated and prolonged mechanisms, but, at the same time, noted that this mechanism is the only one adequately regarded by the authorities - in the context of the fulfillment of international obligations of the State.

About 60% of respondents - human rights defenders said that they not only have knowledge about the UPR mechanism, but are involved in the preparation of shadow reports, and 10% of respondents had contacts with international lobbying human rights organizations, attended the procedure of the UPR in Geneva in 2010. About 40% of respondents noted the importance of the UPR for consolidation of human rights organizations. About 25% of respondents suggested that the UPR is a mechanism of pressure (influence) on the State, as well as an incentive for states to contact with human rights defenders.

The participation of Belarus in the UPR, as an international legal and political mechanism simultaneously of mega-level, at the moment has not yet demonstrated concrete results for the country's legal system. However, the specifics of the UPR mechanism is such, that where a range of the actors involved in it (including human rights organizations) expands, the role of socially important effects will increase. This trend became more obvious in the course of public debates of the second cycle of the UPR (Summer-Autumn 2014) and was recorded in the interviews with human rights defenders-respondents.

The most significant effects of participation in the UPR mechanism include the following:

*Communication effects:* a system of sustainable communications between human rights organizations during the preparation of shadow reports, as well as their interaction with international lobbying structures, Belarusian state officials and other actors formed. As sustainable interaction between human rights organizations developed, a coalition of 11 organizations formed, the work of which resulted in the shadow report of the second cycle of the UPR.

*Cumulative effects:* a list of main recommendations of UN member states regarding improvement of the system for ensuring human rights, regardless of the extent of their acceptability for the Government, is stable and concerns the improvement of legislation of Belarus. Among the most successful of the UPR recommendations referred to by the survey participants, there are the rights of people with disabilities, human trafficking, counteracting domestic abuse, discrimination. These are the fields in which human rights defenders see positive changes, also the intention of the authorities to invite UN Special Rapporteurs was assessed positively. The UPR mechanism also provides a universal approach to the preparation of reports, allowing you to analyze the dynamics of the human rights situation.

*Awareness-raising effects:* the subjects of the most problematic human rights fields - freedom of speech, freedom of association, enforced disappearances, keeping in places of detention, freedom of assembly, violations of the rights of journalists and civil society activists and human rights defenders – do not go beyond the media space of human rights organizations` online resources. It should be noted that in Belarus information about the UPR mechanism is mainly provided by the websites of human rights organizations and the Ministry of Foreign Affairs website. Only four publications of informational nature were found which had been posted by outstanding national electronic media during 2010-2014.

*Political effects:* in most cases, human rights defenders pointed to the lack of "political will" as the main obstacle to the provision of human rights. Participation in such international legal and political mechanisms of mega-level as the UPR shows the interdependence of all national level actors and, at the same time, stimulates the dialogue: progress or problems in

ensuring human rights within the framework of the UPR mechanism become an occasion for public debate within the country and within international system.

### Recommendations

It is obvious, the lack of public information on the UPR within the country too adversely affects as an image of the authorities, as a human rights defenders' one:

a) despite the problems in communication between the authorities and human rights organizations, there are nevertheless some positive *changes in ensuring human rights, achievements of the authorities in these processes also need to be covered;*

b) human rights NGOs, focusing only on the most problematic issues in the field of human rights (freedom of speech, freedom of association, enforced disappearances, keeping in places of detention, and others.) do not bear in mind the topics closer to official national mass media (social and economic rights, children's rights, protection of minorities and so forth). It is obvious now that *human rights defenders' information strategies need to be updated, and thematic issues of human rights need to be interpreted through their connection with quality of life;*

c) It is necessary to overcome the split of Belarusian media space, *the actors of the UPR mechanism, forming their own media strategies, should to realize all the benefits contributing to the international image; the authorities and human rights defenders are interested in this equally.*

### 2. Special procedures of the Human Rights Council: Special Rapporteurs

Special Rapporteurs are a part of the system of special procedures of the Human Rights Council and are independent experts in the field of human rights, which are authorized to report and advice on thematic issues of human rights or on the human rights situation in specific countries. Special procedures system is a central element of the United Nations human rights machinery and covers all human rights: civil, cultural, economic, political, and social.

#### Thematic mandates

The Government of the Republic of Belarus recognizes only thematic mandates, communicating with a lot of them. The data about the authorities' communication with thematic mandate holders, as well as a number of human rights defenders' resorts to them are shown in Table 1.

*Table 1. Communication of the Government of the Republic of Belarus with thematic mandate holders and a number of human rights defenders' resorts to them*

Thematic mandates	Start of communication	A number of urgent appeals	A number of letters about alleged violations of human rights	A number of the Government responses*	Country visits	Communication with human rights defenders
Special Rapporteur on extrajudicial, summary executions or arbitrary executions	1997	5	2	7	-	5%
Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment	2006	8	7	13	-	20%
Special Rapporteur on Freedom of Religion or Belief	2005	-	4	3	-	-

Special Rapporteur on Trafficking in Persons, especially Women and Children	2009	-	-	-	2009	-
Special Rapporteur on the independence of judges and lawyers	1998	9	4	9	2000	10%
Special Rapporteur on the situation of human rights defenders	2001	27	13	26	-	20%
Special Rapporteur on the right to freedom of peaceful assembly and association	2012	2	7	8	-	15%
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression	1997	32	17	47	1997	5%

\* according to the data from the reports of the special rapporteurs

\*\* according to the data of the questionnaire survey of human rights defenders

### ***Special Rapporteur on extrajudicial, summary or arbitrary executions***

The data cited in the reports of the Special Rapporteur show that:

- Most of the Special Rapporteur`s communications are "urgent appeals", this follows from the specificity of the mandate;

- The Belarusian government responded to all requests, this was welcomed by the Special Rapporteur, the answers were given to the merits of questions posed;

- But the Special Rapporteur *has repeatedly expressed concern about the communications regarding a secret trial in the cases the death penalty can be imposed in Belarus, reminded the Government of the duty to ensure a fair trial and procedural guaranties in accordance with Article 14 of the International Covenant on Civil and Political Rights.*

Last communication of human rights defenders with the Special Rapporteur has concerned the execution of the death penalty in relation to Alexander Grunov, whose individual complaint is under consideration by the Human Rights Committee. The Government of Belarus had been requested not to execute the death penalty as long as the case was under consideration of the Committee, nonetheless, it violated its obligations.

Statistics on the death penalty in Belarus is manifestly negative, and at the same time there is conflicting information about a number of death sentences executed. The authorities still justify their position on the death penalty on the grounds of the results of 1996 referendum, where 80.44% of Belarusians have voted against its abolition. In addition, the Second Optional Protocol to the International Covenant on Civil and Political Rights, obliging each State Party to the Protocol to take all necessary measures to abolish the death penalty within its jurisdiction, is still not ratified. The Special Rapporteur, in the communications, repeatedly urged the Government to *ensure full transparency at every stage of a trial, including providing information to family members and lawyers; reinstate the moratorium on the death penalty to abolish it further.*

### ***Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment***

The data cited in the reports of the Special Rapporteur show that:

- Most of the Special Rapporteur`s communications are "urgent appeals", this follows from the specificity of the mandate, it needs to be noted high-speed reaction of the Special Rapporteur on the communications of human rights defenders;

- *Almost all cases of communication of the Special Rapporteur with the authorities led to partial improvements, as the replies of the Government testified, although rights violations were not recognized in any case;*

- The Belarusian government replied to almost all communications, except the occasions concerning the use of violence in mass arbitrary detentions during the dispersal of peaceful protests;
- The Special Rapporteur's efforts to pay heed of the Belarusian authorities on the issue of "torture" prison conditions were made repeatedly. Not being satisfied by the Government's replies, the Special Rapporteur sent in 2005 a request to go to Belarus for a working visit, but the invitation was not received.

### ***Special Rapporteur on freedom of religion or belief***

The Special Rapporteur's reports contain information regarding to the norms of the Law of the Republic of Belarus "On the Freedom of Conscience and the Religious Organizations" (2002), restricting the rights in this field: the requirement for obligatory registration with extremely difficult procedure, the requirement to act in the region of localization of the legal address only, improper hierarchy of subjects (religious associations and other organizations), and so on.

In its 2007 report, the Special Rapporteur emphasized that the right to freedom of religion should be enjoyed not only by the members of registered religious communities. Registration should not be obligatory, that is, it should not be a prerequisite for the exercise of religion, but only for obtaining the status of a legal entity and benefits related to this.

Communication of the Special Rapporteur with the Belarusian authorities proceeded in the traditional way: the authorities 'clarified' to the Special Rapporteur the provisions of the Belarusian legislation and referred to the absence of complaints from religious leaders of the dominant churches, as well as positive registration statistics. The references to the International Covenant on Civil and Political Rights (Article 18) in the response about the rights of minors attract attention, as well as the detailed response about communication with Jewish organizations to address the conflict situation around a Jewish cemetery. As follows from the Special Rapporteur's report, communication with the Belarusian government began and ended in fact in 2005, the Special Rapporteur did not receive a reply of the Government to the 2007 communication. However, the communications from civil society organizations, human rights defenders and religious organizations were not received by the Special Rapporteur after 2007 too.

### ***Special Rapporteur on trafficking in persons, especially women and children***

On 18-24 May 2009, the Special Rapporteur visited Belarus, as a result, the following recommendations were formulated regarding legislation (adoption of a law on domestic abuse, adoption and implementation of a draft law enabling the State to provide funding to civil society organizations on the basis of a call for tender, and others); establish a national special rapporteur on trafficking in persons, under the aegis of the Presidential Administration; ensure that anti-trafficking measures do not violate human rights, a proper balance must be struck between measures to combat trafficking and protection of other human rights (freedom of movement, freedom of association, information exchange, education, privacy, and the right to work and earn a decent livelihood); adopt guidelines and procedures for relevant state authorities and officials.

*The recommendations of the Special Rapporteur were implemented in many respects:*

On 16 April 2014, in Belarus the Law "On the grounds of crime prevention activities" entered into force which established a restraining order applying to a person committed an offense in the field of family relations. The law also prescribes local executive bodies to set up crisis rooms for the victims of violence and to provide the persons, in relation to whom restraining orders applied, with places of temporary residence.

In July 2012, the Law of the Republic of Belarus "On combating human trafficking" entered into force. In 2013, the Republic of Belarus has acceded to the Council of Europe Convention on Action against Trafficking in Human Beings, now the domestic legislation is being brought into line with this document. The National Action Plan to Combat Trafficking in Human Beings, in the form of State programs, is implemented in the country.

In the implementation of all State programs not only public authorities, but also non-governmental organizations take part: the Office of the International Organization for Migration in the Republic of Belarus and public associations (such as *La Strada / Gender Prospects*, *the Business Women's Club*, the Belarusian Red Cross Society, *Children are not for violence*, *the Understanding*). An indicator of the partnership is a "hot line" with the telephone number 113, created with the help of the Ministry of Communications and Informatization and the Ministry of Internal Affairs. The calls are served by the very non-governmental organizations. International Public Association *Gender Prospects* (Program "La Strada Belarus") serves phone calls in the territory of Minsk, Vitebsk, Minsk and Mogilev regions. Public Association *the Business Women's Club* serves phone calls in Brest, Gomel and Grodno regions. The role of NGOs in this field is reduced to first contact with alleged victims, this type of activity is not actually human rights activity. There is also an independent analytics in the field.

The functions of a national rapporteur were entrusted to the Minister of Internal Affairs. In Belarus, international anti-trafficking forums are organized annually where representatives of foreign states and international experts in the field of combating human trafficking are invited. State authorities of Belarus cooperate with such important international organizations as the United Nations Development Programme, the International Organization for Migration, the Organization for Security and Cooperation in Europe, the United Nations Children's Fund and others.

### ***Special Rapporteur on the independence of judges and lawyers***

In the period of 2006-2011, the Special Rapporteur worked extremely, sending urgent appeals to stop the interference in the professional functions of lawyers. The Government replied to almost all the appeals of the Special Rapporteur, except the appeals of 29.03.2006 on the violation of the right to a fair trial in respect of people arrested for participating in a peaceful demonstration on 24-25 March 2006 and the appeal in 2011 calling on the termination of interference in performing professional legal functions (of both human rights organizations and lawyers).

In general, the recommendations of the Special Rapporteur on the occasions of 2000-2011 correlate with more detailed observations made during the visit to Belarus in the period of 12.06-17.06.2000. The Special Rapporteur, in the conclusions of the report dated 08.02.2001 (E/CN.4/2001/65/Add.1), made important observations concerning the need to transform the judicial system in Belarus noting that its imperfections will be the basis for subsequent violations. That happened afterwards.

