

**Report of Belarusian non-governmental organizations and human rights defenders
on implementation by the Republic of Belarus
of the Convention Against Torture and Other Cruel, Inhuman or Degrading
Treatment or Punishment**

1. Introduction

1.1 This Report on implementation by the Republic of Belarus of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in the period July 1999 – October 2010 has been prepared by joint efforts of a number of human rights defenders and Belarusian NGOs.¹

1.2 This Report is submitted to the UN Committee against Torture as a response to the Fourth Periodic Report of the Republic of Belarus on measures taken to implement commitments in compliance with the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (*hereinafter the Convention*).

1.3 During the period covered by the Fourth Periodic Report “On measures taken to implement commitments in compliance with UN Convention against Torture” (*hereinafter the Report of the Republic of Belarus*) Belarus saw some positive changes basically pertaining to improvements of material and technical support of the penitentiary system institutions. However, Belarusian non-governmental organizations express serious concern about the use of torture and other cruel treatment in our country by such state institutions as militia and penitentiary system institutions. This report will in detail analyze the use of torture, absence of an effective system of torture reports investigation as well as cases of cruel, inhuman and degrading treatment and punishment.

1.4 As a positive aspect we can mention the fact that the part “Prohibition of torture and implementation of the right to human treatment and respect for human dignity” of the Periodic Report submitted by Belarus in 2010 says that 12 persons were convicted in 2008 and 11 persons were convicted during six months of 2009 for the use of force or cruel and inhuman treatment of individuals subject to criminal proceedings or held in custody, for application of forbidden methods of treatment against persons under criminal proceedings. However, we can still observe that in general information in this area remains classified.

1.5 In some cases law enforcement officers use excessive physical actions and tortures even in respect of teenagers, i.e. those who are physically not able to offer serious resistance or become a threat to life or health of the law enforcement officers.

1.6 Public prosecutor’s office in a number of cases does not properly investigate torture reports, without grounds delay implementation of necessary investigative actions, which results in procrastination of the period of investigation of torture in general and violation of standard procedural time-frame. Moreover, facts indicating that tortures were possibly used (for example, bodily injuries) can be ignored by investigators. Often the public prosecutor’s office rejects witnesses’ evidence as unreliable, although the evidence of militia officers including those who are directly indicated as offenders by victims, are treated with presumption of trust. Until relevant amendments were made in 2007 the law of the Republic of Belarus “On Militia” had contained the norm on presumption of trust for militia officers. Despite the formal elimination of the norm from the law in 2007 it is still applicable. There are often cases when prosecutor’s officers simply ignore evidence, proving victims’ arguments.

1.7 Often the public prosecutor’s office uses so called “ping-pong” practice, when torture reports are sent from one authority to another and therefore investigation is unreasonably delayed without finding a final solution. Prosecutor’s office officials, who take illegal procedural decisions seriously violating victim’s rights, are not usually liable for doing so.

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1.8 At the same time during the reporting period Belarus did not make any additional steps to implement international treaties aimed to prohibit tortures into the national legislation. In particular, measures to consider a possibility to make statements in accordance with articles 21 and 22 of the Convention, as well as to prepare to sign and ratify the Optional protocol to the Convention were not taken. Besides, Belarus postponed for indefinite period the visit of the UN special rapporteur for tortures, whose visit to Belarus was planned as back as in 2005.

2. Part I. Information on the new measures and new facts pertaining to application of the Convention (articles 1-16 of the Convention)

2.1 Despite the fact that tortures and other cruel treatment are inadmissible in accordance with the Constitution of the Republic of Belarus, there are no normative and legal acts of the Republic of Belarus containing definition of “torture” as it is stated in the Convention.

2.2 *Pursuant to part 1 of article 64 of the Criminal Code (hereinafter the CC) one of the aggravating circumstances is commitment of a crime with special cruelty or humiliation (p. 7 of the Report of the Republic of Belarus).*

2.3 *Article 128 of the CC envisages imprisonment for 7 to 25 years, life sentence, or capital punishment for deportation, illegal custody, slavery, mass or systematic executions without trial, forced disappearances, tortures or acts of cruelty, committed due to race, national, ethnical reasons, political or religious views of the civic population (p.8 of the Report of the Republic of Belarus).*

2.4 *In order to provide methodological assistance to courts to correctly implement the law and international norms the Supreme Court of the Republic of Belarus passed regulation No 9 on 17 December 2002 “On judicial practice for murder cases”. The Regulation reflects recommendations of the Committee against Torture and draws the courts’ attention to the fact that the concept of special cruelty in qualification of a murder in accordance with point 6 of part 2 of article 139 of the CC pertains to both methods of deprivation of life as well as to other circumstances that prove demonstration of such cruelty by the offender (P. 10 of the Report of the Republic of Belarus).*

2.5 *The CC contains a norm specifying liability for cruel treatment (article 154 “Torture”). Torture is punished by arrest for up to three months, custodial restraint for up to three years, or imprisonment for the same term. In case if the torture is committed against a woman who is known to be pregnant or against a person who is under age, or person in a helpless or dependable condition, such act is punished by custodial restraint for one to three years or imprisonment for one to five years (p. 11 of the Report of the Republic of Belarus).*

2.6 There is nothing in part 1 of article 64 of the CC, article 128 of the CC, point 6 of part 2 of article 139 of the CC, article 154 of the CC saying that such offences refer to cases, when such pain or suffering is inflicted by, or at the instigation of, or with the consent or acquiescence of a public official or other person acting in an official capacity. Thus the definition of “torture” in the sense of the Convention cannot be applicable to such articles, unlike it is presented by the State.

