



**Politically Motivated
Administrative Proceedings:
Standards and Reality in
Contemporary Belarus**

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INTRODUCTION

This report summarizes the observation of administrative proceedings in politically motivated cases from the beginning of 2020 to the end of March 2021. The monitoring was carried out by members and volunteers of the Human Rights Center “Viasna”, while the analysis of every phase of administrative proceedings was provided by the organization’s lawyers and experts.

Reports from 44 observers on 590 court hearings in administrative cases in 17 courts of Belarus were analyzed, as well as information received from more than 600 persons detained in administrative cases from 38 cities of Belarus, which they provided to the HRC “Viasna”.

The obtained data were assessed both from the point of view of the fair trial standards enshrined in international treaties and other UN documents, to which Belarus is a party, and in terms of domestic legislation.

Earlier, issues of fair justice standards were highlighted by human rights defenders and experts in the report [“Belarus. August 2020: “Justice” for Protesters”](#).

The following abbreviations are used in the report:

Covenant – International Covenant on Civil and Political Rights (adopted by General Assembly resolution 2200 A (XXI) of December 16, 1966);

HRC – UN Human Rights Committee;

CAO – Code of Administrative Offenses of the Republic of Belarus of 2003 (expired on March 1, 2021; generalized data for the observation period do not take into account changes in the numbering of articles from the specified day);

PECAO – Code of Execution Procedure on Administrative Offenses of the Republic of Belarus of 2006 (expired on March 1, 2021);

CC – Criminal Code of the Republic of Belarus of 1999;

CCP – Code of Criminal Procedure of the Republic of Belarus of 1999.

The term “administrative proceedings” in this report refers to litigation, including in court hearings, for violations of domestic law that do not pose a public danger, i.e. misdemeanors, the responsibility for which is provided for by the Code of Administrative Offenses. Accordingly, in this process, the concepts of “administrative case”, “administrative offense”, “administrative detention” and “administrative arrest” are used, which may not coincide with the corresponding meanings of the concept “administrative” in other legal systems.

The authors of the report share the position of the HRC, which stated¹ that safeguards in criminal proceedings may also “extend to acts that are criminal in nature with sanctions that, regardless of their qualification in domestic law, must be regarded as penal because of their purpose, character or severity”. The criminal nature of the cases considered in the report is evidenced by the use of inherently penal measures of coercion, e.g. detention for up to 72 hours, criminal penalties, including administrative arrest, which constitutes imprisonment, and heavy fines

¹General comment no. 32, Article 14, Right to equality before courts and tribunals and to fair trial

that are comparable to those provided for by the Criminal Code for committing a criminal offense, and also associated with restrictions on the rights linked to the status of a person earlier brought to administrative responsibility (restrictions on admission to public service, employment restrictions, and bans on engaging in certain types of activities)². Therefore, the analysis of the rights and obligations of the participants in the respective legal relations was carried out from the point of view of the provisions of the Covenant and other UN documents that define the standards in the field of criminal justice.

² Administrative convictions under Articles 23.34 and 23.4 were used to disbar lawyers K. Mikhel, M. Konan and L. Kazak

CONTEXT



The use of administrative legislation for repressive purposes has a long and well-established tradition in Belarus.

Since the first mass protests against the current political authoritarian regime of Aliaksandr Lukashenka in 1996, the administrative legislation has been reformed several times and continues to be applied in order to silence dissent in the country.

The number of individuals detained and subsequently brought to administrative responsibility especially increases during periods of acute political crises caused by the holding of electoral campaigns (elections, referendums) and other significant social and political events.

Administrative law usually applies to participants in peaceful assemblies that are held without the appropriate permission of the authorities. Due to the fact that the current legislation on holding assemblies does not comply with a number of international standards in this area, organizing gatherings in accordance with such legislation is extremely burdensome.

Administrative legislation is often used for the purpose of arbitrary detention of individuals – in the absence of both the event itself and the elements of an administrative offense. For example, on the eve of the 2014 Ice Hockey World Championship in Belarus, several dozen youth opposition activists were subjected to arbitrary pre-emptive arrests for up to 25 days.

The imperfection of both material and procedural norms of administrative law has caused criticism from both Belarusian and international human rights organizations.

Administrative detentions and arrests of individuals were actively used during the acute human rights crisis caused by the holding of the presidential election from May 2020 and in the post-electoral period from August 2020 to March 2021.

According to the HRC “Viasna”, more than 30 thousand individuals were detained and subsequently brought to administrative responsibility in this period. These were mainly participants in numerous peaceful assemblies, as well as persons accused of holding one-person pickets by displaying national symbols on the windows and facades of their private homes.

Administrative proceedings, along with criminal prosecutions, were one of the main forms of mass repression of opponents of the current political regime.

Another peculiarity of 2020 and 2021 that had a significant impact on law enforcement practice was the coronavirus epidemic. In the absence of any significant restrictive measures, even during an extreme aggravation of the pandemic, the country's authorities began to selectively apply a number of restrictions on the rights of participants in administrative proceedings. Unlike the beginning of the pandemic when the consideration of administrative cases through the use of videoconferencing systems was sporadic, subsequently such administrative trials became widespread. At the same time, the rules of the PECAO did not provide for the possibility of conducting online trials. Moreover, these restrictions related to the rights of lawyers to visit their clients in places of detention both before and after the trial. This made it virtually impossible to appeal

against court rulings. In addition, the procedure for appeals envisaged by the PECAO, which provides for the immediate execution of a court order of administrative arrest, makes the implementation of this procedure extremely difficult.

During the period, there were repeated cases of lengthy (exceeding three months) isolation of individuals by means of consecutive administrative arrest orders issued by the courts. In these cases, the serving of administrative arrest was commensurate with the punishment provided by the CC.

Against the background of unprecedented repression, aimed primarily at preventing the resumption of mass protests, the authorities took measures to tighten legislation. As a result of adopting the new version of the CAO, which entered into force on March 1, 2021, administrative liability for participation in unauthorized meetings was strengthened: the amount of fines was significantly increased (up to 200 base values), while terms of administrative arrest for repeated offenses was increased from 15 to 30 days.

The law enforcement practice of recent times, despite heavy criticism from human rights defenders, is reflected in the new edition of the PECAO, including the possibility of holding closed administrative trials in order to classify the personal data of police officers. At the same time, the right to defense, as stipulated by the new edition of the PECAO, remained unsecured in practice; as before, the PECAO does not provide for and does not regulate the conduct of court sessions through the use of video communication systems.

OBSERVATION CONDITIONS

General comment no. 32, Article 14, Right to equality before courts and tribunals and to fair trial

28. All trials in criminal matters or related to a suit at law must in principle be conducted orally and publicly. The publicity of hearings ensures the transparency of proceedings and thus provides an important safeguard for the interest of the individual and of society at large. Courts must make information regarding the time and venue of the oral hearings available to the public and provide for adequate facilities for the attendance of interested members of the public, within reasonable limits, taking into account, inter alia, the potential interest in the case and the duration of the oral hearing. <...>

29. Article 14, paragraph 1, acknowledges that courts have the power to exclude all or part of the public for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would be prejudicial to the interests of justice. Apart from such exceptional circumstances, a hearing must be open to the general public, including members of the media, and must not, for instance, be limited to a particular category of persons. Even in cases in which the public is excluded from the trial, the judgment, including the essential findings, evidence and legal reasoning must be made public, except where the interest of juvenile persons otherwise requires, or the proceedings concern matrimonial disputes or the guardianship of children.

93.6% of the observers had the opportunity to observe the court sessions they were assigned to.

Of the 35 observers who did not attend the court hearings, 13 people, or 37%, had not received information about the place and time of the hearing:

"The courtroom was locked";

"The secretary sent no invitation to the court hearing";

"I could not attend, as the hearing was not on the schedule";

"The secretary updated the information on the time of the hearing after its start";

"I warned the secretaries in advance that I wanted to attend, but I was not invited. When I came in, [the name of the judge] screamed at me urging me to leave."

Seven people (20%) were not admitted without explanation or due to alleged lack of vacant seats in the courtroom (chambers):

"The hearing was held in an office with only five chairs. The family and the lawyer came, so there were not enough seats";

"The room was small, only five people were allowed inside";

"The judge and the secretary just left for another office."

51.7% of the court hearings monitored by volunteers were conducted with the use of videoconference systems. In some cases, the audio recordings of the court sessions were available.