The Special Rapporteur made recommendations regarding the Constitution, the judicial system, prosecutors and lawyers. The core of these is the need to restore the independence of the judicial system from the executive power.

Unfortunately, the Belarusian authorities did not feel the need to heed the recommendations of the Special Rapporteur, although stopped to communicate only in 2011 (there are no the Government's replies to the appeals of 2011). The Special Rapporteur repeatedly called on the government to respond to the communications of 2011. At the same time, she expressed her concern at the messages received from Belarus, especially in relation to intimidation and interference in the exercise of the professional of lawyer, and stressed the need to secure the rights of lawyers to represent the interests of their clients and perform their professional duties without fear, intimidation and various types of interference.

### ***Special Rapporteur on the situation of human rights defenders***

Communication of the Special Representative (before the establishment of a mandate of the Special Rapporteur) with the Belarusian authorities began in 2001. Among the most problematic issues, the Special Representative noted the following:

- Restricting freedom of association;
- Harassment, intimidation, excessive violence, mass arrests and imprisonment are increasingly applied by the State, the authorities use any practices to repress civil or political dissent;
- Alleged perpetrators of violations against human rights defenders were such institutions as the police, government bodies, the judicial system;
- Restrictive measures in the legislation and decrees of the President.

In all the reports of the Special Representative and the Special Rapporteur, the material on Belarus is the most voluminous. The main trends in the communication with the Belarusian authorities on the situation of human rights defenders are:

1. The subjects of the Special Rapporteur appeals contain both the individual cases of human rights violations and the systemic issues related to non-compliance of the Belarusian legislation with international standards, therefore those are the factors provoking and, at the same time, preserving the mass violation of human rights (of individuals and organizations). For the first time, these issues were reflected in the report dated 06.03.2006, where the Special Rapporteur analyzed and subjected to criticism the Belarusian legislation on public associations, mass media, and others. Further, the Special Rapporteur offered repeatedly any advice on drawing up a more progressive legislation.
2. The most multiple communications of the Special Rapporteur to the Belarusian authorities are urgent appeals. It underlines once again the extreme conditions of existence of human rights organizations in Belarus.
3. The lack of communication of the authorities with the Special Rapporteur over the last year is an alarming factor. Taking into account the fact that the authorities have ignored requests of all Special Representatives and the Special Rapporteur to visit the country, the trend of complete separation from this UN mechanism is a symptom of isolationist position of the Belarusian authorities.
4. In addition, official media have actively created for a long time a negative image of human rights defenders as "a fifth column", "internal enemies". This, to some extent, contributes to the isolation of human rights defenders within society, which in some cases has a form of overt discrimination in employment, education and so forth.

Crisis expressed in increasing distance between the Belarusian State and the UN mechanism and, at the same time, in the internal isolation of Belarusian human rights defenders is ambivalent: internal isolation of human rights defenders is the basis for external one.

### ***Special Rapporteur on the right to freedom of peaceful assembly and association***

In each report, the Special Rapporteur regretted that the Belarusian authorities had not responded to the communications. Replying to the communications was considered as an important part of the Government's cooperation with his or her mandate. The Special Rapporteur urged the authorities to ensure that no one to be prosecuted for the peaceful exercise of his or her fundamental freedoms and to assume all appropriate measures to ensure that any individual or

would safely enjoy their right to freedom of peaceful assembly and association. The Special Rapporteur also reminded the Government of Belarus of the request to visit the country (sent in September 2011), which is unanswered up to date.

### ***Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression***

The Special Rapporteur was the most important for Belarusian human rights defenders: the situation in Belarus was described by him or her in a record number of reports – 12. Most of the cases described were persecution of journalists, independent media, human rights defenders. The Special Rapporteur also recommended repeatedly to bring the legislation of Belarus in line with international standards.

In the period of 28.05-01.06.1997, the Special Rapporteur visited the Republic of Belarus. In his report, Special Rapporteur noted worsening of working conditions of media, persecution of staff of independent and opposition media, cases of censorship in the course of the elections and referenda; administrative and financial sanctions against non-state media, growing threat of a complete termination of the activities of the media, the problem of distributing independent media products, denial of access to media to members of the opposition. The Special Rapporteur has repeatedly urged the Belarusian authorities to respect article 19 of the International Covenant on Civil and Political Rights and to eliminate the improper restrictions on the right to freedom of opinion and expression.

The Special Rapporteur the most active communicated with the Government in 2007; in the communications of the Special Rapporteur, the concern over multiple cases of persecution of activists and opposition leaders after the protest actions in 2006, as well as independent media was reflected. The government's responses were primarily based on clarifying to the Special Rapporteur the provisions of the Belarusian legislation; persecution of journalists and media were often explained by "dissemination of false information", "defaming the country's international image" (1998); from 2003, almost all cases of deprivation of accreditation, persecution of civil society activists and journalists were related to "libel on the President." In the letter dated 03.12.2003, the Special Rapporteur requested to undertake a country visit to Belarus, but received no response. The Special Rapporteur, in his 2011 report, noting the high intensity of contacts with the Government of the Republic of Belarus, however, pointed to that 13 his communications in 2004, 2006 and 2008 remained unanswered.

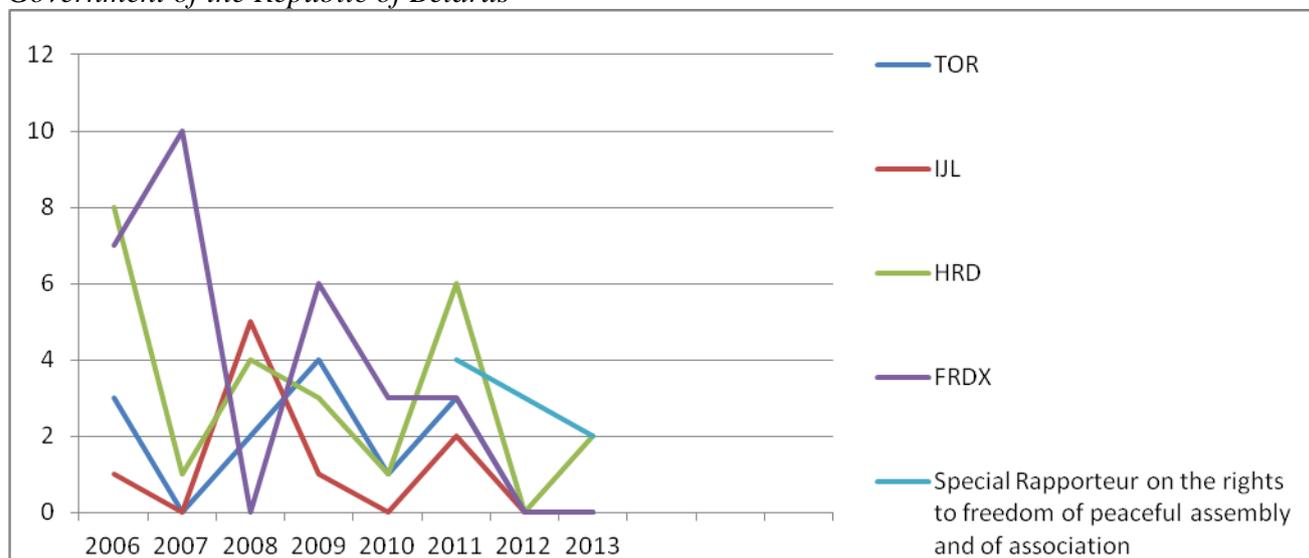
About 30% out of all the Special Rapporteur's communications on the promotion and protection of the right to freedom of opinion and expression was sent by him jointly with the Special Rapporteur on the situation of human rights defenders, it is a distinctive feature of their communicating with the Government of Belarus.

Despite this long and regular experience of communicating with the authorities, there was no information about the activities of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression in the official media, it was only regularly reported by the victims of violations of human rights in this field - human rights defenders and independent journalists - in their media resources. The recent amendments to the Law "On the Media" (December 2014), providing repressive measures against the independent Internet resources, creation of a register of the distributors of printed and electronic media may prospectively create difficulties for the dissemination of independent media, and it may happen that nobody will report about the interaction of the Special Rapporteur with the Government.

In general, the activeness of the Special Rapporteurs correlated with the dynamics of massive human rights violations and the persecution of civic leaders and activists during the peaceful protests against the election results. This dynamics is presented visually in Diagram 1. As a basis for the quantitative data was taken a number of the communications of some Special Rapporteurs whose mandates were established to protect freedom from torture, freedom of assembly and association, opinion, judges and lawyers, as well as the protection of human rights defenders.

The diagram shows that the highest peak of the activeness was in 2006 - the year of the Presidential election and the mass protests - and in the next 2007. The next peak of the activeness was in 2011, when repressions followed the suppression of peaceful protests against the election results in 2010. However, the activeness of the Special Rapporteurs on the situation of human rights defenders and on the protection of the right to freedom of opinion and expression was remaining consistently high.

*Diagram 1. Dynamics of the Special Rapporteurs` activeness in relation to the Government of the Republic of Belarus*



### ***Special Rapporteur on the situation of human rights in Belarus***

The mandate of the Special Rapporteur on the situation of human rights in Belarus was firstly established by the Commission on Human Rights resolution 2004/14 in 2004. In this resolution, the Commission requested the Special Rapporteur to directly contact the government and people of Belarus in order to study the situation of human rights in Belarus and oversee the development of a program of human rights education for all segments of society, in particular for personnel of law enforcement bodies, the judiciary system staff, prison officials, and civil society, and to report to the Commission.

The Special rapporteur for the period 2004-2007 has been Adrian Severin.

In his 2005 report, he "regrets that the Government of Belarus has not responded favorably to his request to visit the country and, in general, has not cooperated with him in the fulfilment of his mandate." This report contained recommendations regarding the death penalty, disappearances of political activists, torture, ill-treatment, cruel and inhuman punishment and treatment, detention, the independence of judges and lawyers, media freedom, the freedom of assembly, of association, of religion, political rights.

In the 2007 report, the Special Rapporteur, describing the worsening of the human rights situation, notes that "the Republic of Belarus has also not complied with reporting obligations under the treaties it has ratified. Thus, outstanding reports were not forwarded respectively to the Committee on Economic, Social and Cultural Rights (due in 1999 and 2004); to the Human Rights Committee (due in 2001); to the Committee against Torture (due in 2000 and 2004); to the Committee on the Elimination of Discrimination against Women (due in September 2006); and to the Committee on the Rights of the Child under the Optional Protocol on the sale of children, child prostitution and child pornography (due in 2004)."

On 28 June 2012, the mandate of the Special Rapporteur on the situation of human rights in Belarus was re-established by the Human Rights Council resolution 20/13. On 1 November 2012, Miklos Haraszti (Hungary) took over the functions of the Special Rapporteur.

In the April 2013 report, the Special Rapporteur tells, that "the information gathered from primary sources suggests the existence of systemic and systematic violations of human rights,

especially in the areas of due process, fair trial, and torture. The effective denial reported of the full enjoyment of the freedoms of expression and opinion, of peaceful assembly and of association is in itself indicative of the state of human rights in Belarus, as these rights are so often the pathway along which other civil, cultural, economic, political and social rights are exercised."

In the August 2013 report, the Special Rapporteur stated again the worsening of the situation and recommended the Government in view of the election in 2015:

- (a) Ensure that the process of electoral legislative reform;
- (b) Guarantee independent election commissions;
- (c) Ensure a transparent vote count;
- (d) Repeal the law making it a criminal offence to criticize public figures or the Republic;
- (e) Guarantee non-interference by the Government in the media;
- (f) Reform and improve the system of judicial self-governance with a view to freeing it from the executive;
- (g)...
- (h)...
- (i) Expedite legislative reforms to ensure the absolute prohibition of torture;
- (j)...
- (k) Implement training and capacity-building for the police, the national security services and military personnel on international human rights standards;
- (l) ...
- (m) Conduct prompt, impartial and thorough investigations for any acts of intimidation and violence against human rights defenders and journalists;
- (n) Repeal article 193.1 of the Criminal Code that criminalizes public activities without official permission;
- (o) Ensure full rehabilitation for individuals who have been politically prosecuted and convicted, including the removal of any criminal record and limitations on their participation in political life and elections;
- (p) ...
- (q) ...
- (r) Amend the Law on Mass Events in Belarus to comply with the constitution and international standards;
- (s) Recognize and extend full cooperation to the mandate holder by engaging in dialogue and facilitating a country visit by the end of 2013.

In the 2014 report, Special Rapporteur once again "urges the Government to undertake measures to implement comprehensively all the recommendations made by the United Nations human rights mechanisms – treaty bodies, the Universal Periodic Review, special procedures and those from the High Commissioner for Human Rights."

