



BELARUSIAN HUMAN RIGHTS MAGAZINE

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#4/5

RESPONSE OF INTERNATIONAL COMMUNITY TO EVENTS IN BELARUS

Anna HERASIMAVA:
“Sometimes statements/assessments by
international human rights organizations seem
not to have direct practical effect”

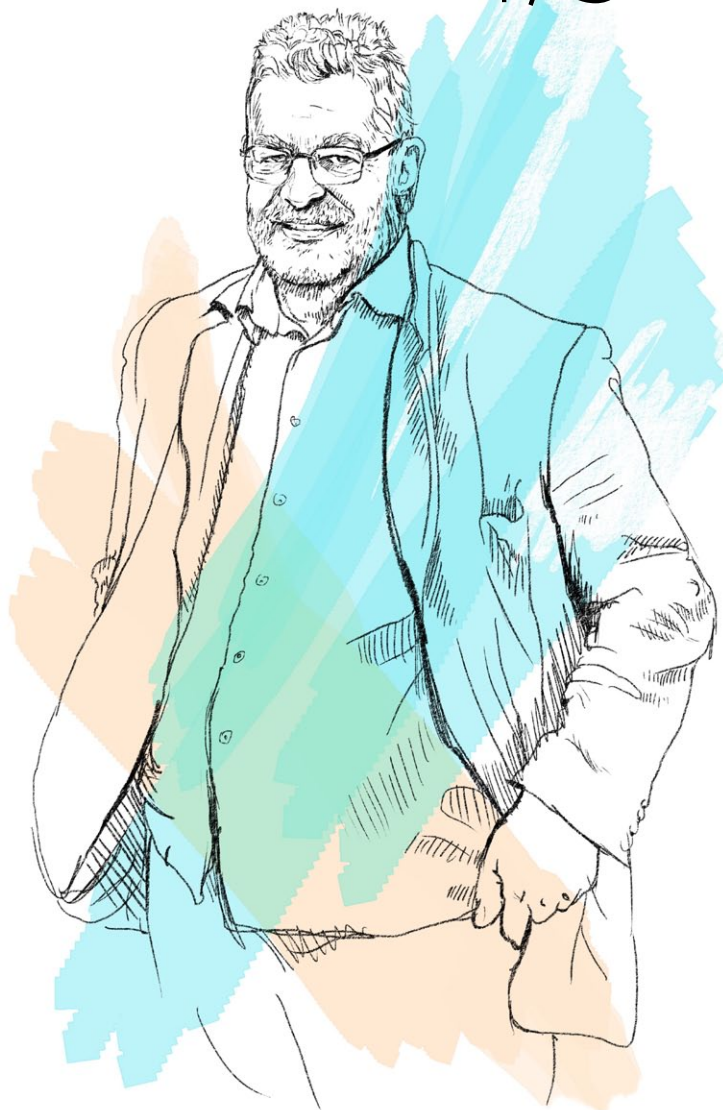
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whose professionalism we cannot doubt”

STANDARDS OF FAIR TRIAL: INDEPENDENCE OF JUDGES IN BELARUS

INTERVIEW with the judge Jan BERGMAN:
“We work according to the principle of freedom
under control...”



IN PROPRIA PERSONA *



Many people like dates, and so do I. Dates help to find one's bearings in time, show vividly the progress acceleration. In 1576 Jean Bauden proclaimed the idea of absolute sovereignty of states in their internal affairs. It took centuries to get the idea incorporated in international relations. The Modern concept of Human Rights is less than 70 years old. The thesis that human rights issues go beyond the interior affairs of a state is even younger. Observing human rights within a separate state is a common business of the international community. In 1975 in Helsinki the High Contracting Parties have turned the thesis into a regulatory principle of the international law. Yes, this norm is not always and not everywhere observed. The logic of compressing time makes me think that the results of the actions of those who consistently promote the principle will emerge sooner than it is expected.

