

# **OSCE Rapporteur's Report on Belarus**

By prof. Emmanuel Decaux

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## **SUMMARY**

At the request of fourteen Participating States the Human Dimension Mechanism of the OSCE was triggered according to §.12 of the 1991 Document of Moscow in order to establish a fact-finding mission to examine the fulfillment of the provisions of the OSCE human dimension in Belarus and to produce an independent and impartial report containing facts, proposals and advice. The OSCE rapporteur has “*to examine concerns regarding the demonstration that took place there on 19 December [2010] as well as developments since then*” and “*to investigate all matters relating to : the arrest, detention, conviction and sentencing of several hundred of protestors and many journalists; allegations of torture, other cruel, inhuman or degrading treatment or punishment, physical coercion and intimidation; and the apparent harassment of human rights activists, lawyers, opposition political parties, independent media and civil society organizations. Belarus’s actions with regard to the demonstrations may constitute a particularly serious threat to the fulfillment of its OSCE commitments in the human dimension*”.

The OSCE rapporteur, Prof. Emmanuel Decaux, fulfilled his task with independence and impartiality. He stresses the importance, specially in the context of the present crisis, to protect persons with whom he was in relation, according the Moscow Document : “*The participating States will refrain from any action against persons, organizations or institutions on account of their contact with the mission of experts or of any publicly available information transmitted to it*” (I §.6). Due to the non-co-operation of Belarus, the rapporteur was not able to go to Minsk, but had intensive consultations in Paris, Geneva, Vienna, Warsaw and Vilnius, with international institutions, members of the diplomatic community, representatives of NGOs and civil society.

The fact-finding mission indicates the seriousness, duration and scale of gross and systematic human rights violations, since the events of 19 December. This concern not only a long list of individual cases of great concern, as “political detainees”, but a system of social control, by fear and harassment, torture and blackmail, phone tapping, false evidences and forced confessions, with arbitrary and discriminatory measures and sanctions against persons and their families. Beneath some legal niceties, there is neither independent justice, nor rule of law. It is urgent for Belarus to respect its international commitments in the framework of the OSCE and the UN and to accept a full and permanent monitoring of the human rights, by independent organs and bodies.

For his part the OSCE rapporteur dealing with his mandate was particularly careful not to impede other efforts to promote diplomatic co-operation with Belarus or to facilitate the monitoring of specific situations. His recommendations are not of a political nature, dealing with diplomatic relations, but of a legal nature, in regard to progressive respect and effective implementation of the OSCE principles and commitments, as of the international standards in matter of human rights, democracy and rule of law. Belarus used to describe itself as a “*country in the heart of Europe*”. The Belarusian authorities have to interact with their partners and neighbours, as well as with the whole international community, to make this utopia a reality for its own people’s sake.

## RECOMMENDATIONS

### §.1 – ON THE EVENTS SINCE 19 DECEMBER.

The Belarus ought, under international monitoring, supervision and follow up, to warrant the right to justice and to fight impunity, in the context of the events of 19 December and to the following crackdown against political candidates and civil society activists, in:

1. conducting an independent and impartial investigation, into the circumstances of the attack against presidential candidate Vladimir Neklyaev and his supporters on 19 December, with in mind the responsibility of the State to respect and protect human rights. This concerns both the attack in the street of Mr Neklyaev and the forcibly taking of Mr Neklyaev away from the hospital, to be brought to the KGB prison.
2. conducting an independent and impartial investigation, into the indiscriminate and disproportionate use of force by the law enforcement officers when clearing the Independence Square from participants of the main demonstration, while seemingly non reacting against the small group of people involved in window-smashing in the Government House;
3. organizing a judicial review of all decisions imposing administrative liability on participants of the unsanctioned peaceful demonstration on 19 December, taking into account the international standards and proportionality of the punishment;
4. investigating on reported ill-treatment, including torture and degrading conditions of detention, of people arrested and detained in connection with the 19 December events, and examine their complaints of being denied access to counsel and any contact with family, and of being deprived of proper registration and of *habeas corpus*;
5. investigating on conditions during pre-trial detention and methods of criminal investigations, on reports of cruel and inhuman conditions of detention and other ill-treatment, including psychological pressure, such as threats on the family, and physical abuse, particularly in the KGB prison. The State has a duty to conduct an independent and impartial inquiry in order to bring sanction to the perpetrators and to offer reparation to the victims;
6. ensuring effective access to justice for all detainees, suspects and defendants, refrain from denying them access to legal counsel, and allow defence lawyers to carry out their duty of representing the defendants. The authorities should stop any pressure against lawyers, such as unfounded withdrawal of their licenses or threats of such withdrawal;
7. initiating a review of court judgments in cases where individuals were found guilty under various provisions of the Criminal Code for their participation in, or organisation of, the 19 December protests, and ensure fair trial in all pending cases;
8. allowing members of NGOs and mass media to exercise their activities and stop the harassment and arbitrary searches of NGOs and editorial offices and homes of their members and staff; stopping confiscations of office equipment and materials; refraining from unsubstantiated warnings against mass media and the initiation of

criminal libel proceedings against critics of public officials; stopping firing activists from their jobs and expelling students from educational institutions.

## **§.2 – ON THE DOMESTIC FRAMEWORK.**

The Belarus ought to reform its domestic legislation and its practice(s) in order to confirm itself with its international obligations, and to offer effective judicial and non-judicial remedies to persons alleging a violation of human rights. It implies taking progressive measures, with the support of international co-operation and technical assistance:

1. ensuring independence of the judiciary and amend domestic legislation to ensure compliance with international fair trial standards, including presumption of innocence, access to legal counsel, effective right to appeal, and transparency of proceedings; guaranteeing independence of lawyers and stopping any harassment of and pressure on lawyers, such as withdrawal of their status as a defence lawyer, arbitrary audits and banning their participation in training programs abroad; restoring such status to lawyers unfairly stripped of it in connection of their role in defending political figures, civil society activists and journalists;
2. taking effective measures for the full and absolute prohibition and elimination of torture, inhuman, cruel and degrading treatment in detention centres, prisons, penitentiary colonies and closed institutions; ensuring that conditions of detention in pre-trial detention centres, prisons, colonies and closed establishments conform with international standards prohibiting torture, inhuman, cruel and degrading treatment; prohibiting judges from accepting confessions and statements obtained under torture, inhuman, cruel and degrading treatment; ensuring effective, impartial and full investigation into all reports of ill-treatment of detainees and prisoners;
3. taking effective measures to prohibit and eliminate the practice of enforced disappearances; ensuring full and impartial investigation into cases of enforced disappearances, in order to identify the perpetrators and bring them to justice; suspending from duty, pending investigation, any law enforcement officers reported or suspected to be implicated in enforced disappearances;
4. taking effective measures to guarantee freedom of association in accordance with relevant international standards and the OSCE commitments; reviewing domestic legislation, in particular with a view to simplify registration of non-governmental associations, trade unions and political parties; decriminalising involvement and membership in unregistered nongovernmental organisations (Art. 193-1 of the Criminal Code); discontinuing the practice of arbitrary denials of registration to NGOs; putting an end to pressure and harassment against NGOs, in particular human rights groups, in the form of arbitrary inspections, searches, confiscation of property, warnings, etc.; stopping unlawful attempts to prevent interaction between domestic human rights groups and international organisations;
5. taking effective measures to guarantee freedom of assembly in accordance with international standards; bring the Law on Mass Events in accordance with the International standards and the OSCE Guidelines on Freedom of Peaceful Assembly; in

- particular, reviewing the procedure for requesting authorisation of a public meeting and stopping discriminatory practices in authorising meetings; putting an end to indiscriminate and disproportionate use of force in dispersing peaceful demonstrations;
6. taking effective measures to guarantee freedom of expression and information in accordance with international standards and the recommendations of the OSCE Representative on Freedom of the Media; in particular, taking legislative and practical measures to guarantee independence of the media, freedom of information and access to information on the internet; abolishing the "two warnings rule" whereby a media outlet may be closed following two official warnings; prohibiting any direct and indirect censorship of the media; decriminalizing "libel" and "insult"; adopting non-discriminatory procedures for media registration and accreditation of foreign journalists; repealing the Presidential Decree of February 2010 on the Internet Regulation which requires registration of online resources, user identification in internet cafes, and storage of e-zines for 12 months, and limits access to "prohibited" content; protecting journalists from pressure, harassment and attacks;
  7. taking effective measures to ensure safety of human rights defenders, so that they and other civic activists may engage in their legitimate activities and exercise their freedoms of speech, association and assembly without fear for their safety, free from harassment, pressure and undue restriction, according to the UN Declaration on Human Rights Defenders; ensuring effective investigation into threats, attacks and harassment targeting human rights defenders and civic activists, and bring the perpetrators to justice; allow trans-border co-operation and international funding for the NGOs;
  8. establishing independent and pluralistic national institutions for the protection of human rights, in accordance with the International Principles Relating to the Status of National Institutions (The Paris Principles);
  9. creating independent and efficient mechanisms of oversight of the law enforcement agencies, in particular in the field of monitoring of phone tapping and of protection of personal data;
  10. setting an action plan for human rights education and training, in primary and secondary schools as well as for professional schools, specially for law enforcement officials, in consultation with all the stakeholders according to the UN strategy.

### **§.3 – ON THE INTERNATIONAL FRAMEWORK.**

The Belarus ought to consolidate its international commitments in the field of human rights and develop its co-operation with relevant independent bodies, by *inter alia* :

1. ratifying, as soon as possible the Optional Protocol to the UN Convention against Torture and other cruel, inhuman or degrading treatment or punishment, and the second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;
2. ratifying, as soon as possible the Rome Statute of the International Criminal Court and the International Convention for the Protection of All Persons from Enforced Disappearance;

3. taking in due consideration the final observations and the decisions of treaty-bodies, in particular the provisional measures of the Human Rights Committee;
4. addressing a standing invitation to the thematic procedures, specially, the Working Group on arbitrary detention, the Special Rapporteur on torture, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur for freedom of assembly and association, the Special Rapporteur on the right to freedom of opinion and expression, the Special Rapporteur on the situation of human rights defenders, and fully co-operate with these mandate in answering in due time to their demand of information and to their urgent appeals;
5. implementing the UNESCO Convention against discrimination in Education and accessing to its Protocol, and fully respecting the obligation of the International Covenant on Civil and Political Rights and of the Convention on the Rights of the Child, in providing effective access to higher education to pupils and students, without arbitrary interference or political threat.

#### **§.4 – ON THE FOLLOW UP OF THE REPORT.**

The Participating States and the OSCE institutions should take action on the basis of the present report to deal efficiently with an alarming situation of systematic and gross violation of human rights, by *inter alia* :

- publishing this report, as soon as possible, in its entirety, including the annexes, widely disseminate its Russian and Belarusian translations, and make available its electronic version on the OSCE website, in a user-friendly manner ;
- transmitting it to the UN High Commissioner for Human Rights for official distribution to members of the UN Human Rights Council in order to facilitate a coordinated follow up, in the light of the eventual decisions that the Council's can take during its next sessions and specially the nomination of a Special Rapporteur on Human Rights in Belarus;
- forwarding this report to the regional organisation as the Commonwealth of Independent States, the Council of Europe, the European Union, and to the international financial institutions (the World Bank, the European Bank for Reconstruction and Development, the European Investment Bank) and other organisations for international cooperation (including the Eurasian Economic Community);
- reinforcing the international presence in the field, and its point of contact with human Rights defenders, in cooperation with Belarusian and international civic organisations and other international organisations, in order to develop a strategy for bringing an effective and comprehensive compliance with OSCE commitments, including cooperation in all areas of concern listed above;
- welcoming that the OSCE Parliamentary Assembly discuss the findings and recommendations of this report at its next session and adopt a resolution on the situation of human rights in Belarus.

## I – INTRODUCTION : THE OSCE RAPPORTEUR’S MISSION

### A – The nature and scope of the Moscow Mechanism

This report is presented, in the framework of the Human Dimension Mechanism of the OSCE. In the Document of Moscow of 1991, the Participating States emphasized that the human dimension mechanism “*constitutes an essential achievement of the OSCE process, having demonstrated its value as a method of furthering respect for human rights, fundamental freedoms, democracy and the rule of law through dialogue and co-operation and assisting in the resolution of specific relevant questions. In order to improve further implementation of the CSCE commitments in the human dimension, they decide to enhance the effectiveness of this mechanism and to strengthen and expand it (...)*” (I §.1).

Twenty years later, during the Astana Summit of 1st and 2 December 2011, the Heads of State and Government reaffirmed their commitments : “*3 (...) We further reaffirm that all OSCE principles and commitments, without exception, apply equally to each participating State, and we emphasize that we are accountable to our citizens and responsible to each other for their full implementation. We regard these commitments as our common achievement, and therefore consider them to be matters of immediate and legitimate concern to all participating States (...).6. (...) Convinced that the inherent dignity of the individual is at the core of comprehensive security, we reiterate that human rights and fundamental freedoms are inalienable, and that their protection and promotion is our first responsibility. We reaffirm categorically and irrevocably that the commitments undertaken in the field of the human dimension are matters of direct and legitimate concern to all participating States and do not belong exclusively to the internal affairs of the State concerned. We value the important role played by civil society and free media in helping us to ensure full respect for human rights, fundamental freedoms, democracy, including free and fair elections, and the rule of law. 7. (...) Respect for human rights, fundamental freedoms, democracy and the rule of law must be safeguarded and strengthened*”.

The Moscow Mechanism is a part of this legacy, with its multi-level approaches and all participating states, as well as the OSCE institutions as a whole, have the core responsibility to respect, protect and implement the principles, commitments and mechanisms of the human dimension, in particular the effectiveness and the efficiency of the Moscow Mechanism.

The present OSCE rapporteur has to stress, once again, that the use of the mechanism is not an unfriendly measure, but an instrument of dialogue and co-operation to further respect of human rights, and the fulfillment *de bona fide* of an international commitment. As expressly stipulated in the Moscow Document, “*The inviting State will co-operate fully with the mission of experts and facilitate its work. It will grant the mission all the facilities necessary for the independent exercise of its functions. It will, inter alia, allow the mission, for the purpose of carrying out its tasks, to enter in the territory without delay, to hold discussions and travel freely therein, to meet freely with officials, non-governmental organizations and any group or person from whom it wishes to receive information*” (I, §.6).