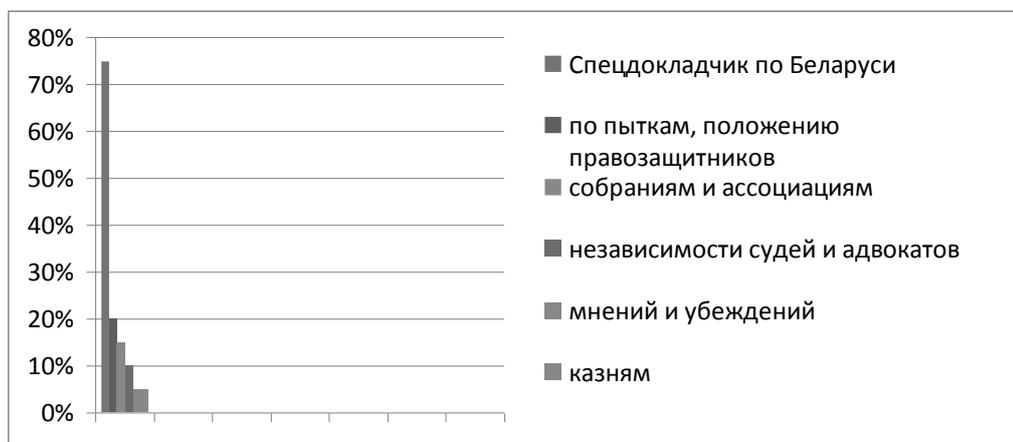
In a statement made on 24 December 2014, Miklos Haraszi told that "in 2014, the Belarus Government made welcome efforts to ease the tensions and human rights crisis which evolved in the region. However, despite the expectations of the international community... the internal human rights situation in Belarus shows no signs of improvement." The persecution of human rights defenders and independent journalists continued throughout the year; in December 2014, a new Internet law established direct governmental censorship over all internet-based communications; and death sentences continued to be handed down and executed.

The Belarusian authorities do not recognize the mandate of the Special Rapporteur on the situation of human rights in Belarus, considering it "a political gamble of the European Union", "an instrument of political manipulation and pressure." The Special Rapporteur was unable to visit the country, to meet with government officials, to receive a reply to his requests.

75% of respondents-Belarusian human rights defenders stated about communication with the Special Rapporteur and, at the same time, the results of this communication were appreciated.

## Findings

According to the survey of human rights defenders results, the quantity rating of communications to special rapporteurs is as follows:



The effects of resort to special rapporteurs were formulated and fixed in the answers of human rights defenders.

### *Communication effects:*

The system of the sustainable communications of human rights defenders with some special rapporteurs was formed, in particular, with the Special Rapporteur on Belarus, with thematic mandate holders, which are able to address urgent cases: on executions, on torture, on the situation of human rights defenders, on freedom of opinion, on the independence of judges and lawyers.

It should be noted that human rights defenders` communicating with the country mandate holder does not exclude or replace communicating with the thematic mandate holders. In this area, the potential of human rights organizations is far from exhausted, interaction with the thematic mandate holders, whom have not yet been communicated with, is very promising, in particular with: the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, the Special Rapporteur on violence against women, its causes and consequences, the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, the Special Rapporteur on the **implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes**, the Special Rapporteur on the Rights of Persons with Disabilities, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on minority issues, etc.

The material of thematic mandate holders` annual reports, given above, demonstrates that an outcome, in spite of political will of the authorities, depends on frequency of contacts with special rapporteurs and on quality of messages prepared.

In 2010, Belarus sent the invitations to some thematic mandate holders to visit the country: on freedom of opinion and expression, on freedom of religion, on freedom of judges, on trafficking in people and child pornography, on the rights of migrants, on violence against women. In 2014, these invitations were confirmed. The possible visits of the special rapporteurs would increase the chances of the human rights community of the full-fledged communication.

### *Institutional effects:*

The State and special rapporteurs communicate, but their partnership does not arise. However, a stable communication system has developed between human rights organizations, taking into account the areas of their specialization and international communicational capacity.

### *Cumulative effects:*

Now, communication with special rapporteurs is situational: when critical situations arise and to be addressed. Virtually no recommendations of a systemic nature, except for the field of human trafficking, has not been taken into account by the Belarusian authorities, so it is impossible to talk about serious cumulative effects. But, the fact of analyzing by special rapporteurs the Belarusian legislation (the Criminal Code, the Criminal Procedure Code, the Laws "On Mass Media", "On mass events" and others) is positive, and the comments regarding the Belarusian legislation made in special rapporteurs` reports can be very useful as serious arguments of human rights defenders in dialogue with the Government.

In addition, it attracts attention the specifics of the Government`s responses to special rapporteurs` communications: in almost 90% of the responses the Government clarifies special rapporteurs the Belarusian legislation, without trying to assess its actions in terms of international standards, including the permissible restriction on the rights. Only in some cases the responses contained references to the articles of the International Covenant on Civil and Political Rights.

### *Awareness-raising effects:*

Information about the interaction of human rights defenders with special rapporteurs is bound within the media space of human rights organizations` online resources. Obviously, the lack of public information about the UPR, as well as special rapporteurs has a negative impact on the image of the authorities and the image of human rights defenders within the country. A vast corpus of information about the activities of the thematic mandate holders is virtually inaccessible for an ordinary reader and even for the overwhelming majority of human rights defenders: the information is in English, making difficult to navigate on the UN website and familiarize with the annual reports of special rapporteurs. The image of the country mandate holder within the country was formed in many respects through negative perception of him by the authorities, and negativism towards Adrian Severin was automatically and unfairly extended to Miklos Haraszti and his activities. Although the emphasis, the general rhetoric and stylistics of Miklos Haraszti`s reports are devoted to the legal framework of Belarus and recommendations for its improvement. Against the background of a great reluctance of the authorities to present objective information about special rapporteurs, the responsibility of human rights organizations for forming a media-informational and, at the same time, educational space is totally obvious.

### *Political effects:*

Special rapporteurs` recommendations are considered by human rights defenders as an instrument to influence on the Government of Belarus. In this case, the very fact of inviting some special rapporteurs is, nevertheless, demonstrates the authorities` concern of their international image.

The recommendations for improving the interaction of human rights defenders with society, special rapporteurs and the Government may be the following:

- rebrand human rights work: the emphasis in the work to be done on the connection of human rights with ensuring the quality of life, otherwise appealing to "democratic values" will never be understood by the majority of Belarusian citizens;
- strengthen communicative and educational presence in a public space (visual and verbal), translate the texts of Special Rapporteurs` reports and acquaint the public with them;
- make more active professional training and work with regional offices to promote international standards in a public space;
- intensify work with the Special Rapporteurs in terms of advice on the implementation of international standards, especially for the protection of freedom of opinion and belief in domestic legislation;
- work comprehensively with the Special Rapporteurs, both thematic and country, special attention should be paid to the interaction with those mandate holders, who have not worked with the information on Belarus and can be promising for such cooperation;

- strengthen communication with relevant ministries and agencies to clarify them international standards in the context of a comparison them with the norms of the existing Belarusian legislation.

The human rights community in Belarus must create a public demand for the protection of rights, in this case, communication with the Special Rapporteurs will be perceived by the Belarusian authorities as the necessary to improve national legislation and the country's international image.

## ***2. Special procedures of the Human Rights Council: The Working Group on Arbitrary Detention***

The Working Group on Arbitrary Detention is a special procedure established by the Commission on Human Rights (now - the Human Rights Council) in 1991, with the following mandate: (a) to investigate cases of arbitrary detention or other cases of detention inconsistently with the relevant international standards; (b) to seek and receive information from Governments and intergovernmental and non-governmental organizations, and receive information from the individuals concerned, their families or their representatives; (c) to present an overall annual report to the Human Rights Council.

The Working Group on Arbitrary Detention is the only non-treaty mechanism which has a mandate directly providing for consideration of individual complaints.

The Working Group worked out the criteria to determine whether a deprivation of liberty was arbitrary, as well as the procedures used by it (inquiry procedure for individual cases, 'deliberations' procedure; urgent action procedure; field missions)<sup>3</sup>.

The Working Group undertook a visit to the Republic of Belarus at the invitation of the Government from 16 to 26 August 2004, visiting a great number of detention centres and having individual meetings in private with more than 200 detainees.

By the results of the visit, the Working Group prepared a report<sup>4</sup> in which identified a number of issues of concern: the excessive power given to the prosecutors and investigators during the pre-trial detention period; the lack of independence of the National Bar Association and judicial authorities; pre-trial detention regime; detention as a mean of suppressing freedom of expression; jurisdiction of civilians to military courts; inadequate protection of vulnerable prisoners; the lack of guaranties for placement in psychiatric hospitals. A number of recommendations were made by the WGAD in the report.

After its visit, the Working Group was very active to ascertain whether the progress in the implementation of its recommendations by the Republic of Belarus. Based on the report of the Working Group at the seventh session of UN Human Rights Council<sup>5</sup> (March 2008), the Government reported about the progress in the implementation of its recommendations (implementation of the National Programme for the Enhancement of the Penal Correction System on the Ministry of Internal Affairs (2006-2010), adoption of the Code of the Republic of Belarus "On the Judicial System and a Status of Judges", other explanations concerning the provisions of existing law addressing the issues of concern of the Working Group).

Thus, in terms of general issues and recommendations of the Working Group, the Republic of Belarus assumed certain measures to cooperate with this international mechanism, it is a positive trend. However, it should be recognized that to date the Republic of Belarus failed to achieve any significant progress in the field of arbitrary detentions, as well as in the fields related to this problem (the judicial system, the independence of lawyers and judges, preliminary

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<sup>3</sup> **Access:** <<http://www.ohchr.org/Documents/Publications/FactSheet26ru.pdf>>

<sup>4</sup> Report of the Working Group on Arbitrary Detention, MISSION TO BELARUS, E/CN.4/2005/6/Add.3, 25 November 2004. Access: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G04/166/25/PDF/G0416625.pdf?OpenElement>

<sup>5</sup> A/HRH/7/4

investigation and penal system). The majority of the recommendations are remaining unfulfilled, and only some of them are realizing.

The Working Group on Arbitrary Detention adopted four opinions on individual communications in respect of the Republic of Belarus:

1) Opinion No. 37/2005 adopted by the Working Group on Arbitrary Detention at the sixty-second session of the Commission on Human Rights, September 2, 2005 concerning Mr. Mikhail Marynich.

2) Opinion № 13/2011 adopted by the Working Group on Arbitrary Detention at its sixtieth session, 2-6 May 2011 concerning Mr. Nikolai Statkevich;

3) Opinion № 14/2012 adopted by the Working Group on Arbitrary Detention at its sixty-third session, 30 April – 4 May 2012 concerning Mr. Andrei Sannikov;

4) Opinion № 39/2012 adopted by the Working Group on Arbitrary Detention at its sixty-fourth session, 27-31 August 2012 concerning Mr. Ales Bialiatski.

In all the cases the Working Group determined that detentions and deprivation of liberty of the indicated Belarusian citizens were arbitrary and violated international obligations of the Republic of Belarus. The Working Group requested the authorities to take steps to remedy the situation in each case and to pay compensations to these persons.

The State participated in communications during consideration of these cases by the Working Group, but did not take any steps to implement the decisions of the Working Group and in 2013 announced that it "sees no point in collaboration with the Working Group of its current composition."<sup>6</sup> The Ministry of Foreign Affairs points out that "the implementation of the opinions of the Working Group on Arbitrary Detention is not covered by the international obligations of the Republic of Belarus in accordance with international treaties the Republic of Belarus is a party to."<sup>7</sup>

### **Findings**

The analysis of the Working Group authorities and its procedures given above leads to the conclusion that it is a rather simple, but effective international mechanism. It should be emphasized the desire of the Belarusian authorities to maintain interaction with the Working Group on the implementation of institutional recommendations to improve the situation in the area of arbitrary detention. Some of these recommendations are being in the process of implementation by the country.

On the other hand, the Republic of Belarus, which has communicated on individual submission till 2013, refuses to implement final decisions (opinions) of the Working Group.

There are following effects of the use of this international mechanism:

*Preventive effect* can be traced in connection with the use of urgent actions by the Working Group in relation to persons in a dangerous position. It follows from the reports of the Working Group that after urgent appeals to the Government some of the persons deprived of liberty are released. Thus, according to the Working Group information in its report at the fourth session of the Human Rights Council on 9 January 2007, after two urgent appeals of the Working Group concerning 298 detained persons of 50 of them were released.<sup>8</sup>

*Cumulative effect:* during the cooperation of the Republic of Belarus with the Working Group on Arbitrary Detention a whole range of materials was accumulated, including as the

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<sup>6</sup> On the 22th session of the Human Rights Council on 5 March 2013 the Belarusian delegation made a statement on the report and in connection with the activities of the Working Group on Arbitrary Detention in which expressed its disagreement with the findings of consideration of Mr. Bialiatski`s case by the Working Group, indicating that the Working Group had considered the case "violating its mandate," " had ignored the Government information on this case." The Delegation stated "political involvement" of the Working Group and that "Belarus sees no point in further interaction with the Working Group of its current composition."