Aliaxei KAZLIUK

Editors: Volha DAMARAD, Aliaxei KAZLIUK

Design and layout: Ihar KORZUN

Illustrations: Hanna KRUK

Translation: Tatsiana TSYULIA

Front cover: Gerd Greune (1949-2012) — civil activist of the European pacifist, antinuclear and human rights movements, director of IFIAS.

Authors of the issue:

Iryna DZESHAVITSYNA, human rights activist, expert of the Legal Transformation Center (Lawtrend) on international mechanisms of human rights defence.

Volha DAMARAD, jurist, expert in international law, international humanitarian and criminal laws, human rights law.

Experts of the issue:

Andrei YUROV — human rights defender, expert of the Council of Europe, honorary president of the Youth International Human Rights Movement, member of the Council on development of civil society and human rights under the auspices of the President of Russia, head of the International Observation Committee of the Committee of International Control in Belarus.

Jan BERGMAN — jurist, law teacher, judge of the Supreme Administrative Court of Baden-Württemberg land (Germany).

Hanna HERASIMAVA — head of the Belarusian Human Rights House in Vilnius.

Florian IRMINGER — head of the Geneva office of the Human Rights House.



* *in personal capacity*



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Volha DAMARAD: RESPONSE OF THE INTERNATIONAL COMMUNITY TO EVENTS IN BELARUS



International community at once condemned unanimously the events which happened on December 19 in Belarus. International organizations and bodies expressed solidarity and called on the world community to pay attention to the Belarusian situation. For instance, several days after December 19 a number of international organizations joined their initiatives and set up a Committee of International Control over the human rights situation in Belarus. Serious active attention is being paid even now, two years after the events.

As a rule, international organizations call on the Belarusian Government to cease violations of human rights, find those who are guilty of such violations and hold them accountable for that. Very often such initiatives only stay as statements. Nevertheless, it helps inform a large number of countries and draw their attention to particular violations. Lawtrend Monitor prepared a list of the most important (from our point of view) statements and actions of international organizations and bodies.

International governmental organisations and their bodies

The High Commissioner for Human Rights is the official responsible for human rights activities of the United Nations. The mandate of the HCHR includes: (a) promoting enjoyment of human rights; (b) stimulating and coordinating human rights activities throughout the UN system; (c) developing new standards in the sphere of human rights; (d) encouraging ratification



of international agreements in the sphere of human rights. Navanethem Pillay took up the post as the UN High Commissioner for Human Rights on 1 September 2008. Ms. Pillay has twice expressed her opinion on the human rights situation in Belarus. On February 21, 2011 the High Commissioner for Human Rights expressed her concern over the conviction of representatives of political opposition in Belarus and appealed to the authorities to stop human rights violation. On August 5, 2011 the HCHR made a statement on arrests of human rights defenders, which is a violation of international obligations taken by the Government of Belarus.

The Committee against Torture (CAT) is the UN supervisory body that monitors implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by its State parties. The Committee started its work on January 1, 1988, six months after the Convention was ratified. The committee's tasks include: (a) examine country reports of the states that ratified the Convention; (b) consider reports on violations of the human rights guaranteed by the Convention. The Committee consists of 10 independent experts based in Geneva. Belarus signed the Convention on December 19 1985. In 2002 an Optional Protocol to the Convention was adopted, which has not been signed by Belarus yet.

In 2011 the Belarusian issue was discussed within the periodic report at the 47th session of the Committee against Torture: the official report submitted by the state, as well as the alternative report of NGOs and human rights defenders were considered. In the Final Recommendations the Committee called on the Belarusian Government to provide access for the public (including the international one) to places of custody; and to let the Special Rapporteur on torture, on freedom of expression and the situation of human rights defenders visit the country. Besides, the Committee requested to urgently consider the High Commissioner's application for a country visit for a team of the Office of the High Commissioner on Human Rights.