Fourteen participating States invoked §.12 of the 1991 Document of Moscow in order to establish a fact-finding mission of rapporteurs to examine the fulfillment of the provisions of the OSCE human dimension in Belarus and to produce an independent and impartial report containing facts, proposals and advice. In a letter of 6 April 2011, representatives of the Fourteen participating States ask the cooperation of the Government of Belarus on the arrangements for the fact-finding mission (PC.DEL/313/11) In a letter to the Director of ODIHR, the following day, the fourteen Participating States defined the scope of the “*fact-finding mission to Belarus to examine concerns regarding the demonstration that took place there on 19 December as well as developments since then. We expect the mission to investigate all matters relating to : the arrest, detention, conviction and sentencing of several hundred of protestors and many journalists; allegations of torture, other cruel, inhuman or degrading treatment or punishment, physical coercion and intimidation; and the apparent harassment of human rights activists, lawyers, opposition political parties, independent media and civil society organizations. Belarus’s actions with regard to the demonstrations may constitute a particularly serious threat to the fulfillment of its OSCE commitments in the human dimension*”. The Fourteen indicated “*that they have appointed Professor Emmanuel Decaux of France from the resource list of experts (ODIHR.GAL/1/11 of 7 January 2011 refers) to serve as a rapporteur on the fact-finding mission*”. They look forward to working with ODIHR and the Government of Belarus “*on the establishment of the mission, in accordance with the timelines and co-operative procedures foreseen in the Moscow Document, in particular paragraph 6*” (PC.DEL/314/11).

Unfortunately, Belarus from the start tried to undermine the legitimacy of the Moscow Mechanism as well as its usefulness and its feasibility, both in speech of its permanent representative during the PC of 7 April 2011 (PC.DEL/339/11/Rev.1) and in a written answer to the ODIHR Director, Ambassador Lenarcic, on the 12 April 2011. The permanent representative of Belarus, Ambassador Sychov write that “*As there are no valid grounds for invoking paragraph 12 of the 1991 Moscow Document with regard to Belarus and the initiative of the 14 participating States is in, clear contradiction with the relevant provisions of this document, the Belarusian side does not consider that the procedures, stipulated by the 1991 Moscow Document especially in paragraphs 6 and 10 are in any way applicable to Belarus in the particular case. In view of the above, Belarus will not appoint a rapporteur. We see no reason to consider Prof. Decaux as “the rapporteur on the fact-finding mission to Belarus” and to accept him in such a capacity in the country*”. As if its denial of its obligation of co-operation was not enough, the Belarus adds an blunt innuendo : “*I would like to emphasize that since the ODIHR experts are currently involved in trial monitoring in Belarus related to the issue raised by the 14 participating States, the Belarusian side strongly believes that your Office is not in a position to act in this particular case “as the OSCE Institution charged with the tasks in connection with expert or rapporteur missions according to the Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE”*. This would run counter to the relevant provisions of the 1991 Moscow Document and could compromise the current work of the ODIHR trial monitors”. Ambassador Sychov concluded his letter to Ambassador Lenarcic : “*Therefore, I call on you to abstain from being further involved in the above initiative of the 14 delegations*” (ODIHR.GAL/21/11).



In a letter of the 15 April 2011, Ambassador Kuchynova Smigolova, on behalf of the Fourteen, (PC/DEL/381/11) “*express their regret that Belarus has not appointed a rapporteur for the fact-finding mission within the six days provided for in the Mechanism. The Moscow Mechanism envisages the possibility of a single OSCE rapporteur carrying out the mission, should the requested State decline to appoint a rapporteur. We are confident therefore that our objective of an impartial, full and transparent investigation of the recent events in Belarus can be met. We call once again upon the Belarusian authorities to meet their commitment to allow the mission to enter Belarus without delay and to meet freely with all those who might provide the information needed for the mission. The Moscow Mechanism is an OSCE mechanism that was approved by consensus of all participating States and is based on the concept of cooperation. We hope that the Mission’s report will support efforts to build cooperation and dialogue. We look forward to receiving the mission’s report as soon as practicable, and to the discussion in the Permanent Council that will follow*”.

### **B – The implementation of the mandate of OSCE rapporteur**

If the Moscow Mechanism was triggered by fourteen participating States, the mission is by itself, as an early warning and fact-finding mechanism of the human dimension, a temporary function of the OSCE. While deploring the lack of co-operation of the requested State, the main responsibility of the OSCE rapporteur is to complete his mandate, with independence, impartiality and confidentiality in order to protect sources of information, as stressed in the Moscow Document: “*The mission may also receive information in confidence from any individual, group or organization on questions it is addressing. The members of such missions will respect the confidential nature of their task*” (I, §.6, al.2). Pursuant the Moscow Document, “*The CSCE rapporteur(s) will establish the facts, report on them and may give advice on possible solutions to the question raised*” (I, §.11). In doing so the main responsibility of the rapporteur is towards the implementation of the human rights commitments and particularly the integrity of the Moscow Mechanism, on behalf of the whole community of OSCE participating States, including Belarus.

The OSCE rapporteur was delivered a diplomatic passport by the French Ministry of Foreign and European Affairs, but his application for a visa was quickly returned by the Belarusian Embassy in Paris, without any explanation. The rapporteur expected that duly time of consideration and constructive dialogue will initiate the ways and means of a well prepared visit, according to the letter and the spirit of the Moscow Mechanism. It is only possible to deplore the systematic non-co-operation of Belarus, first for the constitution of a team of experts, secondly to authorize access in the country to the fact-finding mission, thirdly to share useful information with the OSCE rapporteur. While regretting this systematic denial of the Moscow Document, the OSCE rapporteur fulfilled his mandate with the constant hope of a future co-operation for relevant information and follow up of his recommendations, in the best interest of Belarus and its citizens.

The OSCE rapporteur went in Vienna, on 6 and 7 of May, to meet the Fourteen Participating States in order to determinate the effective start and the deadline of the mission. Due to the

lack of co-operation of Belarus and the following practical and logistical difficulties, it was agreed between the concerned participating States that end of May was the date for the submission of the report. The OSCE rapporteur went in Warsaw on 13 and 14 of May and in Vilnius on 22 till 24 of May. He had official meetings and informal contacts with OSCE institutions, members of the diplomatic community and of the civil society. He had contacts with several NGOs and academics in Paris and went also to Geneva where he had on 18 of May a useful consultation with the Office of the HCHR.

The OSCE rapporteur wants to underline the great professionalism and legal expertise of NGOs, and thanks *Amnesty International*, the *Fédération internationale des droits de l'homme* (FIDH) and *Human Rights Watch*, as well as the “*Committee on International Control over the Human Rights Situation in Belarus*”, and other NGOs from Belarus, for their work, dedication and support. He had a lot of direct and indirect contacts with Belarusian individuals and associations, it is impossible to quote each one nominally, in order not to impede their future work on the turf and their own safety. In order to have a large scope of relevant information, the rapporteur consulted various media, in particular the official websites of Belarusian authorities and of news agencies. The OSCE rapporteur regrets the closure of the OSCE Office in Minsk, at the end of 2010 and welcomes the on-going commitment of ODIHR and the proactive role of the Representative for the Freedom of Media.

It is necessary to underline that OSCE institutions have, in their responsibility to support the Moscow Mechanism as an original part of the OSCE architecture, the special duty to protect the persons involved in contacts with the OSCE rapporteur. As indicated in the Moscow Document, “*The participating States will refrain from any action against persons, organizations or institutions on account of their contact with the mission of experts or of any publicly available information transmitted to it*” (I, §.6 al.2). The OSCE institutions have a special duty in this regard, after the end of the mission of the OSCE rapporteur. The OSCE need a strong commitment in order not to abandon human rights defenders which are entitled of its special protection.

For his part the OSCE rapporteur dealing with his mandate was particularly careful not to impede other efforts to promote diplomatic co-operation with Belarus or to facilitate the monitoring of specific situation of human rights. His recommendation are not of a political nature, dealing with diplomatic relations, but of a legal nature, in regard to progressive respect and effective implementation of the OSCE principles and commitments, as of the international standards in matter of human rights, democracy and rule of law. Belarus used to describe itself as a “*country in the heart of Europe*”. The Belarusian authorities have to interact with their partners and neighbors, as to the whole international community, to make this utopia a reality for its own people sake’s.

## II – THE LEGAL FRAMEWORK

### A – The international framework

The regional commitments of Belarus in the OSCE community ought to be put in the broader context of its international obligations, as Founding Member of the UN. The UPR was a recent opportunity to have a broad up-to-date review of the situation of human rights in Belarus, as the report of the Working Group on the Universal Review was adopted on 14 May 2010 (A/HRC/15/16), with the usual documentation consistent of the National report (A/HRC/WG.6/8/BLR/1), the compilation of UN documents (A/HRC/WG.6/8/BLR.2) and the summary of 29 stakeholders' submissions (A/HRC/WG.6/8/BLR.3).

A shadow report for the “UPR Review of Belarus, 2010” was presented by FIDH, Belarusian Helsinki Committee (BHC), Belarusian Association of Journalists (BAJ), “Viasna” Human Rights Center, Assembly of Democratic Non-Governmental Organizations of Belarus and Congress of Independent Union (Belarus). Positively this paper stresses that *“beginning in August 2008 Belarusian authorities undertook specific steps to improve the situation by organizing the early release of political prisoners, in the first place, and by decreasing the level of suppression against opposition activists. This reflected positively on the lowering the atmosphere of fear in the society. In some instances the authorities have not resorted to excessive bans on the ability to realize political and civil rights, however demonstrating limiting and discriminating practices in other cases”*. But the document added that *“changes in legislation that would signify any systemic progress towards democratization have not yet been adopted”*. The cooperation with human rights organizations which was curtailed since 2003, looked temporary better : *“The situation began to change in the beginning of 2009 when the Community Advisory Council under the Presidential Administration of Belarus, whose goal was defined as discussion of the most serious socio-political issues and whose participants included a representative of the BHC, as well as the civic coordinating committee on mass media, which contained a representative of the BAJ, were established”*. But at that time, the report noted that if those bodies conducted several sessions, *“so far their work hasn't been very effective”*.

Belarus is a State Party of core international human rights instruments and presented reports to treaty-bodies with some undue delays, especially for the Human Rights Committee where the last report was considered in 1996. But Belarus tried more recently to move along and submitted its report the Committee on Economic, Social and Cultural Rights on 19 November 2010 (E/C.12/BLR/4-6) while the last report was considered in 1997<sup>1</sup>. Belarus submitted a report to the Committee against torture on 21 December 2009 which was overdue since 2000 (CAT/C/BLR/4). The Committee on the Elimination of Discrimination against Women adopted its concluding observations on Belarus (CEDAW/C/BLR/CO/7), after consideration of the national report on 27 January 2011. The Committee on the Rights of the Child adopted its concluding observations on Belarus on 4 February 2011 (CRC/BLR/CO/3-

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<sup>1</sup> The commitment of Belarus is illustrated by the participation, since 2000 until 2012, as expert independent of the Committee on Economic, Social and Cultural rights, of its actual Foreign Minister, Mr Sergei Martynov.

4). It is very useful to have a regular review of the human rights issues with competent treaty-bodies and the need to up-graded the monitoring by the HRC and the CAT is self-evident.

As State Party of the Additional Protocol of the International Covenant on Civil and Political Rights, Belarus is the object of a regular case-law of the Human Rights Committee, with 27 communications since 2000, and, for example, 4 communications examined in 2009 and 5 communications examined in 2010. The views of the Committee are specially relevant for the interpretation and application of the international obligations of Belarus, on political rights and judicial remedies, even if the cases concerned presidential elections of 2001 (*Mikhail Marinich v. Belarus*, CCPR/C/99/D/1502/2006, views adopted on 16 July 2010) and 2006 (*Viktor Korneenko and Aleksandar Milinkevich v. Belarus*, CCPR/C/95/D/1503/2007, views adopted on 20 March 2010) or parliamentary elections of 2004 (*Valery Lukyanchik v. Belarus*, CCPR/C/97/D/1392/2005, Views adopted on 21 October 2009; *Vladimir Katsore v. Belarus*, CCPR/C/99/D/1377/2005, views adopted on 19 July 2010; *Leonid Sudakenlo v. Belarus*, CCPR/C/100/D/1354/2005, views adopted on 19 October 2010) .

Belarus didn't use to make standing invitation to the thematic procedures, even if in November 2009 it invited eight special procedures mandate to visit the country at a date to be mutually agreed. In the past, a visit of the Special Rapporteur on the independence of Judges and Lawyers was made en years ago (E/CN.4/2001/65/Add.1) and a visit of the Working Group on Arbitrary Detention in 2004 (E/CN.4/2005/6/Add.3). But It could be noted that the Special Rapporteur on the situation of human rights defenders has made a pending request for a country visit in 2002, 2003, 2004 which was renewed in 2010 (A/HRC/16/44). A visit of the Special Rapporteur on torture is still pending, after a request in 2005 and a follow up request in 2007.

More recently, The UN High Commissioner for Human Rights, Mrs Navi Pillay, issued two public statements about the human rights situation in Belarus, the first on 21 december 2010, the second on 21 February 2011. It is necessary to quote them *in extenso*. The first statement is an immediate reaction to the brutal crackdown in the aftermath of the presidential elections:

*GENEVA (21 December 2010) – The UN High Commissioner for Human Rights, Navi Pillay, expressed deep concern about the violence against and detention of opposition candidates and their supporters in the aftermath of Sunday's presidential elections in the Republic of Belarus.*

*"While I condemn any calls for or resort to violence on the part of some radical factions in the opposition," Pillay stressed, "I would like to note that the relevant authorities must fully respect and ensure their political opponents' rights to peaceful demonstrations and freedom of speech."*

*"I am very much concerned by the use of force against demonstrators who were not participating in hostilities, violence against and abduction of opposition candidates and their supporters, detention of opposition activists and human rights defenders, and searches and harassment of independent non-governmental organizations," the High Commissioner said. Violence broke out following the 19 December presidential elections resulting in a leading opposition candidate being attacked on his way to a mass rally in Minsk, hospitalized and*

*later abducted by unidentified persons. Attempts by some radical supporters of opposition candidates to break into a government building were followed by mass detentions of opposition candidates and their supporters, human rights activists, journalists and harassment of civil society.*

*The UN human rights chief called for the immediate release of opposition candidates and their supporters who did not call for and were not involved in any violence. She also called upon the Government of Belarus to ensure that human rights defenders, journalists and civil society organizations are free from any harassment. "I urge all parties to refrain from violence and demonstrate full respect for human rights," she said.*

The second public statement of the UN High Commissioner for Human Rights followed the harsh sentencing in the first trial against opposition leaders and supporters in Belarus.

