



ANALYTICAL REVIEW OF THE HUMAN RIGHTS SITUATION IN BELARUS IN 2015

MAIN TENDENCIES WHICH INFLUENCE THE HUMAN RIGHTS SITUATION

In the first half of the 2015, the human rights situation (primarily, civil and political rights situation) was characterized by presence of political prisoners, systemic problems in the legislation and legal practice in the spheres of freedom of expression, peaceful assembly, associations, right to a fair trial, and situation of journalists and human rights activists.

Then, in the second half of the year, during the election campaign, Belarusian authorities took important steps to alleviate the human rights situation in the country. On August 22nd, all six political prisoners, who had been sentenced to long-term deprivation of liberty, were discharged, namely Mikalai Statkevich, Mikalai Dziadok, Ihar Alinevich, Yauheni Vaskovich, Artsiom Prakapenka, and Yuri Rubtsou.

"Graffitiists", whose arrest before the trial had been criticized by human rights activists as political persecution, were released from custody. Ales Mikhalevich, a former presidential contender, who is a defendant in the criminal case initiated after the mass action of protest had been held after the presidential elections in 2010, was discharged under an undertaking not to leave the jurisdiction pending trial after he had returned to the country.

In the course of election campaign and after the results of the elections were announced, the authorities refrained from their habitual practice of brutal suppression of any protest actions and administrative detention of their organizers and participants.

Such changes, and the stance which Belarusian authorities took on the Ukrainian events together with active participation in the peace process in the Donbas region, were evaluated positively by the international community. The European Union and the United States of America mitigated sanction measures; contacts between foreign policy bodies of Belarus and western countries became more active. It also important to take into account that the Statement of Preliminary Findings and Conclusions made by the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (ODIHR OSCE), Parliamentary Assembly of the OSCE, and the Parliamentary Assembly of the Council of Europe, which was published next day after the elections day (i.e. on October 12th), contained wordings which allowed to speak about improvements, however minimal they were.

The dialogue between the EU and Belarus about the human rights recommenced; Belarusian officials visited Washington in the context of the dialogue with the USA about the human rights situation, which started at the same time.

Such active a warming of relations apparently became possible because of the growing interest of Belarusian leaders to the reduction of dependence on Russia, which influenced certain alleviation of the human rights situation as well.

Belarusian economy was under severe pressure caused by the reduction of profits from the oil processing and the fall of purchasing capacity of Russian consumers. Systemic problems with competitive capacity of Belarusian economic model kept manifesting themselves even more distinctly as the Russian support reduced; real earnings of the population reduced considerably. In this situation a chance to obtain a credit from the International Monetary Fund (IMF), in which Belarusian leaders are extremely interested, becomes a primary concern.

The difference between Russian and Belarusian interests became more acute because of the wish of Russian leaders to establish a military base in the territory of Belarus.

On the whole, systemic problems with human rights in our country persist. Certain positive steps and tendencies, which were recorded in 2015, have not yet become irreversible. It should be had in view while making plans for 2016 that the above-mentioned factors are long-term and it is most probably that their impact will matter to the development of the human rights situation.

FREEDOM OF SPEECH

Solution of the systemic problem of persecution of journalists, who contribute to foreign mass media without accreditation, became a positive change in the sphere of freedom of speech. This problem emerged as far back as April 2014; as of August 2015, the total sum of fines imposed on journalists amounted to circa Br150 million¹. The persecution became especially intense in summer of 2015, before the start of the presidential election campaign. But in August, when the election campaign was already under way, after Aliaksandr Lukashenko promised to solve this problem during the meeting with journalists of independent mass media, no new administrative cases were initiated against freelance journalists.

But the cases which had already been initiated, resulted in journalists being held administratively liable. In late November, three journalists from Homiel, Natallia Kryvashei, Larysa Shchyrakova, and Kanstantsin Zhukouski, tried unsuccessfully to appeal against disproportionately big fines (up to Br31.5 million) imposed on them by regional courts on the ground of police reports drawn for contribution to the Polish satellite channel Belsat². If their appeals are not satisfied, the journalists are going to appeal to the United Nations Human Rights Committee.

