



**DETENTION AND
PENITENTIARY FACILITIES
OF BELARUS: 2020-2021**

Monitoring report

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OF BELARUS: 2020-2021
MONITORING REPORT**

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INTRODUCTION

The Human Rights Center Viasna constantly monitors the observance of human rights in detention and penitentiary facilities, and also supports and coordinates efforts aimed to end torture and other forms of cruel, inhuman and degrading treatment.

In 2004, the organization carried out monitoring of the use of torture and other types of inhuman treatment in Belarus; in 2007, Viasna, together with the International Federation for Human Rights (FIDH), prepared a report “Conditions of Detention in the Republic of Belarus”; in 2009, a report was prepared to cover violations of the right to liberty and security of person, as well as the use of forced labor.

In 2010-2011, Viasna monitored the situation of political prisoners in penitentiary facilities after the arrest of campaign activists, presidential candidates and peaceful protesters on election night, December 19, 2010.

In 2013, Viasna and FIDH presented a report “Forced Labor and Pervasive Violations of Workers’ Rights in Belarus”, covering the topic of labor and treatment prophylactoriums (LTPs).

In 2014, Viasna, together with FIDH, presented a report on preventive detention of opposition activists; in this context, the conditions of detention and the state of procedural guarantees for detainees in administrative cases were analyzed.

Since 2010, the results of monitoring penitentiary facilities have been regularly covered in annual and biannual reports.

In 2020, the topic of the conditions of detention of administratively imprisoned people was touched upon in the reports “Administrative Imprisonment in Belarus in 2020. An Instrument of Violating Human Rights” and “Belarus After Election”. The latter was a joint review of systematic widespread torture and cruel, inhuman and degrading treatment of participants in protests and dissidents in Belarus after the presidential election of August 2020.

Experts of the Human Rights Center Viasna are regularly involved in the preparation and submission of alternative reports for the Universal Periodic Review of Belarus at the UN Human Rights Council, the UN Committee against Torture, the UN Special Rapporteur on the situation of human rights in Belarus and other UN special procedures.

The present report summarizes the results of studies on the observance of human rights in penitentiary facilities in 2020 and 2021, providing updates on the state of legislation in this area.

MONITORING

The monitoring of detention and penitentiary facilities was carried out with the participation of experts with degrees in Law and relevant employment experience, who have received theoretical and practical training in the field of human rights protection. Human rights activists, volunteers, civil society activists, convicts and former convicts, together with their families, were involved in collecting material for the monitoring.

The overall goal of this monitoring is to raise public awareness of the level of human rights abuses in penitentiary facilities, improve detention conditions with respect for human rights and eradicate torture and all forms of ill-treatment.

To this end, the monitoring team carefully analyzed the collected information for compliance with domestic legislation and international obligations of the state.

The monitoring covers the following subjects:

- legislation in the area under study (legal acts on criminal, penitentiary, civil and administrative procedures, sectoral acts of the government and ministries);
- institutions of the Ministry of Internal Affairs, most importantly the Ministry's Department of Corrections, closed institutions of the Ministry of Education, the Ministry of Healthcare, pre-trial detention centers of the KGB and the State Border Committee.

The study was systematic: it was carried out annually, focusing on the most pressing problems in the field of penitentiary legislation and law enforcement practice; information from various sources regarding the state of affairs in closed institutions was collected, verified, summarized and analyzed.

This report also includes updates on the topics previously explored to highlight amended rules from relevant legal acts.

Data collection and storage methods included observation, questioning, obtaining official documents and their copies, photo and video recording, taking into account the desire of some respondents to remain unknown to anyone other than experts. The survey was conducted in various accessible forms: individually and in small groups, by mail, by e-mail, using the phone and instant messaging applications.

External factors that influenced the progress of monitoring included the total opposition of government bodies. Since the experts were not empowered to directly collect information in places of detention, their efforts focused on identifying problems in legislation and the most complete and independent sources of subjective knowledge and impressions about the problems under study. These sources were prisoners, former prisoners and their families.

The monitoring made an extensive use of the method of expert assessment of the legislation regulating the area under study, including its compliance with the international obligations of the state.

Self-assessment methods were not used in this monitoring due to repeated refusals of cooperation by government bodies and other institutions whose activities are related to the facilities and institutions under review.

In the process of compiling the report, simple methods of statistical analysis were used.

Calculations in the process of research helped identify the compliance of the declared or statutory conditions with the characteristics of the processes and the actual situation in a particular area. The process took into account the circumstances that could affect the assessments and the level of satisfaction: social and marital status, income level, education, and age of the interviewees.

The stages of monitoring are no longer delineated and sequential: the collection of data for evaluation was carried out in parallel and simultaneously.

It should be noted that the analysis and evaluation of the data obtained are free from political, religious and other preferences; they are independent and aim to emphasize the universality of human rights.

The monitoring used data from government statistical agencies and information from other open sources.

The monitoring resulted in a series of recommendations addressed by the experts to the legislative and executive authorities on separate aspects of the study.

HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INTERNATIONAL LAW AND INTERNATIONALLY RECOGNIZED STANDARDS

Article 8 of the Constitution of the Republic of Belarus establishes the priority of universally recognized principles of international law and declares the need to ensure compliance with them by national legislation.

The International Covenant on Civil and Political Rights (hereinafter referred to as the Covenant) secures:

– the duty of the State, as established by Article 2, to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, as well as:

(a) to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) to ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) to ensure that the competent authorities shall enforce such remedies when granted.

– the right under Article 7 not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment;

– prohibition of forced or compulsory labor (Article 8), taking into account that:

(a) in countries where imprisonment with hard labor may be imposed as a punishment for a crime, the performance of hard labor is possible in pursuance of a sentence to such punishment by a competent court;

(c) the term “forced or compulsory labor” shall not include any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

– Article 9, right to liberty and security of person: no one shall be subjected to arbitrary arrest or detention; no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law; 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; anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation;

– the right of all persons deprived of their liberty, as enshrined in Article 10, to be treated with humanity and with respect for the inherent dignity of the human person; the essential aim of the penitentiary system shall be reformation and social rehabilitation of convicted offenders;

– the right and opportunity, enshrined in Article 25, without discrimination of any kind and without unreasonable restrictions, to take part in the conduct of public affairs, directly or through freely chosen representatives; to vote and to be elected at genuine periodic elections which shall be by universal and

equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; to have access, on general terms of equality, to public service in his country;

– prohibition of discrimination on any grounds, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (Article 26).

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was adopted by General Assembly resolution 39/46 of December 10, 1984 and unconditionally determines the nature of the state's obligations in this area.

The Convention on the Rights of the Child, adopted by General Assembly resolution 44/25 of November 20, 1989, was ratified and is binding on Belarus.

The provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), in conjunction with the practice of the European Court of Human Rights, despite its regional status and non-participation of Belarus in the Council of Europe, should be taken into account when assessing processes due to the unity of the spirit and ideas of the ECHR and decisions of the ECtHR with the spirit and ideas of universal documents.

An important factor designed to form appropriate national penitentiary rules that would secure compliance with international obligations is the existence of international standards in the field under study. International standards, being documents of international organizations, are not subject to ratification and formally do not have binding force, but are widely recognized due to their compliance with international treaties, their progressive nature, as well as the high authority and status of the organizations that adopted them.

The sources of international penitentiary law used in the study are as follows:

- Standard Minimum Rules for the Treatment of Prisoners (revised, adopted at the 24th session of the Commission on Crime Prevention and Criminal Justice, Vienna, May, 18-22, 2015);
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules, 1985);
- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (adopted by the UN General Assembly, 1988);
- United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders;
- Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).

NATIONAL LEGAL STANDARDS. CHANGES IN LEGISLATION

The monitoring researched and assessed provisions of national law regulating the legal status of convicts and the administration of penitentiary facilities, as well as the legal status of people confined to closed institutions.

The Belarusian Constitution enshrines the fundamental rights of citizens; other legal acts must comply with the Constitution. All legal acts, as well as the practice of their application, were assessed during the monitoring process to determine their compliance with the important constitutional rule of the possibility of restricting the rights and freedoms of an individual only in cases provided for by law, in the interests of national security, public order, protection of morality, public health, rights and freedoms of other persons (Part 1 of Article 23 of the Constitution).

The legal status in the sphere under consideration is regulated by a number of Codes of the Republic of Belarus:

– Penal Code: establishes the procedure for the execution of custodial sentences, as well as the rights and obligations of prisoners and officials in charge of executing the punishment; establishes measures for the resocialization of prisoners; determines the conditions of serving sentences by juvenile prisoners and other aspects;

In 2020–2022, the Code was amended by the Law of July 17, 2020 (the amendments entered into force on July 24, 2020), which abolished the separate detention of persons convicted on drug-related charges; the Law of December 10, 2020 “On Amending the Codes” (the amendments entered into force on December 28, 2020), which establishes the procedure for appealing against imposed penalties by those sentenced to correctional labor and restriction of freedom; the Law of January 6, 2021 “On Amending Laws on Issues of Enforcement Proceedings” (the amendments entered into force on July 15, 2021), which changed the procedure for deductions from wages and other incomes of convicts sentenced to deprivation of liberty; the Laws of May 26, 2021 “On Amending the Codes on Criminal Liability”, which changed the rules of liability for failure to execute a court sentence ordering deprivation of the right to hold certain positions or be engaged in certain activities, violations of the procedure for serving certain types of punishment, as well as the procedure for providing telephone conversations, education and other aspects of the execution of punishments, the criteria and degree of correction of those sentenced to punishment not related to isolation from society.

– Code of Administrative Procedures: establishes the procedure for imposing and executing sentences of administrative imprisonment, the procedure for compensating for damage caused by the bodies conducting administrative proceedings;

The new edition of the Code was adopted on January 6, 2021 and entered into force on March 1, 2021.

– Criminal Code: establishes responsibility for violating the rules of serving a sentence;

– Code of Criminal Procedures: establishes grounds and procedure for placing the accused in custody, the procedure for appealing against pre-trial detention, the procedure and conditions for compensation for damage caused by illegal actions of the body conducting criminal proceedings;

– Civil Code: establishes grounds for compensation for damage caused by illegal actions of government bodies;

- Code of Civil Procedures: establishes the procedure for appealing against disciplinary penalties imposed on convicts, as well as the procedure for sending them to closed medical and education institutions, as well as labor and treatment prophylactoriums;
- Electoral Code: establishes restrictions on the voting rights of prisoners;
- Code on Education, as amended by the Law of January 14, 2022 “On Amending the Code on Education of the Republic of Belarus”: defines the structure and procedure for the functioning of closed education and medical education institutions;
- Labor Code: establishes certain rules regulating the work of all workers, including prisoners.

Laws of the Republic of Belarus:

- “On the Procedure and Conditions for the Detention of Persons in Custody”, 2003; determines the legal status of individuals deprived of liberty before trial;
- “On the Bodies of Internal Affairs of the Republic of Belarus”, 2007 (amended in 2021); determines the rights and obligations of employees of penitentiary facilities, the conditions for the legality of using physical violence, non-lethal gear and weapons;
- “On the Bodies of State Security of the Republic of Belarus”, 2012; enables the KGB to run detention facilities for detainees and persons in custody;
- “On Healthcare”, 1993; defines the categories of persons subject to compulsory treatment in closed institutions;
- “On Psychiatric Care”, 2012; defines the procedure for referral and treatment in closed healthcare institutions;
- “On the Procedure and Conditions for Sending Individuals to Labor and Treatment Prophylactoriums and the Conditions of their Confinement”, 2010; determines the procedure, terms and conditions for confinement to and release from LTPs; on December 10, 2020 the Law “On Amendments to the Law of the Republic of Belarus “On the Procedure and Conditions for Sending Individuals to Labor and Treatment Prophylactoriums and the Conditions of their Confinement” (effective since December 30, 2020) supplemented the categories of persons sent to LTPs and changed the procedure and conditions for serving solitary confinement;
- “On the Fundamentals of the System for the Prevention of Neglect and Juvenile Delinquency”, 2003; defines the procedure for sending minors to closed education institutions.

Many aspects of the activities of penitentiary facilities and the legal status of persons held in them are regulated by the internal regulations of these institutions.

These rules have the legal force of the document by which they are approved, and must not contradict the Constitution and laws of the Republic of Belarus:

- Internal regulations of correctional institutions, approved by Decree No. 174 of the Ministry of Internal Affairs of the Republic of Belarus of October 20, 2000; amended on August 10, 2021 in connection with amendments to the Penal Code, supplemented by rules on the procedure for access to distance education;
- Rules of internal order of pre-trial detention centers of the penitentiary system of the Ministry of Internal Affairs of the Republic of Belarus, approved by a resolution of the Ministry of Internal Affairs of the Republic of Belarus in 2004;
- Rules of internal order in pre-trial detention centers of the bodies of state security of the Republic of Belarus, approved by a resolution of the State Security Committee of the Republic of Belarus in 2003;
- Internal regulations of the temporary detention facilities of the local bodies of internal affairs, approved by a Decree of the Ministry of Internal Affairs of the Republic of Belarus in 2016;

- Internal regulations of open correctional institutions, approved by a Decree of the Ministry of Internal Affairs of the Republic of Belarus in 2017;
- Internal regulations of facilities for serving administrative imprisonment, approved by a decree of the Ministry of Internal Affairs of the Republic of Belarus in 2015;
- Rules for individuals subjected to administrative detention, approved by a Resolution of the Council of Ministers of the Republic of Belarus of November 21, 2013;
- Protocol on the procedure and conditions for the detention of persons in specialized detention centers of the bodies of internal affairs (vytrezvitels, or drunk tanks), approved by a Decree of the Ministry of Internal Affairs in 2015; determines the procedure and conditions for the detention of persons subjected to administrative detention for appearing a public place while intoxicated, offending human dignity and morality, as well as for committing administrative offenses while intoxicated, for which a penalty of administrative imprisonment may be imposed;
- Decree No. 37 of the Council of Ministers of the Republic of Belarus of January 16, 2017 “On Establishing the List and Number of Items, Belongings and Food that Can be Allowed during the Escort of a Person in Custody”;
- Rules of internal order of places of detention of the border service of the Republic of Belarus, approved by resolution No. 31 of the State Border Committee of the Republic of Belarus of May 06, 2009;
- Protocol on the procedure for escorting, isolating, guarding and supervising detainees, approved by Decree No. 16 of the State Border Committee of the Republic of Belarus of December 16, 2016;
- Internal regulations at the guardhouses of military commandant’s offices for military personnel in custody, approved by Decree No. 25 of the Ministry of Defense of the Republic of Belarus of November 21, 2016;
- Internal regulations of labor and treatment prophylactoriums, approved by Decree No. 86 of the Ministry of Internal Affairs of the Republic of Belarus of March 25, 2021; entered into force on August 12, 2021.

2021 was marked by significant changes in the rules for counting the periods of pre-trial detention and house arrest.

The period of pre-trial detention and of house arrest or the period of stay in a reception center for minors shall be counted by the court as part of the period of punishment or the period of application of a compulsory educational measure. Meanwhile:

- 1) one day of stay in a reception center for minors or two days of house arrest corresponds to:
 - one day of deprivation of liberty, one day of stay of a minor in a special education or special medical and education institution;
 - two days of restriction of freedom;
 - three days of corrective labor or restrictions on military service;
 - twenty-four hours of community service.
- 2) one day of pre-trial detention corresponds to:
 - two days of imprisonment for a person who has committed a crime under the age of eighteen, as well as serving in a correctional settlement;
 - one and a half days of imprisonment when serving in a correctional colony of general and enhanced security;

- one day of imprisonment to be served in a correctional colony of maximum and special security or in prison;
- one day of criminal arrest;
- two days of restriction of freedom or stay of a minor in a special education or special medical and education institution;
- three days of corrective labor or restrictions on military service;
- twenty-four hours of community service.

When imposing punishments not specified in this list (for example, a fine, deprivation of the right to hold certain positions or engage in certain activities), the court, taking into account the period of pre-trial detention and the period of house arrest, may accordingly mitigate the punishment or completely release the perpetrator from serving it.

These provisions do not apply to persons who had served their sentence before it became final.