2.7 Following from p. 7, p. 8, p. 10, p. 11 of the Report of the Republic of Belarus the State Party doesn’t seem to understand, or is reluctant to understand the definition of “torture” according to article 1 of the Convention. Due to such non-understanding the State Party does not undertake effective measures to prevent acts of tortures, and to investigate facts of torture in accordance with the criminal law.

2.8 The State Party in its Fourth Periodical Report states as follows:

As a measure to protect suspects and alleged offenders from tortures or unlawful treatment all the reports on tortures being used against participants in the criminal proceedings shall be examined in the course of legal investigation, evidence shall be collected, the court shall specifically ensure full observance of the rights of suspects and alleged offenders to defense. Part 3 of article 394 of

the CC deems torture as aggravating circumstance of coercion of a suspect, an alleged offender, a victim or a witness to testify (or an expert to provide expert's report). An act referred to in part 1 of this article, in complex with use of torture, shall be punished by three to ten years' imprisonment with or without forfeit of a right to hold certain offices or to be engaged in some activities (P. 12 of the Report of the Republic of Belarus).

2.9 The State Party assurance that all the torture reports filed by participants of criminal proceedings are examined and relevant evidence is collected is inaccurate. Complaints about torture used against participants of criminal proceedings often are not properly examined by public prosecutor's office. Thus, in the course of investigation of a torture fact reported by Pavel Levshin from Minsk the prosecutor's office of Sovetsky region of the city of Minsk ignored forensic medical expert's report that confirmed the existence of bruises and ruled out a possibility that the injuries could have been caused by a fall on a plain surface. The prosecutor's office personnel did not questioned the witnesses, who had been held in the same cell as Pavel Levshin. (**Annex 1**)

2.10 There are some cases registered when despite the irrefutable facts of use of torture (fractured wrist, bruises and scratches caused by solid blunt object) public prosecutor's office refused to commence a criminal action and confined itself to questioning militia personnel, those who arrested and interrogated the victim, i.e. those who allegedly committed the torture. (**Annex 2** contains materials on the fact of torture used against minor Andrei Dubovik from Soligorsk: complaint addressed to the prosecutor's office of Frunsensky region of Minsk, forensic medical experts' report, prosecutor's office of Frunsensky region of Minsk regulation to dismiss institution of a criminal proceeding).

2.11 There are some cases known when in response to victims' complaints about unlawful actions of militia personnel, who used tortures and degrading treatment, criminal procedures were instituted against victims, presumably in order to justify tortures and inhuman treatment.

2.12 On 21 July 1999 Oleg Volchek, a human rights defender from Minsk, was subject to assault and battery by three militiamen at the militia station of Moscovsky region of Minsk. The militiamen kicked and punched Oleg Volchek's head, neck, spine and other parts of his body unless he fainted. They demanded that he should quit his human rights activities. Then Mr. Volchek was placed into a cell, where he had been kept for 18 hours without food, water or medical help. There was a lot of chloride of lime in the cell, which had been provoking lacrimation of his eyes. In response to torture complaints, criminal procedures were instituted against Oleg Volchek for attacking militia personnel. For about one year Oleg Volchek had been filing complaints in order to institute criminal procedures against militiamen who had beaten him, however, nor regional prosecutor's office, neither Minsk prosecutors' office instituted a criminal case on the fact of torture despite witnesses' testimony and forensic medical experts' reports proving the existence of bodily injuries. (**Annex 3**)

2.13 On 21 January 2008 Sergei Parsiukevich was beaten by militia personnel of Minsk Detention Center. After he filed a complaint about torture, criminal proceeding in respect of Sergei Parsiukevich was instituted according to article 364 of the CC "Use of violence or threat of violence in respect of militia personnel" (Sergey Parsiukevich's sentence is attached as **Annex 4**). Criminal proceeding under article 400, part 2 "knowingly false denunciation" was instituted against Yana Poliakova, a human rights defender, who was hit by official of Soligorsk regional militia department. Yana Poliakova could not endure moral suffering resulting from the false accusation and committed a suicide after the verdict had been announced by court.

2.14 Article 64 of the CC specifies aggravating circumstances and does not contain coercion by torture of the alleged offender, accused, victim, witness to testify. This fact suggests that the State does not recognize use of torture in the criminal procedure as an aggravating circumstance.

2.15 The State Party in its Fourth Periodical Report states as follows:

Responsibility for the use of torture is specified by article 426 of the CC (Abuse of power), part 3 of which contains such qualifying characteristic as "associated with violence, torture or insult of the victim or use of arms or special facilities". The offence in question falls under the category of grievous offences, that is penalized by imprisonment for three to ten years with or without

confiscation of property and with forfeit of right to hold specific offices or be engaged into specific activities (P. 13 of the Report of the Republic of Belarus).