<sup>7</sup> The response of the Ministry of Foreign Affaires to an application of Mr. Stefanovich.

<sup>8</sup> A/HRC/4/40, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/101/23/PDF/G0710123.pdf?OpenElement>

opinions of the Working Group on individual communications, as a report by the results of the visit to the country in 2004 containing recommendations for improvement of the situation - both regarding legislation and law enforcement.

*Awareness-raising effect:* opinions and findings of the Working Group on individual communications are disseminated in a public space, giving legal justification of illegality of using arbitrary detentions in the Republic of Belarus.

*Communication and empirical effects:* human rights defenders successfully mastered the mechanism, this led to receiving positive decisions of the Working Group and releasing some detained persons. If until 2012 the Working Group has considered only 4 such communications, during the interview in 2014, 8 out of 20 respondents reported about the use of this mechanism by them. And now such communications are sent in the cases of mass arbitrary detentions.

#### ***4. Procedure for submission of reports to the bodies monitoring the core international human rights treaties***

Human rights treaty bodies are committees of independent experts nominated and elected for fixed renewable terms of four years by State parties which monitor implementation of the core international human rights.<sup>9</sup>

Committees perform a number of functions in accordance with the provisions of the treaty established them. Those are the examination of the periodic reports of States parties, the consideration of individual complaints, conducting investigations in the field, as well as the adoption of general comments explaining certain provisions of the treaty and the organization of thematic discussions regarding the treaties.

*Examining the reports of States parties.* When a state ratifies a treaty, it assumes a legal obligation to comply with the rights specified in it. However, accession to the treaty is only the first step, because recognition of the rights on paper is not enough to ensure their compliance in practice. In this regard, in addition to the obligation to implement the provisions of the treaty, each State Party shall also submit to the relevant treaty bodies the periodic reports on how the rights are respected. In addition to the reports of States parties, the treaty bodies may receive information on the situation of human rights in the country from other sources, including national human rights institutions, civil society organizations, international and national structures and UN entities, other intergovernmental organizations, professional groups and scientific institutions. Most Committees specially set aside time in their plenary sessions to hear the presentations of civil society organizations and UN entities. In light of all available information treaty bodies examine the report in the presence of the State party delegation. On the

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<sup>9</sup>There are ten human rights treaty bodies in the United Nations: the Human Rights Committee (CCPR) monitors implementation of the International Covenant on Civil and Political Rights (1966) and its optional protocols; the Committee on Economic, Social and Cultural Rights (CESCR) monitors implementation of the International Covenant on Economic, Social and Cultural Rights (1966); the Committee on the Elimination of Racial Discrimination (CERD) monitors implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (1965); the Committee on the Elimination of Discrimination against Women (CEDAW) monitors implementation of the Convention on the Elimination of All Forms of Discrimination against Women (1979) and its optional protocol (1999); the Committee against Torture (CAT) monitors implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (1984); the Committee on the Rights of the Child (CRC) monitors implementation of the Convention on the Rights of the Child (1989) and its optional protocols (2000); the Committee on Migrant Workers (CMW) monitors implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990); the Committee on the Rights of Persons with Disabilities (CRPD) monitors implementation of the International Convention on the Rights of Persons with Disabilities (2006); the Committee on Enforced Disappearances (CED) monitors implementation of the International Convention for the Protection of All Persons from Enforced Disappearance (2006).

basis of constructive dialogue, the Committee publishes its observations and recommendations, called "concluding observations".

Six out of ten UN human rights treaty bodies - Committees - have jurisdiction in relation to the Republic of Belarus: The Human Rights Committee<sup>10</sup>, the Committee on Economic, Social and Cultural Rights<sup>11</sup>, the Committee on the Elimination of Racial Discrimination<sup>12</sup>, the Committee on the Elimination of Discrimination against Women<sup>13</sup>, the Committee against Torture<sup>14</sup>, the Committee on the Rights of the Child<sup>15</sup>.

Information on examining the reports of the Republic of Belarus is presented in the tables:

### Human Rights Committee (HRC)

Reporting cycle	Session (year) of the Committee's work	Due date for reporting by the Republic of Belarus	Date of submitting report by the Republic of Belarus	Information from civil society organizations	Date of submitting the Committee's concluding observations
V	114 (2015)	Set initially to 11.07.2001		Joint submission of the Belarusian Helsinki Committee and the Human Rights Center "Viasna" (2010)	
IV	61 (1997)	04.11.1993	11.04.1995	-	19.11.1997
III	45 (1992)	04.11.1988	04.07.1990	-	25.09.1992
II	23 (1984)	04.11.1983	04.07.1984	-	
I	5 (1978)	22.03.1977	09.06.1978	-	

### Committee on Economic, Social and Cultural Rights (CESCR)

Reporting cycle	Session (year) of the Committee's work	Due date for reporting by the Republic of Belarus	Date of submitting report by the Republic of	Information from civil society organizations	Date of submitting the Committee's concluding observations
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<sup>10</sup> The International Covenant on Civil and Political Rights (1966), signature: 19.03.1968, ratification: 05.10.1973, entering into force: 03.23.1976.

<sup>11</sup> The International Covenant on Economic, Social and Cultural Rights (1966), signature: 03.19.1968, ratification: 05.10.1973, entering into force: 03.01.1976.

<sup>12</sup> The International Convention on the Elimination of All Forms of Racial Discrimination (1965), signature: 03.07.1966, ratification: 01.27.1969, entering into force: 05.08.1969.

<sup>13</sup> The International Convention on the Elimination of All Forms of Discrimination against Women (1979), signature: 17.07.1980, ratification: 22.12.1980, entering into force: 03.09.1981.

<sup>14</sup> The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), signature: 19.12.1985, ratification: 29.01.1987, entering into force: 26.06.1987.

<sup>15</sup> The Convention on the Rights of the Child (1989), signature: 26.01.1990, ratification: 28.07.1990, entering into force: 31.10.1990.

			<b>Belarus</b>		
VII		30.11.2018		-	
IV – IV	51 (2013)	30.06.2009	19.11.2010	The Equal Rights Trust (October 2013) Global Initiative to End All Corporal Punishment of Children (March 2013)	12.12.2013
III	15 (1996)	30.06.1994	20.04.1995	-	02.12.1996
II	WG (1984)	01.09.1983	28.11.1983	-	30.04.1984
I	WG (1980)	01.09.1977	09.06.1978	-	28.04.1980

### Committee on the Elimination of Racial Discrimination (CERD)

Reporting cycle	Session (year) of the Committee's work	Due date for reporting by the Republic of Belarus	Date of submitting report by the Republic of Belarus	Information from civil society organizations	Date of submitting the Committee's concluding observations
XX – XXIII		08.05.2016			
XVIII – XIX	83 (2013)	08.08.2008	02.08.2012; 24.09.2014: Follow-up State party's report	-	23.09.2013
XV – XVII	65 (2004)	08.05.1998	20.02.2004	-	10.12.2004
XIV	50 (1997)	08.05.1996	15.08.1996	-	23.04.1997
XI – XIII	47 (1995)	08.05.1990	27.10.1994	-	22.09.1995
X	38 (1990)	08.05.1988	25.01.1989	-	01.01.1991
IX	34 (1987)	08.05.1986	22.05.1986	-	01.01.1987
VIII	31 (1985)	08.05.1982	08.06.1984	-	
VII	27 (1983)	08.05.1982	16.07.1982	-	
VI	22(1980)	08.05.1980	12.05.1980	-	
V	19 (1979)	08.05.1978	09.06.1978	-	
IV	14 (1976)	08.05.1976	18.05.1976	-	
III	10 (1974)	08.05.1974	24.04.1974	-	
II	7 (1973)	08.05.1972	12.06.1972	-	
I	3 (1971)	08.05.1970	05.08.1970	-	

### Committee on the Elimination of Discrimination against Women (CEDAW)

Reporting cycle	Session (year) of the Committee's work	Due date for reporting by the Republic of Belarus	Date of submitting report by the Republic of Belarus	Information from civil society organizations	Date of submitting the Committee's concluding observations
VIII		01.02.2015			
VII	48 (2011)	03.09.2006; 04.02.2013: Follow-up State party's report	01.07.2009 06.11.2013: Follow-up State party's report	The Global Initiative to End All Corporal Punishment of Children (June 2010);	06.04.2011

				<p>International Disability Alliance (2 reports) (2010, 2011);</p> <p>Joint submission of Belarusian NGOs: “Women’s Independent Democratic Movement” “Centre of Legal Transformation”, “Europa Donna”, “NOVAK” Laboratory, “Belarusian Confederation of Democratic Trade Unions” (2010);</p> <p>The Equal Rights Trust (2011);</p> <p>The United Nations Educational, Scientific and Cultural Organization (UNESCO) (January 2011)</p>	
IV – VI	30 (2004)	03.09.2002	19.12.2002	The United Nations Educational, Scientific and Cultural Organization (UNESCO) (November 2003)	18.03.2004
III	22 (2000)	03.09.1990	01.07.1993	<p>The United Nations Educational, Scientific and Cultural Organization (UNESCO) (February 2000);</p> <p>The World Health Organization (WHO) (February 2000);</p> <p>International Labour Organization (ILO) (February 2000)</p>	01.01.2000
II	8 (1989)	03.09.1986	03.03.1987	-	13.02.1990
I	2 (1983)	03.09.1982	04.10.1982	-	01.01.1984

### Committee against Torture (CAT)

Reporting cycle	Session (year) of the	Due date for reporting by the	Date of submitting		Date of submitting the
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	Committee's work	Republic of Belarus	report by the Republic of Belarus		Committee's concluding observations
V	51 (2013)	08.12.2013: List of issues prior to reporting; 25.11.2015: Due date for State party reporting			
IV	47 (2011)	25.06.2000; 25.11.2012: Follow-up State party's report	21.12.2009; 27.11.2012: Follow-up State party's report; 23.10.2013: Follow-up additional State party's report	International Federation for Human Rights (FIDH) and the Human Rights Center "Viasna" (October 2011);  Global Initiative To End All Corporal Punishment Of Children (October 2011);  Joint submission of Belarusian NGOs: Committee "Solidarity", "Legal Initiative", Belarusian Helsinki Committee, "Legal Transformation Centre", "Platform", the Human Rights Centre "Viasna" (October 2011);  Human Rights Watch (October 2011);  International Disability Alliance (IDA);  Follow-up report of the Belarusian public initiative "Human Rights Activists Against Torture" (23.10.2013)	07.12.2011
III	25 (2000)	25.06.1996	29.09.1999	-	20.11.2000
II	9 (1992)	25.06.1992	15.09.1992	-	26.06.1993
I	3 (1989)	25.06.1988	11.01.1989	-	

## Committee on the Rights of the Child (CRC)

Reporting cycle	Session (year) of the Committee's work	Due date for reporting by the Republic of Belarus	Date of submitting report by the Republic of Belarus		Date of submitting the Committee's concluding observations
V – VI		30.10.2017		-	
III – IV	56 (2011)	30.10.2007	13.11.2008	-	08.04.2011
II	30 (2002)	30.10.1997	20.05.1999	-	13.06.2002
I	5 (1994)	30.10.1992	12.02.1993	-	07.02.1994

Comparison of information about the due dates fixed by the Committees for the submission of periodic reports by the Republic of Belarus and analysis of the relevant reports texts lead to the conclusion that the Republic of Belarus regularly cooperates with the Committees in submitting reports, but skirts deadlines often. In addition, the State submits replies to the issues sent by the Committees after the examination of periodic reports, reports on follow-up measures for the implementation of recommendations of the Committees. The exception is the Human Rights Committee, to which the reports have not been submitted by the Republic of Belarus since 1995. However, a letter dated 29 September 2014 from the Permanent Representative of Belarus to the United Nations addressed to the Secretary-General “Belarus and human rights: general views and cooperation with United Nations human rights mechanisms from 2012 to 2014”<sup>16</sup> shows that in 2015 the Government intends to submit a periodic report to the HRC as well. Thus, there are quite sustainable communication and interaction between Belarus and UN human rights treaty bodies. A range of participants of these communications is not limited to the State's representatives and experts of the Committees, it also includes human rights organizations submitted to the Committees shadow reports.