Several articles were excluded from the Criminal Code that provided for criminal liability for malicious evasion of convicts from serving a sentence of restriction of liberty, correctional labor, community service, a fine, or deprivation of the right to hold certain positions or engage in certain activities.

In this regard, the articles on the corresponding types of punishment in the Criminal Code were supplemented with new provisions.

In case of malicious evasion from serving a sentence of restricted freedom, the court, on the proposal of the body entrusted with the execution of the sentence, may replace the restriction of liberty with deprivation of liberty at the rate of one day of deprivation of liberty for two days of restriction of liberty. At the same time, the time of evasion from serving a sentence of restricted freedom is not included in the period of the served sentence.

In case of malicious evasion from serving a sentence of community service, the court, on the proposal of the body entrusted with the execution of the sentence, may replace community service with criminal arrest at the rate of one day of arrest for twenty-four hours of community service or with restriction of freedom at the rate of one day of restriction of liberty for twelve community service hours. At the same time, the time of evasion from serving a sentence of community service is not included in the period of the served sentence.

In case of malicious evasion from the execution of a fine, the court, on the initiative of the authority responsible for the execution of the sentence, may replace a fine with criminal arrest at the rate of one day of arrest for ten basic units of a fine based on the amount of the basic unit established on the day the sentence was passed, but for a period not exceeding three months, or with restriction of freedom at the rate of one month of restricted freedom for five basic units of a fine based on the amount of the basic amount established on the day of the sentence, but for a period not exceeding five years. The issue of replacing a fine imposed as an additional punishment is considered by the court after the convict has served the main punishment.

In case of malicious evasion from serving a sentence of deprivation of the right to hold certain positions or engage in certain activities, the court, on the proposal of the body entrusted with the execution of the sentence, may replace the deprivation of the right to hold certain positions or engage in certain activities with restriction of freedom at the rate of one day of restriction of freedom for one day of deprivation of the right to occupy certain positions or engage in certain activities, but for a period not exceeding five years. At the same time, the time of evasion from serving a sentence of deprivation of the right to occupy certain positions or engage in certain activities is not included in the period of the served sentence. The issue of replacing the deprivation of the right to hold certain positions or engage in certain activities appointed as an additional punishment is considered by the court after the convict has served the basic punishment.

In case of malicious evasion from serving a sentence of correctional labor, the court, on the proposal of the body entrusted with the execution of the sentence, may replace correctional labor with criminal arrest at the rate of one day of arrest for three days of correctional labor, but for a period not exceeding three months (for the person who committed crime under the age of eighteen – for a period not exceeding two months) or restriction of freedom at the rate of one day of restriction of freedom for one and a half days of correctional labor. At the same time, the time of evasion from serving a sentence of correctional labor is not included in the period of the served sentence.

Persons convicted of crimes under Arts. 415-419 of the Criminal Code, until the entry into force of these changes (until September 9, 2021), and still serving sentences, continue to serve their sentences in places determined by bodies or institutions executing punishment and other measures of criminal liability. The conviction of persons convicted of crimes under Arts. 415-419 of the Criminal Code is expunged for these crimes after serving the sentence. Conviction of persons convicted of other crimes forming a set of crimes or sentences with crimes under Arts. 415-419 of the Criminal Code is expunged in the manner prescribed by the Criminal Code.

The conviction of persons convicted of crimes under Arts. 415-419 of the Criminal Code and those who have served their sentences before the entry into force of the new law is expunged for these crimes from the date of its entry into force.

Questions about replacing the sentence imposed on the convict by a court sentence with a more severe punishment in case of malicious evasion from serving it are resolved by the court that passed the sentence, or by the court of the corresponding locality on the proposal of the body or institution in charge of the execution of punishment in the manner determined by Arts. 402 and 402-2 Code of Criminal Procedures.

Issues related to the execution of the sentence shall be resolved by the judge alone in a court session with the participation of the prosecutor. When considering questions on replacing the sentence imposed on the convict by a court verdict with a more severe punishment in the event of malicious evasion from serving it, the participation of the convict, their legal representative, and a representative of the body or institution that submitted the proposal is mandatory. The convict may exercise their rights with the help of a lawyer.

The procedure for considering an issue differs significantly from a full-fledged consideration of a criminal case: at the appointed time, the presiding judge opens the court session and announces what material is to be considered. The secretary of the court session shall report to the presiding judge on the appearance of the persons summoned to the court session and report on the reasons for the absence of those absent. The presiding judge announces the composition of the court, the name of the prosecutor, the secretary of the court session and the interpreter. The presiding judge determines the identity of the convict, the identity and powers of other persons. The presiding judge explains to the convict their right to challenge the composition of the court, the secretary of the court session and the interpreter.

The presiding judge shall inquire whether the convict or the persons summoned to the court session have any motions, and resolve the motions received.

The consideration of the case begins with the report of the judge, after which they hear the persons who have appeared at the court session. Then, the court examines the documents available in the case. After that, the conclusion of the prosecutor is heard and the judge retires to the deliberation room to issue a decision, which must be announced at the court session.

In such cases, there is no opportunity to receive a free-of-charge consultation of a defense lawyer or to have them appointed by the court. There are no adversarial procedures of the trial – the Code of Criminal Procedures does not provide for a lawyer's right to defend the convict after the conclusion of the prosecutor.

DETENTION AND PENITENTIARY FACILITIES AND GOVERNMENT AGENCIES

The penitentiary system of Belarus consists of:

- pre-trial detention centers and correctional institutions subordinated to the Department of Corrections of the Ministry of Internal Affairs of the Republic of Belarus (correctional colonies, prisons, open-type correctional institutions);
- labor and treatment prophylactoriums subordinated to the Department of Corrections;
- pre-trial detention center of the KGB of the Republic of Belarus;
- temporary detention centers in the structure of local departments of internal affairs;
- special institutions that ensure the execution of administrative penalties (administrative imprisonment), centers for the confinement of offenders;
- specialized detention facilities of bodies of internal affairs;
- reception centers for minors of the Ministry of Internal Affairs;
- temporary detention facilities of the Border Guard Service (Border Committee of the Republic of Belarus);
- healthcare institutions of the Ministry of Healthcare;
- closed education and medical institutions of the Ministry of Education.

PLACES OF FORCED DETENTION UNDER THE MINISTRY OF INTERNAL AFFAIRS AND LOCAL BODIES OF INTERNAL AFFAIRS

The current list of state organizations subordinate to the Ministry of Internal Affairs (its departments) was approved by Decree No. 6111 of the President of the Republic of Belarus of December 4, 2007 "On Some Issues of the Ministry of Internal Affairs and Organizations Included in the System of Bodies of Internal Affairs".

The Department of Corrections runs the following facilities:

- Mahilioŭ region: Education Colony No. 2, Correctional Colony No. 2, Correctional Colony No. 9, Correctional Colony No. 15, Correctional Colony Settlement No. 16, Correctional Colony No. 17, Prison No. 4;
- Viciebsk region: Correctional Colony No. 1, Correctional Colony No. 3, Correctional Colony No. 8, Correctional Colony No. 12 (for convicts with active tuberculosis), Correctional Colony No. 13;
- Homieĺ region: Correctional Colony No. 4, Correctional Colony No. 20, Correctional Colony Settlement No. 21, Correctional Colony No. 24;
- Brest region: Correctional Colony No. 5, Correctional Colony No. 22, Prison No. 1;
- Hrodna region: Correctional Colony No. 11, Correctional Colony Settlement No. 26;
- Minsk and Minsk region: Correctional Colony No. 14, Prison No. 8;
- open penitentiaries Nos. 1, 3, 6, 7, 45 and 52 (Brest region);
- open penitentiaries Nos. 9-11 (Viciebsk region);
- open penitentiaries Nos. 17, 19, 21 and 22 (Homieĺ region);
- open penitentiaries Nos. 24-26, 29 and 31 (Hrodna region);
- open penitentiaries Nos. 35, 36, 39, 51 and 55 (Minsk and Minsk region);
- open penitentiaries Nos. 15, 43, 46-49 (Mahilioŭ region);

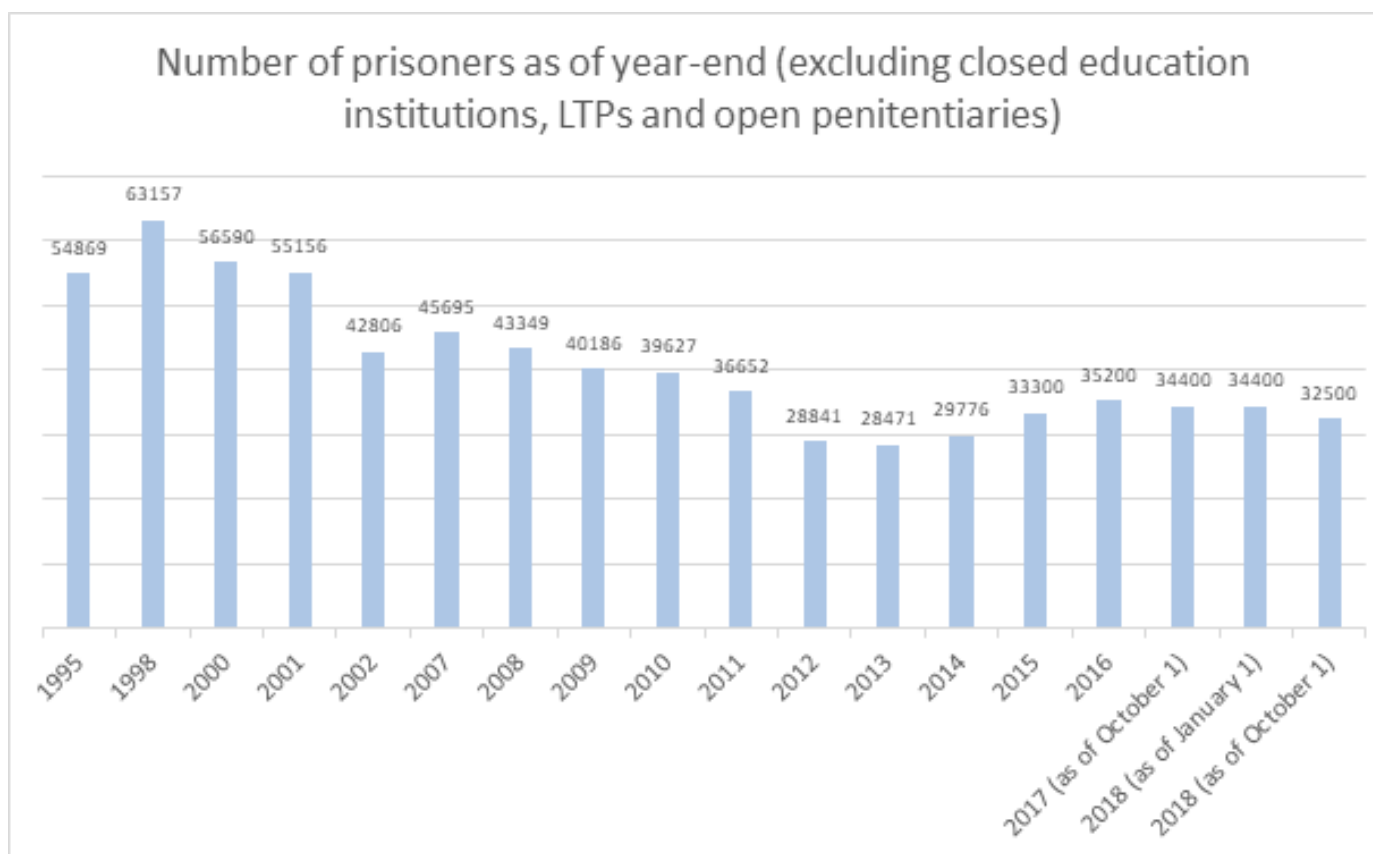
- Republican unitary enterprise “One”, “No. 4”, “IK 8 – Poisk”, “Seventeen”, “LTP-1”, Republican unitary enterprise “Khutor-Agro”, Republican unitary enterprise “Correctional Colony No. 2 of Babrujsk”, “Correctional Institution No. 5”, “IK-9”, “Eleven”, “IK 12-VAL”, “IK 13-Berezvechye”, “Fourteen”, “Fifteen”, “IK-20”;
- labor and treatment prophylactorium No. 1 (Homiel’ region);
- labor and treatment prophylactorium No. 2, labor and treatment prophylactorium No. 7 (Mahilioŭ region);
- labor and treatment prophylactorium No. 3, labor and treatment prophylactorium No. 6 (Minsk and Minsk region);
- labor and treatment prophylactorium No. 4, labor and treatment prophylactorium No. 9 (Viciebsk region);
- labor and treatment prophylactorium No. 5 (Hrodna region);
- Pre-trial Detention Facility No. 1 (Minsk);
- Pre-trial Detention Facility No. 2 (Viciebsk);
- Pre-trial Detention Facility No. 3 (Homiel’ region);
- Pre-trial Detention Facility No. 5 (Mahilioŭ region);
- Pre-trial Detention Facility No. 6, Pre-trial Detention Facility No. 7 (Brest);
- Detention houses within the structures of correctional facilities; the exact number for 2022 is not specified in open sources.

Thus, there are 3 prisons, 16 correctional colonies, 1 education colony, 6 pre-trial detention centers, 8 LTPs and 29 open penitentiaries in Belarus.

The structure of the local bodies of internal affairs includes temporary detention facilities and special institutions that ensure the execution of administrative penalties (administrative imprisonment). The Department of Supervisory and Executive Activities of the Ministry of Internal Affairs of the Republic of Belarus, within its powers, coordinates the activities of structural units of the central apparatus and central subordination of the Ministry of Internal Affairs, internal affairs bodies, and organizations included in their system, and military units of the internal troops of the Ministry of Internal Affairs in the field of organizing the escort of persons held in custody, ensuring the detention of persons detained in accordance with the procedure established by the legislation of the Republic of Belarus in temporary detention centers of internal affairs bodies, special institutions that ensure the execution of administrative imprisonment.

DATA ON THE NUMBER OF PRISONERS

Current statistics on the composition and number of prisoners and other key parameters are no longer published on the official website of the Ministry of Internal Affairs. At the same time, the National Statistical Committee stopped compiling and publishing digests which made it possible to analyze the structure of crimes and the persons who committed them, according to various parameters. The latest digest was published in 2016 and contained up-to-date data for 2015.



As of October 1, 2018, 32,500 people were held in penitentiary facilities, while the official capacity of all facilities as of January 1, 2015 was 35,720; the breakdown of correctional institutions is not provided, however. These data failed to take into account colony No. 1 created to replace a former LTP and a new colony opened in Navapolack in the fall of 2017.

There were more than 3,400 women in detention.

The official number of prisoners did not include those serving sentences of restricted freedom in open correctional institutions and terms of criminal arrest; nor did it include those confined to LTPs, sentenced to terms of administrative imprisonment or undergoing compulsory treatment under a court decision. Official statistics do not include minors who are held as prisoners in special closed education and medical education schools.

According to the Department of Corrections, as of October 1, 2019, sentences of imprisonment were being served by: 40% - in correctional colonies for persons serving a sentence of imprisonment for the first time, 41% - in correctional colonies for persons who had previously served sentences of imprisonment, 11% - in correctional colonies for women, 2% - in correctional settlements, 2% - in prisons, 1% - in education colonies, 2% of people were in hospitals, 1% were on the transfer.

As of July 1, 2017, about 160 people (all men) were serving life sentences in correctional institutions, while almost all of them were convicted under Art. 139 of the Criminal Code, murder. 39.4% of them were convicted for the first time, 96.4% are employable, and 6.7% are men over the age of 60.