DETENTION



Domestic legislation defines detention as a measure to ensure administrative proceedings, which, along with others, can be applied in order to prevent administrative offenses, establish the identity of an individual facing administrative charges, prepare an administrative offense report, ensure the timely and correct consideration of the case and the execution of court rulings issued in an administrative case. Administrative detention stands for the actual short-term restriction of the freedom of an individual involved in proceedings for committing an administrative offense, bringing them to a place determined by the body conducting administrative proceedings, and holding them in that place.

According to the PECAO, administrative detention is used for the following purposes:

1. prevention of illegal activities;
2. preparation of an administrative offense report, if its preparation at the place of detection (commission) of an administrative offense is not possible;
3. identification of the person;
4. ensuring participation in the consideration of an administrative case;
5. prevention of concealment or destruction of evidence;
6. securing the execution of an administrative penalty in the form of administrative arrest or deportation.

Thus, all other grounds for detention that are characteristic of national practice, e.g. "for inquiry", "for clarification", "on suspicion", are arbitrary. Detention for identification purposes is only possible in relation to the person who committed the offense. In accordance with the Law on Internal Affairs Bodies, the detainees shall be informed about the reason for their detention.

According to the detainees, in 87.3% of cases, law enforcement officers did not introduce themselves during detention, while only 7.5% gave their names, and 5.3% presented their identification. In 84.6% of cases, the detainees were not explained the reason for their detention, and in 15.4% they received explanations.

Article 9 of the Covenant:

2. Everyone who is arrested shall be informed at the time of arrest of the reasons for his arrest and shall be promptly informed of any charge against him.

General comment no. 35, Article 9: Liberty and security of person

25. One major purpose of requiring that all arrested persons be informed of the reasons for the arrest is to enable them to seek release if they believe that the reasons given are invalid or unfounded. The reasons must include not only the general legal basis of the arrest, but also enough factual specifics to indicate the substance of the complaint, such as the wrongful act and the identity of an alleged victim. The "reasons" concern the official basis for the arrest, not the subjective motivations of the arresting officer.

The people who were detained stated that they were held in connection with their presence in the places of mass events or in the surrounding areas; often they were given fictitious and far-fetched reasons for detention: eleven people were detained

in connection with the need to check the VIN numbers of their vehicles, their alleged resemblance to a wanted person, etc.

37 of the interviewees were detained for “identification”, “verification” and similar reasons:

“I was not accused of anything; they said that they wanted to take me to the police department to establish my identity. My request to ID me with my passport was ignored, and they ushered me into a minibus by force, holding my arms on both sides”;

“Going to the police station for identification. Meanwhile, I had my passport, editorial ID, a badge and editorial assignment with me”;

“Checking, identification”;

“Going to the police department for one hour for identification”;

“Checking my involvement in unauthorized protests.”

16 people from among the interviewees were detained in connection with “suspicious behavior”:

“You ran”;

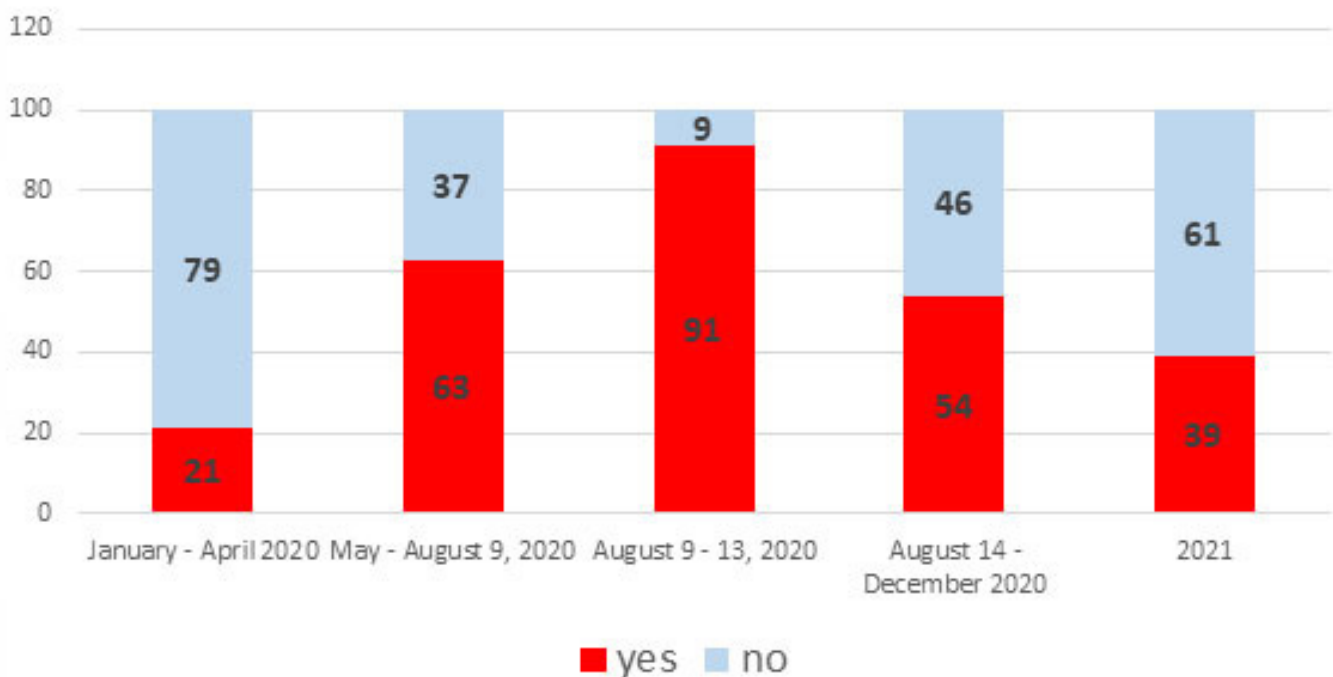
“You have been standing too long”;

“Carrying a photo camera”;

“They said that I was driving in circles.”

Physical force was used against 57% of the detainees:

USE OF PHYSICAL FORCE AGAINST DETAINEES, %



In many cases, the specified reason could not be grounds for detention under the law:

"I have a yellow and blue ribbon on my backpack, which means that many "good boys" have died in Ukraine because of b....s like me";

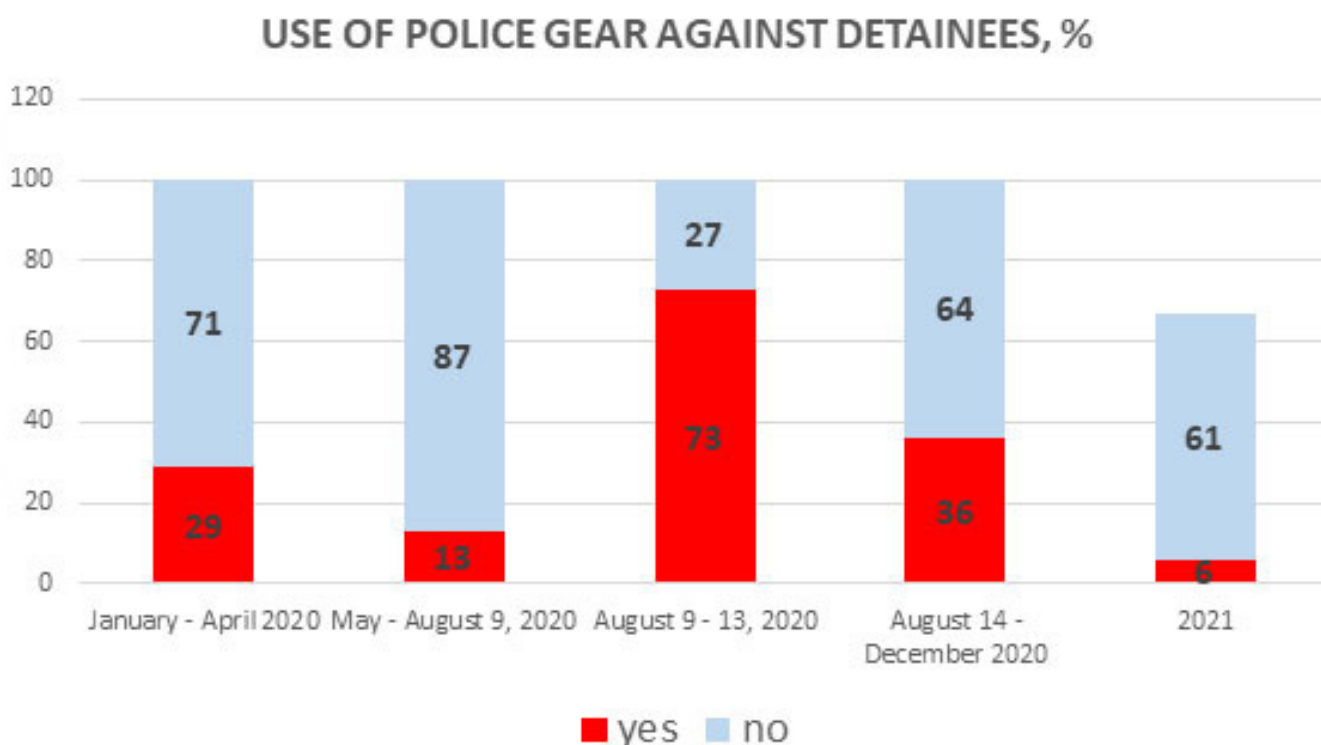
"A sticker on the bike. Pahonia emblem";

"For trying to take pictures";

"If "OK, throw her in too" is considered grounds, then this is it";

"F...ed if I know why... cause you're wearing this T-shirt." I had a picture of Pahonia on my shirt."