The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment – the position of the Special Rapporteur was appointed by the Resolution of the UN Human Rights Committee in 1985. The mandate of the Rapporteur covers the following problematic issues: (a) transmitting appropriate cases to the Committee against Torture; (b) visiting problematic countries in order to collect first-hand information; (c) submitting annual reports on fulfilling the Convention provisions to the Human Rights Council and the General Assembly; (d) obtaining information on violations of the Convention provisions. In contrast to the Committee against Torture, the powers of the Special Rapporteur encompass not only member states of the Convention against Torture, but all UN member states, including observer states. The procedure of the Special Rapporteur against Torture has been applied in Belarus twice. In the first Report, the Special Rapporteur Juan Mendez expressed his negative assessment of arrests and improper treatment of protesters in October square; in the second Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, the Special Rapporteur Frank La Rue made a statement on increasing pressure on journalists and human rights defenders.

The Organization on Security and Cooperation in Europe (OSCE) is a transatlantic organization that deals with questions of security, supporting peace, democracy and stability in 56 countries of North America, Europe and Asia. The Warsaw-based Bureau on democratic institutions and human rights conducts work in the sphere of elections, democratic development, human rights, tolerance, non-discrimination, and the rule of law. It also holds Annual Human Dimension Implementation Meeting – the largest regular conference on human rights in the OSCE region.

The OSCE prepared two thorough reports on the events of December 19, 2010. One of them is the OSCE/ODIHR Election Observation Mission Final Report: it not only provides evaluation

* for discussion



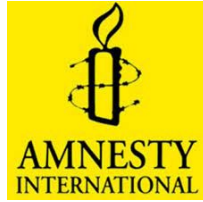
of the electoral process and the results of the presidential elections in Belarus, but also describes the events that took place after the elections, namely the dispersal of the peaceful protest action and the subsequent criminal cases on “mass riots”. The second report is the Monitoring of the trials in the Republic of Belarus (March –July 2011) dedicated to evaluation of the criminal cases related to December 19. The report contains the conclusion that the court proceedings under consideration did not comply with the international standards of fair trial, some shortcomings of the criminal legislation were detected, and recommendations were issued for the Belarusian Government.

The OSCE Moscow Mechanism is a method of work of the OSCE in human rights dimension. The Mechanism was started on the grounds of the CSCE Moscow document in 1991 for the development of the Moscow Mechanism. The Moscow Mechanism provides for the possibility to establish ad hoc missions of independent experts to assist in the resolution of a specific human dimension problem. The situations where the Mechanism can be applied: (a) on the initiative of participating state or other states; (b) by six participating states as a result of a discussion with a problematic state, with appointment of a Special Rapporteur; (c) by 10 participating states without preliminary discussion and appointment of the Special

Rapporteur; (d) by the Committee of the Senior Officials or the Permanent Council. The Moscow Mechanism has been used seven times: in Croatia and Bosnia-Herzegovina (1992); Estonia (1992); Moldova (1993); Serbia and Montenegro (1993); in the former Federal Republic of Yugoslavia (1999); in Turkmenistan (2002 – 2003); in Belarus (2011).

At the beginning of April, 15 participating states of the OSCE called on Belarus to cooperate with the international mission of experts within the Moscow Mechanism for investigation of the activities to suppress the demonstration after the presidential elections on December 19, 2010. The scheme was approved by all OSCE members except for Belarus. Nevertheless, the Moscow Mechanism was launched, and the professor of international law of the University of Paris Emmanuel Decaux was appointed Special Rapporteur within the Moscow Mechanism. The final report prepared by Mr. Decaux was presented on June 16, 2011 in Vienna at the meeting of the OSCE Permanent Council. The Belarusian Government refused to cooperate within the Moscow Mechanism and denied visa to the Special Rapporteur, so the report was based on interviews with participants, experts, witnesses of the events. The report indicated numerous violations of human rights, including the obligations taken on within the OSCE.