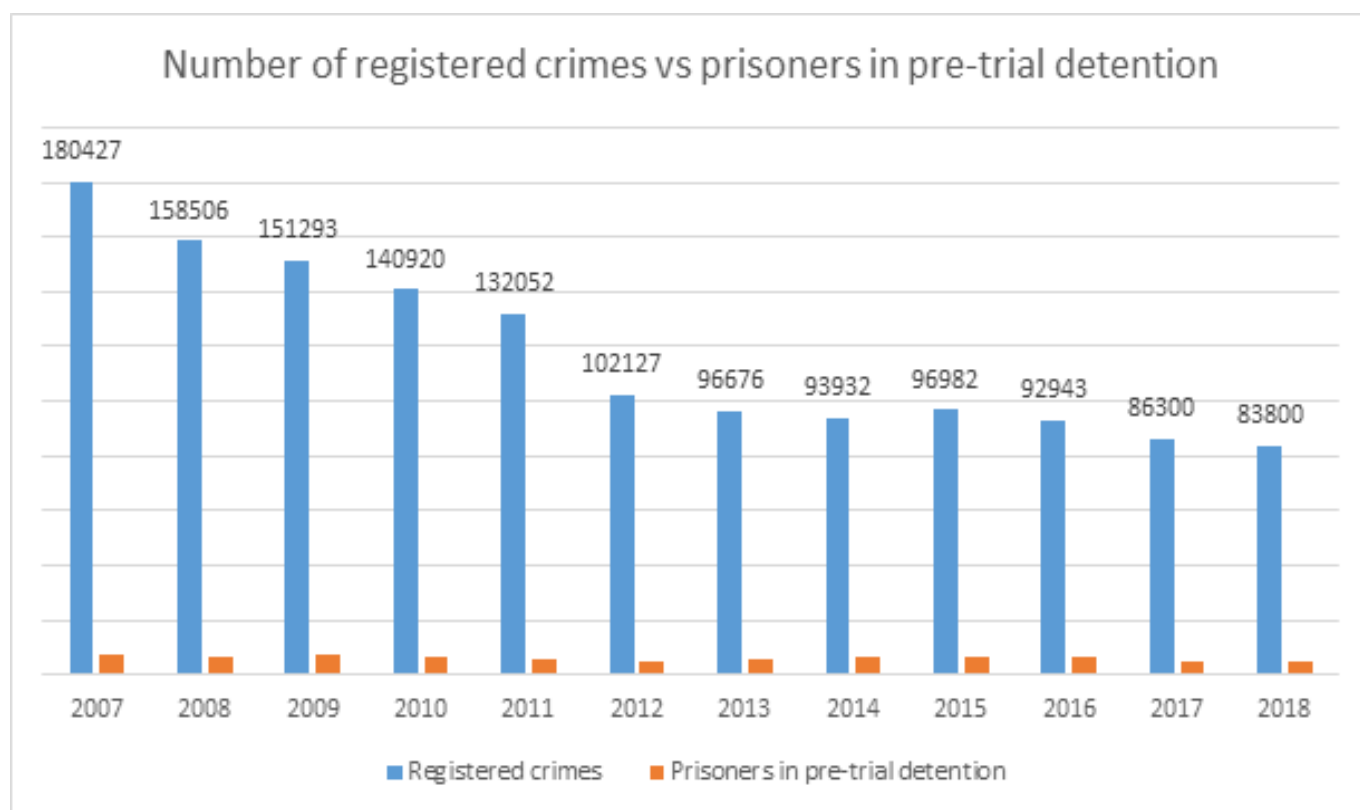
There are no data on the number of prisoners simultaneously serving terms of criminal arrest. In total, 6,663 people were sentenced to terms of criminal arrest by the courts of Belarus in 2021, and 7,143 in 2020; in 2019 – 7,405; in 2018 – 7,507; in 2017 – 7,177, in 2016 – 7,266, in 2015 – 7,126, in 2014 – 7,312 people.

No data are available on the number of prisoners held in open penitentiaries. In total, 2,006 people were subjected to this type of punishment in 2021, 1,613 – in 2020, and 1,774 – in 2019, in 2018 – 1,947, in 2017 – 2,476, in 2016 – 3,024, in 2015 – 3,322, and in 2014 – 2,543 people. The latest information on the number of prisoners is dated May 2015, when 3.5 thousand people were reportedly held in open institutions; thus, the number of convicts tends to decrease.

In 2021, administrative imprisonment was assigned to 38,301 people, in 2020 – 52,536, in 2019 – 52,829; in 2018 – 51,590; in 2017 – 52,069; in 2016 – 41,921, in 2015 – 39,724, in 2014 – 35,674 people.

In 2017, bodies of the Ministry of Internal Affairs extrajudicially considered 19,537 administrative cases under Art. 9.27 of the Code of Administrative Offenses (evading employment by a court order of “obligated persons”), and in 2018 – 21,389; it is most likely that the same number of times administrative imprisonment was imposed on the offenders. No statistics were published for subsequent years.

The number of prisoners in pre-trial detention centers, against the backdrop of a general decrease in the level of crime over the past 10 years, has remained almost unchanged.



FOREIGN PRISONERS

In 2018, about 1,000 foreign nationals were held in colonies, pre-trial detention centers and prisons of Belarus, which amounted for 3.1% of the total number of prisoners. Of them:

- 87% were men;
- 67% were citizens of a CIS member state;
- 23% were stateless;
- 10% were citizens of other countries outside the CIS;

- 51.4% had lived on the territory of the Republic of Belarus for more than 5 years at the time of the crime;
- 73% were not employed and were not students;
- 52.5% had not committed crimes before.

Serving a criminal sentence of imprisonment for foreigners in Belarus is possible in any correctional institution of the corresponding type. Belarus does not have a special institution for convicted foreigners, as well as no separate units in correctional colonies.

MINOR PRISONERS

There are no official data on the number of juvenile prisoners in 2019-2022. During the previous years (since 2012), the number of those sentenced to terms of imprisonment in education colonies fluctuated between 160 and 280 people, while more than 100 children were usually held in pre-trial detention centers. It should be noted that only less than half of the prisoners in education colonies are minors (the penitentiary legislation allows prisoners who are 18 years of age to be kept in education colonies up to 21, and in exceptional cases – up to 22 years).

Juvenile female prisoners serve their sentences in a separate subdivision (detachment) of the all-women's penal colony (colony No. 4).

It should be borne in mind that in Belarus there are about 250 pupils of special closed education and medical institutions, where offenders aged 11 to 18 are kept; there are minors kept in special reception centers.

Summarizing the above, it can be argued that in 2022 more than 40,000 people are subjected to long-term deprivation of liberty in Belarus.

LABOR AND TREATMENT PROPHYLACTORIUMS

Decree No. 803 of the Council of Ministers of the Republic of Belarus of September 25, 2015 approved the Concept of social rehabilitation of persons suffering from alcoholism, drug addiction and substance abuse, providing their compulsory involvement in labor. The document was expected to optimize the activities of labor and treatment prophylactoriums (LTPs) by gradually reducing their number.

The following figure indicates a steady upward trend over the past few years. As of September 1, 2016, there were 6,788 people in Belarusian LTPs, of which 1,341 were women. Since that time, no official data on the number of prisoners in the LTPs have been published.



As of late-September 2015, the capacity of all LTPs was 6,300 people. Presidential Decree No. 223 of June 23, 2017, closed LTP No. 8, which most likely reduced the limit.

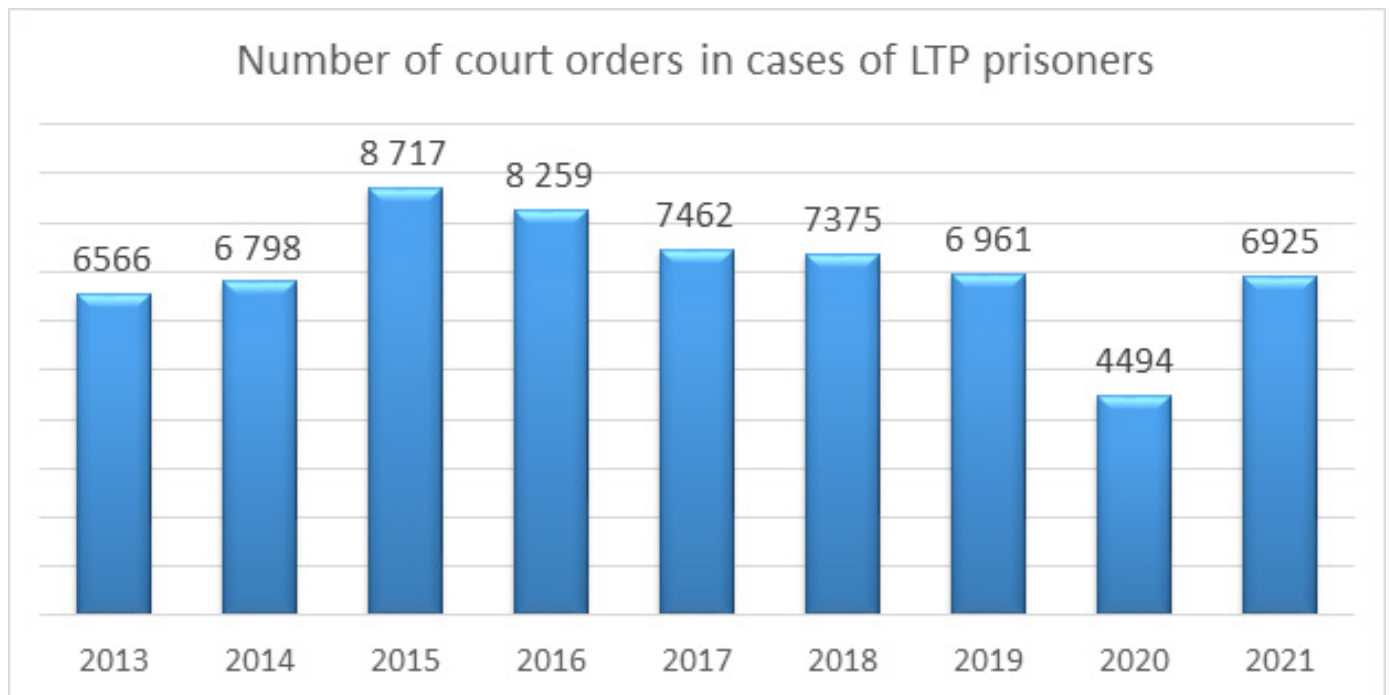
This leads to overcrowding in penal facilities. In particular, as of September 2018, 1,779 people were being held in the LTP in Sviethahorsk, while its capacity is only 1,400 persons.

There are no official data on the number of prisoners in LTPs in 2017-2022. At the same time, according to the Supreme Court, the number of people sent to LTPs over the past decade has remained at a consistently high level – 6-8 thousand people annually, with the exception of 2020, when police forces were tasked to suppress protests, which had a significant impact on their other functions.

Thus, the number of prisoners in the LTPs, apparently, remains at the same level – about 7,000 people. At the same time, the increase in the maximum length of stay in detention should affect the number of inmates.

Initially, the Law used wording that limited trials to ascertaining and verifying the existence of the reasons provided for by the Law for referral to an LTP and the fulfillment by the applicant of the formalities related to referral.

One of the novelties introduced into the Law “On the Procedure and Conditions of Sending Individuals to Labor and Treatment Prophylactoriums and the Conditions of Detention in Them” in 2014 was an indication that the decision to send a persons to an LTP in the presence of formal reasons has become a right, not an obligation of the court.



Significant changes to the Law were introduced by the Law of December 10, 2020, which entered into force on December 30, 2020.

As in the previous version, LTPs can hold:

- citizens suffering from chronic alcoholism, drug addiction or substance abuse, who during one year were brought to administrative responsibility three or more times for committing administrative offenses while intoxicated or in a state caused by the consumption of narcotic drugs, psychotropic substances, their analogues, toxic or other intoxicating substances, were warned about the possibility of being sent to an LTP and within a year after this warning were brought to administrative responsibility for committing an administrative offense while intoxicated or in a state caused by the consumption of prohibited substances;
- citizens who are obliged to reimburse the expenses spent by the state on the maintenance of children in government care, who twice during the year violated labor discipline due to the use of alcoholic beverages, the use of narcotic drugs, psychotropic substances, their analogues, toxic or other intoxicating substances, in connection with this, they were warned about the possibility of being sent to an LTP and within a year after this warning they violated labor discipline due to the use of prohibited substances.

A new category of citizens subject to confinement to LTPs were able-bodied unemployed persons leading an "asocial lifestyle", who were warned about the possibility of being sent to LTPs and within a year after this warning were brought to administrative responsibility for committing an administrative offense in a state of alcoholic intoxication or in a state of caused by the consumption of narcotic drugs, psychotropic substances, their analogues, toxic or other intoxicating substances, for whom local employment commissions recommended referral to an LTP and who, based on the results of a medical examination, were diagnosed with chronic alcoholism, drug addiction or substance abuse.

The following persons are not subject to confinement to LTPs: individuals under the age of eighteen years; citizens who have reached the generally established retirement age; pregnant women; women raising children under the age of one year; disabled people of I and II groups; citizens who have diseases that prevent them from being held in an LTP. The list of diseases that prevent citizens from being confined to LTPs is approved by the Ministry of Healthcare.

A person may be sent by a court to an LTP for a period of twelve months. The new rule is that a person is confined to an LTP for the third time, they may be detained for up to twenty-four months. The stay in the LTP may be extended by a court decision for a period of up to six months in the presence of several penalties, for absence without a valid reason for more than one day; absence without a valid reason for less than one day repeatedly within three months; or late return from social leave without a valid reason.

Labor and treatment prophylactoriums are subdivided into:

- LTPs for persons who were detained for the first time; these LTPs provide separate confinement of people who agreed to be treated for chronic alcoholism, drug addiction or substance abuse and agreed to psychiatric care in accordance with the legislation on the provision of psychiatric care;
- LTPs for people with previous convictions, as well as those referred to LTPs for the second time.

Inmates of LTPs are accommodated in dormitories. They are provided with an individual bed. The norm of living space per person in the sleeping quarters of LTP dormitories cannot be less than two and a half square meters for citizens sent to LTPs for the first time, and two square meters for citizens who have previously been convicted, as well as those sent to an LTP for the second time. For inmates receiving medical care in stationary conditions of the medical units, the norm of living space is set at a rate of at least six square meters.

First-time inmates can send and receive telegrams, letters, money transfers, parcels and packages without any limits. Repeated convicts and those who were earlier confined to an LTP can send telegrams, letters, money transfers, parcels and packages without restrictions, but are entitled to only three parcels or transfers and two packages during one year.

Inmates can be visited by spouses, close relatives and other persons upon request. The prisoners can live with their spouses and close relatives for up to three days in a residential building on the territory of the LTP. Visits lasting up to three hours are held in a specially designed room on the territory of the LTP during the prisoner's free time, and with the permission of the head of the LTP or their deputy – at other times.

The costs of food, clothing and footwear, utilities and other costs are deducted from the wages and equivalent incomes of inmates in accordance with applicable legislative acts. The costs are deducted for the entire duration of confinement until its full repayment. Upon termination of a citizen's stay in the LTP, the unrecovered cost of food, clothing and footwear, as well as utilities is written off as expenses according to the estimate for the maintenance of the LTP.

Regardless of all deductions, at least 25% of gross wages and income equivalent to it and at least 15% for persons obligated to reimburse the expenses for the maintenance of children in government care, and with debts to reimburse these expenses, are transferred to the personal account of an inmate, unless otherwise provided by legislative acts.

LTPs are penal facilities for people who have not committed a crime. The authorities persistently ignore the fact that, according to the Constitution of Belarus, deprivation of liberty is allowed only for the commission of a crime. The problem of LTPs has at least two aspects: arbitrary deprivation of liberty and forced labor. In 2016, the Committee on the Application of Standards of the International Labor Organization (ILO) drew the attention of the Belarusian authorities to the need to bring national legislation in line with the requirements of ILO Convention No. 29 proclaiming a ban on forced labor, following the consideration of the Belarusian issue at the 105th session of the International Labor Conference, which took place on June 6 in Geneva.

The statement that LTPs are places of deprivation of liberty is based on the position of the European Court of Human Rights, according to which the concept of "deprivation of liberty" contains both an

objective element, which is the placement of a person in custody in a certain limited space for a significant period, and an additional subjective element: absence of the person's consent to such detention; relevant objective factors such as the ability to leave a confined space, the degree of supervision and control over the movement of a person, the degree of isolation and the possibility of social contacts are taken into account.