36% of the detainees said that police gear was used against them:



In addition, 74.3% of the detainees reported psychological violence, threats, and blackmail.

Thus, we observed a high level of violence against detainees used for political reasons and widespread failure to comply with the laws describing detention procedures, as well as the rights and obligations of participants in legal relations.

It should be noted that administrative proceedings do not provide for measures similar to criminal procedural measures that would ensure corresponding goals: bail, personal guarantee, or obligation to appear, which expands the scope of application of lengthy administrative detention pending trial (up to 72 hours).

The PECAO provides for restrictions on the use of detention: detention exceeding three hours can only be applied to adults who are charged with committing an administrative offense, for which administrative arrest is provided as a penalty.

Before March 1, 2021, administrative detention could also be applied to those categories

of persons who, in accordance with the CAO, could not be subjected to administrative arrest as a penalty. This state of affairs was regularly criticized by human rights defenders, but the authorized bodies, including the Constitutional Court, did not view it as a violation of the rights of these categories of persons. The new CAO eliminated this obvious drawback, and from March 1, pregnant women, disabled people of groups I and II, women and single men with dependent minors, persons with dependent people with group I disabilities or caring for elderly people above eighty cannot be detained for more than three hours (with the exception of some cases specified by law, e.g. being in a state of intoxication, etc.).

An individual who has been subjected to administrative detention of more than three hours shall be held in a place determined by the body conducting administrative proceedings.

The widespread practice of keeping detainees in places that are not specially designed for detention was analyzed and criticized in the Russian-language report [“Administrative Arrest in Belarus in 2020. An Instrument of Human Rights Violations”](#) prepared by the Human Rights Center “Viasna”.

THE RIGHT TO A FAIR AND PUBLIC HEARING BY A COMPETENT, INDEPENDENT AND IMPARTIAL TRIBUNAL

Article 14 of the Covenant

In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

General comment no. 32, Article 14: Right to equality before courts and tribunals and to fair trial

19. The requirement of competence, independence and impartiality of a tribunal in the sense of article 14, paragraph 1, is an absolute right that is not subject to any exception. The requirement of independence refers, in particular, to the procedure and qualifications for the appointment of judges, and guarantees relating to their security of tenure until a mandatory retirement age or the expiry of their term of office, where such exist, the conditions governing promotion, transfer, suspension and cessation of their functions, and the actual independence of the judiciary from political interference by the executive branch and legislature. States should take specific measures guaranteeing the independence of the judiciary, protecting judges from any form of political influence in their decision-making through the constitution or adoption of laws establishing clear procedures and objective criteria for the appointment, remuneration, tenure, promotion, suspension and dismissal of the members of the judiciary and disciplinary sanctions taken against them. A situation where the functions and competencies of the judiciary and the executive are not clearly distinguishable or where the latter is able to control or direct the former is incompatible with the notion of an independent tribunal.

In the sense of Article 14 of the Covenant, the courts of Belarus do not meet the standards of independence, which, in particular, was pointed out by the HRC in its Concluding observations on the fifth periodic report of Belarus (2018): “39. While noting the measures taken as part of judicial reform, such as the 2016 amendments to the Code on the Judicial System and the Status of Judges, the Committee remains concerned that the independence of the judiciary continues to be undermined by the President’s role in, and control over, the selection, appointment, reappointment, promotion and dismissal of judges and prosecutors and by the lack of security of tenure of judges, who are appointed initially for a term of five years with the possibility of reappointment for a further term or for indefinite terms. It is also concerned that the salaries of judges are determined by presidential decree rather than by law.” The HRC recommended that Belarus “should take all measures necessary to safeguard, in law and in practice, the full independence of the judiciary, including by: (a) reviewing the role of the President in the selection, appointment, reappointment, promotion and dismissal of judges; (b) considering establishing an independent body to govern the judicial selection process; and (c) guaranteeing judges’ security of tenure.”

The peculiarities of consideration of certain categories of cases observed in all courts, statements by officials and analysis of practice in certain categories of cases lead to the conclusion about the dependence of courts and judges, which is incompatible with their

declared independence.

For example, in 2016, judges in all cities stopped assigning terms of administrative arrest to participants in unauthorized public events (the HRC “Viasna” is aware of only one case). This practice was introduced simultaneously in all courts, and also concerned people who were earlier repeatedly sentenced to arrest by the same judges constantly involved in repression (the court rulings referred to the impossibility of applying other types of penalties), i.e. the new mild practice was not related to the personal convictions of the judges. Human rights activists linked this with the beginning of a new phase of rapprochement between Belarus and Western countries.

Similarly, the bodies of the Ministry of Internal Affairs are often vocal about their role in shaping the practice of considering administrative cases. For example, in 2018, the following information on combating trafficking in persons [was posted](#) on the website of the Ministry of Internal Affairs: “The General Directorate for Drug Control and Countering Trafficking in Persons is **introducing the practice of punishing prostitution with administrative arrest.**” It is worth recalling that cases of this category shall be considered by courts, and the selection of penalty is the competence of the judge.

In 2019, the Chairman of the Supreme Court, Valiantsin Sukala, [reported cases](#) of pressure “by employees of the Investigative Committee on the judges for passing wrong verdicts”. The comment concerned the acquittal of Andrei Halavach, CEO at the MZKT factory, after four years in a pre-trial prison.

In 2020, in the course of considering appeals against court rulings issued between August 9 and 13, the Minsk City Court ordered to commute most of the sentences involving administrative arrest to the terms already served by the convicts.

It should be noted that a certain sign of the independence of the courts from the executive authorities is the fact that order in the court building should be established and maintained by the court staff, rather than by representatives of the Ministry of Internal Affairs or unauthorized persons. Some courts have a security staff who control the entrance to the court and order in the building, while in others these functions are performed by police officers. There are also cases when order in the courtroom was not controlled by a court officer, but by other persons, presumably police officers.

“There was a stranger in the courtroom, he gave orders, but did not give his name.”

General comment no. 32, Article 14: Right to equality before courts and tribunals and to fair trial

21. The requirement of impartiality has two aspects. First, judges must not allow their judgement to be influenced by personal bias or prejudice, nor harbour preconceptions about the particular case before them, nor act in ways that improperly promote the interests of one of the parties to the detriment of the other. Second, the tribunal must also appear to a reasonable observer to be impartial. For instance, a trial substantially affected by the participation of a judge who, under domestic statutes, should have been disqualified cannot normally be considered to be impartial.

“The judge talked disrespectfully and biasedly with P., not letting him speak or finish his sentences. He was more polite with the police witnesses”;

“The judge interrupted me and asked questions like “Why do you call it an avtozak? You say that you were put in an avtozak? Where does this word come from? And who else calls it that?” I still don’t understand what he wanted me to answer”;

“The judge puts a lot of pressure on the defendant by asking repeated questions”;

“The judge began to reproach <...> that she, the mother of four children, went to a protest, even though she knew it was illegal”;

“On trial was a history teacher, who clearly explained his position. <...> At some point, the judge for some reason began to talk about other articles of the CAO, without indicating the numbers, which provide for liability for persons engaged in pedagogical activities, those who have committed an immoral offense, which, according to her, could be applied to the case. For several minutes, she talked with the defendant on whether he was promoting white-red-white flags among children at school.”