2.16 Article 12 of the CC categorizes all the offences into four categories:

- 1) offence that doesn't constitute serious public danger;
- 2) less grievous offence;
- 3) grievous offence;
- 4) special grievous offence

2.17 The offence under part 3 of article 426 of the CC "Abuse of power, associated with violence, torture or insult of the victim or use of arms or special facilities" according to article 12 of the CC refers to less grievous. That means that the national law places such offences to the second level of gravity, and doesn't regard it as grievous or special grievous offences.

2.18 Articles 3 and 10 of the Criminal and Executive Code (hereinafter the CEC) contain certain guarantees and measures protecting against torture, violence and other cruel or degrading treatment including the right to file complaints, that are not subject to censure (part 4 of article 13 of the CEC).

2.19 In real life complaints about custody conditions and torture, used at penitentiary institutions, are subject to strict censure and do not always leave the prison. The complaint filed by Oleg Surgan contains information that he was subject to torture at the detention center, and about use of torture in respect of people who complained about humiliation inflicted by detention centre personnel (**Annex 5**). We received information from prisoners' relatives, who are not provided medical assistance of a dentist, or during several days after limb's fracture, that can be qualified as torture. **Annex 6** contains complaint filed by Olga Dorofeeva, mother of Alexander Dorofeev, who was subject to torture, about failure to render medical assistance during long time at the detention center in respect of foot fracture. As well as response from the detention center No 1 that, dental prosthetics is not provided at the penitentiary institutions due to absence of required equipment.

2.20 Many detention centers do not meet minimum UN standards for treating prisoners. One of such centers is Minsk detention center, located at 36, 1st Okrestina lane in Minsk (hereinafter DC), that functions as temporary service of sentence as administrative arrest for up to 25 days. The cells of the DC are not equipped with individual sleeping berths, cabinets for personal belongings, tables or pegs. Prisoners are not given bedclothes, personal belongings of the persons taken into custody are not subject to sanitization. In autumn, winter and spring the temperature in cells drops to +10 C. The DC is not equipped with yards for prisoners to walk in, i.e. all the persons during the service of the sentence do not have an opportunity to walk in the fresh air. The prisoners can not exercise, as the size of cells is too small. Shared wooden bed occupies almost all the space of the cell. Thus Yegor Bobrov, filed a complaint to the Prosecutor's office about low temperature, unavailability of individual sleeping berth and bedclothes, and daylight in the cell, unavailability of walking possibility due to the absence of yards, lack of free space in cells for physical exercises. The only furniture available in the cell was big wooden deck, where all the prisoners sleep, eat, and sit when they are not sleeping. The Minsk prosecutor's office only confirms absence of individual sleeping berths and bedclothes, absence of walking due to absence of special yards. The other issues were not examined by the prosecutor's office in essence. (**Annex 7**)

2.21 Persons who are pending decision of deportation are also held in custody at the DC. There is no maximum term required to carry out deportation set and persons, subject to deportation live in such conditions for months, till the funds for deportation are found. For example, citizen of Cameroon Guja Fransua Tukam complains about absence of furniture, individual sleeping berths, and enclosed toilet, unavailability of toilet sets (such as soap and towel), unavailability of walks. He also complains about use of torture by the DC guards and degrading treatment. (**Annex 8**)

2.22 Annex 9 contains complaints filed by Ivan Stasiuk from Brest and Pavel Levinov from Vitebsk about cruel, inhuman and degrading treatment at detention centers of Brest and Vitebsk.

2.23 In June 2010 the Prosecutor General Mr. Grigory Vasilevich submitted report to the Minister of the Interior Anatoly Kuleshov in respect of conditions of custody in prisons and detention centers. The report among other things states: “We presume that there are some problems with meeting standards in the field of life conditions and medical assistance to such persons. Any violence, physical or psychological, against the persons kept in detention centers and correctional facilities, shall be eliminated,” the Prosecutor General believes, he also believes that the MoI “shall provide standards, that are recorded in a number of codes”².

2.24 According to assessments UN/UNDP Office in Belarus there is no single prison in Belarus, that would fully comply with relevant standards of the World Health Organization for infection control.³

2.25 As a result, the number of tuberculosis cases in Belarusian prisons 6.7 times higher than the average rate in the country. In 2008 the disease rate in prisons was 303,6 cases per 100 000 persons, and 45,3 cases among the general population⁴.

2.26 The State Party in its Fourth Periodic Report states as follows:

Special attention is given to the performance of religious rites by prisoners in prisons. The legal basis for such right is article 31 of the Constitution and article 12 of the CEC, article 10 of the Law “On procedures and conditions of custody”, article 25 of the law “On freedom of conscience and religious institutions”, and Decree of the Ministry of the Interior as of 26 November 1999 No 232 “On procedures of relations of correctional facilities, detention centers and activity therapy centers with religious institutions and ministers of religion” (P. 51 of the Report of the Republic of Belarus).

2.27 There is no Decree of the Ministry of the Interior as of 26 November 1999 No 232 “On procedures of relations of correctional facilities, detention centers and activity therapy centers with religious institutions and ministers of religion” in the register of normative and legal acts of the Republic of Belarus, which suggests that the state deliberately misleads the Committee against Torture.

2.28 The Procedural and Executive Code of the Republic of Belarus on administrative offences, which is the only law setting out the procedure of administrative process, effective on the territory of the Republic of Belarus, doesn’t provide for the right of persons under administrative arrest to perform religious rites. The persons under administrative arrest are not allowed to have with them objects of religious cults. Thus the persons under administrative arrest are deprived of a right to perform religious cults.

