

Questionnaire on the use of legislation, including criminal legislation, to regulate the activities and work of human rights defenders

It would be greatly appreciated if responses were brief. They may be submitted in bullet-points if preferred. For non-governmental organizations, should they wish, their identity will remain confidential (only the country where they operate will be disclosed). Furthermore, they need only answer questions which are relevant to them, and may share information about defenders other than themselves.

1

a) Please indicate if your country has a specific legal framework, laws or regulations that aim to facilitate or protect the activities and work of human rights defenders. Please cite the names of any such laws or regulations in full.

In Belarus, there is no legislation which would facilitate and protect the human rights defenders' activities.

6) Please indicate how these laws and regulations are in line with international human rights standards, including, but not limited to, the Declaration on Human Rights Defenders.

At present, in Belarus, there is no regulatory legal act, which would be, at least to a certain extent, in line with the Declaration on Human Rights Defenders or the provisions of the ICCPR as of 1966, providing for the human rights defenders' rights and freedoms. The law enforcement practice has confirmed that.

In some cases, even the relatives of the persons taken to court could not attend the highly publicized administrative processes. During the widely publicized criminal trials, the law enforcement officers would arbitrarily regulate the number of those permitted to enter the courtroom and impede the media from bringing and using their video, audio and photo equipment. The Courts would not inform the media and the public about their judicial acts.

The local authorities have never officially permitted a mass event intended to raise the issue of the human rights violations in Belarus, as well as of the violations of the human rights defenders' rights. As a result, when unsanctioned meetings were held, the human rights defenders themselves would be held administratively liable. No one has ever won a case, when challenging a refusal to permit a meeting issued by the local authorities, in the RB courts, while the latter do not implement the Communications of the UN Human Rights Committee regarding Belarus.

The local legislation on the foreign grant assistance impedes the human rights defenders from receiving the assistance of that kind and, in fact, impels the defenders to look for loopholes in the law, if not break it, since otherwise they would have to cease their activities.

The General Prosecutor's Office have summoned a number of human rights defenders and independent journalists in order to issue written orders (warnings), actually designed to impel them to abdicate their active citizenship, thereby violating the freedom of expression. The state security bodies have also issued such warnings. Most often such warnings are issued in connection with the appeals and public utterances.

c) Please also indicate what legal or administrative safeguards are put in place to prevent baseless legal action against and/or prosecution of human rights defenders for undertaking their legitimate work.

There are no such safeguards. Thus, on January 12, 2011, the Ministry of Justice issued a warning against the Republican Human Rights Public Association "Belarusian Helsinki Committee" (BHC) in connection with the communication sent by the BHC to the UN Special Rapporteur on the Independence of Judges and Lawyers and reporting the pressure on the certain Belarusian lawyers. The Supreme Court dismissed the BHC's complaint and recognized the warning as lawful.

On February 16, 2011, the General Prosecutor's Office warned the human rights activist Ales Belyatsky about the inadmissibility of the infringement of law, in particular, as regards acting on behalf of

the unregistered Human Rights Centre “Vesna” (such activities being criminally punishable under Art. 193-1 of the RB Criminal Code). Neither the Court of the Central District of Minsk, nor the Minsk City Court cancelled this warning. Subsequently, Ales Belyatsky was convicted of the large-scale tax evasion and sentenced to 4.5 years of imprisonment, with all his property liable to confiscation, by the Court of the Moskovsky District of Minsk. In fact, A. Belyatsky used the funds to carry out the human rights activities, and was forced to manage the funds personally due to: a) the termination of the official registration for the Human Rights Centre “Vesna” headed by him (despite the Communication from the UN Human Rights Council, Belarus did not re-register the HRC “Vesna”), and b) the lack of a real opportunity to legally register the money as the foreign grant assistance.

As for other human rights activists, the authorities practice the pressure against them through the courts (subjecting them to administrative liability, e.g. O. Volchek), the tax inspectorates (conducting continuous tax inspections), the customs authorities (subjecting them to personal searches at the border with the removal of all the electronic storage media) and other law enforcement agencies.