General comment no. 32, Article 14: Right to equality before courts and tribunals and to fair trial

26. Article 14 guarantees procedural equality and fairness only and cannot be interpreted as ensuring the absence of error on the part of the competent tribunal. It is generally for the courts of States parties to the Covenant to review facts and evidence, or the application of domestic legislation, in a particular case, unless it can be shown that such evaluation or application was clearly arbitrary or amounted to a manifest error or denial of justice, or that the court otherwise violated its obligation of independence and impartiality.

The implications of the HRC’s position are as follows: The Committee rarely speaks about whether a domestic court has correctly assessed the evidence presented to it; for experts, of greater importance are the essence of procedural guarantees and their observance in each specific case. An exception is a situation where a misjudgment of evidence or misapplication of the law is so obvious that it amounts to a denial of justice. Observers witnessed a number of situations in which the assessment of the prosecution’s evidence was deliberately incorrect in favor of the prosecution. In all these cases, the courts ordered convictions. Observers noted cases when the same witness – a police officer – gave the same explanations in several trials involving different defendants, who, in turn, denied this information.

Since 2020, a negative sign of administrative proceedings has been the participation of witnesses with classified or redacted personal data and masked faces, which made it possible to use everywhere and with impunity police officers as witnesses who were not really such and obviously perjured.

“A constant witness, the same person. The only one in each case, describes all the circumstances in the same way”;

“[There was] a discrepancy between the testimonies of the witnesses – Belski detained, Hromau testified – said that he recognized him by his face; the defendant claimed that he voluntarily complied with all the orders after the detention, got into a minibus wearing a helmet and took it off only there; it is incomprehensible how he could shout slogans and be identified by his helmet”;

"The police witnesses said the same things as in the previous session; they detained K. at the same time, in the same place as P.; the same testimony and explanations, as if they had learned them by heart";

"The questioning of the witness took place via Viber. The witness could not remember the color of the hair (at the time of the detention, the hair was bright blue, at the trial it was light brown). The judge put pressure on the defendant, he explained that he had not lived in Minsk for 13 years, and she demanded the exact address of his detention at 41 Pieramožcaŭ Avenue (building closest to the stele), and the defendant said that it was near the Moscow cinema (17 Pieramožcaŭ Avenue), the judge put more pressure and forced him to agree that he had been detained at 41 Pieramožcaŭ Avenue";

"The judge corrected the witness's answers. The witness said that the detention took place in the morning; the judge suggested that in the detention report it was 8:10 pm; after that the witness corrected his testimony that he had arrived at the scene in the first half of the day, between 5 and 6 am";

"Witness B. was incoherent in his testimony. At first, he talked about a human chain of solidarity instead of a one-person picket. To the judge's question about inconsistencies, he kept answering, "Since there are many similar detentions on these days, I am confused, but I remember that it happened exactly as it is written in the report";

"K. was detained at 3:10 pm, which, according to him, was as follows: a girl called him and said that she had scratched his car. When he was inspecting the car, two men approached him from different sides, grabbed and put him in another car. They drove him around the city for a while with a sleep mask on his eyes, brought him somewhere, where an unknown man interrogated him, trying to get confirmation that he was a [protest] coordinator... Then he was taken to the Saviecki district police department, where he faced charges for participating in an unauthorized march/rally on November 10, 2020. The case file contained photographs of him talking on the phone next to a crowd. K. claims that he did not participate in the rally, that he was nearby on business and that his wife was instructing him on the phone about the address he needed. Witness B. remembered exactly everything from the report, but he did not know about the photographs. He mentioned his clothes incorrectly and did not see the phone, claiming that K. shouted slogans";

"Yu.'s lawyer noticed that documents from the databases with the detainee's name were printed out at 8:34 and 8:38. But, according to the report, at 9:10 pm, she was allegedly resisting detention and was not yet at the police department. The police witness introduced himself as Aliaksandr Aliaksandravich Aleksandrovich (fake name). He later confirmed that he had filled in an administrative detention report on behalf of Charnushenka. That is, it turned out as if he was interrogating himself as a witness. Then he went back on his words, saying that he was confused";

"M. was accused of taking part in a picket staged by 20 people on January 23, 2021 from 3:10 to 3:20 pm at 20 Kujbyšaŭ Street. He allegedly held a white-red-white flag and shouted slogans. The observer noted, "Aleksandrovich with the same police ID was a witness in the trial of Sh., who reportedly took part in a picket on January 23, 2021 from 3:05 to 3:10 pm at 1 Kamunistyčnaja Street. The court did not pay attention to this."

The judges accept this and other conflicting and unreliable evidence; often, the "correction", or rather, falsification of case files occurs with the approval of the court as a mere formality:

"In one of the cases, the time of detention in the offense report did not match that in the police report, so the case was returned for correction. On November 18, new case file was received, with a new administrative offense report, but the contradictions in time remained unresolved. The judge drew attention to the fact that the case was returned for correction on November 16, 2020, while the date in the second report was again November 15. It turned out that no new questioning of the witness who had performed the arrest was carried out. The circumstances were clarified with him when the report was rewritten by phone, since he was constantly busy. As a result, the only evidence in court was the report of an administrative offense, which was not confirmed neither by witnesses nor by other objective evidence. The court ruled to administratively convict K."

The denial of justice manifests itself especially clearly in combination with the denial of the right not to be subjected to torture and other prohibited forms of treatment:

"The defendant said that he had signed the report under pressure. He was beaten during detention and at the police department. The defendant had his injuries documented with the doctors, but did not report it to the Investigative Committee. According to the defendant, the place of detention was incorrectly indicated in the report. According to the defendant, the witness slandered him";

"I saw a masked judge... The judge saw that I had been beaten, but did not even ask why. I had a witness, but they didn't listen to him either. However, they listened to a witness for the prosecution, whose testimony was inconsistent, and he could not even answer where I was detained";

"According to the defendant's testimony, he was detained at the entrance to his house. A riot policeman hit him on the head, back and leg with a rifle butt. He was detained, forced to kneel on the ground, and his hands were tied with plastic clamps. He was taken to the Centralny district police department, and tried at the Zavodski [district police department]. [Judge]: With your education, as I understand, you have a university degree, did you realize that you were risking your life, knowing what the consequences could be, that there would be a dispersal?";

"The judge did not accept the stamps of two minor children under 14 years of age in the passport as sufficient evidence of their existence and sent the defendant's husband to bring other documents. According to the first report, the defendant stated that she was going to a restaurant with a friend and she did not have any symbols, while the women's march took place later in another place (in the Bolivar park). According to the second report, there was a photograph of the defendant, in which she was standing on the grass, rather than on the road, as claimed by the report. Even the judge was embarrassed that both reports for different days and from different areas of detention were signed by one person, Kramarau. Also, the defendant told the judge that she had been beaten and wanted her injuries to be documented, but the judge said that this was not relevant to the case and the defendant could complain to the Investigative Committee. The defendant also requested to play a video of the detention as proof that she did not shout slogans. The judge avoided answering, distracted her with another question."

The aggregate of violations of the rights of detainees during the consideration of cases led to arbitrary and unlawful deprivation of liberty.

In particular, A. faced charges alleging that on October 11, 2020, between 7 and 7:05 pm, he participated in a picket together with 10 other people near 6/1 Bierut Street, by displaying white-red-white symbols and shouting "Long Live Belarus", "Go Away", and "Shame". A. requested that he be provided with a copy of his offense report (he assumed that the report originally contained a different place of the offense, and Bierut Street appeared there after A.'s own explanations). He also demanded that the judge summon and question the witnesses who were with him. The report was never given to him, and the judge did not invite any witnesses, because by the time of A.'s trial they had been convicted. At the same time, the time of the hearing in A.'s case (4 pm) was announced at about 2 pm, and the potential witness T. was urgently assigned to another judge at 3:45 (appeared on the schedule at 3:41), and the hearing in A.'s case was moved to 4:30, and began at 4:20, that is, 5 minutes after the hearing in T.'s case was over.

An important point was that the only witness, on whose testimony the entire charge was based, was impersonal and did not appear in court. The name of the "witness" they dialed in Skype was Ivan Ivanavich Ivanovich, while the call was answered by Aliaksandr Aliaksandravich Aleksandrovich. The court announced a break for dialing the necessary witness, and, after a 20-minute break, announced that for official reasons the witness could not be interviewed, therefore, his initial questioning was sufficient. Under Article 23.34 of the CAO, A. was sentenced to arrest of 12 days.

RIGHT TO STAND TRIAL



Article 9 of the Covenant

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

General comment no. 35, Article 9: Liberty and security of person

12. An arrest or detention may be authorized by domestic law and nonetheless be arbitrary. The notion of "arbitrariness" is not to be equated with "against the law", but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality. For example, remand in custody on criminal charges must be reasonable and necessary in all the circumstances.