On April 17th, the Ministry of Information adopted the Decision No. On certain issues of state regulation of activity of distributors of printed, television, and broadcasting mass media. The decision regulates the order of registration of distributors of mass media, which has been stipulated by the amendments introduced to the law On mass media in the end of last year. All distributors of mass media (except editorial boards of mass media) were obliged to submit to the

¹ <http://baj.by/ru/content/prezident-efzh-obratilsya-k-aleksandru-lukashenko-v-dele-zhurnalistov-frilanserov>

² <http://baj.by/ru/content/troe-gomelskih-zhurnalistov-frilanserov-obratilis-k-generalnomu-prokuroru>

Ministry of Information the information needed to include them to the respective State Register until July 1st 2015. Activity of mass media not included to the Register is considered to be illegal, and the ministry has been entitled to impose sanctions on mass media distributors up to imposition of ban on their activity.

Additional registration of mass media distributors in the Ministry of Information complicated the activity of independent mass media, which had been selling a considerable part of their circulations through non-state mercantile businesses and entrepreneurs. Against this background, refusal of state enterprises which dominate the market, including Belposhta and Belsayuzpechat, to distribute independent newspapers became especially critical. For example, Belposhta (which is the monopolist in the sphere of distribution of newspapers by subscription) was the first to refuse to include *Barysauksia Naviny* into the subscription catalogue; this decision was grounded on that inclusion of a medium into the catalogue is a right of the enterprise, not an obligation. At the same time Belsayuzpechat refused to distribute the newspaper *Novy Chas* stating that "it is not possible at the time for technical reasons". Distribution had been denied before to editorial boards of *Hazeta Slonimskaya*, *Intex-press* and *Intex-press Plus* (Baranavichy), *SNplus*, *Svobodnye Novosti Plus*.

Journalists were prevented from access to information in different ways during the presidential elections; they were refused to be provided information about the course of voting, they were dismissed from election precincts, and prevented from taking photos and video filming.

On October 9th, Artsiom Liava, journalist of *Novy Chas*, was dismissed from the electoral precinct 129 of Leninski district of Minsk for taking photos as it allegedly disrupted the electoral process. Later, on October 11th, Artsiom Liava was not allowed to enter the electoral precinct 133 of Leninski district of Minsk as the record had allegedly been drawn against him for "violation of rules of conduct at the election precinct", though the members of commission had made no complaints against the journalist before.

On October 11th, a journalist of a Polish internet-edition Eastbook.eu tried to film the counting of votes at the electoral precinct 16 of Piershamaiski district of Minsk. Members of the electoral commission had fenced off themselves with chairs; in their opinion, observers were not supposed to go beyond the obstacle. In response to the journalist's request to provide her opportunity to watch the counting of votes, Natallia Kunouskaya, the head of the commission, claimed that it was her precinct and she dictated the rules there. When the journalist tried to film the counting of votes, one of the members of the commission said that she did not want to be filmed. The head of the commission claimed that the journalist "violated human rights" and forced her to walk away from the table³.

At the same time, as far back as July 1st, the Central Electoral Commission approved an exemplary scenario of the training of members of electoral precincts where, in particular,

³ <http://baj.by/be/content/predsedatel-uik-inostrannomu-zhurnalistu-ne-snimayte-vy-narushaete-prava-cheloveka-video>

interaction with journalists was considered and attention was drawn to their right to access to information, take photos, and video⁴.

Prevention from taking photos and filming occurred not only in the context of the elections. A few detentions of journalists were recorded in early 2015 when they were taking photos of administrative buildings (including Academy of Science and a civilian registry office). Law enforcement officials referred to some "internal directions" issued by Mikalai Mielchanka, deputy minister of internal affairs. The document allegedly "orients" police officers to find out why administrative buildings or police officers themselves are being photographed or filmed, and to detain those individuals who are taking photos and filming, for up to 3 hours, and to examine the materials they have filmed or photographed. The Ministry of Internal Affairs refused to provide the text of the document⁵.

FREEDOM OF ASSEMBLY

In 2015, situation with the freedom of assembly was characterized by a significant reduction of scale of repressions, which has been registered since late August. It became apparent through the renunciation of the established practice of brutal dispersal of unauthorized mass events and detentions of their organizers and participants. Nevertheless, it did not result into liberalization of the legislation and the practice of imposing sanctions against protest actions, and the organizers of unauthorized actions were held administratively liable, as disproportionately big fines were imposed on them.