Compulsory isolation of citizens in LTPs includes: admission to LTPs; supervision and control over inmates; examination and search, including examination of their personal belongings; checks of presence and absence; access control.

For non-fulfillment of the duties assigned to them, the following penalties may be applied to persons held in LTPs: reprimand, ordered duty, placement in a disciplinary room for up to ten days. Confinement to a disciplinary room may be applied for:

- failure to comply with the legal orders of employees and civilian personnel of LTPs;
- obstruction of employees and civilian personnel of LTPs in the performance of their official duties;
- committing intentional actions that threaten one's own life or health, as well as the life or health of other people;
- acquisition, manufacture, storage, use of items and substances not provided for in the list of items and substances permitted for storage and use by citizens staying in LTPs;
- unauthorized leave;
- participation in gambling;
- refusal to be employed or unauthorized termination of work.

LTP inmates, taking into account their age, ability to work, health status, skills and qualifications, are employed in the LTPs, by the unitary production enterprises subordinate to the Department of Corrections and other local organizations, in accordance with the Internal Rules of LTPs and other legislative acts. Opposing employment or unauthorized termination of work entails the application of disciplinary measures. *LTP inmates are entitled to labor and social leaves without the right to leave the territory of the LTP.*

The amount of payment for forced labor of prisoners in LTPs differs depending on the specialization of the LTP, the skills of the prisoners and the work assigned to them. Prisoners who have working professions can earn up to 700 Belarusian rubles inside an LTP and at other enterprises. According to former prisoners, the so-called "obligated persons" are in a privileged position (they are deprived of parental rights and obliged to pay the costs of their maintenance), since they are employed in places with no requirements for qualifications, but with higher wages, so that deductions could cover the costs of keeping children in public institutions of guardianship.

In all-women's LTP No. 9 in Viciebsk, for example, the average wage in 2018 was about 260 Belarusian rubles per month. In February 2021, in the LTP in the Sluck district, prisoners earned from 200 to 700 Belarusian rubles. However, after deducting the costs of food and utilities, most prisoners have little money at their disposal.

WOMEN IN DETENTION

The rules that determine the legal status of convicts, as a rule, are common for men and women. However, conditions differ for women serving sentences in open penitentiaries, penal settlements and correctional colonies.

Women sent to prison for the first time may share the same penitentiary with those who have earlier been imprisoned, provided they are held in separate units (Article 47 of the Penal Code). Female minors are also held isolated from the rest of the convicts (Art. 71 of the Penal Code).

In Belarus, women serve their sentences of imprisonment in correctional settlement No. 21 in the Vietka district and correctional colonies No. 4 in Homieĺ and No. 24 in the Rečyca district under general and medium security conditions; women can also be sent to prison. There is no separate prison for women. Medium security rules do not apply to convicted pregnant women and women who have small children with them.

Like other prisoners, women held in correctional colonies are obliged to work in places and jobs determined by the prison authorities. The rules of labor law apply to working women only in certain aspects, namely in provisions regulating the length of working hours and labor protection requirements.

The amount of remuneration for convicts, including women, who have worked the monthly norm of working time and fulfilled the standard of output established for them, cannot be lower than the amount of remuneration established by the legislation of the Republic of Belarus for the performance of the corresponding work. However, in the event that the prisoners do not meet the productivity standards, they are not entitled to any additional payments. In practice, this results in extremely low wages, especially after charging the convicts for food and utilities.

The correctional facilities holding women with children have internal childcare facilities. The law obliges prison authorities to create in these facilities conditions conducive to the normal wellbeing and development of children. Convicted women can place their children under the age of three years in the childcare facilities of correctional institutions (the period may be extended if the remaining sentence does not exceed one year) and communicate with them in their free time without any restrictions. They may be allowed to live together with their children on the premises.

In January 2019, government-controlled media disseminated the news about the opening of a new building in penal colony No. 4 in Homieĺ, a dormitory for female prisoners with small children. Before that, children under the age of four had to live in childcare facilities; there, children could see their mothers only at allocated times. The new dormitory was equipped with separate bedrooms with furniture, including baby cots and changing tables. Shared facilities included a nurse's station, a games room, a dining room, a bathroom and personal hygiene rooms.

In August 2021, 17 children of female prisoners were kept in penal colony No. 4. Contrary to the ambitious plans and despite the availability of 15 rooms with 20 beds, only four women lived together with their children.

Under Belarusian legislation, there are minor relaxations in security requirements for pregnant and lactating women. Based on a medical examination, convicted pregnant women and nursing mothers may receive additional food in the amount and assortment necessary to maintain the normal health of the mother and the child. In accordance with the Penitentiary Criminal Code, convicted pregnant women and nursing mothers, along with minors, sick people and persons with disabilities of groups I and II, are provided with improved living conditions and increased nutritional standards. Meanwhile, prisoners have pay for food and utilities. Nutrition for children living together their mothers in correctional

colonies, pre-trial detention centers and prisons, as well as children held in the childcare facilities of these penal institutions, has to meet the standards established for children living in asylums belonging to the system of the Ministry of Healthcare.

Along with the convicts released from work due to illness, convicted pregnant women and nursing mothers are provided with food free of charge for the period of their release from work. However, clothes and utilities are provided to them on a reimbursable basis.

The law allows convicted women who conscientiously treat their work and comply with the prison rules to live outside the penitentiary for the period of their release from work due to pregnancy and childbirth, as well as for the period until the child reaches the age of three. Convicted women who are allowed to live outside the correctional colony should settle near the penitentiary in a room or an apartment owned by the penitentiary and be under constant supervision of the prison authorities. However, the fact that, according to the law, they are only allowed to live in the premises owned by the colony made this rule unworkable.

At the end of the period of release from work for pregnancy and childbirth, convicted women go back to work at the direction of the prison administration. This means that women who have given birth to a child in a colony do not have the right to parental leave until the child reaches the age of three. Women prisoners are released from work from the 27th week of pregnancy for 146 calendar days and after this period they are again obliged to work.

Generally, convicts sentenced to terms of imprisonment may be forced to work without pay only as part of "collective self-service," including cleaning and maintenance of correctional institutions and adjacent territories. At the same time, convicted women who have reached the generally established retirement age and convicted pregnant women can work without pay only if they wish to. Women with their children living in internal childcare facilities are not exempted from such work.

Convicts are obliged to clean their rooms in their free time. The duration of work should not exceed 14 hours per week. This means that, in addition to 7-8 hours of paid work per day with a 5-6-day working week, prisoners, including women, can be forced to work without pay and without days off for an additional average of 2 hours a day.

The legislation establishes that persons serving sentences in correctional institutions are provided with the necessary living conditions that should comply with the rules of sanitation and hygiene. The standard of living space per convict in correctional colonies and prisons cannot be less than two square meters. These rates are not increased for pregnant and lactating women. Such standards are unacceptable for any category of convicts and have been repeatedly condemned by the UN HRC and the ECtHR as insufficient (in Europe, four square meters per person is considered an acceptable standard for convicts).

In case of committing disciplinary offenses, pregnant women and nursing mothers sentenced to imprisonment cannot be placed in a punishment cell or transferred to a prison with increased security rules. However, other types of penalties may be applied, including temporary bans on family visits. This is inconsistent with the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, which stress that no disciplinary action against women prisoners can result in restrictions on their contacts with the family, and children, in particular. Under Rule 28, visits involving children shall take place in an environment that is conducive to a positive visiting experience, including with regard to staff attitudes, and shall allow open contact between mother and child. Visits involving extended contact with children should be encouraged, where possible.

In accordance with the Penitentiary Criminal Code, riot control equipment and firearms cannot be used against women with visible signs of pregnancy, except for cases of armed resistance, group or

armed attacks on prison staff and military personnel, or other actions that threaten the life and health of citizens. Such a rule deprives a certain category of pregnant female prisoners of protection – those whose pregnancy cannot be visually determined, but whose pregnancy is reliably known to a police officer. Rule 24 of the above Rules has not been directly implemented in the domestic law: “Instruments of restraint shall never be used on women during labor, during birth and immediately after birth.”

Therefore,

- **social and labor rights of women are unreasonably discriminated against in detention and penitentiary facilities;**
- **the state should amend legislation to ensure the true protection of the rights of pregnant women and nursing mothers;**
- **criminal justice against women should be administered as humanely as possible;**
- **the imprisonment of women, especially those who are pregnant and who have young children, should take place in extremely limited cases, when it is certain that other types of punishment will not achieve their goal.**

PUBLIC CONTROL OVER DETENTION CONDITIONS

SCOPE OF CONTROL

Public monitoring commissions (PMCs) are entitled to exercise control over open correctional facilities, facilities for criminal arrest, penal colonies and prisons, and penitentiary inspections of local bodies of internal affairs. Pre-trial detention centers are only open to scrutiny as long as it covers those sentenced to terms of imprisonment but left in a pre-trial detention facility to perform maintenance work.

Thus, PMCs cannot monitor the observance of the rights of those held in pre-trial detention centers, in the detention facilities of local bodies of internal affairs, LTPs, detention centers for offenders, juvenile reception centers and other places of detention.

RIGHTS OF COMMISSION MEMBERS

Members of a commission have the right to visit correctional institutions only after receiving permission from the Department of Corrections. To obtain permission, an application should be submitted to specify the purpose of the intended visit and the number of members of the commission. This means that the body whose work is controlled by the PMC has the right to deny the controlling authority access to the premises and to know in advance the plan of the future inspection.

Such permission is required even for visiting a penitentiary inspection, i.e. an ordinary department of internal affairs, with no security restrictions, which can be freely visited by an ordinary citizen.

The law does not secure the privacy of communication between commission members and convicts. The new version of the rules regulating the work of PMCs does not mention that the conversation should be carried out in the presence of a correctional officer, but this does not guarantee private communication in conditions where prison staff are not able to exercise control over the conversation (as is enshrined, for example, in the legislation on the Bar).

After receiving permission to visit the institution or the penitentiary inspection, the commission shall notify the head of the institution in advance about the date and time of the visit.

During the inspection, members of the commission are prohibited, among other things, from filming, photographing and recording audios; accepting written appeals from convicts serving sentences of administrative or criminal imprisonment. These prohibitions emasculate the ability of commissioners to control the activities of bodies and institutions that execute punishment and other measures of criminal responsibility.

In particular, having discovered a violation, a member of the PMC is deprived of the opportunity to document it in a photo and video. Also, if commissioners receive information about torture or ill-treatment of prisoners, they cannot document traces of beatings, or receive written evidence or on-the-spot explanations from the prisoner. Finally, the prisoner does not have the opportunity to enter into confidential correspondence with the PMC.

FINANCING THE ACTIVITIES OF THE COMMISSIONS

A public association that has nominated a candidate for a commission seat has the right to reimburse the commission member for expenses related to the implementation of their activities. The activities of the commissions are not financed by the state. This ultimately prevents the commissions from visiting correctional institutions located outside the regional centers.

ROLE OF PMCs IN PUBLIC CONTROL

The above Regulations provide for independent participation of public associations in the activities of bodies and institutions executing punishment and other measures of criminal liability (outside the PMCs):

– in the following areas: improving the conditions of detention and medical and sanitary support for convicts held in institutions; participation in the organization of work, leisure, training of convicts; participation in moral, legal, cultural, social, labor, physical education and development of convicts; ensuring freedom of conscience and freedom of religion for convicts held in institutions; assistance to convicts in preparing for release, resolving issues of housing and household arrangements, employment, medical care and social security, socio-psychological rehabilitation and adaptation; strengthening the material and technical base of bodies and institutions executing punishment and other measures of criminal responsibility;

– taking into account the recommendations of the PMCs in the following forms: provision of gratuitous (sponsored) assistance to bodies and institutions executing punishment and other measures of criminal liability; financing of assistance programs to bodies and institutions executing punishment and other measures of criminal responsibility; in other forms not prohibited by legislative acts.

This means that public associations and human rights defenders cannot take part in the control of places of imprisonment and detention outside the PMCs.

COMPOSITION OF PMCs AND PERFORMANCE INDICATORS

ДThe activities of public monitoring commissions (PMCs) are still ineffective due to the poor legislative regulation of their powers and peculiarities of their formation.

Previously, representatives of human rights organizations were almost never included in the commissions; the exception was the participation of Belarusian Helsinki Committee chairperson Aleh Hulak in the activities of the National PMC and the membership of Barys Bukhel, a representative of the Mahilioŭ Human Rights Center, in the Regional PMC of Mahilioŭ.

Currently, human rights organizations are not represented in the PMCs, while almost all human rights groups of Belarus have been dissolved. Instead, the rights of prisoners have been monitored by representatives of a wide variety of associations, mainly those whose statutory activities are not related to the problems of prisoners and human rights.

The National PMC includes representatives of education, humanitarian, family and religious organizations, which have the capacity to assist penitentiary institutions in the resocialization, education and re-education of prisoners, but these areas are not the goals of the PMCs. In accordance with the Regulations on the procedure for exercising control by public associations over the activities of bodies and institutions executing punishment and other measures of criminal liability, approved by Resolution No. 1220 of the Council of Ministers of the Republic of Belarus on September 15, 2006, citizens of the Republic of Belarus who have reached the age of 25 and are representatives of duly registered public associations can be members of a commission, the statutory goal or activity of which is the protection of the rights of citizens, including the promotion of the protection of the rights of those sentenced to punishment and other measures of criminal liability, and other public associations. Representatives of unregistered associations, initiatives and groups of individuals, as well as of non-profit organizations registered as foundations and institutions, cannot be members of the PMCs.

The National Public Monitoring Commission under the Ministry of Justice currently includes: T. Krauchanka, Belarusian Association of Parents with Many Children, chairperson of the commission;

H. Chyhrynava, Belarusian Public Organization of Soldiers' Mothers; L. Barouski, Belarusian Fund of Culture; I. Lemiasheuskaya, Belarusian Red Cross Society; H. Biadulina, Belarusian Association of UNESCO Clubs; V. Pikulik, Saints Methodius and Cyril Christian Education Center; L. Hladkaya and I. Kandrak, Belarusian Union of Journalists; S. Hancharova, public association "Positive Movement"; A. Hancharova, Belarusian National Youth Union.

The Brest Regional PMC includes four people: representatives of the Public Association "Club of Business Women", the Union of Entrepreneurs, Employers and Craftsmen, the Regional Youth Social and Charitable Public Association "Live, Baby" and public association "Volunteer Firefighters".

On March 25, 2022, representatives of this PMC visited open correctional institution No. 6. During the visit, the commission examined the sanitary and living conditions of the convicts, learned about the organization of free time, the conditions for organizing labor, medical and sanitary support, and interviewed persons held in the penitentiary. As of March 25, 64 convicts were serving their sentences in this facility, which can accommodate 80 inmates. As of the date of the inspection, 58 convicts were employed; the unemployed are newly arrived inmates. In 2019–2021, the kitchen, sanitary room for convicts, room for educational work, rooms for storing and drying things underwent minor redecoration, furniture (bedside tables and cabinets) were replaced. The inmates can receive correspondence secondary specialized and higher education. None of the convicts made use of this opportunity as of the date of the inspection. The institution is working to involve convicts in sports; the building is equipped with a gym, and on the territory, there are sports grounds for playing football, volleyball and streetball. In the course of the conversations with the convicts, there were no complaints about the work of the administration or the conditions of accommodation.

"Conditions of accommodation, organization of free time for convicts and their employment in the penitentiary meet all the requirements established for the system of corrections," the commission found.

In 2021, the PMC was reportedly not engaged in any activities, and in 2020, "the work of the public monitoring commission under the main department of justice of the Brest Regional Executive Committee was aimed at adaptation and resocialization after the release of women serving sentences in open correctional institutions, namely expanding their access to education. Due to the epidemiological situation in the Republic of Belarus, this work was carried out remotely on the ZOOM online platform by conducting master classes and trainings for women serving sentences in open correctional institutions No. 1 (Brest) and No. 52 (Baranavičy)", i.e. did not exercise its control functions, either.

