

Belarus. August 2020: "Justice" for Protesters

Human Rights Center "Viasna"

Experts of the Barys Zvozkau Belarusian Human Rights House:

Maria Sliaptsova, LLM - general editing

Mikita Matsiushchankau, LLM - interviewing and processing

Tatsiana Ziniakova, LLM - legal analysis

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I. Introduction

In accordance with the Constitution, the judiciary in the Republic of Belarus belongs to the courts. In administering justice, judges shall be independent and are expected to be governed by law. Any interference in the activities of judges in the administration of justice is unacceptable and entails liability under the law. All proceedings in all courts shall be public; hearing of cases in a closed court session is allowed only in cases determined by law, in compliance with the rules of judicial procedure. Justice shall be carried out on the basis of adversariality and equality of the parties in the trial. The parties and persons participating in the trial shall have the right to appeal rulings, sentences and other court orders.

Twenty years have passed since 2000, when the Belarusian judicial system was subjected to a scrutiny and criticism by the United Nations Special Rapporteur on the independence of judges and lawyers, Mr. Param Cumaraswamy.¹ Over the years, the Belarusian judicial system has been significantly reformed, resulting in the main aspects of its functioning having been transferred from the Ministry of Justice and the Presidential Administration to the Supreme Court. As a result, the guarantees of the independence of judges were strengthened by law. At the same time, the President of the Republic of Belarus still plays a key role in determining the legal status of judges, in the process of appointing judges to office, their promotion, and determining their financial position. The degree of oversight of the Bar Association by the Ministry of Justice has increased significantly since then.

This report will focus on the violations of fair trial standards in the course of considering administrative cases against participants in peaceful demonstrations against falsification of the results of the 2020 presidential elections in the light of the international obligations of the Republic of Belarus under Article 14 of the International Covenant on Civil and Political Rights:

- the impartiality of the court;
- absence of any direct or indirect influence, pressure or intimidation, or interference of any of the parties and on any grounds;
- publicity (transparency) of the trial;

¹ CIVIL AND POLITICAL RIGHTS, INCLUDING QUESTIONS OF: INDEPENDENCE OF THE JUDICIARY, ADMINISTRATION OF JUSTICE, IMPUNITY. Report of the Special Rapporteur on the independence of judges and lawyers, Dato' Param Cumaraswamy, submitted in accordance with Commission resolution 2000/42

- opportunity to have adequate time and facilities for the preparation of one's defense and to communicate with counsel of one's own choosing;
- opportunity to examine, or have examined, the witnesses against them and to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them;
- not to be compelled to testify against oneself or to confess guilt;
- the right to appeal against a court order.

II. Context

The 2020 presidential elections were held in an unprecedented atmosphere of fear and intimidation², against the backdrop of repression that began almost immediately after the announcement of the campaign and persisted throughout every electoral phase.

On the one hand, the presidential elections were accompanied by an unprecedented surge in civil activity among the public. The emergence of new figures who announced their presidential ambitions, their broad support among all segments of the public, the country's top political leadership's downplaying of the challenges associated with the spread of the COVID-19 pandemic, the holding of a nation-wide day of unpaid community work and the military parade on the occasion of the Victory Day in Minsk on May 9 triggered a wave of enthusiasm in the society and a demand for changes in the political sphere of public life.

On the other hand, the election campaign took place in an atmosphere of intimidation and fear and was marked by a high level of repression against individuals who took part in pickets held to collect signatures to support presidential nominations and later in campaigning events. About 1,500 people were detained during the three months of election campaigning. Siarhei Tsikhanouski, who was denied registration as a presidential candidate and chose to lead the presidential campaign of his wife Sviatlana Tsikhanouskaya, was eventually arrested on criminal charges. Presidential nominee Viktor Babaryka was arrested together with several members of his nomination team and campaign headquarters. Early voting and the main voting day took place in the absence of OSCE observers, while the majority of domestic observers were not allowed to the polling stations, which made the voting process non-transparent and its results not credible to the public.

On the main voting day, in the evening of August 9, hundreds of people gathered outside polling stations across the country, awaiting the posting of the protocols of precinct commissions with the results of the vote count. Many of them never saw the election results, since the protocols were not posted and the members of the precinct commissions left the territory of the polling stations accompanied by police officers.

Significant violations documented during the presidential elections of both national legislation and the fundamental principles of holding fair and democratic elections, including the deprivation of observers of the opportunity to observe the counting of voting results, do not give grounds to trust the election results announced by the CEC or consider them as reflecting the actual will of the

² UN experts demand end to crackdown on protesters in Belarus ahead of elections. Geneva – July 1, 2020: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26023&LangID=E>

citizens of the Republic of Belarus.³ The results of the presidential elections were not recognized by the USA, Great Britain, the countries and institutions of the European Union, or the OSCE.

According to preliminary data announced by a number of government-controlled media after the polling stations closed on August 9, the incumbent won the elections, scoring 80% of the vote.

In the morning of August 9, the Internet was shut down throughout the country and was not resumed until three days later.

In the evening of August 9, according to the Ministry of Internal Affairs, in 33 cities of Belarus, protests were held against the falsification of the results of the presidential elections. The demonstrators were subjected to absolutely disproportionate and brutal violence on the part of the police who used weapons and riot control equipment. For the first time in the history of Belarus, rubber bullets and water cannons were used against peaceful demonstrators. A particularly large amount of damage was inflicted by the use of stun grenades. On August 10, the Ministry of Internal Affairs reported that 3,000 were detained during the protests throughout the country the day before, including 2,000 in Minsk.

The detained protesters subsequently faced torture, cruel and inhuman treatment at the hands of law enforcement officers after they were brought to police departments and temporary detention facilities. The detainees were kept in overcrowded cells, were deprived of basic sanitary and living conditions, they were denied medical assistance, they were not given the opportunity to eat, go to the toilet, inform their relatives and friends about their detention. There are hundreds of testimonies from detainees who between August 9 and 13 were severely beaten by police officers, staff of detention facilities and personnel of military units, either during their arrest, in police stations or in detention centers. As of the date of this report, no criminal cases were opened to investigate allegations of torture.