Thus a number of opposition figures, including Mikalai Statkevich, a political prisoner discharged on August 22nd, held a series of unauthorized peaceful mass events August through December. Law enforcement authorities did not impede these events and did not detain anyone, but each time they held administratively liable individuals who were exercising their right to freedom of assembly. The most conspicuous case was the march on the occasion of the anniversary of the 1996 referendum, held on November 24th⁶. Police officers drew administrative reports against not only participants of the event, but against observers from human rights organizations and journalists as well. In particular, administrative records for participation in an unauthorized mass event were made against observers from the Republic Human Rights Public Association "Belarusian Helsinki Committee" and the Human Rights Centre "Viasna" Siarhei Kaspiarovich and Natallia Satsunkievich, as well as journalists Halina Abakunchym (Radio Svaboda), Katsiaryna Andreeva (*Narodnaya Volia*), and Dzmitry Halko (*Novy Chas*). The administrative procedure against the journalists was suspended later. The court of Maskouski district of Minsk, which considered the case, sent the records against the observers back to the district department of internal affairs for revision. Thus observers are still under threat of being held administratively liable.

Belarusian Helsinki Committee, HRC Viasna, and Educational Institution "Centre for Legal Transformation" prepared an appeal on that matter to four Special UNO Rapporteurs (on the situation of human rights in Belarus; on the situation of human rights activists; on the right to

⁴ <http://www.rec.gov.by/sites/default/files/pdf/Elections-PRB2015-Post19.pdf>

⁵ <http://baj.by/be/node/28027>

⁶ <http://news.tut.by/society/474180.html>

freedom of peaceful assemblies and associations; on the encouragement and protection of the right to freedom of opinion and expression), as well as to the OSCE Representative on Freedom of the Media. The authors of the appeal explained that the human rights organizations had been carrying out the monitoring of mass events for many years, preparing reports for state bodies with recommendations for improvement of the situation with the freedom of assembly in Belarus; yet they did not encounter such cases before. Human rights activists also called upon the Special Rapporteurs to discuss these developments with Belarusian authorities and visit Belarus to examine the situation with the exercise of main freedoms in the country. At the same time Belarusian Helsinki Committee addressed a request to the Main Department of Internal Affairs of Minsk Executive Committee to pass a resolution on withdrawal of administrative cases against the observers⁷.

In 2015 local executive bodies did not grant permission to hold mass events even in the areas they had previously designate for this purpose with their own decisions. In most cases, the ground for the refusal was the absence of agreements with police, medical service, or public utilities services on service of the events. It was the ground on which administration of Chyhunachny district of Vitsebsk prohibited human rights activist Pavel Levinau from holding the picket dated for Human rights day on December 10th, even though the declared duration of the picket was just one second⁸. Courts did not satisfied complaints against the refusal of local authorities to grant permission to hold mass events.

Meanwhile, in early May, the United Nations Human Rights Committee adopted a decision on the complaint filed by Pavel Kazlou, an activist from Brest, against the violation of his rights to freedom of assembly and freedom of expression. According to the complaint, Brest executive committee violated the above-mentioned rights when it prohibited him from holding a picket in Brest on September 27th 2009, by which he wanted to draw attention of local inhabitants to the problem of the legislation on citizens' applications being violated by officials. The United Nations Human Rights Committee acknowledged in its decision that civil rights had been violated, and referred to the decision of the authorities to prohibit individuals from collecting at a public place of their choice, as groundless⁹.

FREEDOM OF ASSOCIATIONS AND SITUATION OF NON-GOVERNMENTAL ORGANIZATIONS IN BELARUS

During all 2015 the practice of groundless refusals to register organizations persisted, including refusals on the ground of insignificant flaws being made in documents. No changes occurred even after certain improvements were registered in other spheres of human rights in the second half of the year.

In January 2015, the Public Association "Crisis Family Centre "Step" was denied registration on the ground of complaints against documents which should prove the presence of legal address.