The Viciebsk Regional PMC includes representatives of the Russian Cultural Center "Rus", Belarusian Peace Fund, Public Association "Belaya Rus", Public Association "Mercy and Community", Public Association, Viciebsk Association of Psychologists, Friendship Society "Polack – Friedrichshafen", Public Association of Former Prisoners of Nazi Concentration Camps in Poland and Germany "Friendship", Belarusian Union of the Soviet-Afghan War Veterans, Belarusian Red Cross Society, Belarusian Public Association of Veterans, and the Belarusian Republican Union of Youth".

On December 24, 2021, the Viciebsk PMC met to discuss the results of its visit on December 16, 2021 to Correctional Colony No. 1 and open-type correctional institution No. 10. The commissioners approved the plan of actions for 2022. The necessary conditions have been created in the institutions for the detention of convicts and their correction, the meeting concluded.

Employment of convicts in penitentiary No. 1 is run by the Tekhnotara branch of the state enterprise IK 12-VAL. All convicts are provided with jobs. The company produces polyethylene sheeting, woodworking products and garments. The residential blocks have rooms, which, depending on the area, house 4 to 12 convicts. These premises comply with sanitary and hygienic standards. The catering department

was inspected. There are workshops: bakery, cooking, dietary, and washing. Premises and equipment are kept clean, sanitation is carried out daily. On the territory of IK No. 1, there is a medical unit. There are dental, physiotherapy, and x-ray rooms. There is an isolation room with 30 beds. The convicts receive the services of medical specialists at the Navapolack Central City Hospital. To minimize the risk of introducing and spreading COVID-19 in the institution, 80% of the convicts were vaccinated. In the institution, from among the convicts, the Antrakt Art Studio was created in 2019, which already prepared two productions; members of the studio are also exploring indie moviemaking. A musical group Number One was organized, which can perform about 100 tracks. There is a literary club called "Land Under White Wings". Representatives of IK No. 1 take part in various competitions for convicts, including nationwide ones, and win prizes there. In 2021, they took part in the snow figure competition and the art competition "My Land is My Soul". In the International Prison Creativity Competition, Dzmitry Novikau's work "Whisper in the Clouds" received the highest assessment. The process of training and obtaining working specialties has been organized: firefighter, fitter, welder, etc. Since 2015, in correctional institutions of the Republic of Belarus, convicts have the opportunity to receive distance higher education. In IK No. 1, three convicts took advantage of this opportunity.

A peculiarity of open penitentiary No. 10 is that it holds women who have not been imprisoned before. Residential and amenity premises are maintained in proper condition. There is a shared kitchen with electric stoves, washbasins and refrigerators. Microwave ovens are available. The educational work of convicts is carried out on the basis of a special plan in the following areas: legal, moral, spiritual and labor education. Information bulletins available on the territory provide information on the legislation of the Republic of Belarus, on the current activities of the institution and announcements. Talks and educational sessions are regularly held for the convicts. Since 2020, the competitions "Best Easter Composition", "Queen of Autumn", "Best New Year's Toy" have been organized. Compositions created by convicts are transferred to orphanages.

The penitentiary has an assembly hall where lectures on various topics are held. The convicts periodically attend the Kolas National Academic Theater free of charge.

The PMC discussed possibilities of visiting in 2022 three correctional institutions located on the territory of the Viciebsk region.

The Homiel Regional PMC includes representatives of the Youth Public Association "Homiel Club of the Funny and Inventive" (its representative is the chairperson), Belarusian Republican Youth Union, Belarusian Republican Union of Lawyers, Public Association "Social Projects", Homiel Association of Children and Youth, and Homiel Regional Public Association of Prosecutor's Offices.

On March 28, 2022, the Main Department of Justice of the Homiel Regional Executive Committee hosted a meeting of the Regional Public Monitoring Commission. The meeting was attended representatives of the Department of Justice and the local office of the Department of Corrections.

The chairperson of the commission was elected. The following issues were discussed: improving efficiency, implementation of its work plan for the 1st half of 2022, interaction of the commission with the Department of Corrections and institutions included in the system of the Ministry of Internal Affairs, including on social support of convicts after their release from correctional institutions, reimbursement of debts by obligated persons serving sentences in correctional institutions, and other issues. It is easy to see that the issues of social support of convicts after their release from correctional institutions, and even more so – repayment of debts by obligated persons serving sentences in correctional institutions – are not within the competence of the PMC. Yet, such an approach to activities is not surprising, since, according to the Main Department of Justice of the Homiel Region, "the participation of the public monitoring commission in the activities of bodies and institutions that execute punishment and other measures of criminal liability is carried out in the

following areas: improving conditions of detention and medical and sanitary provision of convicts held in institutions; participation in the organization of work, leisure and training of convicts; participation in the moral, legal, cultural, social, labor and physical education and development of convicts; ensuring freedom of conscience and freedom of religion for convicts held in institutions; assistance to convicts in preparing for release, resolving issues of housing and household arrangements, employment, medical care and social security, socio-psychological rehabilitation and adaptation; strengthening the material and technical facilities of bodies and institutions executing punishment and other measures of criminal responsibility.” Meanwhile, in accordance with the Regulations on PMCs, all of the above are areas of activity of registered public associations. The powers of the PMCs are listed in another chapter of the Regulations.



On April 15, 2022, the Main Department of Justice of the Homiel Regional Executive Committee hosted a meeting of the Homiel Regional PMC to discuss the results of a visit to pretrial detention facility No. 3 with the participation of representatives of the Main Department of Justice of the Homiel Regional Executive Committee, the Prosecutor’s Office of the Homiel region, the Department of Corrections and the penitentiary’s administration. Based on the results of the visit, the commission made a conclusion about the proper organization of distance school learning for juveniles held in the institution, about the compliance with the legislation of the sanitary and social conditions of the cells, noted the presence of a TV set and leisure items (books, checkers). It should be emphasized that, in accordance with the law, pre-trial detention centers are subject to control by the PMCs only in relation to those sentenced to terms of imprisonment, but left in pre-trial detention centers to perform maintenance work, a provision heavily criticized by human rights defenders.

The Hrodna PMC includes representatives of the charitable public association “Listen to Your Heart”, the Sports Club “Snow Leopard”, Belarusian Red Cross Society, Belarusian Women’s Union, and the Hrodna Fishing Club.

The website of the regional department of justice describes the objectives of public control as follows: protection of the rights of prisoners and their families, ensuring the implementation and protection of the rights and freedoms of the person and the citizen; formation and development of civil legal awareness and increasing the level of citizens’ confidence in the activities of law enforcement

agencies; public assessment of the activities of law enforcement agencies and informing the public about the state of affairs in places of detention; ensuring transparency and openness in the activities of law enforcement agencies and contributing to the prevention and resolution of social conflicts.



Meanwhile, in accordance with the above Regulation, control over the activities of bodies and institutions executing punishment and other measures of criminal liability is carried out by public associations in order to ensure respect for the rights provided for by the Constitution of the Republic of Belarus, universally recognized principles and norms of international law, international treaties of the Republic of Belarus, and legislative acts of the Republic of Belarus.

However, the PMC (or the department of justice) offers its own views on the problem: “The correctional institution plays a central role in protecting citizens. Another aspect of public scrutiny is the understanding that the correctional facility plays a central role in the protection of citizens, as it holds those who pose a threat to law-abiding citizens.”

It further describes its activities: “As part of its activities, the commission visited such correctional institutions as Prison No. 1 in the Hrodna region”, IK No. 11 in Vaŭkavysk, considered the complaints of four prisoners, as well as that by the human rights public association “Belarusian Helsinki Committee”. In 2021, as part of the control activities, the commission visited: correctional colony No. 11 in Vaŭkavysk, open-type correctional institution No. 26 (village of Hinovičy). In 2021, there were reportedly no problematic issues in the framework of the interaction between the commission and the institutions of the Department of Corrections in the Hrodna region. All activities and visits to institutions that carry out the execution of sentences were carried out within the framework of cooperation according to the plan. No violations were found in these correctional institutions. Since 2018, members of the commission have been conducting psychological trainings using the methods of restorative mediation, as well as on the successful employment of persons who have served their sentences. In 2021, members of the commission held twelve events at open penitentiaries Nos. 24 and 25 in Hrodna (including within the framework of the YES project on youth employment in the regions). The commission received no complaints in 2021.”

The Minsk Regional PMC consists of representatives of the Public Association “Promotion of Road Traffic Safety”, Sports Club “White Crane”, Public Association “Family Support Center”, and Sports Club “Region”.

The latest information about its activities is a visit to a penal colony on June 25, 2019.

According to the Ministry of Justice, the Minsk City PMC consists of representatives of the Public Association of Consumers of Psychiatric Services, Center for Sober Life “Our Ark”, Public Association “Radzislava”, Association of Nurses, and Public Association “New Generation”. The website of the City Department of Justice features a new composition, approved by the order of the Main Department of Justice of the Minsk City Executive Committee of March 23, 2022, where the listed public associations were supplemented by the charitable public association “Bread of Life”, a public association for work with youth, a socio-cultural public association of women “Sudarushka” and several other pseudo-public organizations.

On March 11, 2022, representatives of the Minsk City Public Monitoring Commission visited Pre-trial Detention Center No. 1. During the visit to what is known as SIZO No. 1, the commission inspected all the premises of the institution, excluding administrative and service premises, the canteen, the club, the medical unit and other facilities. The convicts reportedly voiced no complaints about the work of the prison administration. Based on the results of the visit, the public monitoring commission came to the conclusion that the conditions for serving sentences by convicts did not contradict the requirements established for the system of execution of sentences.

After a long break since 2017, on March 22, 2022, the PMC visited open correctional institution No. 55 in Minsk, and also took part in a meeting of convicts with representatives of the Department of Employment of the Committee on Labor, Employment and Social Protection of the Minsk City Executive Committee. The commissioners reportedly studied in detail the issues of the institution’s work, the conditions of stay and serving sentences, learned about the conditions of the convict’s life, organization of leisure, medical and sanitary services, and also inspected all the premises for convicts. The inspection included several conversations with the convicts. Complaints about the work of the prison administration, accommodation conditions or relations with the staff were absent.

The Mahilioŭ PMC includes representatives of the Public Association of Entrepreneurs of the Mahilioŭ Region, Military and Patriotic Club “Poisk”, Public Organization “Leader Club”, Belarusian Red Cross Society, Youth Sports Public Association “Kyokunshinkai Karate Do”; public association of dog lovers “Alcor”, and Belarusian Republican Youth Union.

Thus, the activities of commissions for monitoring detention facilities, with rare exceptions, consist of visits to institutions focusing on inspecting the territory, premises and other formal events.

POLITICAL RIGHTS OF PRISONERS. PARTICIPATION IN ELECTIONS

In accordance with the Constitution and the Electoral Code of the Republic of Belarus, persons held in places of deprivation of liberty under a court verdict cannot participate in elections or vote at a referendum. Persons remanded in pre-trial detention in accordance with the procedure established by the criminal procedure legislation cannot take part in the voting. The deprivation of the constitutional right of all those sentenced to deprivation of liberty, and even more so the suspects and defendants, seems unreasonable in relation to those convicted, and also illegal in relation to those held in custody before sentencing.

Persons held in custody awaiting sentencing are, by definition, citizens with full rights, limited only in personal freedom. Prisoners under investigation are presumed innocent by virtue of the presumption of innocence and should be treated accordingly, in accordance with national laws and international treaties.

In particular, Principle 36 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Adopted by UN General Assembly Resolution 43/173 of December, 9, 1988) states: "1. A detained person suspected of or charged with a criminal offence shall be presumed innocent and shall be treated as such until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence. 2. The arrest or detention of such a person pending investigation and trial shall be carried out only for the purposes of the administration of justice on grounds and under conditions and procedures specified by law. The imposition of restrictions upon such a person which are not strictly required for the purpose of the detention or to prevent hindrance to the process of investigation or the administration of justice, or for the maintenance of security and good order in the place of detention shall be forbidden."

With regard to the convicts' right to participate in elections, the following should be noted.

The Code of Good Practice in Electoral Matters (adopted by the Venice Commission at its 51st Plenary Session, Venice, July, 5-6, 2002) stipulates that grounds for the suspension of political rights may be provided. However, such grounds must correspond to the usual conditions under which the limitation of fundamental rights can be made; in other words, they must: be prescribed by law; comply with the principle of proportionality; be based on a criminal conviction for a serious offence. The conditions for depriving individuals of the right to be elected may be less stringent than the conditions for depriving them of the right to vote.

The most important thing established by the Code on the subject under consideration is that the deprivation of a person of political rights is allowed only by a direct decision of the court. This is how it is treated by the legislation of Poland. The Law of April 12, 2001 "On Elections to the Sejm of the Polish Republic and the Senate of the Polish Republic" establishes that every citizen of Poland has an active electoral right, that is, the right to vote in elections, after reaching the age of 18 by voting day, except for persons who: are deprived of civil rights by a final court decision; disenfranchised by final decision of the Supreme Court; declared incompetent by final court decision.

Meanwhile, a person, their rights, freedoms and guarantees of their implementation are the highest value and goal of society and the state. The Republic of Belarus recognizes the priority of the universally recognized principles of international law and ensures that the legislation complies with them (the Constitution of the Republic of Belarus). In particular, art. 2 of the International Covenant on Civil and Political Rights states that "each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the

present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” In accordance with art. 25 of the Covenant, “every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.”

The UN Human Rights Committee, in para. 3 of General Comment No. 21 (1992), stated that “persons deprived of their liberty enjoy all the rights set forth in the Covenant, subject to the restrictions that are unavoidable in a closed environment”.

To understand the groundlessness of restricting the suffrage of convicts, the provisions of the UN Standard Minimum Rules for the Treatment of Prisoners are important. The preliminary observations indicate that the Rules “seek only, on the basis of the general consensus of contemporary thought and the essential elements of the most adequate systems of today, to set out what is generally accepted as being good principles and practice in the treatment of prisoners and prison management.” The Rules indicate that imprisonment and other measures that isolate the offender from the outside world cause them suffering already by virtue of the fact that they deprive them of the right to self-determination, since they deprive them of their freedom. Therefore, except when segregation appears to be justified or when disciplinary considerations require it, the prison system should not exacerbate the suffering resulting from this provision. The treatment of prisoners should not emphasize their exclusion from society, but the fact that they continue to be members of it. Measures should be taken to ensure that prisoners are able to retain the maximum possible rights consistent with the law and the conditions of their sentence in the area of their civic interests.

The Final Report of the OSCE/ODIHR Election Observation Mission (following the parliamentary elections in Belarus in 2016) noted that the “blanket disenfranchisement of citizens serving prison terms regardless of the severity of the crime committed should be reconsidered to ensure proportionality between the limitation imposed and the gravity of the offense. Restrictions on the suffrage rights of those in police custody or pre-trial detention should be removed. To ensure suffrage rights, restrictions on the right to stand of individuals with an unexpunged criminal record should be reviewed. Such restrictions should apply for only the most serious of offences.”

By amending the Constitution at the referendum in 2022, the process of abolishing the restriction on the right to vote for persons in custody was launched: it enforced a new version of Art. 64 of the Constitution, which reads as follows: “Citizens recognized by a court as incompetent, persons held by a court sentence in places of deprivation of liberty do not have the right to elect and be elected.” Corresponding changes to other legislative acts have not yet been made.

LABOR RIGHTS OF PRISONERS

CRIMINAL AND EXECUTIVE LEGISLATION: LABOR REGULATIONS

In accordance with the requirements of the Penal Code (Article 98), every person sentenced to deprivation of liberty is obliged to work in places and jobs determined by the administration of correctional institutions. The prison authorities are obliged to involve convicts in socially useful work, taking into account their gender, age, ability to work, state of health and, if possible, their training. Convicts are involved in labor at enterprises or in production workshops of correctional institutions, as well as at other enterprises, regardless of the form of ownership, provided that proper protection and isolation of convicts is ensured. When convicts are involved in labor, an employment contract is not concluded with them. The work of those sentenced to criminal arrest is organized in the manner and under the conditions established for those sentenced to punishment in the form of deprivation of liberty. Those sentenced to life imprisonment are subject to the conditions for serving the sentence established for those sentenced to imprisonment, taking into account the specifics of serving a life sentence.