2.29 Human rights defenders are specifically concerned about cases of torture of persons sentenced to death. There is information that those suspected of special grievous offences, sanction for which provide for capital punishment, were subject to torture. Thus in June – July 2009 Vasily Yuzepchuk and Andrei Zhuk were sentenced to capital punishment by the panel of judges of Brest and Minsk oblast courts. In their testimony they repeatedly mentioned that they were subject to torture, which is proved by medical documents. Vasily Yuzepchuk stated, that he was severely beaten, starved, given unknown medicines and take alcohol, as a result of which he lost ability to assess the situation adequately. There were no proper investigation of these facts.

2.30 The practice of executing capital punishment is also criticized. Relatives are not informed about the date of death penalty and the place of burial of convicts. Such practice is regarded by UN Human Rights Committee as a violation of article 7 of International Covenant on Civil and Political Rights (Communication No 886/1999 Bondarenko v. Republic of Belarus, Communication No

² http://naviny.by/rubrics/society/2010/06/23/ic_articles_116_168327/

³ http://naviny.by/rubrics/zdorovie/2009/09/09/ic_news_292_317296/

⁴ http://naviny.by/rubrics/zdorovie/2009/09/09/ic_articles_292_164411/

887/1999 Liashkevich v. Republic of Belarus). The practice of execution of capital punishment had been unchanged even after decisions of the Human Rights Committee were published.

2.31 In March 2010 the State executed two death penalties, despite the request of the Human Rights Committee to suspend the execution due to registration of complaints of these citizens at the Committee. Relatives still are not given the bodies of the convicts and are not informed about the place they were buried.

3. Part III

Measures on implementation of recommendations of UN Committee against Torture with regard to examination of the Third Periodic Report (Part D “Recommendations” of the final act of the Committee)

On point “a”

3.1 “introducing amendments into criminal law of the Republic of Belarus with the purpose to include into the legislation such offence as “torture” as defined by article 1 of the Convention and decide upon adequate punishment”

3.2 The State Party in its Fourth Periodic Report states as follows:

Pursuant to article 20 of the law of the Republic of Belarus as of 10 January 2000 № 361-3 “On normative acts of the Republic of Belarus” the norms of law, contained by international treaties the Republic of Belarus is a party to constitute a part of legislation effective on the territory of the Republic of Belarus and, subject to immediate implementation, with the exception of cases when an international treaty requires adoption of a national normative and legal act, and have the effect of the normative and legal act, that expresses consent of the Republic of Belarus to commitment to the correspondent international treaty.

3.3 *Thus for the purposes of implementation of criminal prosecution of persons engaged in inflicting torture the definition of torture as provided for in article 1 of the Convention is used.*

3.4 *According to the legislation persons, subjected to torture, cruel or degrading treatment or punishment, can file complaints and reports to public prosecutors’ office and judicial authorities of the Republic of Belarus. Besides pursuant to the Law of the Republic of Belarus “On public prosecutor’s office of the Republic of Belarus” the officials of the prosecutor’s office are fully independent when performing their duties. Any intervention into their activity is not allowed and entails responsibility set by legal acts. At the same time the Constitution of the Republic of Belarus establishes independence of the judicial system of the Republic of Belarus of other branches of power. (Report of the Republic of Belarus on point “a”).*

3.5 The absence of the definition of “torture” pursuant to the Convention in the national law is still an urgent problem. Belarusian courts always take decisions pursuant to the national legislation, despite the well grounded references in the complaints to international treaties mandatory for Belarus. The Supreme Court gives priority to national legislation and ignores International Covenant on Civil and Political Rights. (**Annex 10**)

3.6 Reports and complaints filed by victims of torture, cruel or degrading treatment to courts are sent back without being investigated.

4. On point “b”

4.1 “taking prompt and effective measures to create fully independent mechanism of processing complaints to provide implementation of efficient, impartial and comprehensive investigation of facts of alleged use of torture, reported to the relevant authorities, and ensuring in appropriate cases of criminal prosecution and punishment of the alleged offenders”

4.2 The State Party in its Fourth Periodic Report states as follows:

Independence of the mechanism of examination of complaints about acts contemplated by article 1 of the Convention, efficiency, impartiality and comprehensiveness of examinations of such reports

is ensured by the fact that such examinations, as well as preliminary investigation of criminal cases in respect of official malfeasances, pursuant to the CPC of the Republic of Belarus are carried out by the prosecutor's office. Pursuant to the Constitution, supervision over precise and uniform implementation of laws, decrees and other normative acts is carried out by the Prosecutor General of the Republic of Belarus and his subordinate prosecutors. (Report of the Republic of Belarus on point "b")

4.3 Public prosecutor's office often are prejudiced to complaints about actions contemplated by article 1 of the Convention. Prosecutor's examinations are neither complete, nor comprehensive, not impartial. In the course of such examinations the officials of the prosecutor's office apply presumption of trust to the testimony of officials, who are reported by the victim as guilty of torture, and doesn't pay proper attention to the testimony of the victim and witnesses on behalf of the victim. For example, in the case of Dmitry Nekhai from Molodechno the prosecutor's office of the Central region of Minsk passed regulation to refuse to institute criminal procedure for torture and degrading treatment. The regulation is based on the interrogation of militiamen, while testimony of witnesses among civil citizens and that of the victim is ignored by the public prosecutor's office. **(Annex 11)**