*GENEVA (21 February 2011) – UN High Commissioner for Human Rights Navi Pillay on Monday expressed deep concern at the harsh sentencing of Vasil Parfyankou in the first of dozens of trials against opposition leaders and supporters in Belarus.*

*Parfyankou was arrested while participating in a rally protesting the outcome of the presidential elections on 19 December. He was found guilty of participating in mass disorder and sentenced to four years in a top security jail.*

*"The prosecution and sentencing are particularly troubling given that he, together with dozens of other opposition activists, is facing trial for exercising his right to freedom of peaceful assembly and freedom of expression," Pillay said.*

*"The continued detention of political opponents, harassment of civil society and intimidation of the independent media are serious human rights violations."*

*Between 30 and 40 of those individuals detained following the 19 December crackdown on protestors remain in custody, many in the special detention centre of the KGB of Belarus. While some prominent opposition figures and journalists have been released, and some put under house arrest, more detentions and arrests took place at the beginning of this year.*

*Pillay noted that the length and conditions of pre-trial detention in Belarus do not comply with the standards stipulated in the International Covenant on Civil and Political Rights. She cited in particular that the power to extend pre-trial detention lies with a prosecutor rather than a judge.*

*"We have also received reports of the continued intimidation of lawyers who provide legal counsel to the detainees and journalists," she said, noting that the Justice Ministry of Belarus has reportedly cancelled the licences of at least three defence attorneys who defended opposition leaders and a journalist.*

*Acts of harassment and political and administrative pressure against human rights defenders and NGOs also continue, she noted, including arrests, interrogation, office raids, confiscation of material, and intimidation designed to prevent contact with international and intergovernmental organizations.*

*"Human rights defenders should be able to do their work in a safe environment without putting themselves at risk and without fear of reprisals, intimidation, threats or stigmatization," the High Commissioner said.*

*“Indeed, I have stressed before to the Belarus Government and I shall say it again: states have a duty to protect human rights defenders, journalists and civil society from threats, retaliation or pressure stemming from the legitimate exercise of their work in defence of human rights.”*

*The High Commissioner reiterated her calls for the immediate release of political detainees, including the remaining presidential candidates. She also urged the Government to take seriously its international commitments pertaining to human rights, noting in particular its lack of due cooperation with the Human Rights Committee, which monitors implementation of the ICCPR.*

More recently it is Mr Thomas Hammarberg, the Commissioner for Human Rights of the Council of Europe who published on 25 May 2011, a “public comment” on Belarus which is a very crude synthesis of the present state of human rights in the only country of the region which is not a full member of the Council of Europe:

*“In Belarus, the crackdown on opposition politicians, civil society groups, human rights defenders and media continues. While no less than seven hundred demonstrators were arrested in the evening after the elections of 19 December, several of them have now been brought to court, have faced unsubstantiated charges and received extreme sentences. The presidential candidate Andrei Sannikov, who was badly ill-treated, has now been sentenced to five years of hard labour for having protested against election fraud. Others who stood trial with him got between three and three and a half years in prison.*

*The charge was “organising mass disturbance”. The court held the well-known activists among the 30 000 peaceful demonstrators at Independence Square responsible for the broken windows on the House of Government caused by a small number of hooligans some distance from the main and orderly demonstration.*

#### *False charges against peaceful demonstrators*

*No proof has been shown for such a link between the peaceful mass demonstration and the violent actions by a few at the doors of the government site. The connection was rather that the police – after having failed to protect this building - responded by attacking the peaceful demonstrators with brutal, excessive force*

*The politicised court procedures have been accompanied by stigmatising statements by government officials. Human rights defenders have been accused of being traitors and a fifth column. These attacks acquired a particularly senseless and menacing dimension after the terrorist attack at Minsk metro station on 11 April – as if there was any connection between this awful crime and human rights defence. One of those targeted was Ales Bialiatski, the head of the Human Rights Centre “Viasna”.*

#### *Human rights defenders targeted*

*There have been numerous reported cases of intensified restrictions of general activities of human rights defenders and activists. They have been harassed and repeatedly questioned by*

*law-enforcement officers. Private homes of leading members have been searched, warnings issued against individuals and organisations, and computers and data storage devices confiscated. The offices of major human rights defence organisations, such as Belarusian Helsinki Committee and Human Rights Centre “Viasna”, and of independent media have been searched.*

*The Ministry of Justice has requested that two independent newspapers should be closed and individual members of the journalists’ association and other media professionals have received official warnings from both the Belarus KGB and the Prosecutor’s office.*

*These repressive actions represent an intensification of the previous restrictions against independent civil society groups. A Presidential decree from 1999 obliging NGOs to re-register has resulted in many of them being deleted from the official register - they were prevented from re-applying and subsequently closed down.*

#### *Registration rules used as an instrument of repression*

*This decree also placed constraints on the activities of non-registered NGOs that continued to operate. Criminal liability was introduced for member activities, imposing sentences of up to two years imprisonment. This offence was then included in the Criminal Code as Article 193.1 and has become an instrument for exerting pressure and control over human rights actors. UN proposals that it be repealed have been ignored.*

*Belarus is not a member of the Council of Europe, and at present it does not meet the requirements for membership. One consequence is that its citizens cannot benefit from support from the Council’s mechanisms and programs in support of human rights, democracy and rule of law.*

*It is all the more important that the fate of the Belarusian people is not forgotten, and that we extend constructive support to civil society in this European country”.*

The situation of Belarus is again on the top of the agenda of the Human Rights Council for its next session, while the last report of a Special Rapporteur on Belarus was delivered in January 2007 (A/HRC/4/16). It is with this international background, specially at the UN that the evaluation of the situation since 19 December 2010 must be conducted, in the prospect of OSCE principles and commitments.

#### **B – The domestic framework**

It is not possible in the time-limit and scope of the mission to endeavor a full survey of the political regime of Belarus or of its “system”, notably the nexus between secret services and economic activities in relation with presidential funds, without transparency and accountability. But two important *caveat* are necessary.

First the notion of rule of law (*Etat de droit*), as defined in the Human Dimension, implied not only “*a clear separation between the State and political parties; in particular, political parties will not be merged with the State*” (Copenhagen, 5.4) but also that “*the participating States will: ensure that their military and paramilitary forces, internal security and intelligence services, and the police are subject to their effective direction and control of the*

*appropriate civil authorities; maintain and, where necessary, strengthen executive control over the use of military and paramilitary forces as well the activities of the internal security and intelligence services and the police; take appropriate steps to create, where they do not already exist, and maintain effective arrangements for legislative supervision of such forces, services and activities”* (Moscow, 25).

Second, the existence of an independent and impartial justice is a core element of rule of law, offering domestic remedies for human rights violations by the State of its agents. The separation of powers and the independence of the judges and lawyers are pre-conditions of any proper system of protection of human rights. The existence of national institutions of promotion and protection of human rights, as independent and pluralist bodies according to the UN “principles of Paris”, can reinforce the legal system, providing consultation with civil society, public advice and accountability. But the right to effective justice and the fight against impunity implied access to the truth, reparation for the victims and full responsibility for the perpetrators of violations, according to the UN guidelines on impunity. Non-judicial remedies or humanitarian measures can be a useful step to ease the plea of victims and families, but can’t be a form of cover up of violations and a denial of effective justice. Without this effective and fundamental justice, the comments on legal niceties can be only a “*faux-semblant*”, an eye-wash, as a Potemkin village.

With these two *caveat* in mind, the legal nature and functioning of the Constitution of Belarus could be assessed by an independent body of experts, as the European Commission for Democracy through Law, the *Venice Commission*, as Belarus is an Associate Member State<sup>2</sup> or by any appropriate OSCE institution. In the past, the Venice Commission made a lot of useful comments on the legislation of Belarus.

According Article 21 of the Constitution of Belarus, on the Protection of Rights and Liberties, “*Safeguarding the rights and liberties of citizens of the Republic of Belarus shall be supreme goal of the State. The State shall guarantee the rights and liberties of the citizens of Belarus that are enshrined in the Constitution and the laws, and specified in the State's international obligations*”.

The Constitution of 1994 enshrines basic principles of rule of law, such as:

Article 6 [Separation of Powers]

*“The State shall rely on the principle of dividing power into legislative, executive, and judicial power. State bodies, within the limits of their powers, shall be independent. They shall cooperate among themselves and check and counterbalance one another”*.

Article 7 [Rule of Law]

*“(1) The State and all the bodies and officials thereof shall be bound by the law and operate within the limits of the Constitution and the laws adopted in accordance with it.  
(2) Legal enactments or specific provisions thereof which are deemed under the procedure*

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<sup>2</sup> Mr Alexander Maryski, from the Constitutional Court, is the Belarusian member of the Venice Commission.



*specified in law to be contrary to the provisions of the Constitution shall have no legal force. (3) Enforceable enactments of state bodies shall be promulgated or published by some means specified in law”.*

Article 8 [International Law]

*“(1) The Republic of Belarus shall recognize the supremacy of the universally acknowledged principles of international law and ensure that its laws comply with such principles. (2) The conclusion of international agreements that are contrary to the Constitution shall not be permitted”.*

Futhermore, as indicated in the “voluntary pledges and commitments” of Belarus for its attempt to be elect member of the HRC in 2007, *“Belarus cooperates and pledges to continue to engage constructively with the United Nations human rights mechanisms. Belarus is a party to almost all human rights instruments, including six core human rights conventions, and is committed to fulfilling its international commitments in good faith. A firm supportive of fair and open dialogue on human rights, Belarus is firmly committed to active, constructive and transparent cooperation with special thematic human rights procedures, including the provision of all requested information (...) At the national level, Belarus will do its utmost to ensure that all international human rights instruments to which it is a party are fully observed. Belarus will continue its activities to promote and protect human rights (...)”* (A/61/849).

### **III - THE FACT-FINDING MISSION <sup>3</sup>**

The rapporteur wishes to indicate that this inventory has been constantly updated during the mission. But much useful information was delivered too late to be fully integrated to the present report, and still are currently coming, confirming the general evaluation. All the available information has not been used here, for confidentiality sake’s or for lack of double checking. The relevant facts, confirmed by various credible sources, which are mentioned in the following developments, constitute an overall illustration of the course of events in Belarus. The report ought to be a starting point for permanent international monitoring on the ongoing situation of human rights, since six months.

#### **A – POLITICAL RIGHTS**

##### **1. The presidential election**

Before the presidential election of 19 December 2010 was held, there were already genuine concerns about the compatibility of Belarusian Electoral Law with OSCE standards. According to a joint opinion by the OSCE/ODIHR and the Venice Commission, the 2009 amendments to this legislation *“are unlikely to resolve the underlying concern that the*

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<sup>3</sup> The OSCE Rapporteur wants to thanks his academic assistants for their help in collecting the material for this section of the report, Mr Arnaud de Nanteuil and Mr Spyridon Akypis, *docteurs* in public law of the University of Paris II.

*legislative framework for elections in Belarus continues to fall short of providing a basis for genuinely democratic elections*<sup>4</sup>. Moreover, according to the ODIHR, the local Belarusian elections of 2010 “were overshadowed by serious and systematic violations of democratic electoral standards”<sup>5</sup>.

On 16 September 2010, in accordance with commitments before the OSCE, the Ministry of Foreign Affairs of the Republic of Belarus invited the OSCE/ODIHR to observe the 19 December 2010 presidential election. The OSCE/ODIHR undertook a Needs Assessment Mission (NAM) to Belarus from 27 to 29 September. On 14 October 2010 the NAM released a Report in which it recommended the deployment of an OSCE/ODIHR election observation activity. Upon invitation of the Belarus authorities, the OSCE/ODIHR deployed an Election Observation Mission (EOM) on 15 November 2010<sup>6</sup>.

During the course of the campaign the CEC gave a warning to two candidates while the Prosecutor General’s Office issued a warning to five candidates.

The process significantly deteriorated during the vote count. Here is the assessment of the OSCE/ODIHR: “*Observers assessed the vote count as bad and very bad in almost half of all observed polling stations. Clear instances of ballot stuffing and tampering with the results were noted by international observers. The count was largely conducted in a non-transparent manner, generally in silence, which undermined its credibility and raised questions about the integrity of the election. In over a third of PECs, access of observers was limited. Tabulation of results was assessed as bad or very bad in about one fifth of observed TECs.*”<sup>7</sup>

According to convergent information, in many instances international observers reported that counting was conducted silently and at a sufficient distance as to make evaluation of the count impossible.

In many precincts ballots from early voting and those cast using mobile ballot boxes were mixed together with those cast at the precinct on election day. Moreover, it was reported that vote totals changed as the ballot boxes were transported between local precincts and the territorial election commission offices.

On 25 December, the CEC announced the official results according to which Alexander Lukashenko received 79.6 per cent; some 6.5 per cent of voters voted against all candidates. The CEC did not publish disaggregated results by precinct, either on its website or in any other format. The voter turnout was established at 90.65 per cent.

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<sup>4</sup> [http://www.venice.coe.int/docs/2010/CDL-AD\(2010\)012-e.pdf](http://www.venice.coe.int/docs/2010/CDL-AD(2010)012-e.pdf)

<sup>5</sup> Republic of Belarus Presidential Election 19 December 2010, 27-29 September 2010, OSCE/ODIHR Needs Assessment Mission Report, 14 October 2010, p. 5.

<sup>6</sup> Republic of Belarus Presidential Election 19 December 2010, OSCE/ODIHR Election Observation Mission Final Report, 22 February 2011, p. 6.

<sup>7</sup> Republic of Belarus Presidential Election 19 December 2010, OSCE/ODIHR Election Observation Mission Final Report, 22 February 2011, p. 3.

## **2. Harassment of candidates and their relatives since 19 December 2010**

### *a. Harassment of the candidates*

Ten presidential candidates – including the incumbent President – were registered to run for the election of 19 December 2010 : Ryhor Kastusyou, Alyaksandr Lukashenka, Alyaksei Mikhalevich, Uladzimir Nyaklyaeu, Yaraslau Ramanchuk, Vital Rymasheuski, Andrei Sannikau, Mikalai Statkevich, Viktar Tsyareschanka and Dzmitry Uss <sup>8</sup>.

According to officially released information, three presidential candidates, Ryhor Kastusyou, Vital Rymasheuski and Andrei Sannikau, were arrested and detained during the dispersal of the rally in the evening of 19 December 2010. During the night from 19 to 20 December, four presidential candidates, Alyaksei Mikhalevich, Uladzimir Nyaklyaeu, Mikalai Statkevich and Dzmitry Uss, were also arrested and detained.

From their arrest up to now, the following changes have taken place in each candidate's situation<sup>9</sup>:

*Ryhor Kastusyou:* He was arrested on 19 December 2010 and released the same day. He was interrogated thrice later. He gave a written recognizance not to leave. He received a subpoena to appear in the public prosecutor's office on 26 April 2011 in order to be interrogated about the April 11, 2011, Minsk metro terrorist attack.