14. The Covenant does not provide an enumeration of the permissible reasons for depriving a person of liberty. Article 9 expressly recognizes that individuals may be detained on criminal charges, and article 11 expressly prohibits imprisonment on ground of inability to fulfil a contractual obligation. Other regimes involving deprivation of liberty must also be established by law and must be accompanied by procedures that prevent arbitrary detention. The grounds and procedures prescribed by law must not be destructive of the right to liberty of person. The regime must not amount to an evasion of the limits on the criminal justice system by providing the equivalent of criminal punishment without the applicable protections.

17. Arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant is arbitrary, including freedom of opinion and expression (art. 19), freedom of assembly (art. 21), freedom of association (art. 22), freedom of religion (art. 18) and the right to privacy (art. 17).

32. Paragraph 3 requires, firstly, that any person arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power. <...> The right is intended to bring the detention of a person in a criminal investigation or prosecution under judicial control.

34. The individual must be brought to appear physically before the judge or other officer authorized by law to exercise judicial power. The physical presence of detainees at the hearing gives the opportunity for inquiry into the treatment that they received in custody and facilitates immediate transfer to a remand detention centre if continued detention is ordered. It thus serves as a safeguard for the right to security of person and the prohibition against torture and cruel, inhuman or degrading treatment. In the hearing that ensues, and in subsequent hearings at which the judge assesses the legality or necessity of the detention, the individual is entitled to legal assistance, which should in principle be by counsel of choice.

Consideration of administrative cases via videoconferencing tools has become an instrument of widespread violations³ of the rights of detainees involved in administrative proceedings. This method of conducting administrative cases is not provided for by the PECAO, therefore, it is not provided with rules implementing the rights and guarantees of persons facing administrative charges.

Of the 442 interviewed individuals, whose administrative cases were considered by the courts using videoconference systems, 120 were tried in the buildings of departments of internal affairs, and 322 – in places of detention (temporary detention facilities, Center for the Confinement of Offenders, prisons, and pre-trial detention centers).

As already mentioned, 51.7% of administrative trials were held with the use of videoconferencing software and observed by Viasna volunteers.

The problems noted by the observers and the defendants can be subdivided into the following groups:

- poor network connection, image and/or sound quality (in particular, according to the observers alone, in more than 40 cases):

“They spoke too quickly. It was unclear, the network was bad via Skype”;

“The Skype connection was interrupted; the sound was very poor, it was difficult to make out what they were saying; they also told us to move away from the laptop”;

“Half of what the judge said was not understood probably because of network failures in Skype”;

“The poor quality of the Skype connection in which the trial was held; the judge’s words were not clear to me; the judge refused to repeat”;

“It was very hard to hear; I did not make out most of it (nor did the judge)”;

“I was given a broken phone in the noisy hallway of the Akrestsin detention center, through which it was barely possible to see the black robe of the judge, the sound was interrupted all the time, the connection was down, which was why breaks were announced all the time to restore communication”;

“There were four computers in the hallway; they were occupied by simultaneous trials; police staff were walking up and down the corridor, talking to each other, and the sound on the computer was very poor; I asked several times to be able to use another computer, but they didn’t let me do it. That’s why I couldn’t hear anything at all and repeatedly asked the judge to say it again.”

- lack of an overview of the entire trial and/or its participants in general:

“Court sessions via Skype limit the ability to see other participants: either only the judge or the hall is visible at a time. The faces of the witnesses are very poorly visible”;

“Under the documents, B. and B. (riot police officers) testified against me, but if it were them, which I doubt, I did not see them and could hardly hear them during the Skype trial”;

³ Findings by experts of the HRC “Viasna” can also be found in the report “Administrative Arrest in Belarus in 2020. An Instrument of Human Rights Violations”

"Immediately after they brought me in and ordered to sit at the table, I was asked to keep my hands under the table. I saw the judge himself. He gave me five minutes to talk to my lawyer (via Skype). Then the judge just entered like "Time is up" and the show trial went on. <...> When the court retires to the deliberation room, the next person is brought in; it was a kind of a conveyor belt. At this time, the person waiting for the ruling was standing in the corridor facing the wall. Then the rulings are given out in a bundle."

"I could not see a thing, as the screen was directed towards the judge. The defendant was unwell and it was not convenient for him to stand in front of the screen, bending over. But he didn't know how to adjust the camera, so he had to stand in a bent position";

"We were judged in packs; first, the cases were considered, and the announcement of the rulings came at the end. Therefore, after my case was considered, I stood for another two or three hours in the corridor facing the wall (like everyone else) and waited for all the remaining trials to be over, so that I could find out the ruling";

"The trial was as follows: the judge said to describe what had happened, then she said that she needed time to think and sent me to the cell. A man in civilian clothes came in and read out everyone's sentence."

- lack of opportunity to exercise procedural rights:

"The image was blurred; all I could see was the judge's face. I could not hear much, which led to the fact that I did not hear the name of the court and last name of the defendant. The judge showed the papers, but I could not see them";

"I saw and heard the judge, but the network was sometimes down, and the witness could not be connected to our conversation, so I gave my consent that his words could be told to me";

"I saw the judge's face. The sound was constantly interrupted. One of the witnesses was in the same room with me throughout the trial";

"At the first court session on October 13, I filed a motion for a government-appointed lawyer, so the session was postponed to the next day and a lawyer was provided. At the court hearing on October 14, I requested a personal meeting with the defense lawyer and I was given such an opportunity via Skype. I also applied for the opportunity to read the case file, but I was denied."

- lack of an opportunity for the public and family to see the detainee (this is the most common violation; cases when the detainee was visible to the observers and the public were rather an exception):

"The man was in the detention center, so only the judge could see him";

"The monitor was on the table in front of the judge. I could not see the defendant and I could not hear much (with interruptions); the connection was interrupted once. The defendant was in Akrestsin Street [detention center]";

"The detainee was not asked for permission. The laptop screen was turned to the judge, and the family members were not allowed to see his face".

This way of handling cases, therefore, deprives the public and observers of the opportunity to see injuries, the condition of clothing and other traces of possible torture.

PRESUMPTION OF INNOCENCE

Article 14 of the Covenant:

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

General comment no. 32, Article 14: Right to equality before courts and tribunals and to fair trial

30. <...> The presumption of innocence, which is fundamental to the protection of human rights, imposes on the prosecution the burden of proving the charge, guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt, ensures that the accused has the benefit of doubt, and requires that persons accused of a criminal act must be treated in accordance with this principle. It is a duty for all public authorities to refrain from prejudging the outcome of a trial, e.g. by abstaining from making public statements affirming the guilt of the accused. Defendants should normally not be shackled or kept in cages during trials or otherwise presented to the court in a manner indicating that they may be dangerous criminals. The media should avoid news coverage undermining the presumption of innocence. Furthermore, the length of pre-trial detention should never be taken as an indication of guilt and its degree.

In accordance with the PECAO, a person cannot be brought to administrative responsibility until, in accordance with the procedure established by the Code, their guilt in committing an offense is established. The duty to prove the guilt of the person facing administrative charges rests with the authority conducting administrative proceedings (with the exception of violations of traffic rules recorded by road safety cameras). The person facing administrative charges is not obliged to prove their innocence. It is important to emphasize that the process must comply with the requirements of the law, and there are no exceptions to this rule, while the practice of considering cases by the courts suggest widespread violations of these rules and procedures.

The circumstances set forth in administrative offense reports and in decisions imposing administrative penalties cannot be based on assumptions. Doubts about the validity of the conclusion about the defendant's guilt shall be interpreted in their favor.

Despite the fact that the most common way of considering a case via videoconference was when the judge was in the court building and the defendant was in a detention facility or at a police station, which eliminates the danger to others, detainees during the hearings were often kept in a cage:

"The defendant was sitting behind bars. The Skype trial took place in the office of the software engineer and the secretary. There was a copier in the room and because of its work I could hardly hear what she was talking about";

"It is not clear where the person was. He was sitting behind bars";

"The person was behind bars. It was not reported where the person was."