2.

a) Please describe the measures taken, if any, to ensure that your country’s national security-related laws (including laws on public order, public safety, respect for morals and counter-terrorism laws) are not used to unduly restrict the scope of activities of human rights defenders.

In Belarus, no measures are taken to this purpose. Instead, pursuing the national security interests, Belarus has denied the entry to the representatives of a number of the international human rights institutions. Since the beginning of 2011, the following representatives of the Committee for international control over the human rights situation in Belarus have faced the same ban: Andrei Yurov, Ivan Kondratenko, Victoria Gromova and Alexander Mnatsakanyan, Lyubov Zakharova, Yekaterina Korosteleva, Irina Paykacheva and several others.

6) Please also indicate in particular how these national security-related laws respect the human right to freedom of expression and opinion.

In Belarus, the responsibility for insult of the President (Art. 368) and slander of the President (Art. 367 CC) has been criminalized, which, in the situation of the dependence of the judicial authorities on the President, creates preconditions for the limitation of possibilities for any criticism. The law “On mass events in the Republic of Belarus” prohibits picketing, including one-person pickets, unless permitted in advance by the local executive authorities. In general, the administrative control over the mass events does not allow exercising freedom of expression, to which fact the Venice Commission and OSCE/ODIHR draw attention in their joint opinion (CDL-AD (2012) 006).

3.

a) Please describe the measures taken, if any, to ensure that provisions of the criminal code, or other national laws, are not ambiguous or too broad to allow their arbitrary use, thereby restricting the activities of human rights defenders.

According to Article 3, Paragraph 2 of the Criminal Code of Belarus, the provisions of the Code shall be subject to the strict interpretation, and it shall not be permitted to apply the criminal law by analogy. According to the ‘Law on Regulations’ as of January 10, 2000, N 361-3, when interpreting a Regulation, the content of its provisions shall be explained or clarified, and the place of them in the legislation shall be specified, as well as the functional and other nexus with other Regulations governing various aspects of the same kind of public relations, while any amendments and (or) changes to it shall not be permitted (page 70).

But, as the long years practice shows, due to the total dependence of the judicial, executive and legislative branches of the Government on the President of the Republic of Belarus and the bodies, subordinate to him, the law enforcement has virtually never been in favour of the human rights defenders.

b) Please indicate what legal or administrative safeguards are in place in order to ensure that human rights defenders are not discriminated against in the administration of justice, be it through the handing down of disproportionate sentences, the unreasonable prolongation of criminal or other trials, or any other means.

Since the state does not view the human rights defenders as a special group needing the legal protection, they have the same safeguards as the public members and do not enjoy any special privileges in the legal proceedings. Moreover, due to the negative and the neglectful attitude to the role of the human rights defenders in the country, having disclosed their activities, the human rights activists would be at risk to be less legally protected than the public members.

4.

a) Please indicate if your country has specific laws or administrative rules governing the registration, functioning and funding of non-governmental organisations. Please cite the names of any such laws or regulations in full.

To date, in Belarus, there are a large number of regulations, affecting, in one way or another, the activities of the non-profit organizations. At the same time, the regulations, directly governing the activities of the non-profit organizations as a special form of legal entities, are scarce. The existing legislation on NPOs is mainly regulating the issues of establishing and registering NPOs, but not the issue of certain benefits or preferences which they could enjoy because of their status. The basic regulations governing the establishment, operation and financing of non-profit organizations in the Republic of Belarus are as follows:

1. Civil Code of December 7, 1998, N 218-3 (as amended);
2. Criminal Code of July 9, 1999, N 275-3 (as amended);
3. Code on Administrative Offenses of April 21, 2003, N 194-3 (as amended);
4. Law 'On Public Associations' of October 4, 1994, N 3254-XII (as amended as of November 8, 2011);
5. Law 'On political parties' of October 5, 1994, N 3266-XII (as amended as of November 8, 2011);
6. Law 'On Trade Unions' of April 22, 1992, N 1605-XII (as amended as of December 13, 2011)
7. Presidential Decree of July 1, 2005, N 302 'On some measures to regularize activities of funds' (as amended as of June 11, 2009)
8. Presidential Decree of January 16, 2009, N 1 'On state registration and liquidation (termination of activities) of economic operators' (as amended as of June 27, 2011);
9. Decision of Ministry of Justice of August 30, 2005, N 48 'On approval of regulations on registration and review of documents related to the state registration of political parties, trade unions, other public associations and the unions (associations) of them, as well as to inclusion in and exclusion from the state register, registration and deregistration of their organizational structures' (as amended as of September 21, 2010);
10. Law of December 30, 1997, N 114-3 'On mass events in the Republic of Belarus' (as amended as of November 8, 2011);
11. Presidential Decree of July 1, 2005, N 300 'On provision and use of grant assistance (sponsor support)' (as amended as of October 13, 2011);
12. Presidential Decree of November 28, 2003 № 24 "On the receipt and use of foreign gratuitous aid" (as amended as of April 19, 2011);
13. Resolution of Presidential Department for Property Management of 17 September 2010, N 9 'On procedure of registration, accounting, receipt and use of foreign gratuitous aid' (as amended as of September 26, 2011);

14. Presidential Decree of October 22, 2003, N 460 'On international technical assistance to Republic of Belarus' (as amended as of March 5, 2010);

15. Resolution of Council of Ministers of November 21, 2003, N 1522 'On some measures for implementation of the Presidential Decree of October 22, 2003, N 460' (as amended as of March 27, 2010).

b) Please explain how these legal or administrative provisions comply with your country's international human rights obligations regarding the right 2 to freedom of association.

The legislation and law enforcement practice in the Republic of Belarus do not contribute to the development of non-profit organizations, severely restricting the freedom of association, especially when compared to the constitutional provisions and the international obligations of the state. Belarus has established a wide range of reasons for a refusal to register a public association and for dismissing it. Moreover, the legislation of Belarus impedes the effective functioning of the existing non-profit organizations, limiting their access to sponsorship. In the autumn of 2011, in Belarus, the next set of legislative amendments was adopted, in particular, establishing criminal liability for breach of the order of receiving the foreign grant assistance.

5.

a) Are there criminal or other legal or administrative sanctions for human rights defenders who undertake activities on an individual basis or while the association they are members of is unregistered?

First of all, the legislation of the Republic of Belarus prohibits any activities of unregistered associations in Belarus. Art. 193.1 of the Criminal Code provides for criminal responsibility for organization of or participation in the activities of political parties, other public associations, religious organizations or foundations, against which the authorized state body has taken a decision about their liquidation or suspension of their activities and such decision has come into force; as well as for organization of or participation in the activities of political parties, other public associations, religious organizations or foundations which have not completed the state registration procedure in due course. Such actions are punishable by a fine, or an imprisonment term which does not exceed six months, or an imprisonment term which does not exceed two years. At the same time, in 2001-2004, in Belarus, virtually all human rights associations were dismissed.

In addition to this article of the Criminal Code, there are a number of articles in the Criminal Code and the Code of Administrative Offences, which can obviously be used as a sanction for human rights activities:

1) Calling for action to the detriment of the external security of the Republic of Belarus, its sovereignty, territorial integrity, national security and defensive ability (Art. 361, Part 2 of the Criminal Code);

2) Discrediting the Republic of Belarus (Article 369-1 of the Criminal Code);

3) Receiving the foreign grant assistance in violation of the laws of the Republic of Belarus (Article 369-2 of the Criminal Code);

4) Breaching the order of organizing or conducting of mass events (Article 369-3 of the Criminal Code);

5) Breaching the order of use of the foreign grant assistance (Article 23.23. of the Administrative Code);

6) Breaching the order of organizing or conducting of mass events (Article 23.34 of the Administrative Code).

b) If such a legal framework exists, does it restrict the type of activities that human rights defenders can undertake? If yes, please provide further details.

The Belarusian legislation and law enforcement practice (not only in the context of the criminal and administrative liability) limits the possibilities for the human rights defenders to carry out the following

activities:

1. Establishing associations in order to implement the human rights goals. Those restrictions exist due to the Law 'On Public Associations', impeding the establishment and registration of public associations, providing for a possibility of a refusal to register an association for the formal reasons; Criminal Code of Belarus, Art. 193.1.