International nongovernmental organizations

The International Observation Mission of the Committee on International Control over the situation with human rights in Belarus has made several statements in relation to human rights violations in Belarus. To date, the Mission has published 14 statements, the latest one dedicated to the Release of ex-candidate for presidency Andrei Sannikau from prison (all statements can be found here). Besides, several analytical reviews have been prepared within the Observation Mission: they contained fact chronology of violations on specific problematic issues and their international legal analysis.

The Special Rapporteur on the events of December 19 in Belarus was appointed by the Committee on International Control over the situation with human rights in Belarus in order to get objective and impartial evaluation of the events on December 19, 2010 in Independence square. The international independent expert on freedom of assembly Neil Jarman was appointed Special Rapporteur. Under his governance, a Group of OSCE experts on Freedom of Assembly and Policing worked, headed by the professor of the Central European University Michael Hamilton.

Having studied video of the events, testimonies of observers and witnesses, statements of the officials, mass media coverage accessible for the public, and the materials of the criminal cases, the Special Rapporteur prepared two reports: the Interim Human Rights Assessment of the events on December 19, 2010 and the Final Assessment on the events on December 19, 2010 from the human rights aspect. The Final Assessment is a detailed report on the events on December 19 with an international legal assessment. The Special Rapporteur reached a conclusion that the Belarusian authorities many times violated the obligations within the International Covenant on Civil and Political Rights; besides, the Government justifies the police violent actions made on December 19, 2010, without investigating circumstances.



Human Rights Watch (HRW) is an international NGO which monitors, investigates and documents violations of human rights. HRW was founded in 1978 in response to human rights violations in Moscow, Prague and Warsaw. The HRW activities are legally based on internationally recognized documents on human rights. The main form of work is country reports for to draw attention of the international community to human rights violations in a particular country. In spring 2011 HRW paid a country visit to Belarus, summed up with a Report 'Shattering Hopes' Post-Election Crackdown in Belarus with enumeration of the most frequent human rights violations in Belarus and their assessment.

Amnesty International is an international NGO set up with the aim to prevent and cease human rights violations. The main directions of their work are the right to physical and psychological privacy, freedom of conscience and self-expression, freedom from discrimination. The organization was set up in 1961 in Great Britain. The activity of the organization was

marked by the Nobel Peace Prize. On September 13 Amnesty International made a statement regarding Belarus (Written statement submitted by Amnesty International, a non-governmental organization in special consultative status) in which voiced the most problematic questions: freedom of assembly and associations, tortures and degrading treatment, fair trial, presumption of innocence, obstacles in the work of lawyers, and capital punishment.

Human Rights House Network is an international network of local Human Rights Houses which at present unites 70 human defence organizations in 15 countries. The mandate of the Network includes strategic targets: supporting the work of human rights defenders, aiding to the work of local Human Rights Houses, encouraging freedom of assembly, association and expression. The Secretariat of the Network is situated in Oslo and Geneva. The Network makes regular statements within its mandate in relation to human rights violations in Belarus.



<http://lawtrend.org/monitor>

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Anna HERASIMAVA has 17 years of experience in human rights activities in Belarus. She worked at the Belarusian PEN Centre, as the Writers in Prison Program coordinator. The program was aimed at defending writers and journalists from persecution for their professional activities. In the following years, Ms. Gerasimova worked for the IREX Representative Office in Minsk, Belarus, first with the Internet Access and Training Program and then with the ProMedia program, aimed at the professional media development. In 2005-2008, she worked at the European Humanities University, a Belarusian university in exile in Vilnius (Lithuania). Since September 2008, Ms. Gerasimova has been working as director of the Belarusian Human Rights House in exile in Vilnius. The Human Rights House in Vilnius is a member of the international Human Rights House Network.