⁷ <http://belhelcom.org/ru/node/19825>

⁸ <http://spring96.org/ru/news/81398>

⁹ http://naviny.by/rubrics/society/2015/05/06/ic_news_116_457664/

In early June, the Supreme Court considered a complaint filed by the initiators of founding the human rights associations "For Fair Elections" against the decision to deny its registration. It was the third time when the Ministry of Justice denied registration to the human rights association; two other times where in 2011 and 2013 respectively. The founders think that the reluctance of the Ministry of Justice to register their organization is politically motivated. They dismiss the formal grounds for the third refusal as being insignificant, technical, and easy to correct: the word "republican", which referred to the status of the organization, was added to its name in one place in documents which related to the name of organization. Some founders also failed to tell the full name of the organization precisely during the examination carried out by the Ministry of Justice, though all of them confirmed that they had participated in its founding.

As far back as October 2014, the United Nations Human Rights Committee adopted a decision on the second refusal to register the organization "For Fair Elections". According to the Committee, the Republic of Belarus violated the right of its individuals to freedom of associations when it failed to register the organization as far back as 2011, when it tried to obtain the status of a legal entity. Nevertheless, on June 11th 2015 the Supreme Court recognized the decision of the Ministry of Justice to deny registration of the organization as lawful and reasonable, again.

This case vividly illustrates numerous systemic problems in the sphere of freedom of association in Belarus: organizations apply for registration more than once and for a long time; they are denied registration because of insignificant technical violations or materials of the questioning of the founders of organization, which is not stipulated by law; courts do not overrule decisions of registering bodies to deny registration; and decisions of the United Nations Human Rights Committee on violations of freedom of associations are not executed.

On August 12th, the Supreme Court considered the complaint filed by the initiators of founding of the Youth Public Association "Modern View" against the refusal to register the organization. The Ministry of Justice denied its registration for the second time. This decision was also adopted on the ground of technical flaws: home phone numbers of two founders were not included into the list of founders, and a mistake was made in the name of the street where one of the founders lived. Nevertheless, the Supreme Court did not satisfy the complaint and recognized the refusal to register this organization as reasonable. At the same time, the Supreme Court substantiated the decision to deny registration with the argument that the list of founders was ineffective because the address of one of fifty founders was misprinted, and phone numbers of three founders were not indicated. The court did not take into consideration the argument that the registration body was obliged to provide to the founders time to eliminate these technical flaws.

On August 14th, the Ministry of Justice denied registration to the party Belarusian Christian Democracy (BHD). It was the fifth time when the ministry denied registration to this party. The list of grounds for the refusal includes failure to submit a number of documents concerning the founding congress of the party, requested by the ministry, and inaccurate personal data of some of the founders (incorrect places of employment or registration; absence of home and work phone numbers). Four individuals, who were stated as founders of the party, claimed that they had not participated in the founding of BHD, and had not put up any delegates for the congress.

Two individuals claimed they had not signed the document; one more individual was included in the list twice. Minor technical flaws were also listed as grounds for the refusal, which, according to the BHD representatives, could not impeach registration of a political party. Even except for the above-mentioned individuals listed by the registration body, the list of founders of the BHD includes more than 1000 individuals, this number being necessary for a party to obtain state registration. According to the statement of the organizational committee of the party, in many regions pressure was exerted on founders of the party in order to make them renounce their participation in founding of the party.

On September 14th, the organizational committee of the BHD party filed a complaint to the Supreme Court against the refusal to register it, but it was not satisfied by the court. On December 24th, activists of the organizational committee submitted documents for registration to the Ministry of Justice, again, for the sixth time. It should be noted that Belarusian authorities have not registered any new parties since 2000 in spite of more than 20 attempts to found them¹⁰.

On August 31st 2015, the Decree No. 15 of the President of the Republic of Belarus On Foreign Gratuitous Aid, which approved the Regulations on the procedure of receipt, accounting, registration, utilization of foreign gratuitous aid, control over its receipt and proper use, as well as registration of humanitarian programs. The document is of considerable importance to Belarusian non-governmental organizations which receive donations from abroad, but it did not change the established system of registration and utilization of foreign gratuitous aid. The system of registration of foreign aid which is stipulated by the decree, does not comply with international obligations of the Republic of Belarus and international standards in the sphere of freedom of associations, for example, OSCE Guiding Principles of Freedom of Association, according to which free access to the resources, including foreign and international ones, is an integral part of the freedom of associations.