*Alyaksei Mikhalevich:* He was detained on 20 December 2010 in his apartment for participation in the 19 December 2010 protest and put into custody in the KGB pretrial prison. He was charged under article 293 of the Criminal Code. On 19 February 2011 he was released on recognizance not to leave. He fled Belarus on 14 March 2011 and asked for asylum in the Czech Republic.

*Uladzimir Nyaklyaeu:* On 19 December 2010 he was seriously beaten and lost consciousness on his way to a peaceful protest rally. He was taken to hospital because of a brain injury. He was kidnapped from the hospital a few hours later. He was later found in the KGB pretrial prison and charged under article 342, para.1, of the Criminal Code. He was not allowed to meet with a lawyer. He was detained in the KGB pretrial prison until 29 January 2011, then transferred to home arrest under KGB guard. On 20 May 2011 he was sentenced to a two-year suspended jail term.

*Vital Rymasheuski:* He was injured by the riot police during the assembly of 19 December 2010. He was arrested and detained in the pretrial prison of the KGB. He was charged under article 293 of the Criminal Code. On 31 December 2010 he was released under a written

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<sup>8</sup> Transcription of names is not uniform, and different spellings have been encountered, for both Russian and Belarusian spelling are used. This is for example the case on the website of the Belarus Permanent representation at the United Nations. The rapporteur made an effort to keep only one spelling per name, but some differences may remain.

<sup>9</sup> See also Annexes.

undertaking not to leave. On 20 May 2011 he was sentenced to a two-year suspended jail term. On 3 January 2011, he was warned by the KGB not to hold a press conference since that would be considered as a violation of the written undertaking not to leave he had signed. On 19 January 2011 he was interrogated by the KGB.

*Andrei Sannikau:* He was ill-treated during the dispersal of the 19 December 2010 rally and suffered injuries to his leg. He was being driven to hospital with his wife, the journalist Iryna Khalip, when the car was stopped by law enforcement officers and he was taken into custody in the KGB pretrial prison. On 29 December 2010 he was charged under article 293, para.1, of the Criminal Code. He was denied the right to correspond with anybody for a month. His health condition deteriorated after his arrest and he did not receive adequate medical treatment. He was allowed to meet for the first time with his lawyer on 22 March 2011, that is almost three months after his arrest. On 13 May 2011, during his trial, he stated that his detention conditions were inhumane and that during his detention he was systematically subjected to torture. On 14 May 2011 he was sentenced to 5 years of imprisonment in a high security penal colony. On 17 May Andrei Sannikau's wife and his mother obtained a permission to meet with him from the Partyzanski district court in Minsk. On 18 May 2011 they visited the KGB detention facility and they were told that he was not detained there. They went to a second detention facility and they were given the same answer. They phoned a third detention facility and were again given the same answer. Later the same day, his lawyer told them that he was, in fact, being detained in the KGB detention facility. Neither his lawyer nor his family have been given access to him.

*Mikalai Statkevich:* He participated in the 19 December 2010 rally. He was detained and put into the KGB pretrial prison, where he was on a hunger strike from 19 December 2010 to 12 January 2011. On 18 May 2011 the Prosecutor demanded eight years in prison for Statkevich.

*Dzmitry Uss:* He was detained in the night of 19-20 December 2010 after the rally of 19 December. He was released on the same day under a written undertaking not to leave. On 18 March 2011 he was charged under article 293, par. 1. He reported pressure on behalf of the investigation aiming at making him testify against his friend Mikalai Statkevich, another former presidential candidate.

#### *b. Harassment of candidates' relatives*

On 19 December 2010 Irina Khalip, one of the leading journalists in Belarus, was arrested along with her husband Andrei Sannikau. On 29 December 2010 she was charged under article 342, para.1, of the Criminal Code. On 29 January 2011 she was released under house arrest. On 16 May 2011 she was sentenced to a two-year jail term suspended for two years.

The KGB had reportedly notified the child welfare services on 23 December 2011 to take action concerning the custody of Andrei Sannikau's and Irina Khalip's three-year-old son, Danil Sannikau. On 19 January 2011 the child welfare services announced that Danil would stay with his maternal grandmother. However, on 27 December 2011 employees of the child welfare services visited Danil Sannikau at his day care centre and informed his grandmother (who had been warned about the visit) that she would need to complete procedures –

including a health examination and an evaluation of the financial situation – to establish her custody over the child or he could be taken into care by State. The boy is still in the custody of his maternal grandmother.

According to convergent information, because Uladzimir Nyaklyayeu’s wife asked for help when he was being kidnapped from the hospital, she was locked into an adjacent room.

According to convergent information, Milana Mikhalevich, the wife of opposition leader Ales Mikhalevich who was released on 19 February 2011 on his own recognizance, was stopped some 100 kilometers from Minsk and not allowed to leave the country. Officials told her this was because of the criminal investigation against her husband. It is worth mentioning that she was not even declared a witness in an investigation.

## **B – FREEDOM OF ASSOCIATION**

### **1. Registration requirements**

Article 36 of the Belarusian Constitution<sup>10</sup> as well as the law provide for freedom of association. Article 41 of the Constitution provides for the rights of citizens to “form trade unions”. The law allows workers, except state security and military personnel, to form and join unions. However, regulations applicable to registration restrict the exercise of this freedom in practice. All political parties, NGOs, trade unions, and other organizations of the civil society must register with the Ministry of Justice<sup>11</sup>.

The Ministry of Justice reviews and approves all registration applications. Registration procedures require applicants to provide, among many other, a physical address in a nonresidential building. However, in order for them to be able to rent a private space – as it is required by the law – they first have to be registered, which is a vicious circle preventing them from developing legal activities. Moreover, participation in the activities and support of a non-registered association constitute a criminal offense.

### **2. Facts**

#### *a. Political parties: premises protection*

According to convergent information, on 10 May 2011 the Minsk Economic Court authorized the eviction of the Belarusian Popular Front from its central office. The eviction application was lodged by the public housing department in Minsk. The Belarusian Popular Front has been in this office since the beginning of the 1990s. According to the Council of Europe

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<sup>10</sup> Article 36. Everyone shall have the right to freedom of association. Judges, employees of the Prosecutor's Office, the staff of bodies of internal affairs, the Committee of State Control and security bodies as well as servicemen may not be members of political parties or other public associations that pursue political goals.

<sup>11</sup> For documents required when registering for the first time, please refer to the following webpage: <http://law.by/work/EnglPortal.nsf/6e1a652fbefce34ac2256d910056d559/265573fc8dd1f687c2256dc10026a2ef?OpenDocument> (source: National Legal Internet Portal of the Republic of Belarus).

Parliamentary Assembly's report on Belarus of 11 April 2011, "the office served as a legal address to several NGOs and political organizations" and, therefore, "these organizations risk being shut down if they lose their legal address"<sup>12</sup>.

According to the Council of Europe Parliamentary Assembly's report on Belarus of 11 April 2011, "Central or regional offices of political parties and movements (e.g. United Civil Party, "For Freedom" movement, Belarusian Social-Democratic *Hramada* Party and Belarusian Popular Front) were searched. Often computers and data storage devices were confiscated."<sup>13</sup>

b. *NGOs: registration*

The *Viasna* Human Rights Center has been denied registration. On 16 February 2011, Mr Ales Bialiatski, Chairman of the unregistered human rights defense centre *Viasna* and vice-president of the FIDH, received an official warning from the General Prosecutor's office for "acting on behalf of an unregistered organization". According to paragraph 1 of Article 193 of the Belarusian Criminal Code, such action constitutes a criminal offense punishable by up to two years of imprisonment.

The Helsinki Committee risks having its activities suspended because on 12 January 2011 it received an official written warning from the Ministry of Justice concerning the Committee's complaint over pressure exerted against the lawyers of accused activists. The complaint had been addressed to the UN Special Rapporteur on the independence of judges and lawyers. The warning stated that the complaint was discrediting the Belarusian Ministry of Justice and law-enforcement organs and demanded its withdrawal in two days time. Article 28 of the Republic of Belarus Law No. 3254-XII on Public Associations as amended on October 4, 1994 – as of January 4, 2010 – provides that "Activity of public association, union may be suspended for the term of one to six months by the decision of the court upon an application of the appropriate registering body in the case if this body has issued a written caution and the public association, union failed to eliminate violations which have given ground for the issuance of the written caution within the established term or to inform the appropriate registering body of their elimination with presentation of confirming documents". The Belarusian Helsinki Committee lodged a complaint against the warning of the Ministry of Justice to the Supreme Court, but the Court dismissed the complaint. On 9 March 2011 the Political Affairs Committee of the Council of Europe Parliamentary Assembly decided to ask the Venice Commission to assess the compatibility of the aforementioned warning with universal human rights standards .

On 5 May 2011 the Brest justice board refused to register the Baranavichy civil association of Ukrainians Kabzar on the grounds that it did not have a legal address.

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<sup>12</sup> Council of Europe, Parliamentary Assembly, Political Affairs Committee, Situation in Belarus, Rapporteur: Mrs Sinikka Hurskainen, Information note on developments following the adoption of PACE Resolution 1790 (2011) on 27 January 2011, 12 April 2011, para. 65, p. 8.

<sup>13</sup> *Ibidem*, para. 61, p. 7.

On 27 May 2011 the chief department of justice of Mahiliou regional executive committee denied state registration to local public associations “Mahiliou Center for Strategic Development *Impulse*”.

In 2010 the Belarusian authorities refused six times to register *Molodoi Front* (Youth Front), an NGO registered in the Czech Republic.

*c. NGOs: premises' protection*

On 20 December 2010 law enforcement officers raided offices of the human rights organization *Viasna* and briefly detained 10 activists who were subsequently released without charge. Police seized all computer equipment, as well as still and video cameras. The same day, authorities searched the offices of the *Tell the Truth* campaign and *Charter97*. Later the same day law enforcement officers in plainclothes attempted to gain entry into *Viasna*'s office and were refused it because they did not have a search warrant. On 17 January 2011 police again searched *Viasna*'s office and the home of its president, Ales Byalyatski. On 29 December 2010, the Molodechno (Minsk District) branch of *Viasna* was searched and a computer, memory sticks and disks were confiscated.

On 5 January 2011 authorities searched offices of the Helsinki Committee – a registered organization – and confiscated several computers.

On 29 December 2010, the home of Eva Tonkacheva, director of The Centre for Legal Transformation, was searched by KGB officers. Documents connected with her human rights activities and a SIM card were confiscated.

On 6 January 2011, the Gomel office of the human rights organization Legal Initiative was searched as was the home of a member of the organization, Leonid Sudalenko. On 26 January 2011 Leonid Sudalenko's flat was searched again.

On 26 January 2011 an NGO resource centre in Gomel was also searched and equipment was removed.

*d. Trade Unions: registration*

According to convergent information, no independent unions have been established since 1999. According to the official website of the government-controlled Federation of Trade Unions of Belarus (FTUB), “The Federation of Trade Unions of Belarus is the largest association of workers of Belarus, the number of its members amounts to 94.8% of the total of working population of the country”<sup>14</sup>. The Belarusian Congress of Democratic Trade Unions

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<sup>14</sup> [http://www.fpb.by/en/menu\\_left/about\\_us](http://www.fpb.by/en/menu_left/about_us)

(BCDTU) – with four affiliates – is the largest independent union umbrella organization with nearly 10 000 members.

On 14 January 2011 KGB officers searched the head office of the REP Trade Union, and as a result documents, all computers, electronic data carriers, and union documentation were seized.

## **C – FREEDOM OF EXPRESSION, FREE MEDIA AND INFORMATION**

### **1. Freedom of expression**

Many people were arrested and detained for having exercised their right to freedom of opinion and expression. On 10 May, Minsk police detained two EHU students Katsiaryna Klimko and Natallia Drylenka for alleged using of foul language. However, they were later released without charges. On 12 May, Navapolatsk activist Viktor Kalesnik was fined BYR 70,000 for “swearing”. On 13 May, Vileika activist Valiantsin Susla was fined BYR 1,050,000 for resisting fingerprinting. An appeal against similar fine to Homel UCPB leader Vasil Paliakou was dismissed. On 13 May, Homel police detained pro-democratic activist Uladzimir Niapomniashchykh for wearing a T-shirt with anti-Lukashenka slogans. On 14 May, Minsk police detained deputy leader of the Young Front movement Mikola Dzemedzenka. The activist was reportedly taken to Minsk detention centre.

Human rights organisation members are also put under pressure for their opinion. On 16 February 2011, Mr. Bialiatski, FIDH Vice-President and President of Human Rights Center Viasna received a written warning stating that the activities of Human Rights Center Viasna were illegal because the organisation was not registered with the Ministry of Justice. FIDH recalls that “*the Human Rights Center Viasna applied for registration several times since 2003. The Belarusian Supreme Court denied its registration request for the last time on August 12, 2009, thereby contravening a July 2007 United Nations Human Rights Committee decision, which stipulated that the dissolution of Viasna violated Article 22.1 of the International Covenant on Civil and Political Rights and that the co-authors of the complaint were entitled to an appropriate remedy, including the re-registration of Viasna*”.

Among many facts, one can mention that on 17 April, a well-known blogger (Yauhen Lipkovich) was sentenced by the Minsk district court to a BYR 525,000 fine, on charges of “insulting” the president of the Union of Writers of Belarus General Mikalai Charhinets. The charges stemmed from an action on March 19, during which Lipkovich burned Charhinets’s book *The Mystery of the Oval Office*.

On 16 May, Minsk Partyzanski District Court sentenced deputy chair of the Young Front Mikalai Dzemedzenka, to an administrative detention for 15 days for attempting to hang a white-red-white flag. Before the trial started, he announced that he was going on a hunger strike.



On 18 May, Homel police once again detained the activist of the UCP and the Movement “For Freedom” Uladzimir Niapomniashchykh. The charges stemmed from an inscription on his T-shirt “For Belarus Without Lukashenka” and “Enough, Fed Up!”.

Many testimonies attest furthermore that people that refusing to give their fingerprints were fined up to BYR 700,000.

## 2. Freedom of media

The OSCE Representative for the Freedom of Media, Ms Dunja Mijatovic, has published 6 statements about her worries concerning the freedom of media in Belarus since 19 December. On the 16 May 2011, she declared that “*I am still hopeful to be given an opportunity to visit Belarus in the nearest future, to meet all concerned, and to assist the country in finding a way out of the current media freedom crisis*”<sup>15</sup>. She has been ready to visit Belarus since the beginning of January 2011, but her proposals remain without answer.

