

Analytical report: Aspects of migrants' detention in Belarus

*prepared by the local initiative-campaign "No people are illegal"
with the support of the human rights center Viasna*

I. Summary

At present, the migration policy of Belarus has a range of problems that are ignored by state bodies and that stay little known to the general public. Attention of human rights activists was drawn to the facts of detention of foreign citizens for quite a long period of time. As a result of three months' practical research into work of the migration legal institute in Belarus (May - July 2014), the following problematic aspects were defined:

1. Limited access to information related to the status and condition of migrants detained according to norms of legislation on migration in the first place.

Physical persons and non-state legal persons / initiative group find it impossible to get information on the number of detainees, their names, countries of their origin, grounds for their detention, the period of time they have stayed in detention, and also find it impossible to pass over any food and goods parcels to detainees or offer any other assistance. Both state bodies and international / national specialized organizations (the UN High Commissioner for Refugees (UN HCR), the Service for consulting refugees, the International Organization for Migration, the Red Cross) refuse to share such information in reply to information requests. It means that people interested in this issue or those people who keep in touch with the detainees' relatives, in fact, can hardly do anything to help the migrants.

2. Poor conditions and long term of detention of migrants and keeping them together with other types of detainees.

At present, there are three open centers of temporary stay for refugees, but there is no any special centers for persons detained for violating the legislation on migration (including absence of identification documents). Such detainees are held in temporary detention facilities (Center for Isolation of Violations of the Main police department of the Minsk City Executive Committee in Minsk) which are designed only for a short-term stay; meantime, conditions in such establishments can be estimated as degrading and inhuman treatment (bad sanitary conditions, rare outdoor walks, shower once a week, low quality and insufficient amount of food, lack of possibilities to receive parcels and to communicate with relatives). All this affects negatively not only physical, but also mental state of detained migrants.

3. Lack of transparency in procedures and restrictions in procedural rights.

Bearing in mind the specific of detained migrants (language and cultural barriers, legal illiteracy etc.), the state should have a number of positive obligations in their regard which demands additional effort to ensure observance of all rights for such detainees equal to the rights guaranteed to citizens of the Republic of Belarus. Meantime, a number of violations of procedural rights were registered in relation to foreign citizens and stateless persons: the right to have explanation of their rights and obligations in due time, the right to legal assistance, the right to have a translator, the right to have explanation of the procedure on how to obtain refugee status etc. Also, it is important to remark that the procedures on offering refugee status, additional protection or voluntary return are quite nontransparent. It is unknown who, when, how and in what circumstances applies for it or not. In such situations migrants become victims of legal discrimination and do not have a possibility to vindicate their rights.

4. Activities of state bodies and specialized organizations (both local and international) are hidden from the public.

Most citizens don't even know about developments in the sphere of Belarusian migration legislation and what problems foreigners are faced with on their way from detention to deportation from Belarus.

II. Legal aspects

Among international treaties in the sphere of migration, in 2001 Belarus ratified the Convention relating to the Status of Refugees (1951) and the Protocol (1967). In 1993 Belarus signed and ratified the CIS Agreement on the Help to Refugees and Internally Displaced persons however, it is not applied in practice. Belarus did not sign the Migration for Employment Convention of 1949, so it does not have obligations in this sphere. A lot of international treaties have been signed in counteracting human trafficking, including the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (with the Final Protocol), the International Convention for the Suppression of the Traffic in Women and Children, the Convention on the Suppression of Traffic of Women of Full Age.

At the national level, the status of foreign citizens in the territory of Belarus is regulated by the Law dated 04.01.2010 [No105-3](#) On the legal status of foreign citizens and stateless persons in the Republic of Belarus and Rules of Stay of Foreign Citizens and Stateless Persons in the Republic of Belarus adopted by the Ruling of the Council of Ministers on 20.01.2006 No73.

Deportation is regulated by the Administrative and Criminal Codes, and also the Ruling on the Procedure of Deportation of Foreign Citizens and Stateless Persons adopted by the Council of Ministers on 15.03.2007 No333. In 2009 the Law On granting the Refugee Status, Additional and Temporary Protection to Foreign Citizens and Stateless Persons in the Republic of Belarus was adopted, as well as an instruction to it.