During the period of August 10-13, several thousand cases of administrative violations were considered against participants in the peaceful protests triggered by the official results of the presidential elections. On August 13, the website of the Supreme Court published a list of persons who were sentenced to administrative penalties of short terms of detention. According to the list, on August 11, the courts of Minsk convicted 567 persons. 503 more were convicted on August 12.

In the overwhelming majority of cases, the charges were heard in field sessions held in the premises of detention facilities and police departments. According to numerous participants in the hearings, the detainees stood before the judges in their appearance, which made it possible to draw an unambiguous conclusion that actions grossly violating the personal integrity of the detainees were committed against the persons who participated in the administrative trials.

The overwhelming majority of the detainees became victims of “carbon-copy justice”, as the courts set aside no more than five minutes for the consideration of each administrative offense. Given this, it is not possible to admit the possibility of safeguarding the procedural rights and guarantees of the participants in the administrative trials.

On August 13-14, convicted participants in peaceful demonstrations were released from detention centers. Appealing against the administrative penalties to higher courts resulted in the court rulings being upheld and the sentences being reduced to the term already served.

³ 2020 Presidential Election. Report on election observation. Belarusian Helsinki Committee and Human Rights Center “Viasna” in the framework of the campaign “Human Rights Defenders for Free Elections”: <http://elections2020.spring96.org/en/news/98942>

On September 10, when appointing a new Prosecutor General, Aliaksandr Lukashenka said addressing prosecutors: “If you think that I’m holding onto power, with my hands blue with strain, for my own sake, you will strongly disappoint me. <...> Sooner or later others will take this power, but they will do so in accordance with the law, and not under pressure from street demonstrations. You are educated people. So you should think. I am not calling on you to save the state in violation of the law. Although when an impudent intervention is underway, as I call it, from the outside and it is heated from within and directed from the outside, there it is no time for laws, it is necessary to take tough measures to stop all the rubbish that has been claiming it. In this case, the situation is different.”⁴

III. Methodology

The report is based on information obtained by human rights defenders in the course of recording and documenting acts of torture, cruel, inhuman, degrading treatment against detained participants in peaceful protests and other persons detained from August 9 to 13, 2020 in connection with their beliefs and political preferences as well as random victims of repression. On August 12, the website of the HRC “Viasna” published an appeal calling on the victims of violence to share their stories, documents and photos with human rights defenders.

Since August 12, human rights defenders and volunteers have conducted more than six hundred interviews with people who were tortured and ill-treated during their detention and after being placed in detention facilities in different cities. Out of these interviews, 38 were selected to focus on administrative procedures, including the consideration of administrative cases by judges. Some of the interviews were recorded as a first-person narrative, while others as presentations of the persons’ explanations on behalf of the interviewer.

All information was verified by comparing it with information obtained from other detainees and by analyzing procedural and medical documents provided by the detainees.

The authors of the report have at their disposal the personal data of the interviewed persons. However, for the purpose of personal and psychological safety, their names are not given in the report; instead, their serial number is indicated in the list of witnesses at the disposal of human rights defenders.

When assessing the information, the authors took into account the information from the Supreme Court on the number of court rulings in administrative cases and penalties imposed.

IV. Fair trial standards

Article 14, paragraph 1 of the International Covenant on Civil and Political Rights:

In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.⁵

⁴ “Лукашенко: Меня часто упрекают в том, что «власть он не отдаст». Правильно упрекают”. September 10, 2020: <https://news.tut.by/economics/699988.html>

⁵ Article 14 of the Covenant deals with the examination of criminal charges, but in the light of the interpretation of the HRC the “notion may also extend to acts that are criminal in nature with sanctions that, regardless of their qualification in domestic law, must be regarded as penal because of their purpose, character or severity.” This means that prosecutions in administrative offenses that involve detention and may result in administrative arrest or a heavy fine are subject to the guarantees of Article 14 with the same effect as in the case of “criminal charges”.

A. Impartiality of the court

Paragraph 21, General Comment No. 32, UN Human Rights Committee:

The tribunal must also appear to a reasonable observer to be impartial.

Justice also requires that judges understand all the factors relevant to the situation they are considering, including those which may affect the way that those present in the courtroom behave, or perceive the trial process. This does not just involve controlling procedures, making rulings on points of law, summing up cases, giving judgments, or passing sentences, but also ensuring that their court proceedings are managed in a way that is fair and is seen to be fair.⁶

The trials of the detainees held on August 9-13, with few exceptions, took place in the premises of detention centers and other detention facilities (for example, in prison No. 1 in Hrodna and in SIZO (pre-trial prison) No. 6 in Baranavičy). Judges from various district-level courts traveled to detention centers and held court sessions in visiting rooms, investigation rooms and even in hallways. The trials were secret: neither the persons brought before judges, nor their families or lawyers had the opportunity to know about the time of the trial (the judges themselves received the case files only upon arrival at the detention center). At the same time, the public did not receive a reasonable justification for the need to hold court hearings in detention facilities, rather than in court buildings.

The time for consideration of each case varied from 2 to 15 minutes. As a rule, there were no opportunities to prepare for the proceedings and obtain the assistance of a lawyer. The witnesses were not interrogated at the hearings. No attempts were made to verify the explanations of persons who pleaded not guilty to the administrative charges they were facing and the misrepresentation of facts by the judges. Penalties were imposed without taking into account the position of the detainee, automatically and stereotypically (in the overwhelming majority of cases — short terms of administrative detention). It follows from the above that the results of the court hearings were predetermined in advance, and the court orders were issued to justify the detentions.

Accordingly, the very manner of holding court sessions and their results testify to the lack of impartiality of the courts in hearing administrative cases.