4.4 The State Party in its Fourth Periodic Report states as follows:

Besides there is a right legally granted to the convicted person to address members of Parliament with a statement, a proposal or a complaint. Article 25 of the Law as of 4 November 1998 No 196-3 "On the status of member of the House of Representatives, member of the Council of the National Assembly of the Republic of Belarus" stipulates that deputies shall examine citizens' proposals, statements and complaints, take measures to legally and timely resolve them in accordance with the current law, examine the reasons, arousing such complaints, and make proposals to the House of Representatives, Council of the Republic and their bodies, local Councils of Deputies, executive and regulatory authorities, other state authorities, public associations, institutions, organizations and enterprises. Deputies exercise control over examination of complaints of citizens by state authorities, public associations, institutions, organizations and enterprises, participate personally in their examination and control over implementation of decisions taken to resolve citizens' complaints. As a result of examination of citizens' proposals, statements and complaints deputies can submit a report to officials of the relevant of the state authorities, authorities of public associations, institutions, organizations and enterprises. (Report of the Republic of Belarus on point "b")

4.5 Reference of the official Report of the Republic of Belarus to the competence of the Deputies of the House of Parliament, members of the Council of the Republic of the National Assembly in examination of proposals, statements and complaints of citizens is not quite correct. Since the phrase "as a result of examination of citizens' proposals, statements and complaints deputies can submit a report to officials of the relevant of the state authorities, authorities of public associations, institutions, organizations and enterprises", means that the Deputies can undertake such actions, however are not obliged to do so.

5. On point "c"

5.1 "considering creation of independent and impartial governmental and non-governmental national committee on human rights with actual powers, in particular to promote human rights and examine all the complaints about human rights violations, especially those connected with implementation of the Convention"

5.2 The State Party in its Fourth Periodic Report states as follows:

Human Rights Commission of the Commonwealth of Independent States is created pursuant to article of article 33 of the Regulations of the Commonwealth of Independent States. By decision of the Council of the Head of States of the Commonwealth of Independent States as of 24 September 1993 ratifies the Regulation on Human Rights Commission of the Commonwealth of Independent States, regulating activity of the above Commission (entered into force as of 11 August 1998). Is a advisory body and supervises implementation of commitments on human rights, undertaken by the

State Parties within the framework of the Commonwealth of Independent States. The Commission is located in Minsk.

5.3 *On 28 January 2009 the Public Advisory Council within the Administration of the President of the Republic of Belarus, that involves broad circle of representatives of the civil society. The key goal of the Council is elaboration of recommendations for the government of the Republic of Belarus with regard to development of the Belarusian state and society.*

5.4 *With the purpose to protect rights of prisoners pursuant to article 21 of the CEC of the Republic of Belarus Republican public supervisory commission under the Ministry of Justice and local supervisory commissions under main Departments of Justice of oblast and Minsk City Executive Committees. (Report of the Republic of Belarus on point "c")*

5.5 Human Rights Commission of the Commonwealth of Independent States is an advisory body and as such does not possess actual powers to efficiently response to human rights violations.

5.6 As for the Public Advisory Council under the Administration of the President of the Republic of Belarus, out concern is raised by the fact that the Council sits every time following the instruction of the Administration of the President and doesn't have regular scheduled sittings.

5.7 There is no public supervisory commission under Minsk City Executive Committee, which is proved by the reply of the main department of Justice of the Minsk City Executive Committee as of 31 May 2010. **(Annex 12)**

6. On point "d"

6.1 **"taking measures, including review of the Constitution, laws and decrees, to establish and ensure in line with international standards, independence of judges and layers while implementation of their official duties"**

6.2 The State Party in its Fourth Periodic Report states as follows:

Pursuant to article 60 of the Constitution everyone is guaranteed protection of his rights and freedoms by competent, independent and impartial court within terms set by the law.

6.3 *The regulation contemplated by the above article of the Constitution is an important safeguard protecting human rights and freedoms from any actions and decision violating such rights. The right for judicial protection falls under such rights, that can not be limited, including in respect to persons, whose right to appeal to court is not directly stipulated in the normative and legal acts of the Republic of Belarus. (Report of the Republic of Belarus on point "d")*

6.4 National courts do not accept for examination complaints of citizens, on violation of human rights not to be subject to torture, cruel and inhuman treatment and punishment in detention centers and correctional facilities. Complaints filed to courts by Pavel Levinov, Valentin Stefanovich, Yegor Bobrov about torture and cruel and inhuman punishment at detention centers and correctional facilities were not taken for examination. **(Annex 13)** Examination by the prosecutor's office and Ministry of the Interior of complaints about custody conditions at detention centers and correctional facilities that constitute cruel and inhuman treatment do not comply with the criteria of independent mechanism of examination of complaints.

6.5 The State Party in its Fourth Periodic Report states as follows:

The Republic of Belarus takes numerous actions to improve organizational support to courts, strengthening guarantees of courts' independence, improving material and social support to judges and courts' personnel, enhancing of the judicial system by qualified professional staff. Measures are taken to prevent corruption among judges and personnel of the courts.