Expert opinion:

Sometimes statements/assessments by international human rights organizations seem not to have direct practical effect. For example, Belarus constantly ignores the decisions of the UN Human Rights Committee, including the calls to take interim protection measures (as was the case with the death sentences for several recent years), which is not allowed by practically all other countries, except for, maybe, the most odious political regimes. However, not everything is so one-valued. In 2011 the UN Human Rights Council adopted a resolution on Belarus which empowered the High Commissioner on Human Rights to make a report on the human rights situation in the country. The report and joint efforts of Belarusian and international human rights defenders resulted in one more resolution in July 2012, and in establishing the mandate of the Special Rapporteur on Belarus (which is a rare case in the UN system) who will carry out monitoring of human rights situation in the country

and provide the High Commissioner and the Council with timely information and support civil society in Belarus. Ideally, the role of the Special Rapporteur would be to help the authorities observe human rights; however in a situation when the authorities are unwilling to cooperate, the Special Rapporteur might communicate with the civil society representative and victims of repressions and be a direct channel of connection between them and the UN bodies. It is only one example of practical use of such actions. Very often the effect is indirect, as statements or other actions made by international human rights organizations influence Governments of other countries who listen up to such assessments and continue to pay serious attention to Belarus and exert pressure on Belarusian authorities. This pressure often brings – though partial, but still – results (for instance, release of a number of political prisoners).



Iryna DZESHAVITSYNA: SPECIAL RAPPOORTEUR – UN REACTION TO BELARUSIAN PROBLEMS



The UN Human Rights Council adopted the resolution A/HRC/RES/20/13 on the situation of human rights in Belarus at its 20th session on June 5, 2012. The key point of the resolution is the one providing for the Council to set up the mandate of the Special Rapporteur on Belarus.

Lawtrend Monitor is trying to find out, what made the organization undertake the actions, and what results might be expected out of this initiative.

Why and how the Special Rapporteur on Belarus was appointed

Appointing the Special Rapporteur has been the direct result of the Belarusian human rights defenders' activity. The necessity for the UN HRC to undertake definite and decisive measures was expressed at the local level. In consultation with the Belarusian civil society, mostly based on the information submitted by them, member states of the UN Human Rights Council made a decision to establish a country rapporteur.

After the human rights situation in Belarus deteriorated in the aftermath of the presidential elections on December 19, 2010, the question of establishing the Special Rapporteur's mandate on Belarus had already been raised once. It was on the unofficial agenda of the 17th session of the UN HRC in June 2011. However, then the Council, whose work is based on consensus principle, decided to use step-by-step method. The Special Rapporteur is the strongest instrument at the disposal of the HRC, that's why it is used in cases when all other human rights mechanisms of the UN do not work.

This had been the case with Belarus by June, 2012. At the June session in 2011 the resolution on human rights situation in Belarus 17/24 was adopted: it recommended that the thematic special procedures of the UN should pay special attention to Belarus, and that the UN High Commissioner for Human Rights should present oral and written reports on human rights in Belarus.

But these mechanisms did not work – firstly because of the unwillingness of the Belarusian authorities to cooperate with the UN human



rights mechanisms on civil and political rights: the situation in Belarus kept on deteriorating in 2011 – 2012, and the systematic character of human rights violations was registered in the report of the UN High Commissioner for Human Rights, presented at the 20th session of the HRC.

Besides, despite the fact that in 1945 our country was one of the founding states of the UN, Belarus is far from being an example of goodwill in cooperating with the United Nations. Cooperation of a state with the organization is assessed in terms of quality, not of quantity: the results achieved by a country are assessed, the implemented recommendations, the Government's reaction to constructive criticism, general attitude of the state officials to the UN human rights mechanisms and international human rights. The Republic of Belarus in its relations with the UN chooses a discriminatory method in human rights issues, voluntarily setting up limits for cooperation. Recommendation of the UN treaty bodies are declined and are not implemented; the Committee on Human Rights is not recognized as a body with which to appeal human rights violations, made by the state; special procedures are regarded by the officials as a politicized mechanism. Even the recommendations given within the procedure of the Universal Periodic Review in 2010, especially those related to civil and political rights, are not taken into consideration by the Belarusian Government.