### a. Custody, arrest of journalists

On 19 December, 23 journalists were put in custody. “*Although a record number of them were accredited to cover the elections, and their working conditions had been improved, brutal treatment of media representatives by law-enforcement agencies in the aftermath of the election shattered signs of progress*” said D. Mijatovic<sup>16</sup>. Both foreign and national journalists were affected. Mariya Antonova, of *Agence France Presse*, was reportedly released but had to leave the country, which he did on December 20<sup>th</sup>. Among the other arrested journalists were Michael Schwirtz and James Hill of the *New York Times*, Anton Kharchenko and Victor Filyaev of television channel Russia Today. One can also mention the case of Andrzej Poczobut, reporter of the *Gazeta Wyborcza* Polish newspaper, who started studying the case file of his criminal charges under Par. 1 Art. 368 of the Criminal Code (“insult of President”) and Par. 1 Art. 367 (“libel of President”). As a result he may be imprisoned for up to 2 and 4 years of imprisonment, respectively. He is currently in custody.

In the beginning of January, D. Mijatovic urged authorities to immediately release imprisoned journalists. On 1<sup>st</sup> February, she noted that “*Security officers have raided the editorial offices of several independent media outlets, confiscating computers, video cameras, DVDs and other equipment. In addition, the Minsk-based Autoradio radio station had its broadcast license cancelled*”<sup>17</sup>.

Dunja Mijatovic specially called for attention on the fate of journalists Natallya Radzina and Iryna Khalip, who were indicted and arrested in the wake of the 19 December presidential election. They were arrested and charged with taking part in and organizing “mass disorder”. Though they were released at the end of January 2011, a judgement of the 16 May sentenced I. Khalip to a two-year suspended jail term in connection with the December 2010 events. D. Mijatovic commented: “*I once again voice my concern over the continuous deterioration of*

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<sup>15</sup> <http://www.osce.org/fom/77565>

<sup>16</sup> <http://www.osce.org/fom/74671>

<sup>17</sup> <http://www.osce.org/fom/75277>

*media freedom in Belarus. Today's sentencing of Irina Khalip, one of the leading journalists in Belarus, is another attempt to silence differing and critical voices in Belarus. While I am relieved that Irina Khalip is no longer under house arrest, she will face administrative restrictions. I hope that Irina will be able to continue her courageous work without pressure and interference. There is still hope that this verdict will be overturned on appeal. Journalists in Belarus must be able to work freely, without being intimidated. Repression of the media needs to end immediately*"<sup>18</sup>. The other journalist, N. Radzina, is still waiting for her trial, and faces prison term up to 15 years.

b. *Harassment of journalists*

Since the beginning of January, Dunja Mijatovic noted that several journalists working for independent media outlets had their homes searched and equipment confiscated. She urged Belarusian authorities to put an end to these hostile actions against independent media and release Khalip and Radina immediately.

The US Department of State Report indeed states that *"On December 25, according to press reports, authorities raided the Minsk offices of ERB, which was officially registered in the country but based in Poland, and Belsat TV, unregistered in the country and based in Poland. Over 50 pieces of office and studio equipment were seized from the ERB offices without the presence of its journalists, leaving little more than tables and chairs. In anticipation of the raid, Belsat staff had vacated their premises several days earlier. On December 31, KGB agents searched the apartment of Belsat reporter Katsyaryna Tkachenka, seizing her laptop and SIM cards"*.

The report goes on : *"On December 28, three KGB officers searched for three hours the residence of Andrey Skurko, chief editor of the independent Nasha Niva, and confiscated computer equipment. That same day security forces raided offices of the Belarusian PEN Center and Nasha Niva in downtown Minsk. Officers seized 12 computers and electronic storage media. On December 31, KGB officers raided the residence of Nasha Niva photojournalist Yuliya Darashkevich in search of video and photos from the December 19 demonstration. They seized two laptops, flash drives, recording devices, cameras, and disks"*.

In April, D. Mijatovic warned against continuous harassment of journalists, that took place since the beginning of 2011. In a letter sent in recent days to Belarusian Foreign Minister Sergei Martynov, she appealed to the government's *"wisdom and understanding to change these unacceptable practices toward media"*, either national or foreign. In her letter, D. Mijatovic listed cases where journalists and media were subject to pressure and said she was gravely concerned about *"criminal investigations against journalists Irina Khalip and Natalia Radina"*. She also stressed several events: the reject of the legal appeal of broadcaster Avtoradio aimed at reinstating its broadcasting license ; failure of *Narodnaya Volya* newspaper to annul a warning by the Ministry of Information ; cases of imprisonment of Belarusian and Russian journalists.

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<sup>18</sup> <http://www.osce.org/fom/77565>

Many actions were carried out in order to put pressure upon journalists, and encourage them not to investigate too deeply about the 19 December events :

On 6 January journalist Victoria Kolhina who is shooting movie about beaten journalists for TV-channel “Belsat” was called for questioning to KGB. After conversation with the investigator with presence of attorney of Victoria, she signed acknowledgment about nondisclosure of investigation<sup>19</sup>.

On 12 January Andrei Bastunets, Deputy Head of the Belarusian Journalists Association was questioned in KGB<sup>20</sup>.

On 10 May, Vitsebsk Kastychnitski District Court fined local journalist Uladzislau Staraverau BYR 875,000 for alleged swearing and resisting arrest back on 26 April. Judge Alesya Zharykava dismissed a motion for screening a police video of the journalist’s detention.

Several international organizations have expressed concerns about harassment and detention of journalist in Belarus:

On 31 January 2011 the EU Council on Foreign Affairs adopted a resolution by which it *“called on the Belarusian authorities to end the persecution of democratic forces, independent media [...]”*. It added that the EU was *“working on measures to provide urgent support to those repressed and detained on political grounds and their families, as well as support to civil society. It will also review its assistance to Belarus which is aimed at addressing the needs of the population, in order to further strengthen support to civil society, targeting in particular NGOs and students, including through the International Donors’ Conference in Warsaw on 2 February”*<sup>21</sup>.

On 1<sup>st</sup> February 2011 the UN Secretary General Ban Ki-moon said his concern about the reports on oppression and detention of journalists, and asked for them to be released<sup>22</sup>. The UN Secretary General had already made a statement of concern on January 10<sup>th</sup> 2011<sup>23</sup>.

On 16 March, 44 States made a joint statement at the UN Human Rights Council to declare that they strongly condemned *“the arbitrary arrest of [...] independent journalists and civil society representatives, as well as the ensuing detention and harassment of the opposition figures, and members of the independent media”*.

On 14 April, the European Union issued a statement in the OSCE Permanent council (PC.DEL/369/11), in which it expressed it *“regrets that the respect for freedom of the media in Belarus continues to deteriorate and is deeply concerned by recent detentions of journalists in the country”*. It further stated that it *“strongly condemns all harassment, arrests and*

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<sup>19</sup> <http://baj.by/m-p-viewpub-tid-1-pid-9669.html>

<sup>20</sup> <http://baj.by/m-p-viewpub-tid-1-pid-9707.html>

<sup>21</sup> [http://www.consilium.europa.eu/uedocs/cms\\_Data/docs/pressdata/EN/foraff/119038.pdf](http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/119038.pdf)

<sup>22</sup> <http://www.un.org/apps/news/story.asp?NewsID=37440&Cr=Belarus&Cr1=>

<sup>23</sup> <http://www.un.org/apps/news/story.asp?NewsID=37237&Cr=Belarus&Cr1=>

*intimidation of representatives of independent media by the authorities in Belarus” and agreed with the OSCE representative for the freedom of media, considering that these actions were “flagrant violations of OSCE commitments undertaken by Belarus”.*

*c. Searches against journalists’ home and offices.*

Many searches were carried out at journalist’s home and office, in relation with the investigations on mass disorders on Independence square in 19 December night. The International Observation Mission of the Committee of international control over the situation with human rights in Belarus lists the following events that happened until 15 January: (rapport IOM du CIC n°2-1).

On 30 December the apartment of Ekaterina Tkachenko (staff member of the TV-channel «Belsat») was searched, and notebook and diskettes were seized<sup>24</sup>.

On 31 December, the private apartment of Yulia Doroshkevich, photo-correspondent of the newspaper "Nasha Niva" (*Our Field*) and her husband, Pavel Yukhnevich, who participated to the campaign "European Belarus" was searched by KGB agents. Two notebooks, flesh-memories, dictating machine were seized. Pavel Yukhnevich was sentenced to 10 days of arrest<sup>25</sup>.

On 31 December a search was carried out at Tetyana Gavrilchik’s home. She works for "Nasha Niva". Her video-camera, PC and flesh-memories were seized during the search. On January 10 she could get her belongings back from the KGB, except one disc.

On 4 January, Aleksey Borozenko, operator of the TV channel "Belsat" had his flat forcibly searched: a PC and banner "Where is mother of Kolya?" were seized<sup>26</sup>. Then he was taken to KGB for interrogation, without his lawyer, and signed acknowledgment about nondisclosure of investigation<sup>27</sup>.

On 11 January the search took place in apartment of Larisa Shchirakova, journalist, member of Belarusian Journalists Association, resulted in seizure of two fixed PCs with monitors and mouses, one notebook, several hundred of disks, several flesh-memories, player, two dictating machines<sup>28</sup>.

On 12 January search took place in apartment of Aleksey Salei, photo-correspondent of “Glosa znad Nemna”<sup>29</sup>.

On 13 January, 2011 search took place in apartment of Irina Chernyavka, journalist of “Belsat” TV channel. KGB staff came with search to the apartment rented by sister of the

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<sup>24</sup> <http://baj.by/m-p-viewpub-tid-1-pid-9637.html>

<sup>25</sup> <http://www.belaruspartisan.org/bp-forte/?page=100&news=74092>

<sup>26</sup> <http://www.belsat.eu/be/wiadomosci/a,1072,apieratara-bielsatu-dapytali.html>

<sup>27</sup> <http://baj.by/m-p-viewpub-tid-1-pid-9648.html>

<sup>28</sup> <http://baj.by/m-p-viewpub-tid-1-pid-9693.html>

<sup>29</sup> <http://baj.by/m-p-viewpub-tid-1-pid-9714.html>

journalist in Minsk. After search journalist was taken to questioning to KGB. She signed acknowledgment about nondisclosure of investigation<sup>30</sup>.

On 15 January, 2011 searches took place in apartment of Viktor Fedorovich, the staff member of the company BelaPan and journalist of the internet-media and apartment of his parents. As informed by Fedorovich, at 10 a.m. people knocked to his flat and presented themselves as KGB staff. He said that he has no relation to events happened on 19 December. According to him, notebook, system block of the PC, dictating machine, flash memories, notepads, documents and notes about investigator Svetlana Baikova and other working materials related to his professional activities were taken. It was unclear to journalist why the searches had happened in his and his parents apartments<sup>31</sup>.

#### d. *Threat of administrative closure of newspapers*

On 28 April 2011, D. Mijatovic shed the light on lawsuits filed by the Belarusian Information Ministry, aiming at shutting down two of the main independent publications of the Country, *Nasha Niva* and *Narodnaya Volya*. The two newspaper received three warnings for their publication if reports in the December events. D. Mijatovic considered that “*this move by the Belarusian government to silence a few remaining critical voices will further diminish media pluralism in the country*”. She also considered that oppression put over newspapers since the events of 20 December “*violates core OSCE media freedom commitments and is unacceptable in an OSCE participating State*”<sup>32</sup>.

It seems that the State is willing to exercise a tough control over newspapers that intend to address political issues. The US Report on Belarus states that “*State-owned media dominated the information field and maintained the highest circulation and viewership. The state-owned postal system, Belposhta, and the state-owned kiosk system, Belsayuzdruk, continued to refuse to deliver and sell at least 10 independent newspapers that covered politics*”.

Many independent media have received at least one warning, including *Komsomolskaya Pravda in Belarus*, *Va-Bank*, *Novy Chas*, and *Tovarishch*.

## **D – FREEDOM OF MOVEMENT**

### **1. The right of Belarusian citizens to foreign travel**

The law provides for freedom of movement, including the right to emigrate. However, the government at times has restricted the right of its citizens to foreign travel. Therefore, any student who wishes to study abroad must obtain permission from the minister of education. Moreover, citizens working abroad are tracked and travel agencies have the obligation to report individuals who do not return from abroad as scheduled.

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<sup>30</sup> <http://baj.by/m-p-viewpub-tid-1-pid-9720.html>

<sup>31</sup> [http://naviny.by/rubrics/society/2011/01/15/ic\\_articles\\_116\\_172055](http://naviny.by/rubrics/society/2011/01/15/ic_articles_116_172055)

<sup>32</sup> <http://www.osce.org/fom/77245>

Moreover, according to convergent information, the government has maintained a database of persons who were banned from traveling abroad. According to the Belarusian Ministry of Internal Affairs, in 2010 the list contained the names of at least 120,000 persons who were prohibited from foreign travel, including those who possessed state secrets, were facing criminal prosecution or civil suits, or had outstanding financial commitments. Some persons were informed by letter that their names were in the database; others were informed at border crossings. In some cases opposition activists were either turned away at the border or detained for lengthy searches.

The law also requires persons who travel to areas within 15 miles of the border to obtain an entrance pass.

The law does not allow forced exile, but convergent sources assert that security forces threatened opposition leaders with bodily harm or prosecution if they did not leave the country. The law allows internal exile, known as *khimiya*, for persons convicted of crimes, and authorities employed it during 2010.

Many university students who had been expelled or were under threat of expulsion for their political activities opted for self-imposed exile. Since 2006 more than 500 students left the country to continue their studies at foreign universities.

Internal passports, a form of national identity card, are required for permanent housing, work, and hotel registration. Police continues to harass individuals living at a location other than the legal place of residence indicated in their internal passports.

On 12 January 2011, at 7.45 p.m. some KGB agents stopped opposition leader Paval Sieviarynets' mother Tatsyana on her way to the railway station from which she was supposed to travel to Warsaw, in order to deliver a speech during the session of the Polish Parliament dedicated to the political situation in Belarus. She was arbitrarily detained for a day and her passport was confiscated by the authorities, which prevented her from traveling to Poland on that day as she had planned. She received her passport back the next day, after having written a complaint which ended up with the prosecutor general's office. (HRW Report)

Former presidential candidate Ryhor Kastusyou works in Russia but he cannot go abroad because he was released on recognizance<sup>33</sup>.