6.6 *The above system guaranteeing independence of judges in general complies with international standards and shall ensure real independence of judges when they administer justice (Report of the Republic of Belarus on point "d")*

6.7 The judicial system of the Republic of Belarus as assessed by international experts is not independent de facto, which can be confirmed by report of the International Commission of

Lawyers (hereinafter ICL), submitted in November 2009. The ICL states, that the judicial system of Belarus is not independent enough, it works in the context of extremely broad presidential powers in accordance with the Constitution of 1996, including the right to employ and dismiss judges and other representatives of power at the discretion of the President. The President controls the process of assignment of judges and assigns himself all the judges of ordinary courts, and six judges out of twelve of the Constitutional Court. The President also possesses exceptional right to dismiss judges, at the same time there are no guarantees from arbitrary dismissal. The Code on judicial system and status of judges give the right to the President to inflict “any disciplinary penalty on any judge without instituting disciplinary proceedings”, which among other measures includes dismissal of a judge from his/her position.

In case of instituting a disciplinary proceedings the grounds can be vague or too broad. Judges salaries are fully dependent on the decision of the executive power. After passing decree No 25 as of 1997, applied retroactively, the judges houses were defined as “official premises”, which they can be deprived of in case of dismissal from the position. In total these measures ensure subordination of judicial power to executive power, which are in conflict with the fundamental principals of the UN, with regard to independence of the judicial bodies, and violates the right for fair trial, ensured by article 14 of the International Covenant on Civil and Political Rights.

6.8 The ICJ is especially concerned about the right of the President to directly intervene in the judicial processes. In 2000 the President created an interagency commission that is control so called “big” cases. The Commission’s work is confidential. The Commission takes its decision on criminal cases before the case has been heard in court. Moreover, pursuant to presidential decree No 426 as of 2005, the President granted a right to himself to exempt from any criminal liability a person, who is responsible for offences pertaining to inflicting damage on the state property of public interests. Such mechanism contradicts to principles 3 and 4 of the Fundamental principles on independence of judicial institutions and on the right for fair judicial proceedings by impartial court.

6.9 Report on the mission in Belarus on 12-17 June 2000 prepared by Parama Kumarasvami, the Special Rapporteur, also suggests that judges in Belarus are not impartial. He is concerned about the large number of inexperienced judges, poor working conditions and about the fact that their dependency on the Government threatens independence of judicial system and extends possibility to put pressure on judges and to corrupt them. The low level of judges’ salaries and their dependence on the executive power and the Presidential Administration with regard to their carrier promotion and ensuring other minimal conditions of their service threaten judges’ capability to take independent decisions. The low salary level enables corruption among judges. **(Report of Parama Kumarasvami in Annex 14)**

6.10 The State Party in its Fourth Periodic Report states as follows:

The law of the Republic of Belarus as of 15 June 1993 “On the Bar Association” says that the Bar in the Republic of Belarus is an independent legal institution that in line with the Constitution performs professional legal human rights activity.

6.11 *Pursuant to article 62 of the Constitution of the Republic of Belarus every person has a right to receive legal assistance in order to defend his rights and freedoms, including the right to resort at any moment to the assistance of lawyers’ and other representatives in court, other state institutions, local authorities, enterprises, institutions and organizations, public associations and in relations with officials and citizens. Moreover in cases specified by law, the legal assistance shall be provided at the expense of the state.*

6.12 *Lawyer is independent in his/her activity and subordinate to the law only.*

6.13 *Lawyer is exempted from the list of subjects, who are subject to criminal liability for non-reported crime (article 406 of the CC).*

6.14 *Any interference into lawyers’ professional activity, demanding lawyers to give out any information that constitutes a part of lawyer’s confidentiality, as well as demanding such*

information from officials and technical staff of advocates' self-government institutions and advocates' associations is prohibited.

6.15 *Information that constitutes a part of lawyer's confidentiality cannot be obtained from a lawyer and used as evidence in civil, administrative and criminal procedures.*

6.16 *The State ensures independence of the Bar's work, access to legal assistance and cooperation of state bodies and advocacy self-government institutions in the course of ensuring protection of rights, freedoms and lawful interests of citizens, providing legal assistance to physical and legal entities (articles 1, 16 and 29 of the Law). (Report of the Republic of Belarus on point "d")*

6.17 Based on the report of the International Commission of Jurists (ICJ), we should mention that contrary to requirements of the Fundamental principals in respect to lawyers role, lawyers do not have a possibility to form independent advocacy associations. In practice lawyers undergo persecution for defense of their clients. International Commission of Jurists is seriously concerned about the fact that the lawyers professional activity is totally under control of the Ministry of Justice. **(Report of the ICJ in Annex 15)**

6.18 Thus on 2nd March 2006 Mr. Igor Rynkevich, the lawyer of Alexander Kozulin, a presidential candidate, was beaten by senior officers of Almaz, the special division for fighting terrorism under the Ministry of the Interior of the Republic of Belarus. They broke his glasses and used stifling hold on his neck. According to the forensic medical experts' reports, the lawyer was inflicted to bodily injuries that negatively influenced his health. The militiamen, who beaten Me. Rynkevich, filled in the protocol on administrative offence against him and sent the protocol to the court. However, the court dismissed the case **(regulation on dismissal of the administrative case in respect of Igor Rynkevich in Annex 16)**. Despite the fact that the lawyer came to the Oktyabrsky militia department in order to perform his legal duty, the public prosecutor didn't institute a criminal proceedings against the militia officers, though their names were identified. Later Igor Rynkevich was subjected to severe pressure on behalf of officials of the Ministry of Justice with the purpose to initiate his resignation from the judicial company. Following such pressure Igor Rynkevich had to return his license to the Ministry of Justice and discontinue his working as a lawyer.