THE RIGHT TO PREPARE FOR TRIAL

Article 14 of the Covenant:

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing

General comment no. 32, Article 14, Right to equality before courts and tribunals and to fair trial

33. "Adequate facilities" must include access to documents and other evidence; this access must include all materials that the prosecution plans to offer in court against the accused or that are exculpatory. Exculpatory material should be understood as including not only material establishing innocence but also other evidence that could assist the defence (e.g. indications that a confession was not voluntary). In cases of a claim that evidence was obtained in violation of article 7 of the Covenant, information about the circumstances in which such evidence was obtained must be made available to allow an assessment of such a claim.

The high percentage of those detained pending trial and those detainees who did not have the opportunity to use the assistance of a lawyer make it especially important for the detainees to prepare their defense, e.g. by having access to copies of case files, filing motions for the recovery of evidence, etc. These rights of detainees are regularly violated, both in the bodies conducting administrative proceedings, in detention facilities, and often in courts.

44% of the interviewed administrative convicts were not allowed to access case files in full; this number includes those to whom case material was read out by the judge during the trial. 54.7% were able to access the case files; this number includes those who were allowed to do this immediately before the trial or said that they read the material on their own initiative, cursorily, hastily, or through a lawyer.

"K. filed a motion to read the case file. The judge dismissed it because, according to the report, he had already read the material";

"The witnesses did not appear in court, and the lawyer's request to question the witness for the defense via Skype was not granted."

Sometimes the lack of opportunities for preparation entails the inability to exercise other rights of the detainees in court:

"At the stage of filing motions, the defendant asked the judge to invite a witness who detained her, but could not remember his full name. As a consequence, the judge dismissed the motion as unspecific."

THE RIGHT TO EXAMINE WITNESSES

Article 14 of the Covenant:

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.

General comment no. 32, Article 14, Right to equality before courts and tribunals and to fair trial

39. Paragraph 3 (e) of article 14 guarantees the right of accused persons to examine, or have examined, the witnesses against them and to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them. As an application of the principle of equality of arms, this guarantee is important for ensuring an effective defence by the accused and their counsel and thus guarantees the accused the same legal powers of compelling the attendance of witnesses and of examining or cross-examining any witnesses as are available to the prosecution. It does not, however, provide an unlimited right to obtain the attendance of any witness requested by the accused or their counsel, but only a right to have witnesses admitted that are relevant for the defence, and to be given a proper opportunity to question and challenge witnesses against them at some stage of the proceedings.

The most common violation of this right was failure to appear by witnesses for the prosecution. The available witnesses were not interviewed in 41% (247) of the considered cases, which were attended by observers. The reasons for the failure to appear were usually insufficiently valid, and the courts made little effort to ensure the attendance of such witnesses or to reissue the summons, often announcing their reports or interrogation minutes, instead, and eventually issuing rulings. It should be noted that these documents are usually uninformative and stereotyped. In many cases, they are identical from different witnesses. In some cases, the announcement of the reports and interrogation minutes was carried out with the consent of the defendant, but often this was due to the fact that obtaining the attendance of these witnesses would have delayed the defendant's release. Moreover, the direct prejudice of the police witnesses and the uncritical perception of their testimony by the judges are a well-known fact.

"The judge told the witness the address of the detention. The defendant had the opportunity to ask the witness questions, asked him what clothes she was wearing, what hairstyle she had (the witness answered that it was the same as at the trial, the defendant answered that the hair was different, then the judge stopped the witness's examination)";

"The defense lawyer's objections to the consideration of the case in the absence of police witnesses were dismissed";

"The accused was very well prepared, pointed out inconsistencies in the case, errors, different signatures under the same name. In response to a motion requesting video footage from the police officer, Judge Zh. answered: "Describe him." She asked the

prosecution witness a lot of questions: what he was wearing, what his height was, how he recognized her, what he said. The judge dismissed many questions."

"The lawyer was trying to argue about the PECAO and the fake names of the witnesses, the judge replied that this was the current practice";

"The witnesses for the prosecution did not appear in court. The motion to summon a witness on the part of the defendant was dismissed."

Among the reasons used to justify the absence of police witnesses, the observers noted the following:

"M. did not appear due to job engagements";

"The police witness Z. could not appear, since at that time he was protecting public order";

"The witnesses did not appear: P. was in lockdown, Kh. was outside Minsk, Rzheuski was not able to provide information about the reason for his absence";

"Witness K. again did not appear in court. According to the judge, at that time he participated in another court session."

As a rule, judges made their own choices on reading out the reports and/or interrogation minutes, without explaining the reasons. In some cases, such decisions were made with justification:

"The judge himself read out the minutes and said that there was no point in summoning witnesses, because a lot of time had passed";

"Judge: "The judicial practice is like this, we announce what we have and make a decision, because... even if we find the police officer, he will not explain anything else, therefore we announce the report and the interrogation minutes available in the administrative case itself. No objection?";

"The witnesses are classified; the judge insisted that their search would delay the consideration of the cases";

"Witness A.A. Aleksandrovich; no reasons were specified why he was not summoned; his report and written testimony were read out";

"The reason is unknown; the lawyer asked why, but the judge said there was no possibility."

After its introduction in August 2020, the practice of applying security measures in relation to witnesses who are police officers has become an instrument of violating this right. Human rights defenders and legal practitioners have subjected this practice to serious and well-founded criticism. Such measures are not provided for by the PECAO (contained only in the CCP), and therefore cannot be applied to witnesses in administrative cases. Moreover, since the procedure for applying such measures is not established by the Code, they are applied in various ways, often at the discretion of the police officers themselves and their superiors. There are no procedures defined by law: in some trials, only the personal IDs of police witnesses are documented; in others, this information is not announced, at least by the court. Another security measure is the appearance in court of police officers wearing masks. In some trials, such witnesses are identified by the court in the absence of other participants in the trial. Combinations of

these measures are possible. Finally, a security option is to examine a witness through videoconferencing systems. In this case, observers noted cases when witnesses read out the text of their explanations.

The so-called security measures clearly do not serve the declared purposes. There is no reason to believe that the witnesses are in danger in connection with the performance of their civil and official duties. Never before was there a single case when a police officer would be harmed in connection with his appearance in court as a witness in politically motivated administrative cases. The interviewees noted that, in their opinion, about 40% of the police witnesses gave their actual names, or the names were most likely true, while more than 60% of the police officers' names were classified or most likely classified. With so many police officers choosing not to conceal their names, in the absence of known cases of attacks on police witnesses since August 2020, it should be confidently stated that there is no danger for witnesses in administrative cases.

The security measures taken are based on completely different considerations:

- about 7,000 individuals were detained without observing the minimum guarantees on August 9-13; it is impossible to conduct full-fledged administrative proceedings in relation to them in compliance with the administrative procedural legislation;
- the disclosure of the names of persons who detained the individuals on the above and subsequent days will inevitably reveal the names of those police officers who committed crimes against detainees related to torture and other acts of prohibited treatment;
- disorderly and haphazard disguise of witnesses eliminates the danger of subsequent exposure of their personal data in the course of their prosecution;
- defendants in administrative proceedings are effectively deprived of the opportunity to examine the witnesses against them; these persons are allowed not to appear in court, and their role will be performed by other police officers.

All the shortcomings and violations described in this section were a factor excluding confidence in the court. However, none of the motions requesting the disqualification of judges was granted.

"The reason for removing the judge was a classified witness, although there was no report on the classification of his data in the case file. The lawyer insisted that he should not be considered a witness. And also she [considered illegal] the judge's order to leave the room to identify the witness. The lawyer said that the demand for the defense counsel to leave the hearing is not provided for by the Code of Procedure. When the judge rejected the motion, the lawyer challenged her."