Selected examples showing a lack of impartiality:

Conditions for holding court sessions

“There were two judges with secretaries in the office. One detainee was brought before one judge and another before the other. The judges were separated by a glass partition. Maybe it was a meeting room for lawyers and detainees. That is not just an office with a classic desk. The two hearings were held simultaneously. Although there was a partition, you could hear what was happening in the other part. I did not listen, but if I wanted to, I could hear what was behind the partition. There was a short distance between us. It was like a conveyor belt. It was in the IVS (temporary detention facility) on Akrescin Street. A policeman brought me before the judge. She had a secretary with her. A young girl. She asked if my names and year of birth were right. I said “Yes”. She asked if I agreed with the charges. I said “Yes”. She asked for clarification. I began to speak, and suddenly she said to me: “15 days”. I said that maybe the fine would be better. She

⁶ Foley Conor, *Combating Torture: A Manual for Judges and Prosecutors*, Human Rights Centre, University of Essex, 2006: <https://www.refworld.org/docid/4ec0e9062.html>

replied that I could appeal within 5 days and told the policeman to take me away.” (August 11, 2020. Kastryčnicki District Court of Minsk, judge Alena Zhyvitsa, witness 34)

Predetermined nature of court rulings and demonstration of the presumption of trust in prosecution evidence

“Five people were brought into the hallway, then called into the office one by one. Our group of five were given ten basic units each (270 rubles). Other groups were given thirty basic units (810 rubles), some were given 7 days of detention. All persons in one group of five were awarded the same punishment, regardless of whether the person was at the rally or not.” (August 12, 2020. Lida District Court, judge Natallia Yarmakovich (Deputy President of the Court), witness 4)

“The staff of the IVS warned before the trial that in case we admitted our guilt, we would receive 10 days, in case we didn’t — 25 days of detention. Back in the cell, the detainees agreed to divide into two groups: those who would not admit their guilt, and those who would. The result was the same for all: 15 days of detention.” (August 12 and 13, 2020. Partyzanski District Court of Minsk, judge Aliaksandr Kočyk, witness 13)

“All the detainees who passed through this judge saw marks in pencil on the cardboard folders containing the case files indicating the number of days to be awarded. Subsequently, the judge only circled this figure with a pen. She said: “Sorry, I cannot trust the testimony of the police officer who detained you, so you will have 5 days.” (August 10, 2020. Smaliavičy District Court, judge Lina Barodzich, witness 5)

“The judge read out the arrest report and asked if there were any motions. The detainee said that he did not agree with what he was charged with. The judge said: “I see no reason to grant the motion, because I see no reason not to trust the police officers.” The she announced her decision - 15 days.” (August 13, 2020. Lieninski District Court of Minsk, judge - name unknown, witness 7)

“The atmosphere of the trial can be characterized as a conveyor belt for the announcement of decisions made in advance. The “conveyor belt” asked all the detainees the standard three questions: “Do you admit guilt or not?”, “Are you employed or unemployed?” (those who work were sometimes given fines), and “Have you been convicted under this article before?” (August 11, 2020. Court of the City of Babrujsk and Babrujsk District, judge Hanna Asipenka, witness 14)

Lack of information about the judge and improper behavior of judges

“The court session was held in an office in the IVS. The hearing lasted 3 minutes. In the office, there were a judge, an assistant and a police officer who did not allow looking at his face. The judge did not say which court she came from and didn’t give her name (the name of the court and the judge were only known after receiving a copy of the ruling in the case on September 3, 2020). She asked me if I had any motions. She read everything fluently. She asked if I was at the rally. After I said that I was walking with my girlfriend, the judge announced the verdict: “15 days and leave the office.” (August 12, 2020. Saviecki District Court of Minsk, judge Marya Shumeika, witness 9)

“They tried him in a small stuffy room in SIZO No. 6, there was a judge and an assistant. The judge did not introduce herself, did not even read out the rights, and immediately began to read out the administrative offense report. At the same time, the judge saw that the detainee was in dirty clothes, his ear and knee were swollen, and the size of the hematoma was visible, as he was wearing shorts. The judge did not ask any questions. The detainee made a remark that the report

had errors, to which the judge said: "It means you do not plead guilty". He pleaded guilty, asked for a fine, since he had two dependent children, himself from an orphanage, the only breadwinner in the family. The judge did not hide her anger at the request for a fine. The trial lasted about 6 minutes, the judge found him guilty and gave him 7 days of detention." (August 13, 2020. Court of the Baranavičy District and the City of Baranavičy, judge Yuliyana Shcherba, witness 31)

B. Absence of any direct or indirect influence, pressure or intimidation or interference by any of the parties and for any reason as an aspect of the fairness of the trial

Paragraph 25, General Comment No. 32, UN Human Rights Committee:

A hearing is not fair if, for instance, the defendant in criminal proceedings is faced with the expression of a hostile attitude from the public or support for one party in the courtroom that is tolerated by the court, thereby impinging on the right to defence.

Court hearings in most cases were held in the presence of prison staff or police officers, some of which did not allow looking at their faces, others were wearing masks covering their faces. Considering that there was no one in the rooms where the trials were held besides the judge, the secretary and the police officer(s), who were often hostile to the detainee, most of the detainees noted that they felt threatened by the security forces, realizing that that in case of "wrong" behavior in the court session, violence might be used or continued to be used.

"There was a judge in the office, on either side of the judge there stood a police officer in "armor" and a helmet and another policeman." (August 12, 2020. Valožyn District Court, judge Anatol Zianko, witness 30)

"Just before the trial, a police officer who was present in the office during the hearing told everyone who was taken out of the cell that they should admit guilt, then there would be a fine. The same officer assured that the detainee and the other 25 detainees held in one cell were lucky, because they were detained before the murder of an OMON (riot police) officer and before Molotov cocktails were thrown at OMON personnel." (throughout the entire time the detainees were cut off from the outside world) (August 11, 2020. Centralny District Court of Minsk, judge Ivan Kastsian, witness 1)

There were open displays of hostility and the use of violence on the part of police officers, to which the judges did not react:

"In the office where the trial was held, there were a judge in a robe, an assistant judge, an employee of the SIZO (detention center) and the detainee. Entering the office, the detainee heard a command from the SIZO officer that he had to stand before the court with his hands behind his back. The detainee objected, saying that he was in court, not in prison, and therefore would obey the judge's demands. The judge said that the detainee must obey the orders and procedures of the institution in which he was staying. As a result, the detainee stood in front of the court with his hands behind his back throughout the entire hearing. The detainee requested that the judge allowed him to read the case file. Immediately after the request, the prison officer approached the detainee and struck two blows with his fist in the area of the kidneys. The judge made a remark to the detainee that he was "showing disrespect to the court." The detainee told the judge that she should take response measures in connection with the use of violence against the defendant. The judge said in response: "You must understand, we are in prison, they have their own rules, which I cannot influence." (August 11, 2020. Barysaŭ District Court of Minsk Region, judge Tatsiana Dzeravianka, witness 32)

C. Publicity (transparency) of the trial

Paragraph 28, General Comment No. 32, UN Human Rights Committee:

All trials in criminal matters or related to a suit at law must in principle be conducted orally and publicly. The publicity of hearings ensures the transparency of proceedings and thus provides an important safeguard for the interest of the individual and of society at large. Courts must make information regarding the time and venue of the oral hearings available to the public and provide for adequate facilities for the attendance of interested members of the public.

Article 14, Paragraph 3 of the International Covenant on Civil and Political Rights:

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

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

Paragraph 33, General Comment No. 32, UN Human Rights Committee:

“Adequate facilities” must include access to documents and other evidence; this access must include all materials that the prosecution plans to offer in court against the accused or that are exculpatory.

Before the hearing, the detainees either did not have the opportunity to access the case files or signed administrative offense reports in an atmosphere of threats and intimidation.

“The court session was held in the IVS. Fourth floor. We stood in the hallway facing the wall. Police officers walked with truncheons walked by. A police officer approached the detainee standing next to me and said: “Don’t you want to crap your pants, (obscene word)? Now I’m going to (obscene word) kick your ass about ten times, and you will crap your pants. And then ten times on your legs so that you could run better.” In such an atmosphere, facing the wall, we were reading our case files. The person standing next to him signed a confession of guilt. Access to the case files was only allowed for a few minutes.” (August 11, 2020. Court of the Kastychnicki District of Minsk, judge Alena Zhyvitsa, witness 6)

“The day before the trial, a man approached the cell (we could not identify him, because he was wearing a mask, and he talked to the detainees passed through the hatch in the cell door) and said: “Now you walk out one by one, sign the reports and in an hour and a half we will release you.” They were called by their names (before that the detainees were registered four times). There was a man sitting at the table, holding the reports and leafing through the pages of papers that had to be signed. A woman in uniform and two riot policemen in balaclavas with batons were sitting next to him. There was no time to read the report, because there was a threat of physical punishment. Some girls wrote that they did not agree with the report, later it became clear that there was no point in this. Some received threats of physical pressure if anything other than an admission of guilt was written.” (August 11, 2020. Frunzienski District Court of Minsk, judge Hanna Buinouskaya, witness 17)

“In the gym, there were 54 detainees lying facing the floor. On one side, about seven tables were set, to which the detainees were brought to face administrative charges. Some of the detainees were interviewed, while they were on the floor, face down. The officers approached them and filled in the reports. No one was given time to read the reports. Everyone was fingerprinted. The police ordered to write a confession of guilt in the report, in which case they promised 10 days, in case

of refusal to confess guilt — 15 days.” (August 12, 2020. Court of the Čyhunačny District of Homieł, judge Yauhen Shershneu, witness 19)

“When they were filling in the administrative offense reports, the police officers said that if the report were not signed and guilt were not admitted, “you will be in prison for a long time, and no one will let you out”. “If you want to leave, you must admit your guilt and sign the report,” they said. They did not provide an opportunity to read the reports, referring to the fact that “this information is not for you.” (August 13, 2020. Court of the Baranavičy District and the City of Baranavičy, judge Yuliyana Shcherba, witness 22)

Even in the presence of obvious contradictions and inaccurate information in the case files, there was no opportunity to present arguments and evidence in their defense.

“The judge did not read out the defendant’s rights, leafed through the case file, said that the detainee had waived the right to counsel (the detainee never signed anything). In the case file, there were two administrative offense reports. In one of them, the offense was an unauthorized protest at 3 Independence Avenue (indeed, where the girl was detained). The other reports said that she committed disobedience on Dzerzhinsky Avenue at the time when she participated in the protest on Independence Avenue. The detainee pointed to this contradiction. The judge said: “Fine, we will make a decision ourselves, go, they will tell you.” Subsequently, the detainee found out about the ruling from his friends, after the website of the Supreme Court published a list with the names and the number of days awarded: twenty.” (August 12, 2020. Maskoŭski District Court of Minsk, judge Palina Antsipchuk, witness 12)

“The bottom line is that no one really asked me any questions. The judge read out the report, told me that I was chanting slogans and detained at such and such place. I explained to him that I was not at this place, I had videos from work showing that at that time I was at work. But nobody listened to me. The judge said: “Do you want to say that you were detained by mistake?” I said “Yes”. He said: “Well, 15 days.” That was it. He asked: “Will there be any motions?” I said: “Yes, please change the sentence to a fine.” He said: “15 days anyway.” (August 11, 2020. Partyzanski District Court of Minsk, judge Aliaksandr Kochyk, witness 35)

Article 14, Paragraph 3 of the International Covenant on Civil and Political Rights:

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

Paragraph 34, General Comment No. 32, UN Human Rights Committee:

The right to communicate with counsel requires that the accused is granted prompt access to counsel. Counsel should be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications.

The detainees were kept incommunicado, as the family members did not know about their whereabouts and did not have the opportunity to find out this information. The detainees were not allowed to inform about where they were being held. Accordingly, there was no way to invite a lawyer. At the stage of filling in the administrative offense reports, the rights were not explained. In court, the rights were read fluently or not explained at all. The judges did not ask whether the defendants needed counsels. Only in one case (23), the judge asked if there was an agreement with

a lawyer. There was no such thing, so the trial was resumed. The detainees feared that claiming to exercise their rights could lead to violence.

