



Committee on International Control over the Situation with Human Rights in Belarus

MEMORANDUM of the Committee on International Control over the Situation with Human Rights in Belarus

Taking into consideration the analysis carried out by this Committee regarding grounds for initiation, investigation and judicial consideration of a range of criminal cases* against persons involved into the events of December 19th, 2010 and, most notably, the basic provisions of the report delivered by the Special Rapporteur of the Committee; considering the materials of the independent court monitoring organized by the International Observation Mission of the Committee and referring to other analytical documents prepared by it,

The Committee deems it necessary to state that:

1. The legislation of the Republic of Belarus that regulates the procedure of conducting mass events, as well as relevant international legal standards allow to point out the following possible violations of their enforcement:

- a) Organization of and participation in mass riots involving violence against persons, pogroms, arsons, destruction of property, armed resistance to the authorities (Art. 293-1, 293-2 of the Criminal Code of the Republic of Belarus);
- b) Organization of and participation in activities that roughly violated public order, relating, inter alia, to mass events;
- c) Other violations linked to non-observance of the procedure of conducting mass events (Art. 23. 34 of the Administrative Code of the Republic of Belarus) or violations of law that were incurred during acts other than those provided for by Art. 293 and 342 of the Criminal Code of the Republic of Belarus (as depicted by Chapter 17 of the Administrative Code of the Republic of Belarus).

2. There are ample grounds to conclude that no credible or sufficient proof was ensured during the examination** of the December 19th, 2010 events and of violations that took place during these events to claim crimes have been committed given the following factors:

- a) Intentions of the organizers of mass events, including those not consulted with the local authorities, to deliberately inflict harm during conduction of such events;
- b) Responsibility of the events' organizers for actions conducted by unauthorized persons whose participation could not have been eliminated during the organization of the events;
- c) Differentiations in legal classification of unlawful acts (as mentioned in Para. 1 of the present Memorandum), i.e. rating charges pressed against particular organizers or participants of the events of December 19th, 2010 as present corpus delicti of the criminal case, as an administrative offence or as absence of those.

Furthermore, it is necessary to consider that proof of guilt pursuant to indictment:

upon Art. 293 of the Criminal Code of the Republic of Belarus requires that there exists a group of persons conducting riots, proof of guilt shall also require analysis of the riots' nature as to massiveness and aggressiveness of their character and the gravity of consequences that followed;

upon Art. 342 of the Criminal Code of the Republic of Belarus requires that group actions violating public order have taken place, bearing gross character and being connected to flagrant disobedience or resulting into consequences mentioned by the present article of the Criminal Code;

d) Actual and direct involvement of suspects or defendants in conduct of unlawful acts that have been grounded by the unfabricated and non-contradictory evidence and that is not based upon the priority of his own avowals made during the pre-trial stage of the criminal case investigation.

3. Apart from the criminal law dimension of charges against the persons mentioned earlier, procedural measures connected to their custodial detention and the character of investigation of the corresponding criminal cases cause serious concern. This means selective nature of the restraint measures set forward to certain suspects and defendants, harsh and at times inhumane conditions of their detention in custody, disproportionate and illegitimate application of other procedural measures towards them.

4. Other circumstances supplementing all abovementioned points include, in particular, restriction of the right of defence and the right of access to information in connection with the criminal cases investigation, cases of pressure exerted on lawyers, journalists and human rights defenders who were conducting their lawful activities in connection with the events of December 19th, 2010 (see analytical materials and statements made by the International Observation Mission).

In connection with the aforementioned, we believe that court trials that have already taken place and the investigatory measures that preceded them were politically motivated, this allowing to recognize those convicted upon them as political prisoners.

The Committee on International Control over the Situation with Human Rights in Belarus expresses its outmost concern that the new court trials launched in late April, 2011 against persons related to the events of December 19, 2010 will most probably bear a politically motivated character.

We, therefore, assume that the adequate demands towards the competent state bodies of the Republic of Belarus must include:

- Additional investigation of the events that took place in the center of Minsk on December 19, 2010, this being done within the framework of the currently uncompleted criminal case № 10011110362, and further transmission of its results to the corresponding judicial bodies in relation to persons accused of involvement into these events;
- Provision, on the basis of the appeal to the Supreme Court, of supplementary investigation upon the cases of persons already convicted by the courts of first instance and further reconsideration of their cases in due order of procedure.

* - namely, court trials on the cases of Parfiankou; Atroshchenkau, Malchanau and Novik; Breus and Gaponov; Myadzvedz; Likhavid; Bandarenka that took place over the period of February to April, 2011.

** - under the criminal case №10011110362, currently uncompleted, initiated in the light of events mentioned above and criminal cases considered by court in regard of persons mentioned in the footnote.

May 4th, 2011