RIGHT TO DEFENSE

Article 14 of the Covenant:

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

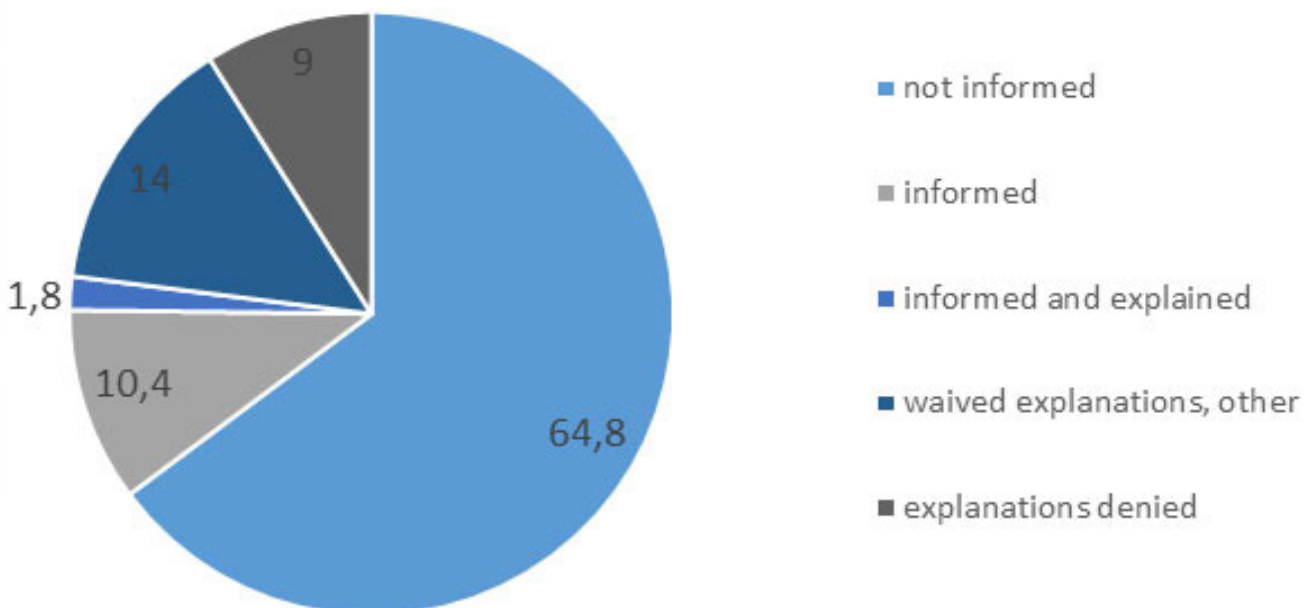
b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing.

General comment no. 32, Article 14: Right to equality before courts and tribunals and to fair trial

24. The right to communicate with counsel requires that the accused is granted prompt access to counsel. Counsel should be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications. Furthermore, lawyers should be able to advise and to represent persons charged with a criminal offence in accordance with generally recognised professional ethics without restrictions, influence, pressure or undue interference from any quarter.

At the beginning of administrative proceedings, only 10.4% of the detainees were informed about the right to a defense lawyer, and 1.8% of the detainees were also explained the procedure for exercising this right. 13.4% of the detainees indicated that they themselves knew this procedure and did not need an explanation. In 9% of the cases, a clarification of rights was refused. 64.8% of detainees (380 persons) were not informed of this right. 17.6% of those detained were refused to use a counsel, or the lawyers were not allowed to participate.

RIGHT TO ACCESS TO COUNSEL, %



The non-admission of lawyers to detention facilities to meet with their clients was usually justified by measures against the spread of the coronavirus, which was defiant against the background of complete disregard for other, even more important security measures:

"In response to an appeal of the Belarusian Republican Bar Association (hereinafter - BRBA), the Main Department of Internal Affairs of the Minsk City Executive Committee [reported the following](#): "an inspection carried out in response to reports of lawyers being denied access to the Center for the Confinement of Offenders and the Temporary Detention Facility of the Main Department of Internal Affairs of the Minsk City Executive Committee failed to find violations of the law by employees. Currently, the admission of lawyers to these institutions has been resumed and is carried out in accordance with the established procedure, with their strict adherence to the rules and recommendations aimed at preventing the spread of COVID-19 infection."

It should be noted that the situation remained practically unchanged after the inspection.

In court, the process of clarifying rights in many cases was perfunctory, fraught with technical problems when considering cases through videoconference systems. As a result, 36 people indicated that they did not know about their right to be represented by a lawyer in court.

In general, individuals subjected to administrative penalties reported that in 61.4% of cases their rights were read out to them; in 28.2%, they were announced but not explained or not provided; and in 10.4%, not announced at all.

36 individuals were not allowed to be represented by a lawyer in court or their right to defense was otherwise violated:

"I asked for a lawyer but got a "No". The judge could not explain to me exactly why";

"Access to a lawyer was banned, the request for additional witnesses was denied, the motion for playing video footage was denied";

"1. I was refused to bring a close relative as a defense lawyer, but was allowed to have a court-appointed lawyer.

2. The state counsel was denied to communicate with me at her request";

"The right to a lawyer and counseling was not granted";

"The lawyer was not notified of the date and time of the trial";

"We were given half an hour on Saturday to find a lawyer."

Of these, three people reported that they could not use the help of a lawyer due to the lack of funds to pay.

According to the Belarusian Republican Bar Association, "[there were cases](#) when relatives entered into an agreement with a lawyer to provide legal assistance in an administrative case, however, the detainees themselves were not aware of this circumstance. In this regard, the detainees did not request to invite a defense lawyer, and their cases were considered without the participation of the latter." The BRBA [provided](#) the presidiums of the Minsk City Court and the Minsk Regional Court with "specific examples of violations of the professional rights of lawyers: the impossibility of timely obtaining information about the location of the detained persons, about the date, place and time of court sessions in the case of bringing detained persons to administrative responsibility; on the refusals by the courts to grant the motions of the detainees for the participation of a defense lawyer, on the collection of additional evidence and materials characterizing

the person; on the impossibility of notifying the detainees about the existence of an agreement on the provision of legal assistance in order to communicate this information to the court, etc.”

Lawyers and experts of the Human Rights Center “Viasna” have repeatedly noted that the existing rules do not contribute to the exercise of the right to legal assistance: the law lacks a mechanism and guarantees, thanks to which the right to defense acquires practical features. In particular, the law does not provide for the possibility of appointing a defense lawyer in an administrative case at the expense of the budget (with advancing from the budget a fixed low rate of payment for the participation of a defense lawyer in the preparation of an administrative case and in a court session; preparation of an appeal against a ruling that has not become final). At the same time, it should be welcomed that since August 2020, dozens of lawyers have worked on cases of those detained for the exercise of their rights and fundamental freedoms during proceedings organized in the police departments and court buildings, while charging no fee or for a symbolic fee, and assisted them in the preparation of appeals; advised on a wide range of issues; also worth noting is the initiative of the BRBA, [which promised](#) “pro bono legal assistance in administrative cases to persons who have suffered from violence during the period of detention... The provision of legal assistance includes consulting, preparation of statements and appeals against court rulings in administrative cases, complaints about illegal actions of police officers, violations of detention conditions in temporary detention facilities, etc.”

Article 14 of the Covenant

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

General comment no. 32, Article 14: Right to equality before courts and tribunals and to fair trial

42. Article 14, paragraph 4, provides that in the case of juvenile persons, procedures should take account of their age and the desirability of promoting their rehabilitation. Juveniles are to enjoy at least the same guarantees and protection as are accorded to adults under article 14 of the Covenant. In addition, juveniles need special protection.

43. States should take measures to establish an appropriate juvenile criminal justice system, in order to ensure that juveniles are treated in a manner commensurate with their age. It is important to establish a minimum age below which children and juveniles shall not be put on trial for criminal offences; that age should take into account their physical and mental immaturity.

44. Whenever appropriate, in particular where the rehabilitation of juveniles alleged to have committed acts prohibited under penal law would be fostered, measures other than criminal proceedings, such as mediation between the perpetrator and the victim, conferences with the family of the perpetrator, counselling or community service or educational programmes, should be considered, provided they are compatible with the requirements of this Covenant and other relevant human rights standards.

Back in September 2020, Ms. Afshan Khan, UNICEF Regional Director for Europe and Central Asia and the Special Coordinator for the Refugee and Migrant Response in Europe, at an emergency debate on Belarus at the UN Human Rights Council expressed concern about reports of 240 teenagers facing administrative charges for participating in largely peaceful demonstrations. At the moment, the HRC “Viasna” knows the names of more than 140 children who were detained and/or subjected to administrative penalties in these cases.

The preparation of administrative cases in relation to minors is carried out by the authorities in accordance with their competence, taking into account some additional rules and guarantees related to the age of the persons involved in administrative proceedings.

The protection of the rights, freedoms and legal interests of a minor or incapacitated natural person involved in administrative proceedings is carried out by their legal representatives. In the absence of a legal representative, the functions of a legal representative are carried out by a guardianship authority.

There is no obligatory participation of a defense lawyer in these administrative cases.

In accordance with Article 11.8 of the PECAO, when interviewing a minor under the age of fourteen, and at the discretion of an official of the body conducting administrative proceedings when interviewing a minor between the ages of fourteen and sixteen, the

presence of an educator is mandatory. If necessary, a psychologist may be present during the interrogation. Parents and other legal representatives of a minor have the right to be present during the interrogation. Such rules, in fact, make it possible to question a minor over the age of 16 without the participation of an educator or legal representatives, since the participation of the latter is only their right, and not an imperative rule.