It should be noted that, at this stage, Belarusian human rights defenders do not interact with all the six Committees having a jurisdiction in relation to the Republic of Belarus, but with three only: the Human Rights Committee, the Committee on the Elimination of Discrimination against Women and the Committee against Torture. It seems that, to date, the scope of activities of the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Racial Discrimination and the Committee on the Rights of the Child is not of professional interest of Belarusian human rights organizations or the latter can not identify difficulties connected with the implementation by the Republic of Belarus of the provisions of relevant international treaties. Though, analysis of the Belarusian human rights defenders' survey results allows to make a conclusion about their low awareness of the activities of the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Racial Discrimination and the Committee on the Rights of the Child.

It is important to note that submission to the Committees of shadow reports by human rights organizations, in most cases, has a desired effect - the problems raised in the reports are reflected in the recommendations to the State in the concluding observations of the Committees. Thus, to influence the State in order to improve the human rights situation it makes sense Belarusian human rights defenders to monitor regularly the situation of implementation of the rights fixed by the core human rights treaties and, in cases of improper ensuring these rights by the State, to inform the Committees about this in time (within a relevant reporting cycle).

<sup>16</sup> Access: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N14/567/13/PDF/N1456713.pdf?OpenElement>

Most of respondents tell about the low effectiveness of international human rights mechanisms, including UN human rights treaty bodies. As the main reason for this the lack of political will of the State to interact and implement the recommendations of the Committees is named. Is this true, whether the activities of the United Nations treaty bodies monitoring implementation of the core international human rights treaties by the Republic of Belarus may be regarded as ineffective?

A part of the recommendations addressed to Belarus has been repeated by most of the Committees for a long time, that is, they are general recommendations not implemented by the State. These include, inter alia: ensure the independence of judges and lawyers; establish a national human rights institution with a comprehensive human rights mandate; review the legislation and practice in order to simplify the registration procedures and activities of non-governmental organizations; decriminalize membership in unregistered NGOs; recommendations related to the events of 19 December 2010, and others. Thus, the Republic of Belarus took a stable position not to accept so called "politicized" recommendations of the Committees.

In addition, the recommendations of the Committees addressed to Belarus to consult and interact broader with civil society organizations working in the field of human rights during the preparation of the State's periodic reports are several times repeated, as well as to ensure timely and unimpeded access to the State's reports at the moment of their submission, to publish the Committees' observations on these reports. These recommendations are not implemented completely by the State. Thus, there is no information about the interaction between the Belarusian authorities and non-governmental organizations to prepare periodic reports. Access to the State's reports is provided post factum, after the examination of the reports by the Committees, the Committee's observations on these reports are not be published by the Republic of Belarus<sup>17</sup>. Some texts of the concluding observations you can find on the websites of the Belarusian human rights organizations only.

However, detailed examination of the interaction of the Republic of Belarus and UN human rights treaty bodies leads, nevertheless, to the optimistic conclusions about prominent positive outcomes and effects of this interaction. Thus, cooperation of Belarus with the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child, in accordance with the recommendations of which Belarus systematically makes efforts to amend domestic legislation and take real measures, may be considered as quite successful.

It should be noted the actions of Belarus to take steps for social security within the economic ability of the State, to ensure the right to education and gender equality, for combating human trafficking and domestic abuse, for the promotion of the rights of the child.

There are certain achievements in the interaction between Belarus and the Committee on the Elimination of Racial Discrimination. For example, the legislation on the legal status of foreign citizens and stateless people was adopted in the State<sup>18</sup>, proclaiming that these people shall enjoy the rights, freedoms and have obligations as citizens of the Republic of Belarus, as well as the legislation on granting to these persons refugee status, additional and temporary protection in the Republic of Belarus<sup>19</sup>; some efforts were taken by the State for antidiscrimination in the field of labor relations.

There are positive outcomes of the cooperation between Belarus and the Committee against Torture. Despite the State formally rejects the existence of torture in Belarus and its determination of most of recommendations of the Committee as "politicized", the State took into

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<sup>17</sup> The official website of the Ministry of Foreign Affairs of the Republic of Belarus, [http://mfa.gov.by/multilateral/human\\_rights](http://mfa.gov.by/multilateral/human_rights).

<sup>18</sup> Law of the Republic of Belarus of 04.01.2010, № 105-3 "On the Legal Status of Foreign Citizens and Stateless People in the Republic of Belarus".

<sup>19</sup> Law of the Republic of Belarus of 23.06.2008 № 2008 № 354-3 "On granting to foreign citizens and stateless people refugee status, additional and temporary protection in the Republic of Belarus".

account a number of the recommendations. For example, in response to the recommendations, in October 2014, the access to monitor penitentiary facilities in the Republic of Belarus has been allowed the members of a non-governmental human rights organization, amendments to the Criminal Code of the Republic of Belarus are preparing for, inter alia, including the concept of torture in the Code. Thus, there are quite tangible outcomes of UN human rights treaty bodies activities in relation to Belarus.

In addition to the outcomes, there are numerous effects of the use of UN human rights treaty bodies in respect of the Republic of Belarus.

The regular sustainable communications and interaction between the Republic of Belarus and the Committees, participating human rights organizations in this interaction suggests the presence of *communication effects*.

The establishment of bodies and institutions in order to implement the provisions of international human rights treaties (for example, the National Council on Gender Policy at the Council of Ministers of the Republic of Belarus, the National Commission on the Rights of the Child), as well as coalitions of human rights organizations for preparing shadow reports to the Committees indicate the presence of *institutional effects*.

Repeated examination of periodic reports of Belarus by the Committees, as well as shadow reports, adoption of the Committees` observations addressed to the State on these reports lead to the accumulation of detailed information about the human rights situation in the fields covered by the Committees. This information, becoming in some cases, must become potentially an instrument for the protection of human rights applied by the State. This suggests the *cumulative effect* of the use of UN human rights treaty bodies.

Making periodic reports of Belarus, shadow reports of human rights organizations and the Committees` concluding observations available free on the official website of the UN Office of High Commissioner for Human Rights<sup>20</sup> and on the websites of the Belarusian state bodies obviously affects the level of awareness of the human rights situation in Belarus, it is an occasion for public debate about both the situation of human rights in general in the State and the implementation of specific rights, carries the *awareness-raising effect*.

The need for the state, having made commitments to the core international human rights treaties, to report on the human rights situation on the international scene, the competence of the Committees to make appropriate recommendations to the State, which is obliged to inform the international community about their implementation, impact to political practice and international system, shows the *political effect*.

It should be borne in mind that the Committee on the Elimination of Discrimination against Women and the Committee against Torture, in addition to the examination of the periodic reports of the Republic of Belarus, have jurisdiction to investigate violations of the relevant conventions by the State. To date, this procedure was not carried out in respect of the Republic of Belarus. However, human rights defenders should remember about the existence of this procedure and, in cases of grave or systematic violations by the Republic of Belarus of the International Convention on the Elimination of All Forms of Discrimination against Women or the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, immediately inform relevant Committees.

##### ***5. Procedure for submission of individual communications to treaty bodies for their consideration (the Human Rights Committee)***

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<sup>20</sup> [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=BLR&Lang=RU](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=BLR&Lang=RU).

The International Covenant on Civil and Political Rights was ratified by the Decree of the Presidium of the Supreme Soviet of the Byelorussian Soviet Socialist Republic on 05.10.1973, entered into force for Belarus on 03.23.1976. The Human Rights Committee was established under the Covenant as a body monitoring the implementation of the terms of this treaty by States parties. The First Optional Protocol to the Covenant gives the Committee competence to receive and consider communications from individuals who claim to be victims of a violation of any of the rights set forth in the Covenant. The Optional Protocol was ratified by the Republic of Belarus on 10.01.1992 and entered into force for it on 30.12.1992.

From entering into force the Optional Protocol in respect of the Republic of Belarus to 29 December 2014<sup>21</sup> it is known that:

80 cases were considered on the merits (some cases were combined, so 70 decisions (views) were adopted);

on 2 communications out of them violations were not found, on the remaining 78, respectively, were found;

11 decisions on admissibility were adopted;

9 cases were terminated without a public decision (contact with the author was lost, the author refused to continue the case, the situation changed).

Thus, considering 100 Belarusian cases by the Human Rights Committee was completed.

70 cases are under communication or waiting to be considered.

170 cases in relation to Belarus were registered at all.

The subject of the research are 48 views of the Committee adopted at its sessions, from 68th to 110<sup>th</sup>, and published in Russian in which the Committee found a violation of the Covenant by the Republic of Belarus. Analysis of the views shows that most often the Committee found a violation of Article 19 of the Covenant (freedom of expression - 31 cases), Article 21 (the right to peaceful assembly - 13), Article 14 (the right to a fair trial - 8 cases) and Article 22 (freedom of association - 6), in conjunction with other violations of the Covenant.

The recommendations of the Committee, being contained in the views, impose on the State the following obligations:

1) ***Provide the victim with an effective remedy, determining in specific views as:***

(a) compensation for material damage (for example, the corrected amount of fines paid and legal expenses<sup>22</sup>, damage suffered during the election campaign<sup>23</sup>, deconfiscation of assets confiscated or compensation for its cost<sup>24</sup>);

(b) legal acts (such as registering a NGO or re-considering its registration<sup>25</sup>, issuing a license<sup>26</sup>, instituting a criminal case in relation to persons guilty of abusing the victim, conducting an investigation and punish guilty persons<sup>27</sup>, taking measures for release of the victim<sup>28</sup>);

(c) providing information (for example, about the place of burial)<sup>29</sup>;

(d) appropriate compensation for moral damage and (or) the anguish suffered.

In some cases, the Committee does not specify what kind of effective remedies the State is obliged to provide<sup>30</sup>.

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<sup>21</sup> Updated data was granted by human rights defender Roman Kisliak.

<sup>22</sup> E. g., views concerning communication No. 1838/2008 of M. Tulzenkova et al.

<sup>23</sup> Views concerning communication No. 1047/2002 of L. Sinitsyn.

<sup>24</sup> E. g., views concerning communication No. 1226/2003 of V. Korneenko et al.

<sup>25</sup> Views concerning communication No. 1296/2004 of A. Beliatski et al.

<sup>26</sup> Views concerning communication No. 1316/2004 of M. Grib.

<sup>27</sup> Views concerning communication No. 1502/2006 of M. Marinich.

<sup>28</sup> Views concerning communication No. 1390/2005 of A. Koreba.

<sup>29</sup> Views concerning communication No. 2120/2011 of L. Kovaliova and T. Koziar.

<sup>30</sup> Views concerning communication No. 1392/2005 of V. Lukyanchik.

*2) take steps to prevent similar violations in the future, including conforming specific domestic legal rules and their practical application with the Covenant (e. g., the Criminal Executive Code<sup>31</sup>, the Code of Administrative Offences<sup>32</sup>, the Criminal Procedure Code<sup>33</sup>, the Law "On Mass Events"<sup>34</sup>);*

*3) cooperate in good faith with the Committee, particularly if the Committee requests to take interim measures;*

*4) within 180 (sometimes 90) days sent to the Committee information about the measures taken to give effect to the Committee's Views;*

*5) publish the Committee's views and to have them widely disseminated in the national languages.*

Analysis of the State's communications with the HRC and the measures taken after having adopted the Committee's views shows that, since the adoption of the Committee's first views concerning a violation of Article 19 of the Covenant<sup>35</sup>, the State, in 2000 and till 2007, has taken into account the credibility of the Committee and its recommendations (so-called latent implementation).

In some cases (e. g., A. Dergachov against Belarus (921/2000), D. Harhal against Belarus (1161/2003)) rights violations were eliminated by the State at the stage of communication with the Committee. You can see also implementation of recommendations of the HRC at the system level (e. g., the recommendations in the cases B. Laptsevich against Belarus (780/1997), L.Sinitsyn against Belarus (1047/2002)).

However, some steps taken by the government in the direction of bringing domestic legislation into line with the Covenant were never officially linked with the Committee's recommendations, were not a clear trend, but were of quite sporadic and often very inconsistent nature caused, as we believe, by political situation first of all.

For example, communicating in the cases of L. Svietik (927/2000) and B. Shchetko (1009/2001) resulted by recognizing the authors' calling to administrative account for "public calls to boycott the elections" to be a violation of Article 19 of the Covenant, the State amended the legislation through elimination of the cause of the rights violation (Art. 167-3 of the Code of Administrative Offences was amended by the Law of 9.10.2000 and "public calls to boycott the elections" ceased to be an administrative offense). However, to date, the legislation has been changed so that a systemic cause of the rights violation found by the Committee is restored (by the Law of 25.11.2013, Art. 47 of the Electoral Code has been amended and "calls, encouraging or having a purpose of encouraging to disrupt or to cancel or to postpone the elections" are prohibited and these actions fall under Art. 10.9 of the Code of Administrative Offences).