Refusal to work or unauthorized termination of work is a malicious violation of the established procedure for serving a sentence and entails the application of penalties.

The conditions and remuneration of work of those sentenced to deprivation of liberty are determined by the norms of the CPC: the length of working hours of those sentenced to deprivation of liberty, labor protection requirements are established in accordance with the legislation of the Republic of Belarus on labor protection. The start and end time of work is determined by the schedule established by the administration of the correctional facility.

The time spent by convicts performing paid work shall be included in the length of service in accordance with the procedure established by the legislation of the Republic of Belarus. Accounting for time worked is assigned to the administration of the correctional institution and is made based on the results of the calendar year. This means that prisoners, by making contributions to social insurance, acquire the length of service necessary to receive a future pension in proportion to their wages: if their wages are equal to or more than the minimum, then in full, if less, then in the appropriate part.

Convicts who have worked for at least eleven months in a calendar year are entitled to eighteen calendar days of labor leave – for those serving deprivation of liberty in education colonies, twelve calendar days – for convicts serving deprivation of liberty in other correctional institutions. Convicts who are obligated to reimburse the expenses spent by the state on the maintenance of children who are in government care, have the right to a labor leave of seven calendar days.

Those sentenced to deprivation of liberty have the right to wages in accordance with the legislation of the Republic of Belarus. It has been established that the amount of remuneration for labor of convicts sentenced to deprivation of liberty, who have worked the monthly norm of working time and fulfilled the standard of output established for them, cannot be lower than the amount of remuneration established by the legislation of the Republic of Belarus for the performance of the corresponding work. This provision, together with the rule that the remuneration of convicts with part-time work is made in proportion to the time they have worked or, depending on the output, allows prisoners to be paid for their work in an amount below the established minimum wage.

Citizens held in an LTP, taking into account their age, ability to work, health status, training and qualifications, are employed at the LTP, at unitary production enterprises run by the Department of Corrections, and in other local organizations, in accordance with the Internal Rules of the LTP and other acts of the legislation of the Republic of Belarus.

The refusal of persons held in LTPs to be employed or unauthorized termination of work entails the application of measures against them. Remuneration of labor in LTPs is carried out in accordance with the acts of the legislation of the Republic of Belarus. Inmates held in LTPs are provided with labor and social leave in accordance with the legislative acts of the Republic of Belarus.

Like those sentenced to criminal arrest and imprisonment, prisoners in LTPs do not conclude an employment contract.

According to human rights defenders, based on a comparative analysis of the norms of labor and penitentiary law, the labor rights of prisoners (including prisoners of LTPs) are unreasonably and arbitrarily curtailed in comparison with the rights provided for by the Labor Code for ordinary workers. This is illegal since the labor rights of convicts are equivalent to the labor rights of other citizens, with the exception of the rights arising from the fact that convicts are obliged by law to work, while for other citizens labor is a right. In accordance with Art. 23 of the Constitution, restriction of the rights and freedoms of an individual is allowed only in cases provided for by law, in the interests of national security, public order, protection of morality, public health, rights and freedoms of other persons. The provisions of Part 1 of Art. 23 suggest the principle of proportionality of restriction of the rights and freedoms of the individual, which meets the requirements of the rule of law, guarantees of social justice and ensuring their social, legal and other protection (Part 1 of Article 8 of the Penal Code of the Republic of Belarus).

Neither the principles nor the goals of criminal liability allow discrimination against convicts, unfair and unreasonable restriction of their labor rights. These restrictions are not dictated by the interests of national security, public order, protection of morality, public health, rights and freedoms of other persons (legitimate goals of restrictions under Article 23 of the Constitution), are not proportionate and necessary to achieve the goals of criminal liability and lead to discrimination against convicts in comparison with other citizens.

PAYMENT FOR PRISONERS' LABOR

In accordance with Art. 59 of the Labor Code, the minimum wage (monthly and hourly) is the state minimum social standard in the field of wages, which the employer is obliged to apply as the lower limit of the remuneration of employees for work under normal conditions during normal working hours when performing the duties of an employee arising from legislation, local regulatory legal acts and an employment contract. Such a rule should, of course, apply to prisoners as well. However, penitentiary legislation allows for cases where a prisoner employed full-time may be paid a wage in an amount less than that established for ordinary workers.

RIGHT TO LEISURE

The law establishes unequal conditions for the granting and duration of labor leave for prisoners and ordinary workers. For both, labor leave is intended for rest and restoration of working abilities, health and other personal needs of the employee. Accordingly, the procedure and conditions for its provision cannot differ significantly.

Certainly unfair and requiring abolition is the rule that allows not to take into account the time of work for a convict who has worked less than eleven months in a calendar year. In this case, it is permissible not to provide the convict with leave at all. As a rule, this means that in the year of admission to the correctional institution and in the year of release from it, the prisoner does not receive leave, nor does he receive compensation for it, since he does not perform the established minimum (11 months), while for ordinary workers, the working year is calculated for each employee from the date of employment. Labor leave (basic and additional) for the first working year is granted no earlier than after six months

of work with the employer, with the exception of some cases (Article 166 of the Labor Code). Thus, all time of employment is taken into account for the purposes of providing an already reduced leave.

In addition, the provision of Part 4 of Art. 99 of the Penal Code unreasonably and disproportionately restricts the right of a convict to rest, guaranteed by Part 1 of Art. 43 of the Constitution.

No additional leave or social leave (for childcare, in connection with education, for valid personal and family reasons) are legally established. The short-term unpaid leave provided for by the Labor Code for family and domestic reasons, for working on a dissertation, writing textbooks and for other valid reasons, provided by agreement between the employee and the employer, is also not provided to prisoners.

OCCUPATIONAL SAFETY AND HEALTH

The right of convicts to safe working conditions is one of the few rights of prisoners that is fully consistent with labor legislation. However, this right is often violated.

The right of an employee to labor safety implies a wide range of employee rights and guarantees for their implementation. Every worker, including a prisoner, has the right to:

1. a workplace that meets the requirements for labor safety;
2. training in safe labor methods and techniques, instructing on labor safety;
3. provision with the necessary personal protective equipment, collective protective equipment, sanitary facilities equipped with the necessary devices and means;
4. obtaining from the employer reliable information about the state of conditions and labor safety at the workplace, as well as about the means of protection against the effects of harmful and (or) hazardous production factors;
5. personal participation or participation through their representative in the consideration of issues related to ensuring safe working conditions, checking by the bodies authorized to exercise control (supervision), in the prescribed manner, of compliance with labor safety legislation at their workplace, investigating an accident that happened to them at work and (or) their occupational disease;
6. refusal to perform assigned work in the event of an immediate danger to the life and health of the worker and those around them until this danger is eliminated, as well as if they are not provided with personal protective equipment that directly ensures labor safety.

According to the norms of the Labor Code, if an employee refuses to perform the assigned work in the event of an immediate danger to their life and health and those around him; failure to provide them with personal protective equipment that directly ensures labor safety; suspension and prohibition of work by the bodies authorized to exercise control (supervision), the employee must be provided with another job corresponding to their qualifications until the violations are eliminated or until a new workplace is created, or, with their consent, work with payment not lower than the average wage for the previous work for up to one month. If necessary, the employer is obliged to ensure that the employee is sent for retraining, vocational training while maintaining average earnings for the period of education.

However, the penal legislation does not directly provide for the possibility of refusing to work in the listed cases. None of the ex-prisoners interviewed were aware of this possibility. All interviewees believed that they were expected to continue to work under existing conditions, unless there is an obvious and visible threat to life.

The law provides that in the event of a deterioration in the health of an employee due to working conditions, loss of professional ability to work due to an accident at work or an occupational disease, the employer is obliged to provide the employee with their consent with work in accordance with the

conclusion of a medical advisory commission or medical rehabilitation expert commission or ensure, at the expense of funds provided for the implementation of compulsory insurance against industrial accidents and occupational diseases, the assignment of an employee for retraining, vocational training while maintaining average earnings for the period of education, and, if necessary, their rehabilitation.

ECONOMIC INDICATORS

Indicators of the economic activity of enterprises owned by the Department of Corrections are no longer published. The Department's website has become a catalog of products.

The latest information on the results of the work of the penitentiary system was published in 2019: "The increase in output at enterprises made it possible to earn 11,745 million Belarusian rubles in net profit in 2018. The achieved results of the work of the organizations of the penal system made it possible to carry out the construction and reconstruction, modernization and technical re-equipment of production facilities. A number of production facilities were put into operation: the production site of the Damanava branch of the state enterprise Correctional Institution No. 5 for the production of molded products and furniture panels, a woodworking shop on the territory of the state enterprise IK 20, the reconstruction of the boiler room and drying complex of the state enterprise "Fifteen". Mutually beneficial cooperation in the manufacturing sector has been established with representatives of the Russian Federation, Belgium, Great Britain, France, the Czech Republic, Finland, Ukraine, Poland, Hungary, Germany, Lithuania, Latvia, Estonia, Turkey, Kazakhstan, Pakistan, Israel and Egypt," according to a report for 2018 by a meeting of the directors of Belarusian penitentiary enterprises and LTPs.

In 2017, the net profit of penitentiary enterprises amounted to 10 million 237 thousand Belarusian rubles.

At the same time, according to the Department, in 2019, 100% of those sentenced to deprivation of liberty and subject to labor, were involved in paid work. However, part-time work (1-2 times a week) amounted to 48% of the cases, the achievement of production standards amounted to 30.2%, and the level of wages made it possible to recover 16% as compensation for the cost of detention in correctional colonies.

23,723 convicts were engaged in paid work in the production and economic services of closed-type institutions. 75.2% of the total number of convicts were employed in their own facility, 11.9% - at enterprises contracted by the penitentiaries, and the rest - in the maintenance of penal institutions.

The Department admitted that as of January 1, 2020, 13.6% of those serving sentences did not have passports. This entailed difficulties in personalized accounting of deductions from the salary of convicts to the Social Protection Fund, which might eventually affect their future pension.

FINAL PROVISIONS

One should note the ongoing legal uncertainty in the regulation of the situation of working prisoners.

The internal regulations of correctional institutions only provide rules of involving convicts in labor in correctional settlements, using the labor of convicts in prisons and regulations on the maintenance of correctional institutions.

In more detail, the rights of workers are enshrined in the Internal Regulations of Labor and Treatment Prophylactoriums of the Ministry of Internal Affairs of the Republic of Belarus: it is established that the working conditions of persons held in LTPs are regulated by labor legislation, taking into account the peculiarities associated with their detention in LTPs. The following legislation does not apply to these persons: employment contracts; collective agreements; part-time work; preservation of wages during

the transfer to another permanent lower-paid job; labor collective of the enterprise; guarantees for employees for the period of their performance of state or public duties; and disciplinary responsibility of employees.

Forms, systems of remuneration and bonuses for persons kept in LTPs and working inside the penitentiary are established by the heads of these enterprises independently, while the amount of remuneration must comply with the legislation of the Republic of Belarus. State guarantees include nation-wide tariffs, as well as some types of additional payments and allowances of a compensatory nature, as determined by law. There is no provision for receiving an education by LTP prisoners.

Summing up, it can be argued that there is discrimination in the labor rights of prisoners in comparison with ordinary employees. These restrictions are not dictated by the interests of national security, public order, protection of morality, public health, the rights and freedoms of others, i.e. the legitimate goals of restrictions under the Constitution and international obligations of Belarus, are not proportionate and necessary to achieve the goals of criminal liability and lead to discrimination against convicts in comparison with other citizens.

RECOMMENDATIONS

The legislator and the government should amend the legal acts regulating the work of prisoners, including those held in LTPs, by which:

- **inequality in the provision of basic social guarantees will be eliminated;**
- **equal conditions for remuneration of labor, provision of leaves (including for combining work and education) will be established;**
- **forms of non-departmental control over the state of labor rights of prisoners will be envisaged.**

VISITS AND TELEPHONE CONVERSATIONS OF PRISONERS

Rule 58 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) enshrines the need for the state to ensure that prisoners are able, under necessary supervision, to communicate with their family and friends at regular intervals:

- a. By corresponding in writing and using, where available, telecommunication, electronic, digital and other means; and
- b. By receiving visits.

Rule 43 emphasizes that disciplinary sanctions or restrictive measures shall not include the prohibition of family contact. The means of family contact may only be restricted for a limited time period and as strictly required for the maintenance of security and order.

In accordance with the Penal Code of the Republic of Belarus, convicts sentenced to deprivation of liberty are entitled to short visits lasting four hours and long visits lasting up to three days in a specially equipped room on the territory of the correctional institution. The number of visits depends on the security level ordered by the court and can be increased by transferring to improved conditions. The administration of the correctional institution has the right to deprive the convict of a visit by applying a disciplinary sanction.

Prisoners of an education colony (which holds juvenile prisoners and a certain number of prisoners who have become adults while serving their sentences in this colony) are also entitled to long visits by close relatives: such visits can be granted up to four times per year; they are also entitled to eight short-term visits per year.

Short-term visits with relatives or other persons take place in the presence of an employee of the administration of the correctional facility. For persons who are not relatives of the convict, short-term visits are only provided at the discretion of the prison administration. Long visits are granted with the right to cohabitate with close relatives. Until now, the problems of providing long-term visits to prisoners with persons who are not related to them in relations of kinship or registered marriage remain unresolved. Such an opportunity, with proper control by the administration, could contribute to the preservation of the convicts' social ties.

In addition, the issue of creating conditions for maintaining marital, parental and other social ties for those who are in detention centers awaiting trial has not yet been resolved. As before, granting them short-term visits is only the right of the body conducting the criminal investigation and the prosecutor at the stage of resolving the issue of sending the case to court, and long-term visits are not provided for by law at all.

The guaranteed right to visits by close relatives and spouses of the accused appears only after the pronouncement of the verdict. According to established practice, such visits are provided after the appeal hearing in the case.

The duration of visits with detainees is usually 1-2 hours.

A person detained or remanded in custody or placed under house arrest on the basis of a decision to execute the request of a body of a foreign state has the right to visits by family members or close relatives with the permission of the Prosecutor General's Office.

After the sentence becomes final, those sentenced to death have the right to one short visit with close relatives per month.

Those sentenced to deprivation of liberty are entitled to telephone conversations, from May 2021, including using video communication systems, with close relatives in the number and manner

established by the internal rules of correctional institutions. The duration of each conversation should not exceed 15 minutes. Telephone conversations, including those using video communication systems, are controlled by the administration of the correctional institution and paid by convicts in the manner prescribed by law. For persons who are not close relatives of the convict, telephone conversations, including using video communication systems, are possible only with the permission of the administration of the correctional institution. Telephone conversations, including using video communication systems, between convicts held in different correctional institutions are prohibited. Telephone conversations, including using video communication systems, are provided to convicts held in punishment (disciplinary) isolation wards, cell-type premises, solitary confinement and those transferred from a general to a medium security level prison only under exceptional circumstances.

The practice of providing the possibility of using video communication tools began in late 2019 and became widespread in 2020 due to the cancellation of visits in the context of the coronavirus infection. The conditions for providing video communication differed from colony to colony due to absence of legislative regulation. The inclusion of the use of video communication systems in the list of communication options has not added certainty to the rules of their use: the frequency and duration of the use of these systems have not been determined.

The internal regulations establish that the right to telephone conversations, including using video communication systems, is granted to convicts subject to the availability of technical capabilities and upon a written request indicating the address, name, degree of kinship, number subscriber's phone number and call duration. Payment for telephone conversations is carried out according to the current tariffs from telephone cards. Convicts can purchase telephone cards at the expense of the funds available on their personal accounts in the institution's store or receive from relatives in the prescribed manner. Phone cards are not issued to convicts, their accounting and storage is provided by the administration of the institution. Telephone conversations are provided in specially equipped call centers or premises allocated for these purposes on the territory of the institution and are carried out under the control of the administration in accordance with the requirements established by the administration. If the subscriber's dialed number does not match the number specified in the request, or if there are insults, threats, obscene language, discussion of criminal plans and goals in the telephone conversation, the telephone conversation is terminated. In this case, the convict's right to a telephone conversation is considered to be exercised.