III. Problem description

3.1 Background

Facts of mistreatment of foreign citizens in detention centers in Belarus have been reported since 2006. Before the Ice Hockey World Championship in Minsk (9-25 May, 2014), 37 civil activists were voluntarily detained, according to the information of the human rights center *Viasna*. Most of the detainees, when serving administrative arrests, came across with foreign citizens who had been staying for quite a long time in the Detention Center of the Main Police Department of the Minsk City Executive Committee, awaiting for exile or deportation. The activists reported about conditions and peculiarities of detention of foreign citizens.

The loudest story of the first half of 2014 was a report about Patrick Mangalua, a citizen of the DRC, who was kept in the Detention Center from December 28, 2013 until June 5, 2014. We learned from his cellmates that Patrick had refused to communicate with other detainees for a long time, as well as to go for walks, to take a shower, though rare; he only lay in the bed, he had digestion and breathing problems, and was in a depressive mood. Also, there was information about uncaring and derogatory treatment of Patrick Mangalua on behalf of the detention center employees.

After learning about Patrick's story, a group of human rights and civil activists (campaign *No people are illegal*) started research of migration and refugees related activities carried out by state structures and respective civil organizations in Belarus.

3.2. Geopolitical peculiarities

On the one hand, Belarus neighbors the EU (bordering on Poland, Lithuania and Latvia), so the territory of Belarus is a transit zone for refugees and migrants moving westward. And the EU is interested in strengthening pass control on the border with Belarus. A special Panel on Migration and Asylum was created within the Eastern Partnership program. The UN HRC is holding a joint project with the Border Committee, financed by the European Commission.

On the other hand, Belarus has joined the Collective Security Treaty Organization within CIS together with Russia, Armenia, Azerbaijan, Tadjikistan, Kyrgyzstan, Kazakhstan. Several migration-related campaigns are held within it, for example, the campaign *Nelegal (An illegal person)*, and also mutual support (construction of a separate center for refugees in Minsk etc).

Within the Union State between Russia and Belarus, there is no border and customs control between the two states, and transport control was also cancelled on April 1, 2011. So, this route has become the main route for illegal migration.

3.3. Procedural aspects

There are three options to resolve the problem of foreign citizens who turn up in the territory of Belarus in illegal status:

1) granting asylum, the status of refugee / temporary protection in the territory of the Republic of Belarus;

2) voluntary return to the country of origin upon request of the citizen himself/herself;

3) exile / deportation.

Granting asylum and a refugee status is carried out only on application-based principle upon a request of a foreign citizen, provided that his/her being in the country of origin is impossible due to different factors threatening to life and liberty of this person. In Belarus, the questions of granting refugee status are tackled by the Department on Citizenship and Migration of the Ministry of the Interior of Belarus. An application for refugee status is considered by the Interior Ministry **from six to nine months**; all this time the foreign citizen stays free.

However, there is a shortened procedure lasting a month, and if an application for a refugee status is heard according to this procedure, the applicant can be held in detention, if he/she had been detained before filing the application. If a refugee status and asylum is denied, the applicant can appeal against the decision of the Department on Citizenship and Migration in court, to all three instances.

There is also a procedure of asylum, provided by the President of Belarus. This institute has existed since the Soviet time, and has not been abolished yet. Usually, an application for asylum is filed to the President after refusals from the Ministry of the Interior. The application is considered within around 6 months, and usually the result is the same as that of the Ministry of the Interior. There is no way to appeal against the decision.

Also, the UN HCR, through the Service of consultation of refugees of the Belarusian Movement of Medical Workers, holds its own procedure after refusals from the Interior Ministry. In case a person is recognized a refugee under the mandate of the UN HCR, the person is moved to a third safe country. There are no appeal possibilities, as well as any specific time limits for considering the application.

Voluntary return to a country of origin presupposes that the foreigner himself/herself files an application that he/she wants to return to the country of their permanent residence. This issue falls within the competence of the International Organization on Migration. IOM assists in purchasing travel tickets to the place of residence and in quicker departure from Belarus. With this procedure, passports are not stamped with "deportation" sign.

The toughest procedure is deportation / exile as a result of violating the legislation on migration. It should be noted that deportation requires a number of procedural actions.

In case a detainee's documents are missing or raise doubts, law enforcement agencies file a request to the country of origin asking to confirm the detainee's identity. The procedure might take up to several months, and all this term the foreigner stays in detention. As soon as identity is confirmed, the person can be deported. Deportation is covered by the deported foreigner, by the country of origin, or, in rare cases, by the Republic of Belarus.