A small number of other significant examples of the implementation of the provisions of the Covenant owing to the views of the HRC suggests a general tendency that these views to be ignored by the State. However, despite this, a number of complaints against Belarus to the Committee has not only decreased, but has increased markedly in recent years. Such a trend can be explained by not only ongoing educational activities among lawyers and human rights defenders<sup>36</sup>, but as well the victims' wish not so much to restore their rights violated by the State,

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<sup>31</sup> Views concerning communication No. 2120/2011 of L. Kovaliova and T.Koziar.

<sup>32</sup> Views concerning communication No. 1837/2008 of A. Yasinovich and V. Shevchenko.

<sup>33</sup> Views concerning communication No. 1592/2007 of O. Pichugina.

<sup>34</sup> Views concerning communication No. 1785/2008 of A. Oleshkevich.

<sup>35</sup> Views concerning communication No. 780/1997 of V. Laptsevich.

<sup>36</sup> E. g., by a project *Bring International Standards Home* which is a part of the Human Rights House Network Programme *International Law in advocacy* three cycles of study (2006-2007), (2009-2011) and (2012-2014) were successfully completed. More than 100 lawyers and human rights defenders, obtaining theoretical knowledge, practical skills and value beliefs in the field of international human rights standards and instruments for their promotion and protection, were graduated.

as to prove injustice of the State and win a moral victory with the help of a reputable international body - the Human Rights Committee of the United Nations.

According to the latest available data<sup>37</sup>, the Republic of Belarus is in the third place as for the number of the communications registered in the Committee (after Canada and Jamaica), and as for the cases at the stages of communications and remaining to be considered on the merits I is in the first place.

Owing to such a flood of complaints the State changed radically its position on the consideration of cases by the HRC and the implementation of its views - in fact, it refused to cooperate with the Human Rights Committee from the stage of communications. It seems that the reasons for this are obvious inconformity of the domestic legislation and practices with the Covenant and, in this regard, the lack of the Covenant-based counter-evidence of the Government relating to well-founded complaints to the Committee, as well as the lack of political will to implement its views.

The State disputes the very registration of individual communications by the Committee, referring to the fact that having become a State party to the First Optional Protocol to the Covenant, it is not obliged to accept its Rules of Procedure, methods and practices. Assuming that the registration of individual communications submitted not by the alleged victim, but by her or his representative, as well as submitted by the authors who have not passed all possible stages of supervisory review at the national level violated the Protocol, the State argues that it will ignore these communications without comments regarding their admissibility or their merits. The decisions adopted by the Committee concerning such ignored communications will be considered by the Belarusian authorities as void.

This position had been first stated by the Permanent Mission of the Republic of Belarus to the UN Office in Geneva in a note verbale dated 09.11.2009 in the case of V. Yuzepchuk, and since 2012 it has been repeated in relation to more than 60 other communications.

In response to these statements, the Committee formulated the legal stance being repeated in its views: the State's refusing to communicate, not recognizing the competence of the Committee to determine whether to register a communication and declaring beforehand that the State will not agree with the Committee's decision on admissibility and merits are the violations by the Republic of Belarus of its obligations under Article 1 of the Optional Protocol to the Covenant.

Also, at the initial stage of communicating on the communications relating to the death penalty, the State actually ignored urgent appeals - to stay the execution pending the consideration of the case by the Committee - and death sentences were executed.

Having faced this practice of the Belarusian authorities, the Committee had to respond to and stated that "the position of the Human Rights Committee is clear – Belarus has committed a grave breach of its legal obligations. [...] We deplore these flagrant violations of the human rights treaty obligations of Belarus."<sup>38</sup>

Regarding the recommendations of the Committee to publish views and to have them wide disseminated in the official languages it should be stated that the Committee's views are not published by the State. With regard to the Committee's request within a certain period of time (90 or 180 days) to send to it information about the measures taken to give effect to its views, there is no official information. We only know that "all decisions of the Human Rights Committee adopted on the petitions of the Belarusian citizens to this body are brought to the notice of competent authorities of the Republic of Belarus by the MFA"<sup>39</sup>.

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<sup>37</sup> Statistical survey of individual complaints dealt with by the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights March 2014

[www.ohchr.org/Documents/HRBodies/CCPR/StatisticalSurvey.xls](http://www.ohchr.org/Documents/HRBodies/CCPR/StatisticalSurvey.xls)

<sup>38</sup> E. g., Report of the Human Rights Committee, A/67/40 (Vol. I).

<sup>39</sup> Response of the Deputy Minister of Foreign Affairs dated 23.04.2009 to an application of V. Korneenko.

Under such conditions, the main burden of enforcing the State to implement these recommendations places on the victims and their representatives.

The citizens - victims of violations of the Covenant, having in hand the decisions of the authoritative international body, have taken a number of steps and initiatives to encourage the State in this direction and they are continuing to do so now:

(a) petitions to the Ministry of Foreign Affairs of Belarus.

Arguments of the MFA mentioned in the responses to these petitions:

- the Committee's Views concerning a complaint made on the basis of Art. 1 of the Optional Protocol are advisory. The Protocol does not impose on the State parties obligations under international law to implement the recommendations of the Committee<sup>40</sup>;

- the Republic of Belarus consider the Committee only as a group of experts and it is not obliged to follow the group's opinion<sup>41</sup>;

- One of the main tasks of the Ministry is to protect the rights and interests of individuals and legal entities of the Republic of Belarus abroad; protection of citizens' rights at the national level is the competence of other state bodies of the Republic of Belarus<sup>42</sup>;

(b) complaints and lawsuits in the courts of general jurisdiction.

In all cases, the courts refused to satisfy claims of applicants. A characteristic feature of almost all court decisions was completely ignoring of international law by the courts and applying the provisions of domestic law exclusively<sup>43</sup>;

c) applications to the Parliament and to the Constitutional Court initiated drawing up and adopting a special law to regulate the implementation of the decisions and application of the practices of international human rights bodies.

Negative replies of these bodies were founded in different ways: from a recommendation to address the subjects of legislative initiative<sup>44</sup> to a statement that implementation of decisions of international organizations had been already regulated by Articles 34 and 35 of the Law "On international treaties of the Republic of Belarus" and no need for new laws<sup>45</sup>;

d) communications to the Committee to complain of the non-implementation by the Republic of Belarus its views adopted earlier (V. Korneenko against Belarus № 1634/2007).

Having considered the complaint of V. Kornienko, on 26 March 2012, the Committee adopted the views, in which indicated that the issues raised by the author are the subject of the Committee's follow-up procedures. The Committee concluded that the author did not put forward a separate statement relating to the Covenant, which would go beyond the decision already taken by the Committee concerning the previous author's communication. From these considerations, the Committee made a conclusion about inadmissibility of the communication;

e) attempt to establish a National human rights public association Movement for the Implementation of the International Covenant on Civil and Political Rights "the Covenant".

On 25 July 2014, the Ministry of Justice refused to register "The Covenant". As grounds for the refusal, the Ministry of Justice assigned mistakes of technical nature in the list of founders. Judicial review of this decision did not lead to success.

## Findings and recommendations

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<sup>40</sup> Response to an application of V. Katsora dated 31.10.2008.

<sup>41</sup> Response to an application of V. Katsora dated 23.01.2010.

<sup>42</sup> Response to an application of V. Korneenko dated 23.04.2009.

<sup>43</sup> Response of the Deputy Chairman of the Supreme Court dated 13.03.2007 to an application for supervisory review of V. Kornienko; decision of the Central district court of Gomel dated 06.04.2013 in the case of L.Sudalenko; decision of the Zheleznjodorozhnyi district court of Vitebsk dated 17/05/2013 in the case of A. Pivonos et al.

<sup>44</sup> Response of Head of the Secretariat of the Constitutional Court dated 19.06.2013 to an application of P. Levinov.

<sup>45</sup> Eg., response of Head of the Secretariat of the Constitutional Court dated 10.10.2014 to an application of M. Pastukhov and L. Sudalenko.

At this stage, human rights defenders and the victims whose rights violations were found by the Human Rights Committee in the consideration of the individual communications state the low effectiveness of the HRC's views in the sense that their adoption does not in itself lead to restoration of the right and tangible systemic transformation as these views not to be recognized by the State.

However, it is possible to trace further, long-term and indirect effects of the interaction with the Committee:

1) Under the influence of Belarusian cases, the HRC practice has transformed, especially towards the concretization of recommendations (*institutional effect*).

So, in the first Belarusian cases<sup>46</sup>, the Committee formulated its recommendations quite universally: it stated the author has the right to an effective remedy, including compensation, and recommended to take steps to prevent similar violations in the future. In time, more specific recommendations appeared in the views: compensation for corrected amount of fines paid, deconfiscation of assets confiscated or compensation for its cost, legal acts, providing information, bringing into line with the Covenant the Law "On mass events"<sup>47</sup>, the Criminal Procedure Code, the Criminal Executive Code, the Code of Administrative Offences and other laws.

In addition, it appears that the very communications from Belarus allowed the Committee to enrich significantly its practices and develop new sustainable legal stance towards a category of cases concerning violations of freedom of peaceful assembly, freedom of expression and freedom of association.

The recommendations for cooperation with the Committee in relation to taking urgent protective actions appeared under the influence of the Belarusian practices<sup>48</sup>.

2) As a result of submitting complaints to the Committee, the State is in the focus of its attention and has not only to accept this, but also to communicate, adducing its arguments.

In this case, the State is shown its internal systemic problems, which can not be solved adequately at the national level, by its citizens through submitting individual communications to the Committee.

3) Owing to having transferred internal Belarusian problems to the international level, these problems became of manifestly political nature, have created for the State an additional political discomfort and, no doubt, are the subject of discourse in the echelons of power.

The problems with human rights in Belarus found by the Human Rights Committee, as well as the refusal of the State to interact with the Committee are the facts recognized by the international community (*political effect*). The logical continuation of this recognition became establishing the mandate of UN Special Rapporteur on the human rights situation in Belarus.

4) In the opinion of many experts, human rights defenders, under the influence of petitioning to the Committee and educational measures taken in recent years the quality of complaints submitted has improved significantly, being confirmed by the figures: the Committee has found a violation of the Covenant regarding 65 (75%) out of 86 communications from Belarus considered to September 2014 (*empirical effect*).

5) The Committee's decisions on the Belarusian cases are also of a self-sufficient value, since, on the one hand, they are the highly qualified international legal assessments of different situations (cases) related to human rights violations in Belarus and, on the other hand, the expert

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<sup>46</sup> Vide, e. g. Views concerning communication No. 814/1998 of M. Pastukhov against Belarus, Views concerning communication No. 1392/2005 of V. Lukyanchik et al. against Belarus.

<sup>47</sup> Vide, e. g. Views concerning communication No. 1784 / 2008 of V. Shumilin against Belarus, Views concerning communication № 1785/2008 of A. Oleshkevich against Belarus.

<sup>48</sup> Vide, e. g. Views concerning communication No. 2120/2011 of L. Kovaleva and T. Kozyar; Views concerning communication No. 910/2009 of S. Zhuk.

opinions on conformity of domestic legislation with the Covenant, which can be used in future reforms (*cumulative effect*).

6) For 14 years of communications with the Committee, a base of practices of the Committee has been accumulated which may be used as a basis by human rights defenders and experts to submit new communications, to carry out training and seminars, to educate new human rights defenders and experts (*awareness-raising effect*).

7) In the course of communication with the Committee, the human rights defenders and experts' contacts with the Office of the High Commissioner for Human Rights, the Committee itself and other treaty bodies strengthened. Conducting study visits to Geneva allow experts to understand better the work of these bodies, and, accordingly, to make their work more efficient (*communication effect*).

Despite the dominant pessimistic assessment of the impact of the Committee on the human rights situation in Belarus, virtually all experts and human rights defenders believe the established practice of submitting communications to the Committee to be objectively useful and must continue.

Sharing completely this point of view, in order to find additional opportunities to improve the effectiveness of these activities, we would like to propose the following measures of organizational, human rights defending and legal nature.