## **2. The right of foreigners not to be expelled without a decision reached in accordance with law**

According to Article 13 of the International Covenant on Civil and Political Rights (ICCPR) – to which Belarus is a Party since 12 November 1973, “*An alien lawfully in the territory of a State Party to the Covenant may be expelled there from only in pursuance of a decision reached in accordance with law (...)*”. According to convergent information, on 4 May 2011,

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<sup>33</sup> <http://euroradio.fm/en/report/prosecutor%E2%80%99s-office-interrogate-kastusyou-about-blast>

Belarusian immigration services along with officials from the Ministry of Internal Affairs arrived at the offices of the Human Rights Centre “Viasna” during the presentation of an independent report prepared by an independent expert group led by Mr Neil Jarman, the Special Rapporteur of the Committee on International Control over the Human Rights Situation in Belarus. They explained that they were informed that several individuals were seen carrying “boxes” into the office. They checked the office for any potential explosives. After searching in vain, the officials requested that all present, including Russian citizens Ms. Victoria Gromova and Lubov Zakharova, go to the Pervomayskoye Police Department. After being held for three hours at the police, all the detainees were let go. The two Russians received a written order to leave the territory of Belarus in 24 hours, banning them from entering the country for two years on the grounds that their names were put on the list of people whose presence in Belarus was forbidden or unwanted. They were told that this was a matter of national security. Origins of this “black list” and legal grounds for inclusion into the list remain unclear; the Ministry of Foreign Affairs of Belarus has previously denied its existence.

According to convergent information, on 20 April 2011 Ms. Marina Tsapok was denied entry to Belarus without specific reason and no written document was handed to her. It is worth recalling that Ukrainian citizens do not need a visa to enter Belarus.

## **E – RIGHT OF PEACEFUL ASSEMBLY**

The Law on Mass Actions (No 114-Z of December 30, 1997; New edition of the Law: the Law No. 233-Z of August 7, 2003; Last amendments of the Law: the Law No. 99-Z of January 4, 2010) imposes restrictions on the right of peaceful assembly<sup>34</sup>. There are serious concerns about some of these restrictions, such as the following two prescribing that “*Holding of mass actions is not allowed: (...) on the distance less than 200 meters from buildings of residence of the President of the Republic of Belarus, National Assembly of the Republic of Belarus, Council of Ministers of the Republic of Belarus, Television and Radio Centre, pedestrian subways and metro stations; on the distance less than 50 meters from the building of republican state bodies, local representative, executive and administrative bodies, diplomatic missions and consular establishments, courts, prosecution bodies, territories of organizations securing defence, state security and life of population (public transport, water, heat and energy supply, hospitals, clinics, child nursery establishments and comprehensive education establishments)*” (article 9 of the aforementioned Law on Mass Actions).

As a result of the aforementioned restrictions to the right of peaceful assembly, demonstrations are de facto impossible in the centre of a city such as Minsk. This means that the demonstration of 19 December 2010 – which was not in conformity with the Law of Mass Actions – could neither be organized nor held lawfully under the current Law. It is worth

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<sup>34</sup> Refer to the following webpage:  
<http://law.by/work/EnglPortal.nsf/6e1a652fbefce34ac2256d910056d559/23544c3532dfe02ac2256dc10025e973?OpenDocument> (Source: Legal National Legal Internet Portal of the Republic of Belarus) .

noting that former presidential candidates asked for a meeting with the Minister of Internal Affairs and the State Security Committee (KGB) to discuss the planned demonstration of 19 December 2010. However, the request was dismissed and on 17 December the Chair of the KGB told the press that leaders of the opposition had asked for a meeting to discuss the safety of the demonstrators, but “law enforcement officers cannot discuss such matters as the calls (for a demonstration) are illegal”<sup>35</sup>.

According to convergent information, the demonstration of 19 December 2010 was mainly peaceful. The violent acts against the Government Building committed by a small group of men at the back of the crowd did neither justify its violent dispersion by riot police – the police used force – nor the arrest of over 700 persons and the prolonged detention of many of them. According to press reports, scores of demonstrators and a number of police officers were injured. Eye witnesses reported that apart from this small group they did not see anybody carrying weapons or offensive articles of any kind. As a result, serious doubts surround films shown on state television that have shown scenes of the Independence Square after the demonstration littered with sticks, shovels and axes. Eyewitnesses claim that these items were deliberately planted by the security forces in order to incriminate the demonstrators.

Indeed, according to the Interim Human Rights Assessment of Prof. Neil Jarman, Special Rapporteur of the Committee on International Control (CIC) over the Situation with Human Rights in Belarus: “The video and documentary evidence indicates that the main assembly in Independence Square in Minsk was still peaceful when the police operation to clear the area began. The violence associated with the attack on the House of Government appears to have been brought under control well before this time and there is no evidence that the main body of the crowd participated, supported or encouraged the violence. It is therefore difficult to conclude that this assembly was a ‘mass riot’ as claimed subsequently by the Belarusian authorities. It was clearly an unlawful assembly under the terms of the Law on Mass Actions, but all the evidence suggests that the main body of the assembly remained peaceful throughout.”<sup>36</sup>

Moreover, as it is pointed out in the CIC’s Interim Assessment, according to international human rights law it is not because a peaceful assembly is unlawful that Government is authorized to disperse it by using disproportionate force – as was the case at Independence Square on 19 December 2010<sup>37</sup>.

In addition, the law holds liable and criminally responsible those who violate the established procedure for organizing and (or) holding mass events as well as the participants in unlawfully organized mass events.

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<sup>35</sup> [http://www.belta.by/ru/all\\_news/politics/Otdelnye-predstaviteli-oppozitsii-pytalis-zakupit-elektroshokery-i-petardy---KGB-i-535954.html](http://www.belta.by/ru/all_news/politics/Otdelnye-predstaviteli-oppozitsii-pytalis-zakupit-elektroshokery-i-petardy---KGB-i-535954.html)

<sup>36</sup> Interim Human Rights assessment of the Events of 19 December 2010 in Minsk, Belarus, by the Special Rapporteur of the Committee on International Control over the Situation with Human Rights in Belarus, 2011, p. 34, para. 71.

<sup>37</sup> *Ibidem*, p. 34, paras 67-70.



On 27 December 2010 a Minsk court sentenced opposition youth activists Mikhail Pashkevich to 15 days in jail; Volha Damarad, Mikhail Matskevich, and Ales Kirkevich to 10 days in jail; and Dzmitry Shurkhay to five days in jail for demonstrating in front of the pre-trial detention facility on 21 December 2010. Police detained three more opposition youth demonstrators on 29 December 2010 and held them at pre-trial detention facilities overnight. On 30 December 2010 Franak Vyachorka and Andrey Krechka were imprisoned for 12 days, and Anton Koipish for 10 days for protesting.

On 23 February 2011 a picket organized by United Civil Party activists was banned in Homel.

According to officially released information, on 25 March 2011 the Belarusian opposition organised the traditional “freedom day” rally. The municipal authorities refused to authorise the meeting in the city centre. The rally was suppressed by the police. About 50 protesters were arrested during the rally and about 50 more opposition activists were placed in preventive detention. The majority of them were released without any further action. On 29 March 2011, three activists were sentenced to fifteen (Mr Nikalai Dzemidzenka, activist of the Youth Front), ten (Mr Viktor Ivashkevich, coordinator of the civil campaign “European Belarus”) and three (Ms Irina Hubsкая, activist of the unregistered Belarusian Christian Democracy party) days of administrative arrest.

## **F – FREEDOM FROM ARBITRARY ARREST OR DETENTION**

A chronological and legal analysis of the 19 December events is available in the balanced report of Pr Neil Jarman (Interim Human Rights Assessment).

### **1. Arrest and custody**

Many people, and not only journalists, have been placed in detention during the 19<sup>th</sup> December events, charged with the crime of participating to or organizing “mass disturbances”, and are now waiting for their trial. On the night of 19 December, almost 700 persons were arrested on this ground.

On 20 January, the European parliament voted a Resolution in which it stated that it “*Strongly condemns the arrest and detention of peaceful protesters and most of the presidential candidates (e.g. Uladzimir Niakliayeu, Andrei Sannikov, Mikalay Statkevich and Aleksey Michalevich); the leaders of the democratic opposition (e.g. Pavel Sevyarynets and Anatoly Lebedko), as well as great number of civil society activists, journalists, teachers and students facing sentences up to 15 year prison; calls for an independent and impartial international investigation into the events under the auspices of the OSCE; calls for politically motivated charges to be immediately dropped*”<sup>38</sup>.

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<sup>38</sup><http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0022+0+DOC+XML+V0//EN&language=EN>

## 2. Respect of private life and searches of private homes

The US Department of State Report mentions many cases of searches carried out at private persons' (and not only journalists) places and offices as well as human rights organizations. It is established that on December 20, officers raided offices of the human rights organization Viasna, and detained ten activists before releasing them without any charge. The report brings the following precisions: *“Police seized all computer equipment, as well as still and video cameras. The same day, authorities searched the offices of the Tell the Truth campaign and Charter97. Yuliya Rymasheuskaya, Tell the Truth leader Uladzimir Nyaklyaeu's spokesperson, was briefly detained along with other activists. Security forces also arrested Natalya Radzina, editor of the Charter97 Web site, on charges of organizing and participating in the December 19 demonstrations”*.

After the 19 December events, the following events have been reported by convergent sources:

On 23 December, four KGB officers searched the apartment of Alyaksandr Fyaduta, an aide to Nyaklyaeu, and confiscated a laptop, flash drives, and printed materials.

On 25 December, KGB and police raided residences of at least 12 people, including Sannikau, Mikhalevich, Bandarenka, Atroshchankau, Radzina, and Arastovich, in connection with the criminal “mass disturbances” case. In Minsk, police also searched apartments of human rights advocate Aleh Volchak, opposition activist Vyachaslau Siuchyuk, and the parents of detained journalist Khalip. Police also raided the residences of human rights defender Alyaksey Kaputski in Maladzyechna and of opposition activist Paval Batuyeu in Salihorsk.

Many Human rights organizations and their members were subject to searches in trouble conditions. The International Observation Mission of the Committee of international control over the situation with human rights in Belarus identifies the following events in this respect:

Human Rights Centre "Viasna" (Minsk): On 17 January, 2011 the KGB had made another search in the premises of the Human Rights Centre "Viasna", and later in the apartment and in the country house of his head Ales Bialiatski. The ground for the search was the consideration of Ales as a witness in a criminal case on the riots.<sup>39</sup> On 19 January, 2011 the International Foundation for the Protection of Human Rights Defenders “Front Line” announced an urgent action of assistance to the Centre "Viasna" because of the series of searches<sup>40</sup>.

Centre for Human Rights (Minsk): On 19 January, 2011 a search was conducted in the Public Association “Centre for Human Rights”, where three computer system blocks were seized<sup>41</sup>.

Raisa Mikhailovskaya, human rights defender, Head of the Centre for Human Rights (Minsk). On 19 January, 2011 the apartment of the Head of the Centre for Human Rights Raisa

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<sup>39</sup> <http://hrwatch-by.org/ales-belyatskii-vlast-obyavila-voinu-grazhdanskomu-obschestvu>

<sup>40</sup> <http://www.frontlinedefenders.org/node/14275>

<sup>41</sup> <http://spring96.org/en/news/40783>

Mikhailovskaya was searched.<sup>42</sup> According to her, a mobile phone, 3 flash drives and memory cards were seized from her.

Elizaveta Efimova, coordinator of the Youth Union Group "Studentskaya Rada", participant of the International Network - Youth Human Rights Movement (YHRM) (Minsk): on 20 January, 2011 the apartment of parents of Elizaveta Efimova (at her place of residence), was searched. At the moment, Elizaveta was forced to leave Belarus temporarily<sup>43</sup>.

Vladimir Telepun, human rights activist, coordinator of the Human Rights Centre "Viasna" in Mozyr (Mozyr city): on 21 January, 2011 the apartment Mozyr defender Vladimir Telepun was searched, during which a computer and DVD-discs were seized. A search warrant was dated 19 December, 2010<sup>44</sup>. At the moment of compiling this analytical paper the technique was not returned to the defender.

Leonid Sudalenka, human rights defender, the NGO "Law Initiative", co-founder of the Center for Strategic Litigation (Gomel city): on 26 January, 2011 the apartment of the human rights activist Leonid Sudalenka was searched again. A laptop, desktop computer, notebook and copying equipment were seized from Sudalenka<sup>45</sup>.

Mikhail Matskevich, Youth Union Group "Studentskaya Rada" activist, participant of the International Network – Youth Human Rights Movement (YHRM) (Minsk): on 2 February, 2011 in the apartment of Mikhail Matskevich was conducted a search. Michael, being away from home, were not present during the investigation. From the apartment computers and portable storage media were seized<sup>46</sup>.

Ales Krot, Youth Union Group "Studentskaya Rada" activist, correspondent of the International Network – Youth Human Rights Movement (YHRM) (Minsk): on 2 February, 2011 a search was conducted in the apartment of Ales Krot. According to Ales, he was not present during the search resulted in seizure of the office equipment and the informational materials of the YHRM.

### **3. Torture and ill treatment**

The European Parliament expressed his concern about the treatment of detainees, and called for a clarification of the situation specially about the allegations of torture: on 10 May, he passed a motion by which it *“Condemns the reported use of torture techniques by the police and KGB services against the opposition activists and journalists, calls for an independent medical expert to visit all detainees to ensure they are receiving adequate medical assistance”*<sup>47</sup>.

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<sup>42</sup> <http://spring96.org/en/news/40783>

<sup>43</sup> <http://hrwatch-by.org/obysk-v-kvartire-roditelei-elizavety-efimovoi>

<sup>44</sup> <http://spring96.org/be/news/40841>

<sup>45</sup> <http://news.tut.by/politics/art212900.html>

<sup>46</sup> <http://hrwatch-by.org/obysk-u-mikhasya-matskevicha-0>

<sup>47</sup> <http://www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=B7-2011-0338&language=EN>

On 16 March, in their joint declaration about the situation of human rights in Belarus, the 44 members of the Human Rights Council that signed the declaration noticed that “*Especially worrying are reports about the use of torture on detainees as alleged for example by former presidential candidate Mr. Michalevich*”.