IV. Problematic points

When exploring the topic, we faced the following problems:

4.1. Access to information

According to legislative norms, information registered during the process of obtaining asylum bears confidential character, for the sake of the applicant's safety. For that reason, nobody has the right to disseminate this information. But, in case there is no application for asylum from a foreigner, especially when the foreigner is being detained in Belarusian detention centers,

we feel that the fact of this detention is of interest to the general public, due to the fact that such detainee possesses a weaker legal status. Besides, in such cases the citizens' right to receive information about activities of state bodies of Belarus should be also observed.

The main information source about detentions of foreign citizens on the state borders of Belarus is the website of the State Border Committee of Belarus. It provides only general information, but sometimes exaggerates facts, gives one-sided information and with obvious violation of the presumption of innocence. To find out about the official status, names, location of detained foreigners, official requests were filed by physical persons, organizations and mass media, but part of state bodies (such as detention centers) refused to provide any information at all, and another part of state bodies only repeated general facts and did not reply to definite questions. With all this, it is very hard to find information about the foreign detainees, their status and fate, especially if they were detained by the Interior Ministry.

The abovementioned specialized organizations dealing with refugees consider situations only through the filter of relevance or irrelevance of the cases within their mandates; however, if the organizations deny assistance to a foreign detainee, they anyway do not disclose information to third parties, which makes any other assistance to the foreign detainee impossible. Lack of public control and closedness of the procedures masks the existing problems and covers up human rights violations.

4.2. Conditions of detention and restrictions on procedural rights of foreign citizens (according to information provided by Belarusian citizens who served administrative arrests and came across foreign citizens in the detention centers).

Foreign citizens and persons without citizenship have the following problems in relation with their status:

- The term for the detainees to stay in detention centers is not restricted by any time limits and may be quite long; detainees are held in extremely bad conditions adapted for serving a short-term arrest (up to 25 days, which is a maximum for several administrative violations at a time; but foreign detainees have to wait much longer until a decision on their further status is taken);

- There are no guarantees that foreign detainees get explanations of the reasons for their detention, of their rights and obligations: employees of migration services and detention facilities do not speak foreign languages well enough and do not resort to the help of interpreters in due time to explain procedural rights to detainees, which leaves them in a hard psychological state feeling uncertain and powerless; besides, state bodies do not inform the detainees' relatives about the detention and location of the detainees;

- Inhuman conditions of stay in detention: absence of regular walks (the law envisages at least one hour a day), lack of minimum hygienic items, lack of food, lack of ventilation, personal space, sanitary conditions etc.;

- Lack of medical aid;

- Decisions of the Department on Citizenship and Migration lack transparency; lack of agreement on informing the specialized organizations about detainees (such agreement exists between the organizations and Border Committee only);

- It is known about facts of beating foreign citizens and absence of possibilities to complain against such actions;

- Problematic points of exile / deportation procedures: detainees get no explanations on how to apply for asylum, to apply for voluntary return, to get help of IOM in paying the travel etc.

V. Recommendations

To improve the situation described above, we consider the following steps are needed:

for state bodies of Belarus:

- a) to consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Their Families, and also fulfil to the full extent all obligations under all international treaties already ratified;

b) to ensure all procedural rights of detained foreigners, bearing in mind their weaker legal status, and guarantee conditions equal with those guaranteed to citizens of the Republic of Belarus, especially pay attention to explaining their rights and obligations, the reason for detention, the right to asylum, the right to legal aid, interpreters, and humanitarian aid;

c) to foster more transparency in activities of migration services and other state bodies, ensure implementation of the right to access information for civil organizations and citizens, to ensure a possibility to provide assistance to detainees;

d) to ensure that relatives or other persons related to detainees are informed about the detention and whereabouts of the detainee;

e) to create specialized detention centers with enough facilities for keeping foreign detainees in conditions that would not be degrading;

to international organizations and representatives of specialized migration-related NGOs:

a) to work more openly within their statutes and mandates, to cooperate with civil society;

b) to observe all standards of international organizations and human rights within their own procedures while working with foreigners who apply for a refugee status or additional protection, and act in the applicants' best interests;

to the European Commission and governments:

a) to take into account the migration policy of Belarus when concluding visa agreements, to envisage additional legal guarantees for migrants;

b) to strengthen observation of the situation in migration, to encourage better access to information and to improve the migration-related situation in Belarus whenever is possible;

c) to raise the issue of ratifying the International Convention of Migrants' Rights, to raise the issues of violating migrants' rights in the Universal Periodic Review, as well as in the bilateral dialogue on human rights;

d) to encourage activities of new actors in the sphere;

e) to demand more responsibility from Belarusian actors within financed projects.