- Not denying, but maintaining the practice established in the country of the promotion of human rights by many human rights organizations, experts and individuals (HRC "Viasna", BHC, Center for Legal Transformation, R. Kislyak and others), found a head specialized organization (similar to the planned project "The Covenant") or an initiative to concentrate organizational, intellectual and other resources and subordinate them to a task of coordinated advance of human rights in the country to a higher level.
- Through consultation with internal and external stakeholders, try to lobby for an inter-state complaint against Belarus pursuant to Article 41 of the Covenant.
- Strengthen the work within the framework of the Committee's ability on follow-up activities and interaction with the Committee's Special Rapporteur on Follow-up to Views.
- In order to establish a national mechanism for implementation of the decisions of international bodies once again raise the issue before the Constitutional Court to initiate constitutional proceedings in the elimination of a legislative gap and legal uncertainty.
- It would be useful for strategic litigation to obtain the Committee's assessments of the problems that have not yet been the subject of considering by the HRC, e. g. massive arbitrary detentions, the existence of medicinal-labour institutions in their current form, forced labor in the wood industry etc.

## ***6. Venice Commission of the Council of Europe***

The European Commission for Democracy through Law, better known as the Venice Commission is an independent body of the Council of Europe providing states with legal advice in the field of constitutional law and constitutional justice.

### **The Republic of Belarus takes part in its work as an associate member.**

Below is a list of all the opinions adopted by the Venice Commission in respect of the Republic of Belarus:

<b>№</b>	<b>Title of an opinion</b>	<b>Year of adoption</b>	<b>Cause for consideration</b>
1	Opinion on the laws of the Republic of Belarus: the Supreme Soviet & the president of the Republic <a href="http://www.venice.coe.int/webforms/documents/?pdf=CDL(1995)075-e">http://www.venice.coe.int/webforms/documents/?pdf=CDL(1995)075-e</a>	1995	Request of the Republic of Belarus (more detailed information is not publicly available)
2	Opinion on the amendments and addenda to the Constitution of the Republic of Belarus as proposed by i: the President of the Republic & ii: the Agrarian and Communist groups of parliamentarians <a href="http://www.venice.coe.int/webforms/documents/?pdf=CDL-INF(1996)008-e">http://www.venice.coe.int/webforms/documents/?pdf=CDL-INF(1996)008-e</a>	1996	Request of Mr Sharetsky, Speaker of the Parliament of the Republic of Belarus
3	Opinion on the Draft Law on the National Assembly of the Republic of Belarus <a href="http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2003)014-e">http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2003)014-e</a>	2003	Request of Mr. V. Konoplev, Deputy Speaker of the House of Representatives of the National Assembly of the Republic of Belarus
4	Opinion on the Referendum of 17 October 2004 in Belarus <a href="http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2004)029-e">http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2004)029-e</a>	2004	Request of the President of the Parliamentary Assembly of the Council of Europe
5	Joint Opinion on the Electoral Legislation of the Republic of Belarus by the Venice Commission and OSCE/ODIHR <a href="http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2006)028-e">http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2006)028-e</a>	2006	Resolution of the Parliamentary Assembly of the Council of Europe
6	Joint Opinion on the Amendments to the Electoral Code of the Republic of Belarus as of 17 December 2009 adopted by the Council for Democratic Elections and by the Venice Commission <a href="http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2010)012-e">http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2010)012-e</a>	2010	Request of the Political Affairs Committee of the Parliamentary Assembly of the Council of Europe
7	Opinion on the warning addressed to the Belarusian association of journalists on 13 January 2010 by the Ministry of Justice of Belarus <a href="http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2010)053rev-e">http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2010)053rev-e</a>	2010	Request of the Political Affairs Committee of the Parliamentary Assembly of the Council of Europe
8	Opinion on the compatibility with universal human rights standards of an official warning addressed by the Ministry of Justice of Belarus to the Belarusian Helsinki Committee <a href="http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2011)026-e">http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2011)026-e</a>	2011	Request of the Chairperson of the Political Affairs Committee of the Parliamentary Assembly
9	Opinion on the compatibility with universal human rights standards of article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus	2011	Request of the Chairperson of the Political Affairs Committee of the

	<a href="http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2011)036-e">http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2011)036-e</a>		Parliamentary Assembly
10	Joint opinion on the law on mass events of the Republic of Belarus adopted by the Venice Commission and OSCE/ODIHR <a href="http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2012)006-e">http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2012)006-e</a>	2012	Request of the Chairperson of the Political Affairs Committee of the Parliamentary Assembly

It should be emphasized that, as an associate member of the Commission, Belarus may send requests to the Venice Commission and thus use its intellectual resource to improve national constitutional law and legal system in order to bring them into conformity with the standards of the Council of Europe, that would help it, in the long term, to entry the organization. However, it is clear from the data given above that the Republic of Belarus has used requests to the Venice Commission for opinions only three times. Analysis of the legislation amended leads to the conclusion that only the first Opinion on the laws of the Republic of Belarus: the Supreme Soviet & the president of the Republic (1995) has been implemented (through an opinion of the Constitutional Court).

Since 2003, the State has not sent requests to the Venice Commission.

At the same time, the State officially declares its cooperation with the Venice Commission<sup>49</sup>. Since 2010, the representative of Belarus has taken part at the sessions of the Commission<sup>50</sup>.

As well, the Constitutional Court cooperates with the Venice Commission through joint conferences and seminars<sup>51</sup>. Such conferences and seminars were held in 2004, 2008, 2010 and 2014 in Minsk<sup>52</sup>. Brief reports about them you can find in the journal “Вестник Конституционного Суда” (“Bulletin of the Constitutional Court.”). However, this is the only public information about such events, in national sources you can not find their materials. That makes the cooperation of the Constitutional Court of Belarus with the Venice Commission secretive and prevents practical use of its resources.

The Council of Europe bodies initiated adoption by the Venice Commission of opinions on the Belarusian issues in seven out of ten cases where such opinions were adopted. And in fact, the initiative to consider certain provisions of national legislation, certain legal acts and individual law enforcement acts by the Commission came from civil society organizations. We may say that the Commission's consideration of a number of problems of the Belarusian legislation was a result of lobbying by Belarusian NGOs.

Objective analysis shows that most of the opinions of the Venice Commission have not been implemented in the domestic legislation, if we talk about eliminating violations or amending legislation. The partial implementation of the Venice Commission`s opinions you can see only in the amendments and additions to the Electoral Code of the Republic of Belarus of 2010.

Nevertheless, the use of this international mechanism has a number of positive effects, including:

1) As a result of the resort to this international mechanism, the Venice Commission developed the practice to adopt opinions not only on draft laws and existing legislation, but also on some decisions of public authorities being contrary to the international obligations of the Republic of Belarus (*institutional effect*);

<sup>49</sup> <http://mfa.gov.by/multilateral/organization/list/a025a26a6670b494.html>

<sup>50</sup> At present, the representative of the State in the Commission is Ms Olga G. Sergeeva, Deputy Chair of the Constitutional Court.

<sup>51</sup> <http://www.kc.gov.by/main.aspx?guid=3381>

<sup>52</sup> <http://www.venice.coe.int/webforms/events/?country=5>

2) The legislation conflicting with international standards, as the Venice Commission determined, is not applied in practice (*preventive, deterrent effect*). E. g., it can be seen in relation to Article 193.1 of the Criminal Code, not being in conformity with international human rights standards concerning unregistered associations, as was established in the opinion of the Venice Commission. Over the past five years, no one has been prosecuted under this article, although there are cases of issuing by prosecutor's offices official warnings under Article 193.1 of the Criminal Code. Certainly, we should not say that it was the adoption of this Opinion what led to a lack of sentences under this article. In the first place, its non-application is rather a political decision. However, this decision was motivated in many respects by the stance of such an authoritative body as the Venice Commission;

3) For almost twenty years of cooperation of the Venice Commission with the Republic of Belarus, ten expert opinions has been accumulated that could potentially be used for constitutional and legal reform in the Republic of Belarus (*cumulative effect*);

4) Information about the consideration by the Venice Commission of certain issues is disseminated in a public space, bringing stakeholders learn about imperfections of national legal regulation of some spheres of social relations. Human rights defenders, in their petitions to public authorities, refer to the Commission's opinions as to the international standards, which should be followed by the Belarusian state and its institutions<sup>53</sup> (*awareness-raising effect*);

5) Human rights organizations mastered ways to interact with the Council of Europe bodies to initiate a request from authorized subjects on a certain issue within the competence of the Venice Commission (*communication and empirical effects*).

To summarize, it should be said that the Republic of Belarus, being able to send requests to the Venice Commission as its associate member, does not use the potential of this international mechanism. The state formally cooperates with the Commission at the level of the Constitutional Court, as well as in the consideration of particular issues, being represented by the Ministry of Justice. On the contrary, national NGOs more actively use the potential of the Commission initiating its consideration of the most urgent and acute legal issues. But, it should be recognized that Belarusian civil society organizations do not use adequately the capabilities of the Venice Commission. According to the results of the survey of experts, Belarusian human rights defenders and NGO`s representatives, most of them use only the adopted opinions in their practice, but not engaged in lobbying for the Commission's consideration of one or another issue of the legislation in the field of human rights. It seems that the potential of the Venice Commission should be used more actively by as representatives of the State - for effective constitutional assistance in legal reforms, as Belarusian NGOs - for accumulation of expert opinions for future review of legislation.

## ***7. OSCE: election legislation***

OSCE, which include 57 participating states, is a regional organization engaged in safety and ensuring peace, democracy and stability. Within OSCE there is a number of institutions and instruments to assist participating States in fulfilling their obligations<sup>54</sup>. Based in Warsaw, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) works in the field of election observation, democratic development, human rights, tolerance, non-discrimination and the rule of law.

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<sup>53</sup> 13 out of 20 interviewed human rights defenders indicated that they study the Venice Commission`s opinions and use them in their work. Three respondents reported that they had been involved in initiating the Commission's consideration of a certain issue.

<sup>54</sup> For further details, vide: <http://www.osce.org/ru/secretariat/35777?download=true>

ODIHR missions monitor elections throughout all participating states. OSCE also provides technical assistance to improve the legislative and administrative framework for elections in specific countries in the OSCE region. As part of this assistance OSCE carries out, in particular, training for election commission members, media and police as well as voter education initiatives.

The interaction of OSCE institutions with the Republic of Belarus on elections is positive because it expands the possibility of dialogue on the international scene. On the other hand, due to the recognition by OSCE all election campaigns in Belarus held since 1996 not conforming with democratic and fair elections standards, OSCE constantly faces with criticism by officials of the Republic of Belarus. By the results of the OSCE/ODIHR missions during Belarusian elections, it was recommended constantly to amend the Electoral Code and its implementation. It should be recognized that some of the recommendations were implemented by the Republic of Belarus. Although those were primarily technical changes in the law, they were aimed at some democratization of the electoral process.

As a result of long-term dialogue between OSCE and the Republic of Belarus, by the Law of 04.01.2010, the Electoral Code was amended, on the whole, positively for both providing additional guarantees for transparent elections and improvement of certain technical aspects of the election campaign. These amendments are concerned with the issues discussed between OSCE/ODIHR and the Belarusian authorities.

The amendments were the subject of Joint Opinion on the Amendments to the Electoral Code of the Republic of Belarus as of 17 December 2009 adopted by the Council for Democratic Elections and by the Venice Commission (Opinion № 521/2009 of 04.06.2010, CDL-AD (2010) 012). This Opinion contains:

- (1) amendments marked a significant improvement,
- 2) amendments to some extent marked changes for the better, but to be refined in order to ensure their proper implementation;
- 3) a number of key recommendations being lacking in the amendments.

After the visit of the OSCE/ODIHR mission to observe the presidential elections in 2010, the recommendations were made traditionally to improve the election legislation for holding more transparent, free and fair elections. However, they were not reflected in the amendments to the Electoral Code made by the Law of 8 November 2011.

The same attitude was demonstrated by the State to the ODIHR mission's recommendations by the results of monitoring election to the House of Representatives in 2012. These recommendations were ignored in the amendments to the Electoral Code made by the Law of 25 November 2013<sup>55</sup>.

## **Findings**

To some extent, the mechanism of OSCE, in the context of improving election legislation, showed its effectiveness. However, it seems this is, primarily, related to a political implication. If you recall, it was in the period of some liberalization and warming of relations between Belarus and European structures when the grave positive changes were made in the election legislation in 2010.

The role of civil society organizations in this process should be noted. They are the consistent initiators of amendments to election legislation, using all possible mechanisms, including interaction with as ODIHR directly, as all OSCE/ODIHR missions sent to Belarus to monitor the election campaigns. National coalitions for election observation in Belarus as well as national human rights organizations constantly sent their observation results to the

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<sup>55</sup> According to the analysis by "Belarusian Helsinki Committee» (<http://belhelcom.org/ru/node/19562>), out of 25 recommendations only one was partially implemented. All other recommendations were not implemented and, regarding three of them, the legislative regulation even became worse.

representatives of OSCE/ODIHR missions in Belarus helped to understand the Belarusian context and some aspects of the legal regulation of election procedure (*communication effect*).