“All the detained girls were greatly frightened by the brutal attitude of the security forces towards the detainees. Many of them had small children at home, they begged to be able to call their families and friends to inform them about the detention. All requests for an opportunity to make one phone call were answered with “You have no rights.” (August 13, 2020. Court of the Baranavičy district and the city of Baranavičy, judge Yuliyana Shcherba, witness 22)

“Before the trial, there was no opportunity to access the case file. I did not put a single signature anywhere. The report said that I had waived everything and disagreed with everything. Before the trial, I never saw the case file. And during the trial, I could not access the case file, either. The trial was over. And again, I did not put a single signature anywhere. I came in, they announced it, I left. I was only able to access the case file after I was released and requested to do so. During the trial, I did not ask to access the case file, since everything was organized like an assembly line and I could run into trouble if I did. I did not ask to call any witnesses, nor did I ask for a lawyer. Nobody explained to me that I had those rights. I was not explained at all which rights I had. I was not aware of what I could do and what I should not do...” (August 11, 2020. Partyzanski District Court of Minsk, judge Aliaksandr Kočyk, witness 35)

Article 14, Paragraph 3 of the International Covenant on Civil and Political Rights:

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

Without exception, all the interviewees pointed out that during the consideration of their cases, the witnesses indicated in the reports as witnesses for the prosecution were absent, and it was out of the question that they could be heard. All those witnesses were police officers. At the same time, there was a presumption of unconditional confidence in their written explanations (reports) (see Section IV.A of this report).

“The court’s ruling was only based on the police report. There were no witnesses during the hearing. There was only one witness in the report - the one who filled it in. The court probably had reason to believe no one but him. The ruling said that the decision was made on the basis of written data.” (August 11, 2020. Partyzanski District Court of Minsk, judge Aliaksandr Kočyk, witness 35).

Some of the interviewees said that during the hearings they tried to name the witnesses of their innocence, but there was no way for these witnesses to be heard. The court ignored the statements about the existence of such witnesses.

“After that, they read to me what I was accused of, what was indicated in the report, that I took part in an unauthorized mass event, a rally, chanted political slogans: “Long Live Belarus”, “Stop Cockroach” and others. After that I was asked if I admitted my guilt. I replied that I did not admit it. I was asked if I wanted to make any statements to justify myself. I told about the details of my detention, that I was detained when I was just walking in the park on Uschodniaja Street, at the intersection of Uschodniaja and Nekrasov Street. At that moment, a minibus pulled over up with members of some special police unit, presumably Almaz. These people jumped out of the car as it still moved with rifles in their hands, shouted and threatened us so that we lied down on the ground. I tried to run away from them, but was detained. After that, I said that there were witnesses to my detention: my friends who were nearby at that moment. The judge asked for the name of one guy. I gave the first name of the guy, but I could not give his last name, because did not know it. But I

named the other guy, a friend of mine. When I gave my friend's name, I said that he did not participate in the rallies, because for all two days I had been told that I had participated in rallies, and somehow on a subconscious level I said this. Then the judge said that since I say that he did not participate in the rallies, then I admit my guilt, that I allegedly participated in the rally, and he did not, so I was detained, but he was not. I began to deny it, she said that everything was clear. This was the end of the discussion of the witnesses.” (August 11, 2020. Červieň District Court of the Minsk Region, judge Inesa Rayeuskaya, witness 36).

Article 14, Paragraph 3 of the International Covenant on Civil and Political Rights:

(g) Not to be compelled to testify against himself or to confess guilt.

Paragraph 41, General Comment No. 32, UN Human Rights Committee:

This safeguard must be understood in terms of the absence of any direct or indirect physical or undue psychological pressure from the investigating authorities on the accused, with a view to obtaining a confession of guilt. A fortiori, it is unacceptable to treat an accused person in a manner contrary to article 7 of the Covenant in order to extract a confession. Domestic law must ensure that statements or confessions obtained in violation of article 7 of the Covenant are excluded from the evidence, except if such material is used as evidence that torture or other treatment prohibited by this provision occurred, and that in such cases the burden is on the State to prove that statements made by the accused have been given of their own free will.

Many of the interviewed citizens said that they were subjected to both physical and psychological pressure exerted to force them agree with the description of the circumstances in the administrative offense report and to admit their guilt.

“The administrative offense report against the detainee was drawn up three days after the arrest. In the course of drawing up the reports, those who disagreed with the imputed offense were taken aside and beaten with fists on the back, after which they were returned to the officer who prepared the report. The detainee signed the report fearing violence, despite the fact that the description of the offense did not correspond to the actual place and time of detention.” (August 13, 2020. Court of the Baranavičy District and the City of Baranavičy, judge Mikalai Kmita, witness 20)

“In the course of drawing up an administrative offense report, they ordered to sign it, not to ask any questions and to admit guilt, in which case they promised a fine. The detainee refused to admit his guilt, for which he received several blows. While standing face down, the detainee signed the report and pleaded guilty. Arguments about the discrepancy between time and place generated additional aggression among police officers.” (August 13, 2020. Court of the Baranavičy District and the City of Baranavičy, judge Yuliyana Shcherba, witness 31)

“The only thing that I understood from the situation that if you asked a lot of questions, you would be beaten. And I didn't want that. It was much more profitable to be silent and not to be bludgeoned. When I was in the hallway, I heard a guy taken out of an adjacent courtroom and a representative of the Ministry of Internal Affairs said that “if you don't agree, I'll say that you tore my clothes and threw stones at me, and this is criminal responsibility.” (August 11, 2020. Partyzanski District Court of Minsk, judge Aliaksandr Kochyk, witness 35)

In some cases, judges explicitly stated that the admission of guilt was the decisive factor in determining the punishment, despite the detainee's statements of innocence.