Convicts serving sentences in a correctional settlement may be allowed by the administration of the institution to keep and use a mobile phone.

SUGGESTIONS:

- **exclude deprivation of visits from the list of disciplinary sanctions that are imposed on those sentenced to deprivation of liberty;**
- **supplement the Penal Code with a rule on the duration and frequency of telephone and video calls;**
- **provide in the legislation for alternatives to face-to-face visits, which, at the request of the prisoner, could supplement or replace them;**
- **establish new rules for visiting prisoners held in pre-trial detention, with proper control, eliminating the possibility of unreasonable restrictions on such a right. At a minimum, establish the right of the prisoner, in the period after the end of the investigation until the entry of the sentence into force, to have regular meetings with family members and other relatives and maintain contact with them through electronic means of communication.**

COMPLAINTS AND CORRESPONDENCE BY PRISONERS

CORRESPONDENCE

The prison administration is responsible, by virtue of national and international norms, for maintaining and developing kinship and family ties: people placed in places of deprivation of liberty lose the right to free movement, but they must retain all other human rights. One of them is the right to contacts with the family. This is the right not only of the prisoner, but also of their family members who have not committed crimes and are not punished by imprisonment and restriction of rights. They retain the right to contact their relatives sent to prison. The key applicable international human rights documents definitely support the general and universal nature of the rights of prisoners, their family members, and other citizens to maintain contacts through correspondence.

In particular, Art. 12 of the Universal Declaration of Human Rights states: "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence [...]." Art. 23 of the International Covenant on Civil and Political Rights reads: "The family is the natural and fundamental group unit of society and is entitled to protection by society and the State."

Penitentiary officials should organize and maintain the most favorable conditions for contacts between prisoners and members of their families. This statement is a consequence of the right to family life and the provisions of art. 10 of the International Covenant on Civil and Political Rights: "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person." This does not infringe upon the right of the prison administration to verify that incoming mail does not contain any prohibited attachments, e.g. weapons or drugs. In some countries, there is a practice whereby all incoming correspondence is opened in the presence of the prisoner to whom it is addressed. A prison officer checks that the envelope does not contain any prohibited items, after which the letter is handed to the prisoner without reading.

In Belarus, in accordance with the Penal Code, prisoners sentenced to deprivation of liberty are allowed to receive and send letters and telegrams without any restrictions in their number. Sending letters and telegrams is carried out at the expense of the convicts. Correspondence received and sent by convicts, with the exception of proposals, statements and complaints of convicts addressed to bodies exercising state control and supervision over the activities of institutions executing punishment, is subject to censorship. Correspondence between convicts held in correctional institutions who are not close relatives is prohibited. The procedure for receiving and sending letters, telegrams and money transfers to convicts is determined by the internal rules of correctional institutions. In accordance with them, the receipt and sending of letters and telegrams by convicts is carried out without limiting their number and is carried out only through the administration of the penitentiary. To this end, in each isolated area, and in an education colony, in a specified place, mailboxes are installed, from which letters are taken out daily, except for weekends and holidays, to be mailed by authorized officials. In prisons, as well as in the punishment facilities of correctional colonies, convicts hand over letters for sending to representatives of the administration of the correctional institution. The letters that are dropped into mailboxes or handed over to the representative of the administration of the penitentiary should be unsealed.

As noted above, correspondence of convicts is subject to censorship. Letters from convicts and letters addressed to them, written in cryptography, cipher, using other conventions or jargon, as well as being cynical in nature, aimed at harming the legally protected rights of state bodies, public associations and individuals, or containing information constituting state or official secret, are not sent to the addressee and are not issued to the convict. This is announced to the convict, after which such correspondence is destroyed. This rule also applies to telegrams of similar content. The maximum

period during which the letter must be censored is not limited. This procedure allows the administration of the penitentiary to arbitrarily limit the correspondence of prisoners, and the lack of effective appeal mechanisms deprives both parties of the correspondence of the opportunity to challenge the actions of the administration. The key point is the statutory possibility of destroying the mail. Therefore, even an appeal to the court demanding to recognize as illegal the actions of the administration that chose not to send the letters (not containing secret writing, cipher, using other conventions or jargon, not of a cynical nature, not aimed at harming the legally protected rights of state bodies, public associations and individuals; not containing information constituting state or official secrets) will not become an effective means of protection, since by the time of judicial review the very subject of the dispute will have been destroyed.

According to human rights defenders, persons convicted for political reasons are regularly arbitrarily limited in correspondence and in visits: arbitrary censorship became a mechanism for restricting correspondence, after which letters are destroyed.

According to the wife of political prisoner Tsikhan Osipau, he started having problems with correspondence in the colony. He receives letters only from his wife, parents and some friends. In addition, Tsikhan has already twice received written orders of destruction of letters that have not been censored. One of the letters belonged to the wife's mother.

It is also known that Osipau was deprived of short visits for four months, and a long one for six months for violating internal regulations. Considering the number of visits allowed under the security rules, the prisoner is only entitled to two short and one long visits.

Over the six weeks he has spent in the colony, Tsikhan only phoned his wife twice. Regardless of the security level, phone calls are allowed once a week for up to 15 minutes according to a schedule. However, Osipau is only allowed to talk for five minutes. In addition, he missed one of the calls. According to him, there were problems with the payphone, so he wasted all the time allocated for the call.

A different procedure has been established for pre-trial detention centers of the Ministry of Internal Affairs and the KGB. The delivery of letters and telegrams is carried out by the prison staff no later than three days from the date of receipt, with the exception of holidays and weekends. If it is necessary to translate a letter into one of the state languages of the Republic of Belarus, the period for sending the letter may be extended by the time required for translation, but not more than seven days. Information about the death or serious illness of a close relative or family member shall be communicated to the detainee immediately after receiving it.

Letters containing information that may impede the preliminary investigation of a criminal case or its consideration by a court, as well as contribute to the commission of a crime, written in secret writing, cipher, containing state secrets or other secrets protected by law, are not sent to the addressee, are not handed over to persons in custody, but are forwarded to the body conducting the criminal investigation.

Correspondence of the convicts and the accused with their defense counsels is subject to general rules, i.e. censorship. This violates attorney-client privilege by depriving the prisoner of the opportunity to obtain an explanation from a lawyer without considerable expenses.

We believe that control over the correspondence of prisoners may be established by national law, and the right to privacy of correspondence of prisoners may be limited, but this restriction must be based on the law, pursue a legitimate aim and be necessary in a democratic society. Cases of unreasonable restriction of the right should be excluded, and this requires a transparent and uncomplicated procedure for administrative and judicial review of the decisions of the administration of the penitentiary. In addition, it is necessary to establish a maximum period during which correspondence must be sent or delivered to the addressee.

COMPLAINTS

The law should not only declare, but also provide for a mechanism of submitting complaints whereby a prisoner will not be punished for filing a complaint, even if it turns out to be inconvenient for the administration or groundless. Researchers of penitentiary rules emphasize that if a prisoner cannot file a complaint in person, then it should be possible to file a complaint on their behalf with family members or their representative. To some extent, this rule is implemented in Belarus: by certified power of attorney, family members can file some complaints on behalf of prisoners, in particular, about conditions of detention. The participation of relatives in the filing of complaints in criminal proceedings, according to the rules of the Code of Criminal Procedure, is excluded even if such powers of attorney are available.

The International Covenant on Civil and Political Rights, article 2, establishes the duty of every state:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 33:

1. A detained or imprisoned person or his counsel shall have the right to make a request or complaint regarding his treatment, in particular in case of torture or other cruel, inhuman or degrading treatment, to the authorities responsible for the administration of the place of detention and to higher authorities and, when necessary, to appropriate authorities vested with reviewing or remedial powers.

2. In those cases where neither the detained or imprisoned person nor his counsel has the possibility to exercise his rights under paragraph 1 of the present principle, a member of the family of the detained or imprisoned person or any other person who has knowledge of the case may exercise such rights.

3. Confidentiality concerning the request or complaint shall be maintained if so requested by the complainant.

4. Every request or complaint shall be promptly dealt with and replied to without undue delay. If the request or complaint is rejected or, in case of inordinate delay, the complainant shall be entitled to bring it before a judicial or other authority. Neither the detained or imprisoned person nor any complainant under paragraph 1 of the present principle shall suffer prejudice for making a request or complaint.

United Nations Standard Minimum Rules for the Treatment of Prisoners, Rule 56:

1. Every prisoner shall have the opportunity each day to make requests or complaints to the prison director or the prison staff member authorized to represent him or her.

2. It shall be possible to make requests or complaints to the inspector of prisons during his or her inspections. The prisoner shall have the opportunity to talk to the inspector or any other inspecting

officer freely and in full confidentiality, without the director or other members of the staff being present.

3. Every prisoner shall be allowed to make a request or complaint regarding his or her treatment, without censorship as to substance, to the central prison administration and to the judicial or other competent authorities, including those vested with reviewing or remedial power.

4. The rights under paragraphs 1 to 3 of this rule shall extend to the legal adviser of the prisoner. In those cases where neither the prisoner nor his or her legal adviser has the possibility of exercising such rights, a member of the prisoner's family or any other person who has knowledge of the case may do so.

Rule 57:

1. Every request or complaint shall be promptly dealt with and replied to without delay. If the request or complaint is rejected, or in the event of undue delay, the complainant shall be entitled to bring it before a judicial or other authority.

2. Safeguards shall be in place to ensure that prisoners can make requests or complaints safely and, if so requested by the complainant, in a confidential manner. A prisoner or other person mentioned in paragraph 4 of rule 56 must not be exposed to any risk of retaliation, intimidation or other negative consequences as a result of having submitted a request or complaint.

3. Allegations of torture or other cruel, inhuman or degrading treatment or punishment of prisoners shall be dealt with immediately and shall result in a prompt and impartial investigation conducted by an independent national authority in accordance with paragraphs 1 and 2 of rule 71.

In Belarus, in accordance with the national law, every convicted person can present a proposal, request or complaint orally or in writing. Convicts have the right to submit proposals, requests and complaints only on their own behalf. Written proposals, request and complaints are sent through the administration of the penitentiary. Appeals of convicts without a signature are not subject to consideration and sending. Proposals, requests and complaints addressed to the bodies exercising control and supervision over the activities of institutions executing criminal penalties are not subject to review and censorship and no later than within a day, with the exception of weekends and public holidays that are non-working days, are sent to the destination. Other appeals of convicts are censored.

Proposals, requests and complaints regarding the receipt of parcels and packages, granting visits, spending money, calculating wages, engaging in labor, providing medical assistance, providing clothing items, as well as other issues of a similar nature (except for proposals, requests and complaints addressed to the bodies exercising control and supervision over the activities of institutions executing criminal penalties) that can be resolved by the administration of the correctional facility are resolved without waiting for the results of their consideration by the bodies or the person to whom they are sent. Proposals, requests and complaints sent to state bodies and public associations, as well as addressed to officials (except for proposals, requests and complaints addressed to bodies exercising control and supervision over the activities of institutions executing criminal penalties) shall be accompanied with a letter in which the prison administration briefly indicates their opinion on the merits of the appeal.

References are attached to requests and complaints to the judicial authorities and prosecution authorities, which contain a request for a reduction in the punishment, as well as to applications for transfer to another correctional institution.

Proposals, requests and complaints submitted in writing are registered in the office of the penitentiary and sent to the addressee no later than within three days. The responses received based on the

results of consideration of proposals, requests and complaints are announced to the convicts against signature upon receipt, but no later than within three days. The last wording is widely used by the prison administrations, who tend to read out the texts of the replies, without transferring the answer itself to the prisoner, which makes it difficult for the convicts to subsequently correspond, as they are deprived of the opportunity to use the text of the response to prepare a further complaint or appeal.

Proposals, requests and complaints of convicts regarding decisions and actions of bodies and institutions executing punishment and other measures of criminal liability do not suspend their execution.

Proposals, requests and complaints addressed to state bodies, editorial offices of newspapers and magazines, public associations and addressed to officials, containing issues that these bodies, public associations or officials, by virtue of their regulations or their powers, are not competent to resolve, are sent upon request to the addressees. The convict is explained and recommended to address the proposal, request or complaint to the corresponding competent authority, organization or official. If the convict insists on sending their proposal, request or complaint to the state body (public organization), official or other organization of their choice, they is explained that their proposals, request or complaints, considered by the administration of the correctional institution, with decisions of which the convict disagrees, as well as on other issues related to the execution of a criminal penalty, in accordance with Presidential Decree No. 498 of October 15, 2007 "On additional measures to work with appeals from citizens and legal entities", are initially sent to the local office of the Department of Corrections, where they are subject to consideration on the merits in accordance with the competence, and in case of repeated disagreement with the results of the consideration, the convict can apply to the Department. The decision of the Department of Corrections on a request or complaint can be appealed to court. Such a procedure unreasonably restricts the rights of convicts to file complaints and reports about their situation, on the one hand, and of the media and public organizations to receive information about the observance of the rights of convicts, on the other.

As unacceptable is a provision saying that proposals, requests and complaints containing obscene language, as well as degrading the honor and dignity of penitentiary officials are not sent to the addressee. Such letters are attached to the materials of the convict's personal file, and the persons who submitted them are held liable in the manner prescribed by the legislation of the Republic of Belarus. We believe that such appeals should be considered by the addressee, since they may contain important information, and the issue of protecting the personal rights of persons whose honor and dignity have been humiliated should be resolved in accordance with the general rules of civil law, regardless of whether these persons are employees of the penitentiary system.

RECOMMENDATIONS:

- **amendments should be introduced to the legislation of Belarus, which regulates the rights of convicts, aimed at real ensuring the right to file a complaint or otherwise report on their situation to state bodies and other institutions, including public organizations and the media;**
- **correspondence of prisoners with a lawyer should be protected from censorship and the principle of attorney-client privilege should be extended to it, with control over the absence of prohibited attachments in the mail.**

EXTENSION OF IMPRISONMENT AND OTHER MEASURES OF INCREASING CRIMINAL PENALTY

In 2020-2022, the use of the constantly criticized Art. 411 of the Criminal Code has become a proven means of extending the term of imprisonment, including for political prisoners.

According to Art. 411, “malicious disobedience to the lawful demands of the administration of a correctional institution executing a sentence of deprivation of liberty, or other opposition to the administration in the exercise of its functions by a person serving a sentence in a correctional institution executing a sentence of deprivation of liberty, if this person was subjected during one calendar years to a disciplinary sanction in the form of a transfer to a cell-type room, a specialized ward, solitary confinement or was transferred to prison (malicious disobedience to the requirements of the administration of a correctional institution executing a sentence of imprisonment), shall be punished by imprisonment for up to one year. Malicious disobedience to the requirements of the administration of a correctional institution executing a sentence of deprivation of liberty, committed by a person convicted of a grave or especially grave crime, or who committed a particularly dangerous relapse, is punishable by deprivation of liberty for up to two years.”

Analysis of numerous sentences in cases of those convicted under Art. 411 of the Criminal Code demonstrates that the courts do not consider it necessary to substantiate the conviction by anything other than a simple enumeration of violations of the internal regulations allegedly committed by the convicted person, for which he has already been held accountable. As a rule, violations constitute minor breaches of the rules of clothing or behavior (for example, sleeping at the wrong time or in the wrong place due to low temperature at night, illness, etc.), as well as refusal to perform humiliating work or occupy humiliating places (to be transferred to certain cells or occupy certain beds).

With regard to the humiliating requirements, it should be emphasized that all these traditions, originating from the long-standing unwritten rules of the criminal subculture, are never suppressed by the prison authorities, but are, instead, purposefully and systematically used for their own needs, most importantly creating difficulties for certain prisoners, blackmail and threats, discrediting disloyal convicts.

Meanwhile, omitting the unacceptability of the very idea of criminal punishment for improper behavior while serving a criminal sentence, it must be emphasized that Art. 411 does not imply punishment for committing a certain set of disciplinary offenses, otherwise it would be formulated according to the principle of other articles of the Criminal Code with administrative prejudice. Art. 411 contains an indication that this malicious disobedience to the legitimate demands of the prison authorities should be a form of opposition to the administration in the exercise of its functions by a person serving a sentence. That is, failure to comply with the orders should jeopardize or impede the functioning of the penitentiary.