Consideration of administrative cases of the category analyzed in the report involving minors is carried out by the juvenile commissions of district (city) executive committees and district administrations in the cities according to the child's place of residence. The participation of a legal representative in the consideration of the case is obligatory, the participation of a defense lawyer is not obligatory.

The regulation on the procedure for the formation and activities of juvenile commissions⁴ provides that the authority should consist of a chairperson (deputy chair of the executive committee or head of the district administration in the city), deputy chairperson, secretary of the commission, social care teacher and educational psychologist, together with heads of government bodies, institutions and other organizations in charge of prevention of neglect and delinquency of minors, or their deputies, as well as representatives of civil society associations with their consent. In fact, this means the participation of representatives of the local executive power and dependent institutions, including police departments, as well as government-organized civil society organizations loyal to the authorities. Thus, this body, which in the process of conducting administrative proceedings has signs of a court (acting within the framework of the PECAO, which does not provide for any elements of mediation, reconciliation and other instruments recommended for minors), is not competent, impartial or independent of the executive and legislative branches of government. It is worth recalling that the Belarusian authorities are persistently evading the implementation of recommendations of international bodies to create specialized juvenile courts.

In accordance with Art. 8.14 of the PECAO, a minor involved in administrative proceedings may be removed from the premises in which the case of an administrative offense is being considered, if the circumstances of the case under consideration may negatively affect them. This violates the juvenile's right to defense and a number of other rights provided for in Article 14 of the Covenant.

In accordance with the CAO, the maximum amount of a fine imposed on minors does not differ from the corresponding amount for adults. From March 1, 2021, this amount has been set at 2 base values, which to a greater extent takes into account the characteristics of this category of offenders.

The HRC "Viasna" possesses information that, prior to the introduction of these changes, minors detained under Article 23.34 of the CAO were sentenced to fines ranging between 5 and 7 base values, and also received warnings.

⁴ Approved by Resolution No. 1599 of the Council of Ministers of the Republic of Belarus of December 10, 2003 (as amended by Resolution No. 651 of the Council of Ministers of the Republic of Belarus of July 24, 2013)

THE RIGHT TO APPEAL (REVIEW)

Article 14 of the Covenant:

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

General comment no. 32, Article 14: Right to equality before courts and tribunals and to fair trial

49. The right to have one's conviction reviewed can only be exercised effectively if the convicted person is entitled to have access to a duly reasoned, written judgement of the trial court, and, at least in the court of first appeal where domestic law provides for several instances of appeal, also to other documents, such as trial transcripts, necessary to enjoy the effective exercise of the right to appeal.

The effectiveness of appealing against decisions in administrative cases is significantly reduced due to the fact that, in accordance with the PECAO, court rulings ordering administrative arrest are subject to immediate execution, and cannot be suspended in connection with the filing of an appeal.

41% of the convicts reported that the courts explained to them the procedure for appeal, another 25.6% – that the judges explained the procedure, but details remained unclear, and in 28.6% cases – the judges did not explain appeal procedures.

Among the circumstances preventing an appeal are absence of access to copies of court rulings, absence of writing supplies, inability to contact a lawyer, and the need to pay a state fee when filing a complaint.

"They did not issue absolutely any documents (except for a piece of paper with the amount of the fine and the bank account)";

"They didn't give me the court decision or a copy; I don't even know the name of the judge";

"After my release, I decided to access the case file. I was refused to take photos of the material, after the judge ordered this. After reading the case file, I found documents that I had not had the opportunity to see earlier. In addition to the papers that I filled out and signed at the police station, there was a detention report, a police report and witness statements by police officers, which differed only in the name of the testifying officer. In addition, the documents that were filled in the police department and which I signed were subsequently supplemented with another pen."

For more details on the possibilities of appealing against court rulings imposed on persons subjected to administrative arrest, see the report of the Human Rights Center "Viasna" ["Administrative Arrest in Belarus in 2020. An Instrument of Human Rights Violations"](#).

RIGHT TO COMPENSATION

In accordance with the PECAO of 2021 and the corresponding identical norms of the PECAO of 2006, a general rule has been established, according to which, if the actions and decisions of the court or the body conducting administrative proceedings are found to be illegal, the convict is entitled to compensation of damages to life or health, property and moral harm, restoration of violated labor and other personal non-property rights, while a legal entity is entitled to compensation of property damage and restoration of business reputation (Article 15.1).

However, in accordance with Article 15.2 of the PECAO, the right to compensation of the harm specified in Article 15.1 is only enjoyed by persons whose administrative cases have been terminated on the grounds provided for in paragraphs 1, 2, 5, 6, 10 and 11 of Part 1, paragraphs 1, 2, 7-9 of Part 2 of Article 9.6 of the PECAO (exculpatory circumstances).

The Code does not establish responsibility for other illegal actions of the authorities conducting administrative proceedings, including the imposition of an excessively harsh penalty, and other shortcomings that led to the cancellation of the decision and a retrial, illegal detention, search, etc.

Therefore, in the practice of courts, cases have been noted when a person who has been assigned a penalty of administrative arrest, until canceled by a higher judge, served the entire term of arrest or part of it, and after a retrial, a milder type of penalty was issued, e.g. a fine that was not taken into account when issuing a new penalty. Thus, the person was convicted twice, without compensation for illegal detention.

The Constitutional Court rejected the arguments of an appeal by a volunteer lawyer at the Human Rights Center "Viasna": no signs of legal uncertainty and gaps in the legislation were found, which are the basis for the consideration of the issue by the court.

One should also critically assess the presence in the administrative procedural law of a norm that allows the return of an administrative case to the police department to amend it in case of its non-compliance with formal requirements, flawed content or deficient list of materials attached to it. This allows the judges not to issue, although there are sufficient grounds, a decision to terminate the administrative case on exonerating grounds, which might become the basis for compensation for the corresponding harm.

"At the hearing (in fact, it was an office in the Žodzina pre-trial detention center), I was released on the condition that I find evidence of my innocence. These were provided in the form of CCTV footage at the next trial. The judge sent the case back for correction, telling me that even the time of detention in the report did not coincide with the actual time on the cameras. However, my property has been withheld for more than two months since I faced the charge. The case was returned after correction only recently; the ruling says nothing about the fact that the charges have been dropped, but only that the period of administrative prosecution has expired."

The harm caused to a person by illegal actions of the court or the body conducting administrative proceedings relating to issues not regulated by Articles 13.18 and 15.4 of the PECAO, including the costs of obtaining legal assistance and other costs incurred in connection with the conduct of administrative proceedings, shall be reimbursed in the manner determined by civil and commercial procedural legislation.

Cancellation of a decision in a case of an administrative offense and the termination of the case entails the return of sums of money, confiscated items, as well as the cancellation of other restrictions associated with earlier decisions. If it is impossible to return the confiscated item, its cost will be reimbursed.

Moral harm, the consequences of which are to be eliminated in the manner determined by the PECAO, is the infliction of moral or physical suffering by actions that violate the personal non-property rights of a citizen, including humiliation of their honor and dignity, as well as damage to business reputation.

In case of termination of an administrative case on the above grounds, the body conducting administrative proceedings is obliged to:

1. offer a formal apology to the person for the harm caused;
2. publish a refutation of information discrediting a person in the mass media, if such information was published in the course of administrative proceedings;
3. send, at the request of the individual or their legal representative (heir), within ten days, a message about the cancellation of illegal decisions to their place of work, service, study or place of residence (stay).

CONCLUSION AND RECOMMENDATIONS

Administrative proceedings, including in the courts, are marked by widespread violations of domestic norms of law, and constitutional and internationally recognized standards of a fair trial. Abuse of human rights and ignoring gross violations have fundamentally undermined the credibility of the law enforcement agencies, as well as the trust and respect for the justice system.

The Belarusian authorities should:

- respect and observe the rights and freedoms enshrined in the Covenant and other universal and regional documents;
- abandon repressive legislation that arbitrarily restricts human rights and freedoms;
- take all necessary measures to respect fundamental human rights in administrative proceedings, including by ensuring that all detainees and those brought before a court have the right to defense, the right not to be subjected to torture, presumption of innocence, as well as other rights and guarantees stipulated by the Covenant;
- ensure a large-scale supervisory review of cases considered in violation of domestic law and human rights, with the aim of rehabilitating all victims and compensating for the harm caused to them;
- take measures to restore the constitutional role of courts in the system of the state.