Former presidential candidate Andrei Sannikau described his arrest as follows: “*I was standing not far from the line of riot policemen and I was hit on my leg by some heavy object, my leg was seriously injured. I received a blow on the head by a truncheon. In a second I fell unconscious. I know that my wife and my driver started to shield me by their bodies, otherwise the situation would be worse.*

*When I regained consciousness, I stood up with the help of my wife and my friend Leanid, they offered to take me to a hospital. I agreed.*

*An acquaintance of mine, a journalist, was passing by not far from that place, he offered me to give a lift. We got into his car and started. On Victory Square a traffic police car moved across and stopped us, a door from my side was opened. I tried to explain that I had been seriously injured. But I was stricken fair in the face, and then there were several kicks in my body, and blows with boots in my arms. Later we were taken to Akrestsin Street remand prison, and I was taken to a medical station there. Doctors said that I had been seriously injured, and I was to be hospitalized. I was taken to the KGB remand prison instead of a hospital”<sup>48</sup>.*

According to reliable information, when in jail, he may have been victim of torture: “*On the ninth day of his trial, Andrei Sannikau said in a statement that the evidence against him had been obtained under torture. He described the methods used to subject him to both physical and psychological pressure, and the authorities’ demands that he confess, in line with their requirements. When he refused to confess, the head of the KGB told him, “in this case we will apply more brutal measures to your wife and child.” Aware that his wife had also been detained, and that efforts were being made to take his son into care, he took the threats seriously and tried to cooperate. He was refused access to a lawyer and only able to meet with a lawyer in private on 22 March, when he had been detained for over three months. For a whole month, he was not able to send or receive letters and says that throughout his detention he has been isolated from outside information*”.

Another former candidate, Ales Mikhalevic, recently fled from Belarus, because he said he had been tortured there. He fled the country, leaving in Minsk his wife and their two children, because he said it was necessary for him to be “out of reach of the KGB”. He gave the following description of the treatment he had received : “*Some people wearing camouflage uniforms and face-masks, with no insignia, dragged me out [of my prison cell], handcuffed me behind my back and pulled my arms so high my face was hitting the concrete floor. They took me down a spiral staircase into a separate room and started pulling my arms up so high*

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<sup>48</sup> <http://www.charter97.org/en/news/2011/4/27/38077/>

*that my bones cracked, demanding that I promise to do whatever I was told to do by State Security officers. And they kept pulling my arms up until I said yes”.*

#### **4. Conditions of detention**

In 2008, the Human right organization Viasna and the FIDH monitored a report on the conditions of detention in Belarus<sup>49</sup>. It does not seem that these conditions have much changed thus far, and specially not since the 19 December.

Converging sources attest that people in detention had no contact with their relative from outside. The US report states that *“Authorities refused to permit access to many of the prisoners by lawyers, family members, foreign embassies, or prison monitoring groups”*. Detainees had had no opportunity to see family members for over a month. Amnesty international report confirms that *“Families of the detainees only started to receive postcards and letters at the beginning of January and they reported that the letters were not in the accustomed style of their relatives and all gave positive reports of the food, their health and conditions”*. It goes on saying: *“Authorities refused to permit access to many of the prisoners by lawyers, family members, foreign embassies, or prison monitoring groups”*.

About the conditions of detention, Viasna reports the following facts:

On 17 May, at the trial of arson of the KGB building in Babruisk the accused Artsiom Prakapenka and Yauhen Vaskovich said of pressure during the investigation. On 19 May, the verdicts in the case were pronounced: Vaskovich, Prakapenka and Pavel Syramolatau received seven years of imprisonment in a high-security penal colony each.

Pressure by investigators was also reported by representative of the anarchist youth movement Mikalai Dziadok. On 18 May, Minsk Zavodski District Court began the trial of the activists of anarchist, civil, anti-Fascist and anti-nuclear movement Ihar Alinevich, Maksim Vetkin, Mikalai Dziadok, Aliaksandr Frantskevich and Yauhen Silivonchyk. The youths are accused of a series of attacks on government buildings, as well as hacking into a governmental web-site.

Yan Lahvinovich, whose hand was broken during the brutal crackdown on the Square protesters by the police, was told that the prosecutor's office had refused to initiate a criminal investigation into the beating.

Deputy chair of the Young Front Ivan Shyla filed a complaint with the Interior Minister and head of Minsk police against prison conditions in the detention centre in Akrestsin Street in Minsk. During his term in the detention centre poor conditions aggravated the activist's allergies, however he was denied hospitalization and medication.

One must also call for special attention to the case fo Andrei Sannikau, former candidate, whose treatment in prison does not seem to respect the international standards:

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<sup>49</sup> Viasna/FIDH, *International fact finding mission, Conditions of detention in the Republic of Belarus*, June 2008, n° 500/2.

Amnesty International reports that on 17 May, Andrei Sannikau's wife and mother tried to visit him in jail, after his 5 year sentence. They went to the detention centre where he was supposed to be, but were told that he was not there. They got to a second centre, then to a third, where they got the same answer. His lawyer was informed one hour later that M. Sannikau was detained incommunicado in a KGB detention Centre. Reliable sources reported that *"being held incommunicado in this fashion puts Andrei Sannikau at serious risk of torture and other ill-treatment"*<sup>50</sup>.

## **G – RIGHT TO A FAIR TRIAL AND INDEPENDENCE OF LAWYERS**

### **1. Fair trial**

The US report states that: *"The law provides for access to legal counsel for detainees and requires that courts appoint a lawyer for those who cannot afford one; however, at times some detainees were denied access to a lawyer and at other times, to a Belarusian-language interpreter if they requested hearings in the that language. Most judges and prosecutors were not fluent in Belarusian and rejected motions for interpreters. The law provides for the right to choose legal representation freely; however, a presidential decree prohibits NGO members who are lawyers by training from representing individuals other than members of their organizations in court. Courts often allowed information obtained by use of force during interrogations to be used against defendants"*.

NGOs have long expressed concerns about unfair trials in Belarus. President Lukashenka personally appoints and dismisses all the judges of the lower courts. In 2001, the Special Rapporteur on the independence of Judges and lawyers stressed that there was *"excessive executive control of the legal protection. Such control undermines the core values of an independent legal profession and the Basic Principles on the Role of Lawyers"*. Moreover, Amnesty International reported that the situation has not evolved since then, and could have gotten worse following the December events: *"Some lawyers defending those who have been charged with 'organizing mass disorder' have been threatened with disbarment for legitimately defending the rights of their clients"*.

According to a survey of released detainees carried out by the Human rights centre Viasna, 700 people were arrested on 19 December. They were taken to court in large groups, and the hearing were generally very quick : detainees reported that witnesses for the defence were not called, and that some hearings lasted five minutes. According to Viasna, the detainees spent up to three hours in police vans after their arrest, and they were not given water or access to toilets. In the police station, detainees say they waited for 2 to 3 hours standing, and some home them reported having been kicked by police officers. Their first food was given after 30 hours of detention, and their relatives were not informed of their detention.

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<sup>50</sup> AI report

## 2. Independence of lawyers

Concerning the independence of lawyers, the US report mentions that “A number of attorneys representing prominent opposition leaders, civil society activists, and independent journalists arrested on or after December 19<sup>th</sup> reported that their licenses could be revoked for activities related to the defence of their clients. In a notice posted on its Web site, the Justice Ministry charged that “certain lawyers” who were defending individuals facing criminal charges, including up to seven presidential candidates, were committing “gross violations” of the rules of professional etiquette for lawyers as well as of the country's laws”. Though, there were no report stating that some lawyer’s licences were revoked for having defended NGOs or opposition members.

Several sources attest that in the beginning of January, P. Sapelko - Andrei Sannikau’s lawyer - publicly raised concerns about his client’s health. For this statement, the Ministry of Justice asked for disciplinary sanction on the 5<sup>th</sup> of January. However the Minsk City College of Lawyers took no disciplinary action<sup>51</sup>. P. Sapelko also told that his client was forced “to stay in horrible conditions and made isolation due to the fact that he did not have the information about either his spouse or his child, even to react on the election results”<sup>52</sup>. He added that for the first time of his life he had to face “the occurrence of the pressure on the state lawyers from the authorities”<sup>53</sup>.

On 20 December, the Ministry of Justice asked for disciplinary action to be taken against four lawyers, because they had declared that their clients were not well treated in jail. The Ministry considers that those denunciations are violations of the Rules of professional Ethics for lawyers, who are required to defend the rights of their clients “in a tactful and dignified manner”.

The International Observation Mission of the Committee of international control over the situation with human rights in Belarus confirms the existence of threats upon lawyers :

On 29 December, the Ministry of justice published on its website a lot of information about “violations of the legislation on the legal profession” by legal practitioners. It was stated that “Certain lawyers that defended individuals (...) who participated in organizing mass riots followed with an attempt to capture state offices, as well as property destruction and armed resistance to state authorities [i.e., that participated to the 19 December events], commit flagrant violations of the Rules of the Bar Lawyers’ professional ethics and acting legislation, including the Law of Belarus “On the bar”. Particularly, some lawyers misuse their right to defend other persons by distortion of information about investigation process and possibilities of realization of the clients’ rights to legal assistance, likewise their level of health and conditions of custody. Moreover, they disseminate information about the work of law enforcement bodies tendentiously”<sup>54</sup>. The Ministry then filled a petition to the Minsk City Bar

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<sup>51</sup> US Report, IOM analysis

<sup>52</sup> [http://news.date.bs/incidents\\_210553.html](http://news.date.bs/incidents_210553.html).

<sup>53</sup> <http://www.oboz.by/articles/detail.php?article=2831>.

<sup>54</sup> [http://www.minjust.by/ru/site\\_menu/news?id=734](http://www.minjust.by/ru/site_menu/news?id=734). Trad. From the IOM report.

Association to take “*the immediate measures for unconditional observance of the legislation and requirements of professional ethics by lawyers*”. However, on 17 January, the Minsk City Bar Association found no breach of the legislation on legal professions, and rejected the petition of the Ministry<sup>55</sup>.

But international lawyers associations expressed concerns about this treatment of legal practitioners by the Ministry. On January 11<sup>th</sup>, the Board of the Ukrainian Bar Association warned against the pressures exercised upon lawyers and expressed hopes that the Republic of Belarus would guarantee the independence of lawyers, as it is the main basis for protection of human rights and fundamental freedoms<sup>56</sup>. On 12 January, the International Commission of Jurists expressed also concerns about the harassment of Belarusian lawyers: it particularly pointed out the unjustified debarment of some lawyers and the attacks against their freedom of expression<sup>57</sup>. On 17 January, the Human Rights Houses Network addressed a letter to national and international bar associations in which it made a survey of facts of pressure on attorneys and self-government bar organizations, and called for solidarity with Belarusian lawyers<sup>58</sup>. Furthermore, the Danish Bar and Law Society expressed its solidarity with Belarusian colleagues. On 26 January, the Human Rights Commission of the Supreme Bar Council of the Republic of Poland addressed an official message to the ambassador of the Republic of Belarus in Poland where it said it considered the intrusion of the state into the lawyers’ work as inadmissible.<sup>59</sup>

On 3<sup>rd</sup> January 2011 Valentina Busko, a lawyer member of the Grodno Regional Bar Association, was prohibited from practicing for participation in a meeting on 19 December, 2010 in the centre of Minsk<sup>60</sup>.

The Report of IOM states that: “*According to the information of the Ministry of Justice, on January 4th, 2011 the Board of the Ministry approved the decision of the Qualifying Commission on the Bar in the Republic of Belarus from January 3rd, 2011 on disbarment of the lawyer of the Grodno Regional Bar Association Busko V.A. Furthermore, in the statement of the Ministry of Justice it is mentioned that the member of the Minsk City Bar Association Sapelko P.V. allowed improper comments about the Bar as independent legal institution, questioned legal grounds of actions of the Ministry of Justice as a state licensing body declaring that it constitutes “pressure of authority on the state Bar”. The Ministry sent the petition to impose measures of disciplinary liability on him and a proposal to examine a question of termination of his functions in the presidency of the Minsk City Bar Association. It is worth mentioning that his clients are the former presidential candidate Andrey Sannikov*

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<sup>55</sup> <http://nn.by/?c=ar&i=49093>.

<sup>56</sup> <http://uba.ua/rus/news/1240>.

<sup>57</sup> [http://icj.org/default.asp?nodeID=349&sessID=&langage=1&myPage=Legal\\_Documentation&id=23655](http://icj.org/default.asp?nodeID=349&sessID=&langage=1&myPage=Legal_Documentation&id=23655).

<sup>58</sup> <http://humanrightshouse.org/Articles/15814.html>.

<sup>59</sup> <http://belarus.regnum.ru/news/1368336.html> , trad. By the IOM Report

<sup>60</sup> <http://udf.by/news/society/37405-u-lishennoy-licenzii-advokata-za-plechami-15-let-bezuprechnoy-praktiki.html> , trad. By the IOM Report



*and Vitaliy Rymashevskiy, chief of the pre-election headquarter of the presidential candidate Pavel Severinec*<sup>61</sup>.

The already cited joint declaration by 44 members of the Human Rights Council of 16 March confirms the existence of such practices: *“We also note with great concern reports about intimidation of lawyers who provide legal counsel to those who are arbitrarily detained”*.

On 14 January, 2011 the Ministry of Justice created a working group in order to elaborate a new version of the Rules of Bar Lawyers’ Professional Ethics. Members of all bar associations were invited to make propositions until 25 January 2011<sup>62</sup>.

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<sup>61</sup> [http://www.minjust.by/ru/site\\_menu/news?id=737](http://www.minjust.by/ru/site_menu/news?id=737), trad. By the IOM Report.

<sup>62</sup> [http://www.minjust.by/ru/site\\_menu/news?id=745](http://www.minjust.by/ru/site_menu/news?id=745)., trad. By IOM Report

**ANNEXES:**

***LIST OF INDIVIDUAL CASES***

**Criminal case on mass riot and on other charges**

**(updated on 26 May)**

**Provisions of the Criminal Code of the Republic of Belarus**

**Article 293, ‘mass riot’:** 1. The organization of the mass riot which was accompanied with violence against people, demolition, arsons, defilement of property and armed resistance to representatives of the authority, - is punished by 5-15 years of imprisonment.

2. Participation in mass riot which manifested in the direct implementation of the actions that were mentioned in part 1 of the article, - is punished by 3-8 years of imprisonment.

**Article 342.** Organizing or preparing actions that grossly violate the public order or taking active part in such actions

1. Organizing group actions that breach public order and that are connected with clear disobedience to lawful demands of representatives of the authorities or that hinder public transport operations or the work of enterprises, institutions or organizations, or taking active part in these actions unless elements of a more serious crime are present – is punished with by a fine, or up to 6 months of arrest, or up to three years of restriction of liberty, or imprisonment for the same term.

2. Training or other form of preparing individuals to take part in group actions that breach public order, as well as financing or other material backing of similar activities unless elements of a more serious crime are present – is punished with up to 6 months of arrest, or to two years of imprisonment.