Cooperation with human rights protecting mechanisms of the UN plays a special role for Belarusian citizens, since there are no any other available human rights defence mechanisms: Belarus is the only country in Europe that is not member of the Council of Europe which forms the regional system of human rights defence. Accordingly, the UN human rights mechanisms is the only possibility for the Belarusians to defend their rights at the international level. Besides, the office of the OSCE was closed in Minsk after criticizing the presidential elections on December 19, 2010.

Thus, bearing in mind the limited array of human rights instruments and the deteriorating human rights situation in Belarus, alongside with the Governments' unwillingness to cooperate with the UN human rights mechanisms on civil and

political rights, the Human Rights Council came to the conclusion on the necessity to establish the mandate of the country rapporteur. Despite the expected voices against the resolution – from Russia, Cuba, Ecuador, China, joined by India, – the resolution was adopted by 22 voices, with 20 abstentions.

It should be mentioned that the resolution was supported by states from different regions, which refutes the argument about the political nature of the document: except for European states, the countries that voted for the resolution were Botswana, Benin, Congo, Burkina Faso, the Philippines, Chile, Costa Rico, Peru, Jordan, Mauritius, the Maldives, the USA.

Many of the states that abstained – for example, Uruguay, Mexico – acknowledge that human rights are violated in Belarus and realize that the Council cannot stay inactive. At the same time, they did not support the idea of a country mandate, but did not offer an alternative efficient variant.

Lawtrend information note:

Special procedures is a general name for mechanisms of the Human Rights Council, designed to examine, observe, advise and inform society on human rights in separate countries (country mandates) or on violations of some rights in the world (thematic mandates). As of October 2012 there were 48 special procedures (12 country and 36 thematic ones). People appointed to implement the procedures are independent experts (mandates), and they can act as special rapporteurs, representatives, special representatives, independent experts or members of working group.



What for is the Special Rapporteur on Belarus

Within the mandate established by the Council, the Special Rapporteur can observe the human rights situation, prepare recommendations on how to improve it, facilitate fulfilling the recommendations of the High Commissioner's report, render assistance to the Belarusian Government to fulfil its human rights obligations, provide support and consultation to civil society, carry out research, obtaining and considering information from any parties involved in human rights issues, take reactions, prepare yearly reports to the Human Rights Council and the General Assembly.

The obvious advantage of the Special Rapporteur as a human rights instrument of the UN (unlike reports on violations presented in Geneva, and because Belarus does not invite for a visit either the technical mission of the Office of the UN High Commissioner for Human Rights or thematic special rapporteurs working with civil and political rights) is that a country special rapporteur has the right to transfer the process from Geneva to Belarus.

Even if the Special Rapporteur, like the predecessor in 2004 – 2007, does not get access to the country and the mandate is not recognized, he will have to work in one of the neighbouring countries (which is not a big problem, since work with the parties involved and victims of violations can be organized beyond the borders of the country), so the mandate will have some definite effect.

Human rights problems will stay in focus of the international community which will allow keeping on pressure on the Government of Belarus with the purpose to make the authorities observe its international human rights obligations. And besides the state authorities, there is also civil society in the country, human rights defenders, who are ready and open for cooperation with human rights protecting mechanisms of the UN.

Lawtrend information note:

Miklós HARASZTI appointed Special Rapporteur on Belarus



Miklós Haraszi was appointed the Special Rapporteur at the 21 session of the HRC in September 2012. In addition to the official UN criteria for the position – qualifications, relative experience, independence, impartiality, conscience, objectiveness – every mandate also includes some specific characteristics necessary for better performance. Mr. Haraszi speaks Russian, he is an expert on how the state system is designed and works, which is an essential factor, especially when the Belarusian authorities refuse to acknowledge and cooperate with the rapporteur.



Florian IRMINGER is the Head of the Human Rights House Foundation office in Geneva, head of the international advocacy of the Human Rights House Network, member and head of the Editorial Committee of the Constitutional Assembly of the Geneva canton of the Green Party of Switzerland (2008-2012).