Information about the results of monitoring of election campaigns by OSCE/ODIHR missions in Belarus was disseminated in a public space. This allowed stakeholders to learn about the significant imperfections of the election legislation and law enforcement of Belarus (*awareness-raising effect*).

### **8. OSCE: trial monitoring**

OSCE/ODIHR carried out trial monitoring programs more than ten years. It can be shown, this monitoring is an effective tool to promote judicial reform and support the right to a fair trial guarantees.

The administration of justice became a subject of interest OSCE/ODIHR in 2011, when the trials of people charged for their participation in the protest meeting after the presidential election on 19 December 2010 were monitored.

A formal invitation to OSCE/ODIHR to monitor the trials on the events of December 19, 2010 was sent by Belarus, and this, of course, should be appreciated positively. At the same time, it should be noted that this initiative was not born spontaneously. The need of sending OSCE/ODIHR experts to monitor the trials in these cases was repeatedly pointed out by representatives of national NGOs at the meetings with official representatives of OSCE participating States.

The monitoring was realized by eight observers from seven countries. In accordance with the agreed terms, a total number of observers, being in the country at once, did not exceed four persons. Having finished each case they prepared a final report on the trial, using a standard questionnaire drawn up on the basis of national and international fair trial standards. During the period from 9 March to 23 July 2011, ODIHR monitored the trials in 10 criminal cases in the courts of first and second instances, as well as in two additional cases only in the second instance, involving of 41 accused persons in all.

By the results of the monitoring, a number of recommendations was made, which were grouped as follows:

1. Addressed to legislators and people responsible for policy development:
  - 1.1 on the role of the executive power;
  - 1.2 amending the Criminal Procedure Code; amending the Criminal Code;
  - 1.3 amending the Law “On operative research activities”;
  - 1.4 security in court;
  - 1.5 independent investigation;
  - 1.6 cooperation with international human rights procedures and mechanisms;
2. Addressed to judiciary authorities:
  - 1.1 on structural / institutional reforms;
  - 1.2 on administration of justice in criminal cases;
  - 1.3 on court hearings;
2. Addressed to law enforcement agencies;
3. Addressed to media.

It should be noted that ODIHR`s recommendations did not limit to the framework of the criminal trial on the riots. ODIHR experts prepared the recommendations concerning different aspects of the right to a fair trial, such as the independence of judges and lawyers, openness and transparency of court proceedings, ensuring the presumption of innocence and others. A number of recommendations are about the need to reform the judicial and law enforcement systems, the need to ensure the right to privacy. Preparation of the report was preceded by the meeting of ODIHR experts with the representatives of the Ministry of Justice, the Supreme Court,

prosecutors, NGO representatives, lawyers and both national and international human rights organizations` members.

### **Findings**

Comparative analysis of the recommendations in the final report on trial monitoring in 2011 and the current state of legislation leads to the conclusion that most of the recommendations have not been implemented. However, it is obvious that monitoring of the trials conducted by ODIHR in Belarus is an important step towards reforming judicial system and administration of justice.

It seems that the use of this international mechanism has a number of positive effects, including:

1) Some of the recommendations are reflected in certain actions of the State to improve the Belarusian judicial system. In particular, we can talk about the first steps towards strengthening the independence of the judiciary (issuing the Decree No 6 "On the improvement of the judicial system of the Republic of Belarus"), ensuring openness and transparency of court proceedings (adoption of the Decision of the Plenum of the Supreme Court No 11 "On ensuring transparency in the administration of justice and on the dissemination of information about the activities of courts"), as well as towards ensuring the adversarial process and the presumption of innocence (adoption of the Decision of the Plenum of the Supreme Court No 8, "On the implementation by the courts of the Decision of the Plenum of the Supreme Court of the Republic of Belarus of 26 September 2002 No 6 "On some issues of application of the criminal procedure law in the court of first instance" (*implementation*).

2) Following the OSCE/ODIHR monitoring, a number of significant problems was identified concerning fair trial standards. This demonstrates the need for a deep reform of the judicial system of Belarus. After the presentation of the results of the monitoring, then-Director of OSCE/ODIHR Janez Lenarcic stressed that ODIHR is ready to cooperate with the Belarusian authorities to resolve these problems (*cumulative effect*).

3) Information about the trial monitoring is distributed in a public space, owing to this stakeholders learn about the problems in the administration of justice and the judicial system (*awareness-raising effect*).

4) Human rights organization gained experience of interaction with OSCE/ODIHR during the preparation by ODIHR experts of the report on the trial monitoring results (*communication effect*).

5) Study of experience of such special (ad hoc) monitoring facilitated to improve the methodology of national human rights organizations for trial monitoring (*empirical effect*).

Summing up, it is important to note that Belarus should not abandon closer cooperation with OSCE/ODIHR to improve the judicial system and the administration of justice. Its rich experience in assisting implementation of international standards in the area of the right to a fair trial can provide invaluable assistance to Belarus in carrying out a judicial reform, the necessity of which was stated in *Prospects of development of the courts of general jurisdiction* message. This will let to avoid unnecessary mistakes in a very important for human rights field - administration of justice.

National NGOs can use this mechanism, as well as the OSCE/ODIHR trial monitoring methodology to analyze the situation of human rights during the consideration by courts of certain categories of cases, for example, cases involving various minorities, cases of administrative offenses and others.

### **Conclusion**

The study of the effectiveness of the use of international human rights mechanisms in reference to Belarus revealed some trends that are important for understanding both the state of

the system ensuring human rights in Belarus and the prospects of development of the Belarusian human rights movement. We list some of these trends:

1. The multi-level involvement of the State in the system of international legal mechanisms led to varying extents of implementation of international legal standards into domestic legislation and law enforcement practice.

It is obvious that a single mechanisms is not absolutely self-sufficient and the most preferred for any country, there are no completely perfect relationship and unconditional acceptance of decisions and recommendations in countries` practices of communication with international legal procedures. A way of each country to the universal human rights values is unique, but inevitable. Orientation of Belarus towards entering to this universal system is historically caused by socio-cultural and mental development in the context of the formation of European political and legal space, as well as the fact that Belarus is a founding member of main international organizations (UN, OSCE), within the framework of which international human rights mechanisms act.

Levels of involving	Charter-based bodies and special procedures			Treaty bodies		OSCE	Venice Commission
	UPR	Special Rapporteurs	Working Group on Arbitrary Detention	Periodic reports	Individual communications (HRC)		
Recognizance of jurisdiction	Yes	Yes, except for the country mandate	From 2013 – non-cooperation	Yes	From 2013 – non-cooperation	Yes	Yes
Implementation of decisions /recommendations regard to legislation	Partly	Partly	General – partly, on individual communications - no	Partly	No	Partly	No
Implementation of decisions /recommendations regard to law enforcement	Partly	Isolated instances	General – partly, on individual communications - no	Partly	No	Partly	Single instance
Nature of communication	Sustainable	Sustainable	To 2013 – Sustainable	Sustainable, except for the HRC (no communication since 1995)	Only the first on each communication	Sustainable	Sustainable

2. Despite relatively high intensity of communication of the Belarusian government with international human rights mechanisms and its readiness to discuss improving legislation, a number of cases of human rights violations (as the data of individual communications, as well as "urgent appeals" of UN Special Rapporteurs show) remains quite high, and from 2006 to the date has had a clear tendency to increase.

It seems that, despite a general tendency not to fulfill its obligations by the Republic of Belarus, as a State, in the field of civil and political rights, recognized by both domestic and international human rights forces, it must be remembered that decisions submitted on behalf of the State, always made by particular officials and therefore are personalized. These decisions may depend on various subjective factors. Perhaps, these subjective factors explain the cases of

negative law enforcement practice: use of violence against fellow citizens, persecution of human rights defenders and their organizations, as well as the media and civil society organizations.

Analysis of communication of international bodies with the Government showed an interesting feature: the responses of the Government "clarify" the rules of the Belarusian legislation without any attempt to assess the actions from the point of view of international standards applying also for legal restrictions of the rights. References to Articles of the International Covenant on Civil and Political Rights are infrequent. They appeared in the materials related to combating human trafficking and ensuring the rights of minors in the context of freedom of conscience and religion. There is reason to believe the lack of these references is related with a low level of state officials' competence in matters of international legal standards of human rights in various fields of public administration and public life. The insufficiently high content level of the Government's responses to requests from international organizations, mechanisms and treaty bodies not only does not work to increase the prestige of the Republic in the international arena, but, on the contrary, creates an unfavorable response in international circles, compelling to doubt the State's intentions to fulfill its international obligations.

We believe that human rights defenders need to assess properly the nature of any violations, reject purely hostile rhetoric with respect to the State, focus on education and human rights work itself with specific state authorities.

3. The most problematic areas, in terms of compliance with international standards, are freedom of association, freedom of expression and freedom of assembly, being a base for realization of the values of a democratic society, formation of a public space and partnership of society and the State. As state authorities, as representatives of the human rights movement and public in the broadest sense of the word should hold an interest in the development of these fields of human rights. Furthermore, it is obvious that ensuring the quality of life directly depends on human rights. The participation in international human rights mechanisms is an important factor of the country's image and, ultimately, also affects both the well-being of citizens and the welfare of the country as a whole. In this regard, human rights defenders have a challenge now to form a public request for ensuring the rights, not forgetting about educational work with the authorities' representatives.

4. The answers of the respondents-human rights defenders showed the dynamics of the perception of expectations from interaction with international mechanisms – from the erroneous image of "a supranational punitive and, at the same time, controlling force" to the understanding the essence of subsidiary, soft impact of international law; from the perception of the State as an opponent to the understanding of the need to cooperate with state authorities and public structures; from the assessment of their role as "a complainant" and "a critic" to the formation of proactive strategies for interaction within the human rights community and public structures in general.

The human rights defenders' survey data carried out in the framework of this project correlates with the data of a national survey by NISEPI conducted in December 2014. In particular, in response to the question *"Do you know that residents of Belarus can use international structures in order to protect their human rights in accordance with domestic law and international obligations of the country?"* the some advantage of affirmative answers was fixed - 52.4%. In response to the question *"What international bodies protecting human rights do you trust more?"* the following "rating" was received: in the first place - the institutions and mechanisms of the United Nations (36.6%) followed by the Council of Europe (the European Court of Human Rights) (19.9% ), CIS (11.7%), OSCE (11.3%), while almost one-third of the respondents do not trust anyone (35.3%). To the question *"Is it effective to seek protection of the violated rights in the international bodies?"* 17.4% of the respondents answered in the affirmative, and 41.3% answered - "50 / 50".

To the question *"If you decide to seek protection of the violated rights in the international bodies, where will you resort to prepare a petition?"* the majority of respondents answered *"to lawyers"* (38.8%), 27% will resort *"to human rights defenders"*.

The survey results by NISEPI actually demonstrated **a public demand for the use of international human rights mechanisms**: 59% of respondents said that *"... it is possible and necessary to resort to international bodies for protection, because human rights are not an internal matter of the state and intervention of international structures in accordance with international and domestic law is good for the country."* 46.8% of respondents consider that *"human rights defenders need to develop and intensify this work, if problems are not solved at the national level."*

To date, we can tell about the complete formation of the human rights community in Belarus, and an important factor of its consolidation and, at the same time, of the specialization of specific organizations became the resort to international human rights mechanisms. Prospects for the development of the Belarusian human rights movement to promote international standards are in the creation of a consolidated media space for dissemination and promotion of international human rights standards, forming a sustainable public demand and informing state authorities.

The collective of authors express the hope that this study will contribute to a deeper reflection of the human rights community regarding the means and methods of the interaction with international human rights mechanisms in order to improve the activities to promote the principles and values of human rights in Belarus.

## **List of Abbreviations**

IHRM - international human rights mechanisms  
The Covenant, the ICCPR - International Covenant on Civil and Political Rights  
The Optional Protocol, the Protocol – the First Optional Protocol to the International Covenant on Civil and Political Rights  
ECHR – the Convention for the Protection of Human Rights and Fundamental Freedoms  
OHCHR – the Office of the United Nations High Commissioner for Human Rights  
UPR – the Universal Periodic Review  
The Working Group, WGAD – the Working Group on Arbitrary Detention  
HRC – the Human Rights Committee  
CEDAW – the Committee on the Elimination of Discrimination against Women  
CAT - the Committee against Torture  
MFA - the Ministry of Foreign Affairs of the Republic of Belarus  
OSCE - Organization for Security and Cooperation in Europe  
ODIHR - Office for Democratic Institutions and Human Rights  
NGOs – non-governmental organizations  
CIS – the Commonwealth of Independent States