**Article 339, ‘hooliganism’ :** 1. Deliberate actions that grossly violate the public order and demonstrate an evident disrespect to the society, which are accompanied with the use of violence or the threat of its use or destruction or waste of property of other people, or are defined by an exceptional cynicism (hooliganism),

2. Hooliganism, committed repeatedly or by a group of persons or connected with resistance to a person that stops the hooligan actions, or accompanied with the infliction of a less hard bodily injuries (malignant hooliganism).

**Accused in the criminal case upon Article 293, para. 1 and 2 of the Criminal Code of the Republic of Belarus, "mass riot".**

	<b>Name</b>	<b>Additional charges</b>	<b>Arrest and custody</b>	<b>Date and place of the Trial</b>	<b>Verdict and detention</b>
<b>1</b>	<b>Aliaksandr Arastovich</b>		In custody until 15 February 2011. He was released in a non-leave recognizance.		
<b>2</b>	<b>Dzmitry Bulanau</b>		In custody in the pre-trial prison in Valadarski Street	26 May 2011, Leninski district court of Minsk	Sentenced to 3 years imprisonment.
<b>3</b>	<b>Dzmitry Daronin</b>		Arrested at work on 14 March 2011 and detained three days as a suspect		
<b>4</b>	<b>Aleh Fedarkevich</b>		In custody in the pre-trial prison in Valadarski Street		
<b>5</b>	<b>Aleh Hnedchyk</b>		In custody between 6 and 9 January, interrogated as a suspect in the criminal case. Charged and arrested in 25 March. In custody in the pre-trial prison in Valadarski Street.		
<b>6</b>	<b>Artsiom Hrybkouk</b>		Served 10-day arrest for participation in the 19 December protest, detained on 12 January. In custody in the pre-trial prison in Valadarski Street.	26 May 2011, Leninski district court of Minsk	Sentenced to 4 years imprisonment, compulsory treatment of alcohol dependence.
<b>7</b>	<b>Siarhei Kazakou</b>		Detained on 27 January. In custody in the pre-trial prison in Valadarski Street.		
<b>8</b>	<b>Aliaksandr Klaskouski</b>	Also accused of insulting a representative of authorities (art. 369) and unauthorized appropriation of the authority of an official. Faces up to 15 years in prison.	In custody in the KGB pre-trial prison.	26 May 2011. Leninski district court of Minsk.	Sentenced to 5 years in a medium security penal colony.

9	<b>Uladzimir Kobets</b>		On 26 January released on recognizance not to leave		
10	<b>Aleh Korban</b>		On 7 January released on recognizance not to leave		
11	<b>Aliaksandr Kviatkevich</b>		Served 12-day arrest. Detained on 4 January. In custody in the KGB pre-trial prison.		
12	<b>Anatol Liabedzka</b>		On 7 April released from the KGB pre trial prison on a written undertaking not to leave.		
13	<b>Uladzimir Loban</b>		Served 10-day arrest. In custody in the pre-trial prison in Valadarski Street.		
14	<b>Vital Matsukevich</b>		Detained on 21 March for 3 days.		
15	<b>Aliaksei Mikhalevich</b>		In custody in the KGB pre-trial. On 19 February released on recognizance not to leave. Fled Belarus on 14 March.		
16	<b>Fiodar Mirzayanau</b>		Served 15-day arrest. On 25 January, detained for 3 days. On 1 February officially charged. In custody in the pre-trial prison in Valadarski Street.		
17	<b>Anatol Paulau</b>		On 7 January released on recognizance not to leave.		
18	<b>Andrei Pazniak</b>		In custody in the pre-trial prison in Valadarski Street.		
19	<b>Natalia Radzina</b>		In custody. Released on 28 January on recognizanc not to leave.		
20	<b>Yauhen Sakret</b>		Served 10-day arrest. Afterwards detained in the pre-trial prison in Valadarski Street. On 18 February released under a written non-leave undertaking. Fled Belarus 31 March.		

<b>21</b>	<b>Andrei Sannikau</b>				Sentenced to 5 years of imprisonment in a high security penal colony.
<b>22</b>	<b>Pavel Seviarynets</b>		In custody in the KGB pre-trial prison		
<b>23</b>	<b>Mikalai Statkevich</b>		In custody in the KGB pre-trial prison	26 May 2011, Leninski district court of Minsk.	Sentenced to 6 years imprisonment in a medium security penal colony.
<b>24</b>	<b>Dzmitry Uss</b>		Detained on 20 December and released on the same day on recognizance.	26 May 2011, Leninski district court of Minsk.	Sentenced to 5.5 years imprisonment in a medium security penal colony
<b>25</b>	<b>Illia Vasilevich</b>		Served 10-day arrest. On 12 January detained for 3 days. In custody in the pre-trial prison in Valadarski Street.		
<b>26</b>	<b>Uladzimir Yaromenak</b>		Served 15-day arrest and spent 7 mors days in the delinquents' isolation center following an interrogation at the KGB as a witness in the criminal case. On 28 January detained. In custody in the pre-trial prison in Valadarski Street.		

<b>Suspects in the criminal case upon Article 293, para. 1 and 2 of the Criminal Code of the Republic of Belarus</b>					
	<b>Names</b>	<b>Notification of the status of suspect</b>	<b>Arrest and custody</b>	<b>Date and place of trial</b>	<b>Verdict and detention</b>
<b>1</b>	<b>Dzimitry Apishau</b>		Served 11-day arrest. Released on a written recognizance not to leave.		
<b>2</b>	<b>Anton Davydenka</b>		Served 10-day arrest. Previously in custody for 2 days. On 31 December released on recognizance not to leave.		
<b>3</b>	<b>Dzianis Huseltsau</b>		Detained on 21 March for 3 days and later released.		
<b>4</b>	<b>Usevalad Kavalenka</b>		Served 15-day arrest. Released on written recognizance not to leave.		
<b>5</b>	<b>Ryhor Kastusiou</b>		Released on recognizance not to leave.		
<b>6</b>	<b>Siarhei Kliuyeu</b>		Served 15-day arrest. Released on written recognizance not to leave.		
<b>7</b>	<b>Mikita Krasnou</b>	His status as a suspect in the case was mentioned in the search warrant presented by KGB officers on 27 Dec. 2010.	Currently abroad		
<b>8</b>	<b>Andrei Mikalayeu</b>		Detained on 11 January. On 14 January released on recognizance not to leave.		
<b>9</b>	<b>Leanid Navitski</b>		Currently abroad.		
<b>10</b>	<b>Aliaksei Sharstou</b>		Detained on 21 March for three days and then released		

<b>11</b>	<b>Dzianis Shydouski</b>		Served 10-day arrest. On 2 February detained for three days. Currently in custody.		
<b>12</b>	<b>Vital Stazharau</b>	On 30 March his grandmother was handed an official ruling of the Minsk City and Region KGB, according to which he was declared suspect.	Fled Belarus immediately after the election.		
<b>13</b>	<b>Aliaksandr Vasileuski</b>		Served 15-day arrest. On 12 January detained at home as a suspect.		

<b>Convicted on the criminal case upon Article 293, para. 1 and 2 of the Criminal Code of the Republic of Belarus, “mass riot”.</b>				
	<b>Name</b>	<b>Arrest and custody</b>	<b>Date and place of the trial</b>	<b>Verdict and detention</b>
<b>1</b>	<b>Aliaksandr Atroshchankau</b>	Was in custody in the KGB pre-trial prison	17 February 2011. Frunzenski district court of Minsk (judge Volha Komar).	Sentenced to 4 years of imprisonment in a high security penal colony.
<b>2</b>	<b>Arytom Breus</b>	Citizen of the Russian federation, was detained on 19 December and sentenced to 10-day arrest. Was released on 29 December together with other Russian citizens, detained again in half an hour within the framework of the criminal case and held in custody in the pre-trial prison in Valadarski Street. On 5 January charged. On 22 February the court proceedings started and the Maskouski district court. New charges were given to the defendant.	10 March 2011. Maskouski district Court (judge Liubou Siamakhina)	Fine of BYR 10.5 million.
<b>3</b>	<b>Dzmitry Drozd</b>	Served 10 day arrest? On 1 February arrested for three days as a suspect. In custody in the pre-trial prison in Valadarski Street.	5 May 2011. Kastychnitski district Court of Minsk (judge Ala Bulash).	Sentenced to 4 years of imprisonment in a high security penal colony.
<b>4</b>	<b>Ivan Gaponov</b>	Citizen of the Russian Federation, was detained on 19 December and sentenced to 10-day arrest. Was released from jail on 29 December together with other Russian citizens, detained again in an hour within the framework of the criminal case and held in custody in the pre-trial prison in Valadarski Street. Charged on 5 January. On 22 February the proceeding started at the Maskouski district Court. New charges were given to the defendant.	10 March 2011. Maskouski district Court (judge Liubou Siamakhina).	Fine of BYR 10.5 million.
<b>5</b>	<b>Uladzimir Khamichenka</b>	Served 15-day arrest. In custody in the KGB pre-trial prison. Trial started on 27 April.	5 May 2011. Kastychnitski district Court of Minsk (judge Ala Bulash).	Sentenced to 3 years in a high security prison.



<b>6</b>	<b>Ales Kirkevich</b>	Served 10-day arrest. On 28 January detained as a suspect. In custody in the KGB pre-trial prison.	Kastrychnitski district Court of Minsk (judge Ala Bulash).	
<b>7</b>	<b>Mikita Likhavid</b>	Served 15-day arrest	29 March 2011	Sentenced to 3.5 years imprisonment in a high security prison.
<b>8</b>	<b>Aliaksandr Malchanau</b>	Arrested on 6 January at home. In custody in the KGB pre-trial prison.	2 March 2011. Frunzenski district Court of Minsk (judge Tatsiana Cherkas).	
<b>9</b>	<b>Dzmitry Miadzvedz</b>	Served 10-day arrest. On 6 January, charged. In custody in the pre-trial prison in Valadarski Street. Proceeding started on 1 March.	10 March 2011. Judge Alena Rudnitskaya.	Sentenced to 3 years of personal restraint without direction to an open penitentiary institution.
<b>10</b>	<b>Dzmitry Novik</b>	Detained on 23 December at home in Baranavichy. On 30 December charged. In custody in the pre-trial prison in Valadarski Street.	2 March 2011. Frunzenski district Court of Minsk (judge Tatsiana Cherkas).	Sentenced to 3.5 years of imprisonment in a high security penal colony.
<b>11</b>	<b>Vasil Parfiankou</b>	Detained on 4 January. In custody in the pre-trial prison in Valadarski Street.	17 February 2011. Frunzenski district Court of Minsk (judge Vohla Komar)	Sentenced to 4 years of imprisonment in a high security penal colony.
<b>12</b>	<b>Andrei Pratasenia</b>	Detained on 9 February. Currently in custody in the KGB pre-trial prison.		
<b>13</b>	<b>Pavel Vinahradau</b>	On 11 January charged. Final charges were given under Art. 293 part. 2 and Art. 373, "outrage of state symbols". In custody in the pre-trial prison in Valadarski Street.	5 May 2011.	Sentenced to 4 years of imprisonment in a high security penal colony under Art. 293.

**Figurants of the criminal case who received new charges under Article 342, para. 1 of the Criminal Code, “organization and preparation of actions that grossly violate the public order, or active participation in them”.**

**Some sentenced to suspended jail term in May 2011.**

	<b>Name</b>	<b>Arrest and custody</b>	<b>Date and place of trial</b>	<b>Verdict and detention</b>
<b>1</b>	<b>Dzmitry Bandarenka</b>	In custody in the KGB jail		
<b>2</b>	<b>Andrei Dzmitryieu</b>	On 3 January released from the KGB pre-trial jail under a written undertaking not to leave.	20 May 2011	Sentenced to a suspended 2-year jail term.
<b>3</b>	<b>Aliaksandr Fiaduta</b>	In custody in the pre-trial prison of the KGB. Received new charges on 30 March.	20 May 2011.	Sentenced to a suspended 2-year jail term.
<b>4</b>	<b>Iryna Khalip</b>	Previously in custody. Since 29 January under house arrest. New charges received on 4 April.	16 May 2011. Minsk Zavodski district Court.	Sentenced to a suspended 2-year jail term.
<b>5</b>	<b>Siarhei Martsaleu</b>	Kept in the KGB pre trial prison. New charges received on 4 April.	16 May 2011. Minsk Zavodski district Court.	Sentenced to a suspended 2-year jail term.
<b>6</b>	<b>Ulazdzimir Niakliayeu</b>	Kept in KGB pre-trial prison till 29 January, then transferred to home arrest under KGB guard? Received new charges on 30 March.	20 May 2011.	Sentenced to a suspended 2-year jail term.
<b>7</b>	<b>Anastasiya Palazhanka</b>	Was kept in the KGB pre-trial prison. Released under a written undertaking not to leave. Received new charges on 30 March.	20 May 2011.	Sentenced to a suspended 2-year jail term.
<b>8</b>	<b>Vital Rymasheuski</b>	On 31 December was released under a written undertaking not to leave. Received new charges on 30 March.	20 May 2011	Sentenced to a suspended 2-year jail term.
<b>9</b>	<b>Pavel Sviarynets</b>	Is kept in custody in the KGB pre-trial prison. Received new charges on 4 April.	16 May 2011. Minsk Zavodski district Court.	Sentenced to a suspended 2-year jail term.
<b>10</b>	<b>Siarhei Vazniak</b>	On 29 January was released from jail under a written undertaking not to leave. Received new charges on 30 March.	20 May 2011.	Sentenced to a suspended 2-year jail term.

<b>Criminal case upon Article 339, para. 3 of the Criminal Code</b>				
	<b>Name</b>	<b>Arrest and custody</b>	<b>Date and place of trial</b>	<b>Verdict and detention</b>
<b>1</b>	<b>Dzmitry Dashkevich</b>	Detained on 18 December and was in the status of accused since 6 January.	24 March 2011	Sentenced to 2 year prison term
<b>2</b>	<b>Eduard Lobau</b>	Detained on 18 December and was in the status of accused since 6 January	24 March 2011	Sentenced to 4 years in a high security prison

<b>Participation in an unauthorized meeting</b>				
	<b>Name</b>	<b>Arrest and custody</b>	<b>Date and place of the trial</b>	<b>Verdict and detention</b>
<b>1</b>	<b>Ivan Shila</b>	While protesting against the trial of Dmitri Dashkevich and Eduard Lobau in front of the Court building on 24 March, he was arrested.		13 days of administrative arrest
<b>2</b>	<b>Grigori Astapenia</b>	While protesting against the trial of Dmitri Dashkevich and Eduard Lobau in front of the Court building on 24 March, he was arrested.		10 days of administrative arrest.