Expert opinion:

Civil society has 3 main ways to use the mechanism of the country Special Rapporteur: submit allegation letters of human rights violations, provide information of the overall human rights situation in Belarus, and use the mandate holder for capacity building.

Although the State has no formal obligation to cooperate with special procedures, there is a moral obligation that comes from the fact that States have international human rights obligations derived from their international engagements, such as the ratification of ICCPR. Therefore, the Special Rapporteur's assessment shows the situation in the country. Lack of cooperation is a sign of unwillingness to implement public policies allowing to bring human rights to the country.

Cambodia and Burma are good examples of special rapporteurs which worked over time into a critical and constructive role.



Andrei YUROV: ABOUT THE COMMITTEE OF INTERNATIONAL CONTROL AND SOLIDARITY OF HUMAN RIGHTS DEFENDERS



Andrei Yurov is a human rights defender, philosopher and trainer. He is director of Strategic Programs of the Moscow Helsinki Group on education and network development, Honorary President of the International Youth Human Rights Movement, and an expert for the Council of Europe. He is a laureate of the Moscow Helsinki Group's award for the promotion of human rights among young people. Andrei Yurov is an expert in human rights education, advocacy and human rights defence. He has been the initiator of many human rights and civil society initiatives in Russia and neighbouring countries.

Ten days after the presidential elections in Belarus a coalition of international human rights organizations set up the Committee on International Control over the Human Rights Situation in Belarus. It was intended to become the main body on monitoring human rights, the situation of human rights defenders and organizations, and also to inform the world public about events in the country. Such international mechanism was not unique, similar initiatives had appeared in Iran, the Tibet and regional campaigns of the Amnesty International. Nevertheless, the Committee has become the only organization of the kind in post-soviet countries.

Several nongovernmental organizations (International Human Rights Movement, International Network of the Helsinki Citizens' Assembly, International Civil Initiative for OSCE, Moscow Helsinki Group, International Youth Human Rights Movement (YHRM)) initiated an open-ended coalition and formed the Observation Council of the CIC. Several dozen other organizations soon joined the initiative. Activities of the CIC pursued three major tasks: (a) continuing monitoring and control over the human rights situation; (b) informing Belarusian NGOs about the international reaction; (c) informing the international public; (d) developing recommendations for the Belarusian authorities and for international organizations on how to stabilize the situation in the country. The International Observation Mission (IOM) was set up within the Committee, with informational centers in Kyiv and Moscow.



LM: What is the Committee of International Control? What was the background for its foundation, and was the initiative successful?

AY: I don't know what to start with because there were many prerequisites, and pretty many-sided. What I mean? On the one hand, maybe if it was necessary not for Belarus, but for some distant post-soviet country, like Tajikistan, we would not do something of the kind there. An important factor here is an active cooperation of Ukrainian, Belarusian and Russian civil society organizations for the last ten or fifteen years. Moreover, it was not only some partnership or cooperation, it was often close friendship. It was very important for us to show that we not only react to some situation in some country, but we also stand up for our friends whom we have

The third precondition was that Belarus is in a good focus. It enjoys close attention of the international community since it is one of the last countries in Europe where the human rights situation is no good; it is the only country staying out of the Council of Europe. The country is located in Europe, which is really important. Not somewhere in Africa or long away in Asia. It is clear: it is a country with well-educated population, with common European values, with common European mentality. It seemed to us that Belarus is a unique country by many criteria where by common effort we could reach some positive changes in both the situation in the country and in attitude towards it.

And then one should clearly understand that the Committee on International Control is a coalition of many organizations, i.e. the Committee

“From the first day of the Committee’s work, the Mission has been the core which links the Committee with its organizations”

known for pretty long and whose professionalism we cannot doubt. It is important that we knew a sufficient number of highly professional human rights organizations. The question is not that we come to some new even place, we come to help someone who is already working hard, but at the moment turned up to be in extreme conditions. When a person does not care about oneself, because tragic events are unfolding in the country.