However, this analysis is impeded by several conceptual issues that rule out objectivity in assessing the legal rules, and, accordingly, the behavior of a particular convict: the penal legislation does not mention the concept of “malicious disobedience” and no definition of the functions of the prison authorities.

As a result, the true element of a crime – opposing the prison authorities in the exercise of its functions – is replaced by the commission of a simple set of disciplinary offenses, which by themselves cannot undermine the operation of the penitentiary system, since there is a wide arsenal of disciplinary measures to counteract the commission of such offenses: from reprimand to upgrading security level. In any case, court rulings do not contain any of such arguments, hastily moving from a list of violations to a conclusion asserting guilt.

It is also worth emphasizing that this is one of the few crimes that do not pose a great public danger, which is punishable by imprisonment without an alternative, while the commission of other crimes in places of deprivation of liberty can be punished by other types of criminal punishment.

Art. 411 of the Criminal Code is a legacy of the Soviet legal system. Meanwhile, the Plenum of the Supreme Court of the USSR in its resolution of March 2, 1989 No. 1 "On judicial practice in cases of crimes committed in correctional labor institutions" noted: "Courts do not always take into account that, in accordance with the law, the commission of a new crime is an aggravating circumstance. At the same time, many cases do not take into account the negative impact of the environment, the misbehavior of administration representatives and other circumstances, which together often lead to the commission of new offenses by convicts. Judicial hearings, as a rule, are held in colonies, where public access is limited. Thus, the principle of publicity of legal proceedings is violated, and the negative phenomena occurring in these institutions remain beyond the control of the public. Revealing specific facts of abuse, inaction of the correctional institution administration, poor organization of work and the unsuitable living conditions of convicts, the courts rarely react to this with special rulings addressed to the heads of higher internal affairs bodies, prosecutors and supervisory commissions in order to take appropriate measures." Decree No. 10 of the Plenum of the Supreme Court of the USSR of June 21, 1985 "On judicial practice in cases of criminal liability for actions that disrupt the work of correctional labor institutions" explains: "*Courts should not allow cases of conviction [...] for actions that constitute malicious disobedience to the administration of a correctional labor institution or another crime, as well as for minor actions that only formally fall under the signs of a crime, but in essence constitute a violation of the prison rules, punishable only in a disciplinary manner.*"

In addition to shortcomings in law enforcement practice, there are numerous deficiencies in legislation that allow arbitrary differentiation of the approach to the correctional process in relation to different persons, depending on the will of the prison authorities or other persons. The system of disciplinary sanctions is enshrined in Art. 112 of the Code of Criminal Procedure.

For violation of the established procedure for serving sentences, the following penalties may be applied to those sentenced to deprivation of liberty: reprimand; extraordinary duty to clean the premises or territory of the correctional institution; deprivation of the right to receive scheduled parcels or money transfers; deprivation scheduled long or short-term visits; placement in a punishment cell, with or without obligation to work or study, for up to ten days; transfer to cell-type premises for up to six months; transfer to solitary confinement for up to six months, and in prisons – upgrading security level to maximum for a period of two to six months. In addition, offenders can face measures provided for in Part 5 of Art. 69 of the Code: convicts can be transferred from a correctional colony to a prison for a term not exceeding three years, with the remaining sentence to be served under the security conditions determined by the court's verdict. Changing the type of correctional institution and the security conditions is carried out by a court on the proposal of the prison authorities and upon agreement with the supervisory commission at a local executive and administrative body.

It is worth noting that, in accordance with Art. 57 of the Criminal Code, a court may order imprisonment for a part of the period of punishment, but not more than five years, only in case of a particularly dangerous relapse (when a person commits a grave or especially grave crime, if they were earlier convicted at least twice and served a sentence of imprisonment for especially serious crimes); adults who have committed especially grave crimes (intentional crimes for which the law provides imprisonment for more than 12 years, life imprisonment or the death penalty), sentenced for them to imprisonment for more than five years.

Thus, the law results in the joint detention of prisoners convicted of minor crimes with those who have committed especially serious crimes and / or have a particularly dangerous recidivism. On the

other hand, prisoners who have committed especially serious crimes, but demonstrating a desire for correction, are mixed with malicious violators of prison rules, which reflects badly on both categories of convicts.

It can be argued that the criminal correctional legislation is not sufficiently clear in defining the conditions for the transfer of prisoners to serve the remainder of their sentences in prisons, and the consequences of such a transfer do not always favorably affect the correction of convicts, while Art. 411 should be excluded from the Criminal Code, as was the case with Arts. 415-419.

CONDITIONS OF DETENTION OF PERSONS SENTENCED TO ADMINISTRATIVE IMPRISONMENT

In 2020–2022, Viasna repeatedly received information about the violation of rights in relation to persons detained on administrative charges and placed in the Center for the Confinement of Offenders of the Main Department of Internal Affairs of the Minsk City Executive Committee.

All the inhumane methods developed over the previous years were applied as intensively as possible to the participants in the political protests of 2020-2022. This review does not address the circumstances of the torture of detainees in August 2020 – this topic was the subject of other reports.

Persons sentenced to short terms of administrative imprisonment for participating in protests in Minsk were placed in overcrowded cells, deprived of bedding and toiletries, packages, and often food; the cells also contained homeless people before them or together with them, who were not subjected to sanitary treatment. As a result, the activists experienced additional suffering due to overcrowding, the inability to sleep on a bed with a mattress and linen, unsanitary conditions, bad smell and lice.

After facing charges under Art. 19.11 of the Code of Administrative Offenses, the woman was sent to a cell at a police department in Minsk to wait for a transfer to the temporary detention facility.

“The cell is approximately 2x2 [meters], concrete walls, no windows, with a concrete bench. In the cell, I only was allowed to have my warm scarf (for safety reasons, a long scarf is not allowed). It was impossible to sit, my butt was freezing, so I mostly walked or squatted to keep warm. I was taken to the cell at about 3 pm, and sent to the temporary detention center at about 9.”

Before admission to the temporary detention center, the woman went through a search, undressing, naked squatting, a quick (almost instant) examination by a doctor, and placement in a concrete room measuring 1x1 m. She was kept there for about half an hour, but the woman did not understand the purpose of keeping her there? After that, she was transferred to a two-person cell.

“There was a wooden two-tier bunk bed without mattresses or linen. In the night, the lights were on. It’s hard to call it sleeping – you just drowse and that’s it. I had to sleep in a skirt, a sweater and a short coat. In the morning, we were woken up and given buckwheat. The trial was scheduled for 2 pm. Over the time, I was transferred from cell to cell three times.”

In particular, cell No. 15 in the Center for the Confinement of Offenders in Minsk was used to hold women political prisoners:

“This was a cell for two, which at the time had four people: Nastya Krupenich-Kandratsiyeva, a homeless woman and two more women. The girls gave me a toothbrush that was left from the previous girls, a bottle of water, also from the stocks. A couple of hours later, there were six people in the cell. “We slept on the floor, because the bunk bed was a lattice of flat metal plates. There was a woman sleeping on the first tier who had just had a knee surgery, so she couldn’t sleep on the floor. She spread several sweaters on the bed and lay down, taking a more or less comfortable position. After such sleeping, the whole body was bruised. To turn around, she held onto the railing with both hands and rolled over with a groan. The following day, a 75-year-old woman was brought in, and there were seven people in the cell. The light in the cell was on 24/7. In addition, every 15 minutes during the day, a duty officer looked into the camera’s peephole. There were checks at night: at 2 and 4 am.”

“Over the 12 days I served, there was no shower or outdoor time. Moreover, our requests for a shower or a walk always ended with a humiliating comment like: “Of course, you can take a shower, only there’s a break in the pipes.” They said tomorrow, but the next day, the answer was the same. The same was with outdoor time: “It’s possible, only it’s cold there, then the paving was bumpy,” or some other absurd reason. Since we weren’t taken to the shower, we got used to the basic washing routine using a water bottle and the toilet. We washed our clothes in the sink and laid it out on the top bed. When there were checks, the laundry was thrown on the floor. The most unpleasant thing was when two more homeless people were brought to our cell. One – Lyuba – was with us before. Three in total. One of them is the famous Alla Ilyinichna. A health worker gave us a medicine that we used to treat the heads of the girls and the homeless woman who was with us initially. In addition, she had lice, which can be found in clothes. I asked to send clothes for disinfection, but no one sent them. In this regard, we spent the entire day checking for each other’s lice several times. The first time we got 90 lice from Lyuba. We didn’t let homeless women into our half.”

“After the trial, the man from Minsk was brought to the detention center on Akrestsin Street and placed in cell No. 19, which the prisoners themselves called “Crematorium 19. According to him, the name was due to the fact that it was unbearably hot and stuffy in the cell. There were 16 people and four bunk beds at first. “Sweat was just pouring down. We even stripped down to our underpants. In general, no matter what they did, there was still no chance to breathe. A day or two later, the incredible thing happened: one of the prison staff offered us to open the window. We opened it, it felt a little better.” As a result, on the ninth day there were already 19 people in the four-man cell. According to the man, the food was very poor. There were no mattresses or bedding in the cell.”

Also, officers of the Ministry of Internal Affairs continued to periodically beat the prisoners.

“As for the number of people: there were 17 people in my two-man cell, I know that in some women’s cells there were 11–14 prisoners with a different number of beds. Some guys had 35 people in a five-man cell and warm clothes were taken from them. Our cell was without a sink, with cockroaches and wood lice. As it was overcrowded, it was stuffy and fresh air was absent. From time to time at night, we woke up because there was not enough air, and the food hatches were never opened. They fed us once a day. From those who were taken away on February 27 [2022], I learned that they were fed only on the morning of March 1. Those who were transported to Žodzina were not fed at all. Regardless of when they went. That is, they could be transported in the evening, and a person, according to their logic, should not eat all day. Of course, in the first place, we gave food to those who were about to be transferred. However, bills were issued to everyone for three meals a day. And just like everywhere else, without mattresses or bedsheets. Chlorine was not poured. Over the three days, they woke us up only once at three in the morning for a head check.”

In addition, the girl also told about a conflict with a facility employee, Yauhen Vrubleuski:

“We had a conflict with him after we asked for toilet paper and also to keep the food hatch open. In response, we heard: “You got what you fought for,” and also swearing. We confronted him. As a result, I managed to drag one woman away, because it was clear who he was. And the other one... Vrubleuski took her out into the corridor and hit her head against the wall.”

After violent detentions at anti-war rallies in Minsk on February 27 and 28, 2022, the security forces continued to beat and torture Belarusians in detention facilities. A man who was serving his arrest at the Akrestsin facility and in the prison of Žodzina, told about torture and conditions in the detention center.

"At Akrestsin [facility], we were immediately taken to a cold room with bars instead of a ceiling, there was ice on the floor. Some 30-40 minutes later, they took us out. They brought me, as I understand it, into a "stakan" [a small standing cell for one prisoner]. A minute later, they added another person, another minute later they released him. I think they decided to show what they could do and where they could send us if we were not obedient. They gave out a medical mask to those who did not have one, and took them to a cell, at the entrance to which they had to leave their shoes. In a cell designed for six people, if I'm not mistaken, there were 14 of us. It stank, there was no paper or soap. There was a head check. The next morning, they gave porridge and bread (as it turned out, I didn't have a chance to eat more that day)."

"The next day after the verdict, they sent me to a special cell, where the number of people changed all the time. At some point, there were about 50. They said that there could be up to 80. In the evening, the people were more or less distributed among the cells. Violence was not used at Akrestsin [facility], some employees were strict, some were quite calm: they did not pick at us, did not hide their faces. The cells had wooden floors, and insects were noticed on them."

"Upon arrival in Žodzina, we were led through the basement straight into the building. After a head check, undressing and examination of clothes, we were sent to a cell designed for eight people, where about 30 men were held. The cell had two-tier metal bunks without mattresses, a tiled floor and daylight lamps, there was only cold water in the cell, and there were two windows. On the first day we were given a roll of paper, a bar of soap, a floor cloth and a broom."

"In the first days, we were treated more or less mildly. We were allowed to lie on the second tier of bunks, to sit, sleep and talk. We were given a key to open the windows. After a day or two, they ordered to get off the second tier. The following day, they told us not to sit on the lower tiers. People were seated on stools and on the floor. People were lined up in the corridor for a search and head count, sometimes a dog was used."

"At first, we were forced to stand for an hour, maybe an hour and a half before lights out. The next day, they made us stand in a semi-squatting position, holding my hands behind my head. The next time the officer came into the cell and picked at something; when the guy answered his question, he was taken to the shower. When he returned, he said that they put him against the wall and lightly beat him, striking him in the body and with the palms in the face. There were no marks or significant damage. The next day, one person was taken out again and they did the same to him. On another occasion, three young guys were taken out, forced to do push-ups on the floor, some were beaten with restraint. Everyone returned to the cell on their own feet. It seemed that their purpose was simply to intimidate people. In the evening, they demanded silence, went into the cell, picked a victim (we had long-haired and young guys), took them to the shower, where the door, as I understand it, was never closed, and beat the people. Everyone heard pops and many trembled."

"The attitude of the prison staff was abusive and rude. We realized that we could not do anything, so we were silent and obeyed, just patient. The food was tasteless: cabbage, sour pickle soup, peas, oatmeal, mixtures of various cereals, potatoes, occasionally boiled eggs were given. Meat only in the form of stew in porridge, or pieces of sausage in porridge. Drinks were given three times a day, only half a cup per person (tea, compote or kissel). We washed the dishes ourselves with cold water. We slept on the bunks and on the floor. It was difficult to maintain the proper level of sanitation and hygiene. After the first roll of toilet paper was over, they gave us a couple of issues of SB - Belarus Today newspaper. And that's it. There wasn't enough soap either."

According to a former prisoner, some prisoners caught a cold, and the necessary medical care was not provided.

The above reports prompt an investigation and bringing to justice all officials guilty of torture, cruel, inhuman and degrading treatment. The absence of an investigation by the bodies of the Ministry of Internal Affairs and the prosecutor's offices of the complaints of people held in these institutions should also become the subject of an investigation and entail criminal liability for those responsible.

CONCLUSIONS

Prisoners in Belarus are held in conditions that are often unacceptable due to overcrowding, lack of respect for personal dignity, poor hygiene, security, poor quality of food and its insufficiency.

Cases of torture, cruel, inhuman and degrading treatment have been observed in places of detention in Belarus. These cases are not always investigated by an impartial and independent authority. The Investigative Committee and the prosecutor's offices, defying the functions and competences assigned to them, have failed to make up for the absence of a national human rights mechanism.

The belonging of places of deprivation of liberty and pre-trial detention centers to the system of the Ministry of Internal Affairs hampers differentiation between the functions of criminal prosecution and the execution of punishments, or ensuring the inviolability of the accused in custody, and burdens the Ministry of Internal Affairs with functions that are not characteristic of it.

Political rights of prisoners are violated. This is most clearly manifested by the deprivation of persons held in pre-trial detention of the right to vote.

In addition to colonies, prisons and pre-trial detention centers, there are a number of institutions in Belarus where detention can be equated to deprivation of liberty. In particular, these are labor and treatment prophylactoriums (LTPs) and closed education institutions.

Public control over places of detention in Belarus is ineffective.

There is discrimination in practice and in legislation against prisoners in the labor and social spheres.

In this regard, the legislator and authorized state bodies are advised to:

- **take measures to exclude cases of torture and cruel, inhuman and degrading treatment in places of detention; for each such case, conduct a timely objective investigation and bring the perpetrators to criminal liability;**
- **ensure the right of prisoners to access affordable legal aid and accessible judicial protection;**
- **take measures to withdraw correctional institutions and pre-trial detention centers from the system of the Ministry of Internal Affairs;**
- **liquidate the institution of labor and treatment prophylactoriums;**
- **take measures to prevent discrimination of prisoners in the sphere of work;**
- **consistently improve the conditions of detention of prisoners in colonies and prisons to an acceptable level;**
- **create conditions for effective public control over places of detention and imprisonment.**