The decree stipulates the necessity to register foreign aid preliminarily in the Department of Humanitarian Activity of the Office of the President. The limited list of goals for which foreign gratuitous aid can be received under the general procedure, has been preserved. As before, this list does not include educational activity, human rights, healthy lifestyle promotion, gender equality, or animal protection. At the same time, criminal responsibility for the violation of the procedure of utilization of humanitarian aid, which is criticized by the civil society, also remains in effect.

On October 23rd, a number of enactments on realization of projects (programs) of foreign gratuitous aid came into effect; the main enactment was the Decree No. 150 of the Council of Ministers of the Republic of Belarus of July 13th 2015. Despite the number of technical improvements, especially in the sphere of foreign gratuitous aid, the permissive system of registration of foreign gratuitous aid, which does not comply with international obligations of the Republic of Belarus, remained in effect, unamended. The new procedure and registration of the aid received from abroad makes life easier rather for state institutions, not non-profit organizations.

¹⁰ <http://spring96.org/ru/news/81747>

ADMINISTRATION OF JUSTICE

In 2015 tendency was recorded towards reduction of the percentage of acquittals in criminal cases, which had already been low. In the first half of the year, it constituted only 0.26% of 20,620 criminal cases which were considered and resulted in judgments; this number is almost twice as little as it was last year (0.4%).

During the period under review, two death sentences were passed by courts. On March 18th Homiel region court sentenced to death Siarhei Ivanou for murder of a 19-year old woman in August 2013. On November 20th Hrodna region court passed the second death sentence on Ivan Kuliesh, who was found guilty of murder of three women in a state of alcohol intoxication. As of today, Belarus is the last country in Europe and Central Asia where death penalty is still imposed.

On December 20th 2013, the Plenum of the Supreme Court adopted the Decision № On ensuring of publicity by administration of justice and on dissemination of information on the activity of courts¹¹. The established practice preserved of informing public about consideration of cases by courts, which are of high public interest. These cases are usually related to notorious murders, corruption scandals, and drug trafficking.

Human rights organizations (Educational Institution "Centre for Legal Transformation", HRC "Viasna", volunteer organization "Belarus Watch", RHRPA "Belarusian Helsinki Committee") analyzed how courts applied other regulations of the Decision № and published a monitoring report on openness and publicity of sittings of the courts in Minsk¹². The report was based on 148 sittings of court in 7 district courts of Minsk, which were held 1st through 30th July 2014.

The authors of the document noted the lack of uniformity in observance of the principle of openness and publicity of sittings of legal proceedings. The implementation of directions stipulated by the Decision № of the Plenum of the Supreme Court on the right of individuals who are present at an open sitting of court, to record its course (by means of sound recording as well), varies from court to court. Implementation of this right is often impeded; for example, courts of Piershamsiski and Partyzanski districts prohibited from carrying out sound recording in one third of cases.

According to the results of the monitoring, recommendations on quality implementation of the decision № of December 20th 2013 of the Plenum of the Supreme Court "On ensuring of publicity by administration of justice and on dissemination of information on the activity of courts", were developed for the Supreme Court, Minsk City Court, district courts of Minsk, and bodies of internal affairs. In particular, the organizers of the monitoring recommended that the Supreme Court should increase control over the implementation of the Decision №, regulate the right to record court session (by means of sound recording as well), and ensure such procedure

¹¹ http://www.court.by/jurisprudence/Post_plen/general/b508a0b355b551ef.html

¹² <http://belhelcom.org/node/19778>

of holding sessions in courts of general jurisdiction, which would make it possible for all comers to be present at the proceedings¹³.

Notification of parties to the proceedings about the time and venue of the proceedings through text messages has become more frequent. Though it had been expected to be convenient, such approach proved to be unpopular with the public, because such text messages were often sent the day before the session, and there was always risk to overlook them. The Supreme Court clarified its position on this question and confirmed that it is an appropriate way of notification if text message complies with the content of subpoena, and the fact of its sending and delivery was recorded. The Supreme Court also referred to the fact that text messages are used for notification abroad, including Russia. Nevertheless, the PA "Belarusian Association of Journalists" has drawn attention to the fact that such way of notification is allowed in Russia only with a prior consent of the party, and such text message is sent to the number which has been provided by the party himself. Time limit which will allow the party to get prepared to the proceedings should also be observed. No such guaranties are stipulated by the Belarusian legislation.

¹³ http://belhelcom.org/sites/default/files/bhc_courts-2014_report_v5.pdf