7. On point "e"

7.1 **"taking measures aimed to improve custody conditions at prisons and detention centers and establishing prison inspection systems by trusted impartial inspectors, whose conclusions shall be made public"**

7.2 The State Party in its Fourth Periodic Report states as follows:

We deem necessary to point out the following aspects with regard to establishing prison inspection systems.

7.3 *Article 21 of the CEC of the Republic of Belarus specifies the form of involvement of public associations in the work of bodies and institutions, executing punishment and other measures of criminal liability.*

7.4 *Pursuant to the above article, based and according to the procedures, stipulated the legislation public associations can exercise control over activity of bodies and institutions, executing punishment and other measures of criminal liability.*

7.5 *Public associations are involved in correction of the convicts and assist to the bodies and institutions, executing punishment and other measures of criminal liability.*

7.6 *Supervisory commissions under local executive and regulatory bodies, and commissions for minors if minors are involved in the case, participate in correction of convicts and in exercising control over the activity of bodies and institutions, executing punishment and other measures of criminal liability.*

7.7 *Supervisory commissions work without remuneration. Their key goals are supervising performance of the bodies executing punishment, activity therapy centers, conditions of custody, use of means of preventive actions; identifying violations and assistance in their elimination;*

assisting bodies, executing punishment, in organization of correctional process in respect of convicts and their re-adaptation, and to local executive and regulatory bodies – in providing re-socialization of persons, released from prisons or activity therapy centers.

7.8 In order to perform their tasks the supervisory commissions are entitled to:

to pay visits to institutions, executing punishment, and organizations, where persons sentenced to public works, therapy activities or imprisonment are working, in the order established by the law with the purpose to supervise implementation of correctional process of those persons;

to request and receive from the administration of the institution executing punishment documents and information necessary for the supervisory commission to perform its tasks;

upon approval of the administration of the institution executing punishment to receive prisoners and review their suggestions, complaints and reports with regard to their service of sentence;

together with the administration of the institution executing punishment to solicit for pardon of the convicts;

during commissions' sittings to examine information of the administration of the institution executing punishment and heads of organizations where persons sentenced to public works, therapy activities or imprisonment are working, about the work to correct convicts and to suggest steps to eliminate drawbacks in their work;

to submit to relevant local executive and regulatory bodies proposals on improvement of correctional process in institutions executing punishment;

to examine possibility of employment of persons, released from prisons and activity therapy centers;

to submit to relevant local executive and regulatory bodies proposals to form vacancy limits to employ persons released from prisons and activity therapy center;

to address applications to courts on their own initiative to release from or to mitigate punishment or to improve the convicts' situation in some other way in view of coming into effect of a law that has a retroactive effect;

to coordinate submission of the administration of a correctional institution an application on substitution a correctional facility of a prisoner;

to grant consent to the administration of a correctional facility to substitute a prisoner's regime from high security regime to general regime and vice versa;

to coordinate decisions of administration of a correctional institution for residence outside the colonies of convicted women during their pregnancy and delivery, and till the child is three years old;

to grant their consent to administration of a medical correctional institution to transfer a prisoner in case when disciplinary measures used proved to be unsuccessful to the specialized board for the period of up to six months;

to participate through its representatives during courts' examination of cases of releasing of convicts on a grant of parole, or substitute a punishment for a convict for lighter sentence, to substitute a category of correctional facility;

to visit activity therapy centers, to examine conditions of medical and social re-adaptation, convicts' custody and work conditions;

to render assistance to criminal and executive inspections in organizing certain activities when executing preventive supervision over persons released from prisons.

7.9 Mass media representatives and other persons have the right to visit prisons with approval of the administration of such institutions or higher authorities.

7.10 *Filming, video filming, and photography of the convicts, as well as interviewing them, is allowed by the administration of the institution or higher authorities with written consent of the convicts.*

7.11 *Filming, video filming, and photography of objects, ensuring security of such institutions and guarding the convicts, is performed upon approval of the administration of the institution or higher authorities.*

7.12 *During the period January 2007 – September 2008 criminal and executive system institutions were visited by representatives of foreign states more than 30 times. The visitors made no critical remarks with regard to organization of punishment execution by institutions of the criminal and executive system. (Report of the Republic of Belarus on point “e”)*

7.13 Sergei Ustinov, representative of Republican Public Association “Legal Initiative” made an attempt to be entered into the composition of several supervisory commissions, but was rejected for various subjective reasons. This fact adds to the closed nature of penitentiary system of Belarus from observance on behalf of public associations. **(Annex 17)**

8. On point “g”

8.1 **“considering possibility to make relevant statements pursuant to articles 21 and 22 of the Convention”**

8.2 The State Party in its Fourth Periodic Report states as follows:

The Republic of Belarus is considering possibility to make statements pursuant articles 21 and 22 of the Convention.