“The trial only involved the judge and the detainee. The judge introduced herself. She read his rights and asked if he agreed with the charges. The judge said: “Everyone's coming to me and

saying that they are innocent, were you all just detained for nothing?!” The detainee objected that he did not know what was happening in the city (the Internet was shut down). The judge said: “If you do not admit guilt, I will give you 15 days.” The detainee pleaded guilty and received a fine of 10 basic units (270 rubles).” (August 12, 2020. Lida District Court, judge Natallia Yarmakovich (Deputy President of the Court), witness 4)

“The judge said that the GUBOPIK wrote that the detainee was trying to start a fight (there was no such thing in the administrative report). No witnesses were invited. The judge asked whether he agreed or disagreed with the report. The detainee said that the maximum he could agree with was that he was drinking alcohol in a forest, in which he was detained by employees of the GUBOPIK of the Ministry of Internal Affairs. The judge said that if he agreed with the report, the minimum that he could give was five days.” (August 10, 2020. Žodzina City Court, judge Mikalai Samoila (President of the Court), witness 10)

“I also told the judge that that evening I had no idea about the rally, that I watched the news and everything was in order, that the whole country was happy with the results of the elections. The judge was angry at this. And at the end, she added that I would have received much less if I had not resisted and admitted my guilt.” (August 11, 2020. Court of the Červień District of the Minsk Region, judge Inesa Rayeuskaya, witness 36)

The detainees’ statements that the consent in the administrative offense reports was signed under pressure did not cause any reaction from the court. The presence of obvious signs of violence in the detainees who did not agree with the charges did not raise questions from the judges.

“The judge read out the administrative offense report, asked if the detainee agreed with the report. The detainee refused, saying that the report was signed under pressure, after which the judge asked to voice her version. The detainee explained that at 10:40 pm (the time of the offense under the report), she was still at work under CCTV cameras (the shift ended at 10:30, and the place of work on Kastryčnickaja Street). The judge asked why the detainee was walking in the direction of the rally, and also about her “instinct of self-preservation.” The judge asked if the detainee wanted to say her last word, to which the detainee burst into tears and heard: “9 days of detention.” (August 11, 2020. Frunzienski District Court of Minsk, judge Hanna Buinouskaya, witness 17)

“They tried him in a small stuffy room in SIZO No. 6, there was a judge and an assistant. The judge did not introduce herself, did not even read out the rights, and immediately began to read out the administrative offense report. At the same time, the judge saw that the detainee was in dirty clothes, his ear and knee were swollen, and the size of the hematoma was visible, as he was wearing shorts. The judge did not ask any questions. The detainee made a remark that the report had errors, to which the judge said: “It means you do not plead guilty.” (August 13, 2020. Court of the Baranavičy District and the City of Baranavičy, judge Yuliyana Shcherba, witness 31)

D. Right to appeal a court ruling

Article 14, Paragraph 5 of the International Covenant on Civil and Political Rights:

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

Paragraph 49, General Comment No. 32, UN Human Rights Committee:

The right to have one’s conviction reviewed can only be exercised effectively if the convicted person is entitled to have access to a duly reasoned, written judgement of the trial court, and, at least in the court of first appeal where domestic law provides for several instances of appeal, also

to other documents, such as trial transcripts, necessary to enjoy the effective exercise of the right to appeal. The effectiveness of this right is also impaired, and article 14, paragraph 5 violated, if the review by the higher instance court is unduly delayed in violation of paragraph 3 (c) of the same provision.

In many cases, according to the interviewees, they did not even have information about which court made the decision, what punishment was imposed, not to mention that they did not receive any copy of the court ruling. They often found out about this only after their release, when they requested access to their case files from the courthouse. By that time, the period of appeal (5 days for administrative detention) had already expired.

“They told him to wait for the result. He was taken out of the office in the same degrading manner, accompanied by shouting commands. The police officer took him out into the yard and told him to lie face down on the ground. Which court judged, what the result was and who the judge was, the detainee only found out after his release, when he received (August 27) the text of the court ruling reading “12 days.” (August 13, 2020. Maskoŭski District Court of Minsk, judge Siarhei Katser, witness 3)

“The judge did not announce the ruling. Subsequently, in the hallway, police officers came up and told who got 14 and who 15 days.” (The detainee was given 14 days) (August 12, 2020. Maskoŭski District Court of Minsk, judge Alina Androsava, witness 21)

“After the trial, while still in the courthouse, I asked the IVS officer to give me a copy of the ruling, but they didn’t give it to me. After the trial, I was taken to the IVS. As a result, the appeal period expired before I received a copy of the ruling.” (August 12, 2020. Stoŭbcy District Court of the Minsk Region, judge Liudmila Shutsko, witness 33)

Even when the result of the court hearing was known to the convict and the appeal process was clear, there was no physical opportunity to write and send an appeal, not to mention the impossibility of obtaining legal assistance. The courts did not react in any way to such statements if they were expressed by the detainees.

“The judge announced: 15 days of detention and 5 days to appeal. The detainee asked how he could appeal the sentence within five days, when he was not even given a sheet of paper and a pen to appeal his previous detention, to which the judge said: “This is not a question for me, but for the IVS.” (August 10, 2020. Court of the Sluck District of the Minsk Region, judge Liudmila Zubar (President of the Court), witness 15)

“The judge announced her decision - 8 days of detention. Then she said that I had 5 days to appeal the sentence. I asked how I could do this, being in a cell without communication with the outside world, without paper, without a pen. She said it was my problem. At this point, the meeting was over and I was taken away. I was not given a copy of the court ruling. I asked the judge to call a lawyer after the end of the trial, which I was denied. I took a copy of the court ruling only after I was released.” (August 11, 2020. Court of the Červień District of the Minsk Region, judge Inesa Rayeuskaya, witness 36)

V. Judicial safeguards against torture

Article 9, Paragraph 3 of the International Covenant on Civil and Political Rights:

Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.

Paragraph 34, General Comment No. 35, UN Human Rights Committee:

The individual must be brought to appear physically before the judge or other officer authorized by law to exercise judicial power. The physical presence of detainees at the hearing gives the opportunity for inquiry into the treatment that they received in custody.