2. Implementing freedom of expression, including through the media, the Internet, as well as abroad. The restrictions exist due to the Law 'On Mass Media', impeding the registration of the mass media; the Presidential Decree; the Presidential Order of February 1, 2010, N 60 'On measures for improvement of the national segment of the Internet' providing for the possibility of establishing a limited access to the Internet resources (for example, the access to the website of the Human Rights Centre "Vesna" has been restricted); the Criminal Code of Belarus, Part 2, Art. 361, Art. 369.2.

3. Holding rallies, pickets and other peaceful mass events. The restrictions are due to the Law 'On mass events in Belarus' of December 30, 1997, N 114-3, in terms of the need to obtain a permission to hold a mass event, the inability to disseminate the information about the time, place and date of the event prior to its authorization, the possibility of banning any mass actions, etc.; the sanctions are imposed by Art. 23.34 of the Code of Administrative Offences and Art. 369.3 of the Criminal Code).

4. Influencing the decisions taken by the public authorities.

The Belarusian legislation also makes it virtually impossible for the human rights organizations to obtain funding both from the Belarusian legal entities and individual entrepreneurs, and from the foreign individuals, legal entities and international organizations. The legislation of Belarus contains a list of purposes, for which such assistance can be obtained, but that list of objectives does not include human rights activities. Besides, funding from abroad is subject to the permissive registration at the state bodies. The use of the foreign grant assistance without the registration is prohibited. The law enforcement practice shows that successful registration of the foreign grant assistance requires a letter of support from the relevant ministry, department or the local executive body. The procedure of registration of the foreign aid is not transparent. A breach of the law on the foreign donations entails administrative and criminal liability.

An example of the restrictions on the human rights activities in the Republic of Belarus is the imprisonment of the director of the Human Rights Centre "Vesna", A. Belyatsky.

6. Please indicate the measures taken, if any, to ensure that internal security and official secret-related laws are not used to deny freedom of information to human rights defenders and to prosecute them for their efforts to seek and disseminate information on the observance of human rights standards.

No measures of this kind have ever been taken. The human rights activists and members of public have no guarantees of access to the largest part of the information about the activities of the state bodies, since there is no appropriate legal basis for that.

7.

a) Please indicate the measures taken, if any, to avoid the use of defamation, slander or blasphemy laws to unduly restrict the right to freedom of opinion and expression of human rights defenders.

No measures have been taken by the state to this purpose.

b) How is it ensured that such laws, as well as laws on printing, publication and censorship, comply with international human rights standards and do not target human rights defenders carrying out their legitimate work?

Unfortunately, no additional guarantees have been provided for in Belarus to enable the human rights defenders to fulfil their functions.

8.

Please indicate if any other type of legislation is used to regulate the activities of human rights defenders in your country and how the application of the legislation mentioned affects the activities of human rights defenders. Please cite the names of any such legislation in full.

The human rights activists, as well as members of public, are entitled to attend the public court proceedings during a criminal (Articles 23, 287 of the Criminal Procedure Code), economic (Article 23 of the Code of Commercial Procedure), civil (Articles 17 and 271 of the Civil Procedure Code) and administrative (Article 2.14. of the Procedural and Executive Code for Administrative Offenses) process.

According to Art. 78 of the Code of Civil Procedure, the views upon the case expressed by a public association or a workers' association, shall be set forth by members of the public. The authority of the members of the public (public associations, workers' association, etc.) shall be certified by excerpts from the Resolution of the General Meeting or an elective body, adopted in connection with the case under consideration. The members of the public have the rights provided for in Article 56 of the Code of Civil Procedure, except for the right to challenge or appeal the court rulings.

According to Art. 86 of the Code of Civil Procedure, the trade unions may apply to the court for the protection of the rights and lawful interests of their members in disputes arising from labour relations and the matters referred to in Article 85 of the Code of Civil Procedure. Other public associations have the same rights as regards the protection of their rights and interests of the members of these associations in line with their statutory purposes, as may be required by law. According to Art. 89 of the Code of Civil Procedure, legal entities and members of public, defending the rights of other persons in their own right, have the rights and bear the responsibilities stipulated in Article 56 and other articles of the Code of Civil Procedure.