8.3 *At the same time the right to address international organizations with the purpose to protect human rights and freedoms, if all the other available national means of legal defense have been exhausted, in accordance with international legal acts ratified by the Republic of Belarus, is guaranteed by article 61 of the Constitution of Belarus.*

8.4 *The Republic of Belarus ratified the Optional Protocol to the International Covenant on Civil and Political Rights by decision of the Supreme Council of the Republic of Belarus as of 10th of January 1992 and by doing so recognized the powers of the Human Rights Committee to examine individual’s complaints about human rights violations in line with the Covenant, including those pertaining to implementation of the Convention. (The Fourth Periodic Report “On measures to implement commitments pursuant to the UN Convention against Torture” on point “g”)*

8.5 Human rights defender Sergei Ustinov addressed the Ministry of the Interior with the request to inform him about actions in respect to statement pursuant to articles 21 and 22 of the Convention. Pursuant to the Ministry’s response as of 16 September 2010, it is obvious that there were no measures pertaining to articles 21 and 22 of the Convention taken. **(Annex 18)**

9. Belarusian NGOs recommendations on measures necessary to achieve sustainable level of compliance with articles of the Convention against torture and other cruel, inhuman or degrading treatment and punishment

General measures on implementation of the Convention

9.1.1 The competent authorities of the Republic of Belarus shall carry out research, analysis and assessment of the practical actions of the law enforcement agencies to maintain public order and fight crime, in order to identify practices that are not in line with requirements of the present Convention, establish reasons of existence of such practices and develop complex measures to eliminate those.

9.2.2 The competent authorities of the Republic of Belarus in cooperation with non-governmental organizations shall develop a monitoring system, providing for objective assessment of the extent of occurrence of tortures and cruel and degrading treatment in the country given the high latency of such crimes. The authorities shall carry out statistical record to count:

- a) number of torture and cruel and degrading treatment complaints sent to competent authorities;
- b) number of investigation resulted from torture complaints;
- c) number of torture complaints proved legitimate in the course of investigation;
- d) number of sentences passed for torture;
- e) number of persons, sued for use of torture and cruel treatment.

9.3.3 The competent authorities of the Republic of Belarus shall continue developing international cooperation in the field of preventing tortures, including:

- a) passing the statement in compliance with articles 21 and 22 of the Convention against tortures;
- b) ratification of the Optional Protocol of the Convention against tortures;
- c) providing full-value interaction with the Special Rapporteur on torture prevention.

9.4.4 The Republic of Belarus shall introduce legal definition of such crime as “torture” into the Criminal Code of the Republic of Belarus, that is to the full extent complies with the definition of “torture” contained in the article 1 of the Convention against Torture.

9.5.5 Cruel, inhuman and degrading treatment shall be given legal definition as a specific offence committed by officials.

9.6.6 The State Party shall review criminal and executive legislation in the part of implementation of capital punishment to eliminate norm (part 5 of article 175 of the Criminal Executing Code) saying that “the body is not given to relatives for burial, relatives are not informed about the place of burial”.

10. Training of law enforcement officers

10.1.1 The competent of the Republic of Belarus shall expand the existing experience of the international cooperation in the field of training of personnel of the penitentiary and law enforcement agencies, enrolling more and more staff in these programmes, directly responsible for interaction with arrested and prisoners.

10.2.2 The competent authorities of the Republic of Belarus shall involve NGOs to the process of training personnel of the penitentiary and law enforcement agencies in respecting human rights and prohibition of tortures.

10.3.3 The State Party shall review technical norms of construction of pre-trial prisons, detention centers and other place of custody of apprehended person to provide prisoners in prison cells with sufficient amount of day light, proper temperature regime, proper airing, individual sleeping berth, place to store individual bare necessities, proper enclosure of the bathroom units.

10.4 Ensuring implementation of the provisions of the Convention during arrest, interrogation and detention.

10.5 Penitentiary system shall be excluded from the competence of the Ministry of the Interior of the Republic of Belarus and included into the competence of the Ministry of Justice.

10.6 The competent authorities of the Republic of Belarus shall undertake measures to create an independent experts institutions to supervise conditions of detention in prisons. In particular to solve this issue on the legal level.

10.7 Medical service, conducting examination of persons, taken into custody, shall be excluded from subordination to the Ministry of the Interior, the medical service in prisons shall be independent.

11. Ensuring quick and unbiased investigation into torture complaints

11.1.1 The Office of the Prosecutor General shall develop methodological recommendations for investigation of torture and cruel and degrading treatment, that would take into account criminological characteristics of such crimes, reflected in the Istanbul Protocol.

11.2.2 The authorities of the Republic of Belarus shall initiate practical training of the personnel of the Prosecutor's Office in methods of investigation of tortures and cruel and degrading treatment.

11.3.3 The authorities of the Republic of Belarus shall adopt complex measures including legal measures ensuring access of the victim of torture to investigation in line with the Convention against Torture.

11.4.4 Competent authorities of the Republic of Belarus shall introduce rules for medical staff when visiting isolators and prisons in case of finding that prisoners have signs of physical acts of violence on their bodies are obliged to report these cases to the relevant prosecutor.

12. Ensuring a right to file a complaint against torture

12.1 Belarusian authorities shall review procedure providing sending complaints of prisoners through the administration of institutions of confinement, and develop a new system, that would provide for posting complaints uncensored and regardless if there is good will of the administration of the institution.