Article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment:

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

International Commission of Jurists, The role of judges, lawyers, and prosecutors in preventing torture:

Judges should rigorously pursue all allegations. They should inquire when there are signs of abuse even if the detainee does not specifically allege abuse.

Judges should ensure that authorities respect rights of access to the outside world (including lawyers, family, friends, doctors, letters, and so on), both as safeguard but also to ensure detainees are not subjected to isolation that in its cumulative impact can itself amount to ill-treatment or even torture.

Judges should ensure accountability of perpetrators.⁷

Judges should at all times be alert to the possibility that defendants and witnesses may have been subject to torture or other ill-treatment. If, for example, a detainee alleges that he or she has been ill-treated when brought before a judge at the end of a period of police custody, it is incumbent upon the judge to record the allegation in writing, immediately order a forensic medical examination and take all necessary steps to ensure the allegation is fully investigated. This should also be done in the absence of an express complaint or allegation if the person concerned bears visible signs of physical or mental ill-treatment.⁸

UN Human Rights Council, Torture and other cruel, inhuman or degrading treatment or punishment: safeguards to prevent torture during police custody and pretrial detention:

12. Urges States, during reviews of domestic interrogation rules, instructions, methods and practices to ensure that they observe their international obligations, that safeguards against torture and other cruel, inhuman or degrading treatment or punishment are in place, and that during such reviews they are mindful of the particular importance of safeguards, to ensure that:

(f) Rules are in place to obligate law enforcement officials to report instances of torture or other cruel, inhuman or degrading treatment or punishment to their superior authorities, with appropriate sanctions for non-reporting, and, where necessary, that independent organs are vested with reviewing or remedial power.⁹

⁷ The role of judges, lawyers, and prosecutors in preventing torture. October 6, 2017: <https://www.icj.org/the-role-of-judges-in-preventing-torture/#:~:text=The%20ICJ%20works%20extensively%20with,custody%20and%20pre%2Dtrial%20detention.&text=Judges%20should%20be%20prepared%20to,the%20authorities%20do%20not%20comply>

⁸ Foley Conor, Combating Torture: A Manual for Judges and Prosecutors, Human Rights Centre, University of Essex, 2006: <https://www.refworld.org/docid/4ec0e9062.html>

⁹ Resolution adopted by the Human Rights Council on 24 March 2016 - 31/31. Torture and other cruel, inhuman or degrading treatment or punishment: safeguards to prevent torture during police custody and pretrial detention. A/HRC/RES/31/31. April 21, 2016: https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/31/31

The courts ignored the defendants' statements about their condition and requests for medical assistance.

"In the office, there were the judge, an assistant, a police officer and the detainee. The judge and the assistant were opposite each other, the policeman was behind. The judge asked: "What kind of motion do you want to file?" The man said that he wanted to be examined by a urologist (he suffered from a chronic condition), since there was blood during urination. The judge pretended to write down the request. The judge asked if the detainee agreed with what he was charged with. The detainee told how everything actually happened and that he did not agree with the administrative offense report. The judge announced her decision: 13 days of detention. The hearing lasted 3 or 4 minutes. The detainee was taken out into the hallway and forced to stand facing the wall." (August 11, 2020. Pieršamajski District Court of Minsk, judge Anastasiya Liaikouskaya, witness 2)

The courts did not react to the obvious traces of the use of violence or ill-treatment against the detainees, tolerated the inhuman methods of treatment of the defendants during court hearings, did not respond to allegations of violence.

"The court hearing was held in the Center for Isolation of Offenders and lasted 5 minutes. In the office measuring 5x5 meters, there were two judges, two assistants, a police officer and the detainee. The latter was beaten (damaged eye), was wearing dirty clothes with traces of violence. He was brought into the office with shouts and commands: "Head down! Hands behind your back!", constantly pushed forward. The shoelaces were taken away before that, which made it difficult to move quickly. All this was within the judge's sight." (August 13, 2020. the Maskoŭski District Court of Minsk, judge Siarhei Katser, witness 3)

"The court hearing took place in the Lida District Court building, the trial lasted about 4 minutes. The defendant came to the trial beaten and in dirty clothes, because he was beaten during the arrest. He was held in a garage before the trial, they splashed him with water from the hose, all the clothes were spray-painted red. The judge saw everything, but did not ask any questions. The trial only involved the judge and the detainee." (August 12, 2020. Lida District Court, judge Natallia Yarmakovich, witness 4)

"The court hearing was held in the IVS and lasted no more than 10 minutes. For four days, the detainee had slept on the floor of a cell. He entered the office in dirty clothes. For three days, he had not eaten anything. There was (on the third day) one loaf of bread for 25 people who were held in the same cell. On the night before the trial, the detainee, along with other inmates (90 people), were held in an open-air room (with bars instead of a ceiling). Most went to defecate in the corner (there was no toilet, and the prisoners were allowed to visit the bathroom in fives every two hours). In the morning before the trial, they brought 100 grams of oatmeal. In the hallway, awaiting trial on the second floor, there were about 30 people, hands behind their backs, head against the wall, looking down. They brought them into the office with their hands behind their back, their heads down. The judge saw everything, the detainee was at a distance of two meters from her." (August 13, 2020. Lieninski District Court of Minsk, judge Tatsiana Shotsik, witness 11)

"The trial was held on Akrescin Street, in the hallway. The detainee was brought to the table. The meeting lasted about 10 minutes. The detainee had a huge bump on her head due to a blow with a truncheon. It was obvious and the head injury was documented by a paramedic. On her hoodie, police officers had sprayed a yellow tag "A". In front of the judge, she was shaking, there was a bruise on her face. The detainee told the judge how she was beaten and asked for help. She said

she would sign any document, just to be released. The judge said: “It’s your right” and “Girl, that’s enough, do not waste my time.” (August 12, 2020. Maskoŭski District Court of Minsk, judge Palina Antsipchuk, witness 12)

“The court hearing was held in the IVS of the Kastryčnicki district police department of Hrodna, on the second floor. The trial lasted about 45 seconds. They took the detainee out of the cell on the fourth floor and brought him down to the judge. He was led into the office with his hands behind his back, his head bent to the floor. Immediately after entering the office, he tried to sit on a chair, but he couldn’t do it right away, because his buttocks had been beaten during arrest. The judge remarked that the detainee was expected to stand before the court. The judge, at a distance of one and a half meters, saw the injuries the man had received during arrest: his right hand had bruises in the area of the forearm, there were large bruises on the shins of both legs, and his knees were scratched (the detainee was wearing shorts). The man was standing in front of the judge wearing only socks, because after being brought to the police station, the shoelaces were cut off, and the officers took his shoes.” (August 12, 2020. Kastryčnicki District Court of Hrodna, judge Ruslan Khikhol, witness 18)

“The court hearing was held in the IVS and lasted about 7 minutes. There were a judge and two assistants in the room. The judge introduced himself, read out the rights, read out the administrative offense report, asked if the detainee admitted his guilt. The detainee was 2.5-3 meters away from the judge, who saw that the man had been beaten, with a black and swollen face in untidy clothes, and the hood of his hoodie was torn off. The judge asked what had happened to the detainee. The judge was not interested in the story of violence; he only demanded that the detainee waited outside. After about 10 minutes, the judge called him in and announced his decision: 15 days of detention.” (August 11, 2020, Pieršamajski District Court of Viciebsk, judge Mikhail Yurchanka, witness 28)

“They tried him in a small stuffy room in SIZO No. 6, there was a judge and an assistant. The judge did not introduce herself, did not even read out the rights, and immediately began to read out the administrative offense report. At the same time, the judge saw that the detainee was in dirty clothes, his ear and knee were swollen, and the size of the hematoma was visible, as he was wearing shorts.” (August 13, 2020. Court of the Baranavičy District and the City of Baranavičy, judge Yuliyana Shcherba, witness 31)

“During the trial, I had abrasions on my face that I received during my arrest the day before the trial. There is no way the judge could not see them. However, the police report only said that they twisted my arms.” (August 12, 2020. Stoŭbcy District Court of the Minsk Region, judge Liudmila Shutsko, witness 33)

Conclusions

The documented violations of the basic principles of judicial activities, constitutional rights and internationally recognized human rights and fundamental freedoms in the preparation of administrative cases and their consideration by judges are blatant and shocking. These violations of international norms regarding the rights to a fair trial enshrined in the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights and other relevant international legal instruments are so serious that they made the deprivation of liberty of the people detained on August 9-12 arbitrary.

Absence of any reaction on the part of the judges to the obvious traces of torture, inhuman and degrading treatment suffered by the people brought before them, as well as the allegations of

torture and ill-treatment, were unexpected and deeply disappointed those of the detainees who hoped that the court would put an end to torture and ill-treatment, that justice would be restored and their situation would return to the legal field.

The disregard by judges of constitutional and internationally recognized fair trial standards and a widespread lack of respect for human rights and fundamental freedoms undermine trust and respect for the justice system as a whole.

Absence of legislatively defined safeguards against torture and ill-treatment, absence of a national mechanism for the protection of human rights and the prevention of torture predetermined not only the unpunished violations of the right not to be subjected to torture and prohibited treatment, but also violations of the right to an independent and fair trial.

The conclusion of the Special Rapporteur on the independence of judges and lawyers, Mr. Param Cumaraswamy, remains highly relevant: “Executive control over the judiciary and the manner in which repressive actions are taken against independent judges appear to have produced a sense of indifference among many judges for the importance of judicial independence in the system. Many appeared to be content with the flawed appointment, promotional and disciplinary procedures and service conditions. These procedures violate international and regional minimum standards for an independent judiciary.”¹⁰

Recommendations

The Belarusian authorities should immediately ensure that the following recommendations of the UN Human Rights Committee¹¹ are implemented:

The State party should take all measures necessary to ensure that all Covenant rights are given full effect in its domestic legal order, that domestic courts refer to them and interpret domestic law in the light of the Covenant and its interpretation by the Committee, and that specific and adequate training on the Covenant is provided to government officials, judges, prosecutors and lawyers, including by making the Covenant and the work of the Committee part of legal education.

The State party should establish, without undue delay, an independent national human rights institution with a mandate to protect the full range of human rights, which is fully compliant with the Paris Principles and which functions independently, transparently and effectively to promote and protect human rights.

The State party should also ensure that defendants are afforded all fair trial guarantees, including the presumption of innocence.

The Belarusian authorities should ensure that the following recommendations of the Committee against Torture¹² are implemented:

The State party should ensure, in law and in practice, that all detainees are afforded all the fundamental legal safeguards from the outset of their deprivation of liberty in accordance with

¹⁰ UN Commission on Human Rights, Addendum to the Report of the Special Rapporteur on the Independence of Judges and Lawyers: Report on the Mission to Belarus, 8 February 2001, E/CN.4/2001/65/Add.1, available at: <https://www.refworld.org/docid/45377abb0.html> [accessed 11 December 2020]

¹¹ Human Rights Committee. Concluding observations on the fifth periodic report of Belarus: <https://undocs.org/CCPR/C/BLR/CO/5>

¹² Committee against Torture. Concluding observations on the fifth periodic report of Belarus: <https://undocs.org/en/CAT/C/BLR/CO/5>

international standards, including the safeguards mentioned in paragraphs 13 and 14 of the Committee's general comment No. 2.

Ensure in practice that statements obtained by torture are declared inadmissible as evidence in any proceedings, except when invoked against a person accused of torture. The State party should ensure in its legislation that in any case in which a person alleges that a confession was obtained through torture, the proceedings are suspended until the claim has been thoroughly investigated.

Review cases in which defendants' claims of having been tortured to extract confessions were not investigated.

The Presidents of the Regional Courts (and Minsk City Court) and the qualification collegiums of judges should, accordingly, initiate and carry out disciplinary proceedings against judges who have violated legal requirements in the administration of justice.

The supervisory authorities should take measures to review all administrative cases considered in violation of constitutional guarantees.