The second precondition is that there has long time been a group which tries to work in post-soviet countries at the international level. These people were thinking that our actions on some countries were not coordinated, were not systematic. At that moment it seemed to us that creating such coalition was a unique possibility to fully coordinate actions of the civil organizations involved, including – which is important – from the East and from the West towards one separate country.

is just a platform for talks and communication. The Committee has an opportunity to create new instruments. In some sense, it is a freedom to work, a freedom to act not only via the existing institutes, the OSCE and the UN in the first place.

LM: What instruments are being set up and used by the Committee for human rights advocacy?

AY: Naturally, the Committee has a lot of instruments, and perhaps up till now the main one, though not the brightest, has been the International Observation Mission of the Committee; I've been heading it up till now, although I am not able to visit the country in person. The Mission had several aims. The formal one was to observe the whole range of the fundamental human rights in Belarus. Particular attention was paid to three target groups which seemed to us to have been in need of special

* in my view



protection, since the groups perform public functions. Not for themselves, but for all. These are human rights defenders, journalists and independent lawyers.

Besides, one of the most important functions of the Mission was solidarity, direct aid to human rights defenders, including physical aid: attending trials, searches, arrests etc. In addition it is surely a kind of an informational channel. Often, especially at the beginning when Belarusian human rights defenders and journalists were up to some other things, we translated a lot of information and spread via our own channels. We have been trying to deliver information on some topics, events in Belarus to leading decision-makers, to European ones in the first place, and to the general public.

From the first day of the Committee's work, the Mission has been the core which links the Committee with its organizations. The very principle of forming the Committee is not to cause troubles to any Belarusian organizations: the Committee includes only international and foreign organizations. It does not mean that we do not consult our strategic partners in Belarus, but the Committee is independent in making decisions.

Lawtrend information note:

The International Observation Mission has been set up for a group of experts to be present in person in Belarusian cities, including Minsk, in order to collect facts about human rights violations and to monitor the situation. Its primary task was to register facts of violations, but then its mandate was extended to analysis of imprisonment conditions, assessment of facts of violence during the protest action, and other spot tasks. Three stages can be singled out in the work of the Mission: (1) constant presence (December 2010 – June 2011) during the toughest period when at least four people from the Mission were observing the events; (2) situational observation (June 2011 – June 2012) in a mode of duty visits of the Mission representatives to check the situation on the spot; (3) building up the community (July 2012 – present) preserving the work of the Mission with far-fetching perspectives, and building up a community of experts, analysts, participants and adherents of the Mission willing to keep on the work in Belarus.



Moreover, it may happen sometimes that an opinion of the Committee differs from opinions of some Belarusian civil society organizations. We think it is not a problem. Another thing is that the main principle of the Committee's and the Mission's work is the doctors' principle "don't do harm". That's why while making an urgent statement, we try to consult with our friends and partners. Here we do not want them to agree with our point of view, the main question here is: "Won't the statement do any harm to you?" They answer: "No, we don't quite agree with it, but it won't do us harm." Well, then we announce our statement. If they say: "No, sorry, it might inflict serious damage and lead to bad consequences", we listen to them, because we realize that it will influence in the first place the people who are working in the country. Disregarding what is happening to them, acting out of our personal reasons, doing harm to people, subjecting them to possible arrests or repressions against civil organizations – we cannot let it happen. That is why the filter of continuing consultations with Belarusian human rights defenders is very important. On the one hand, keeping independence in our guidelines, on the other hand constant consultations, mainly for "not do harm" principle.

LM: In some cases on mass disturbances on December 19, 2010 defence used materials of independent investigation of the events in the Square which had been prepared by international experts headed by Neil Jarman. Could you tell in details about this initiative?

AY: When it became obvious that the topic of December 19 was a separate, complicated and big issue, and the Mission alone wouldn't be able to hold a proper thorough expert investigation, we addressed the Committee with a suggestion of creating a separate position of the Special Rapporteur on December 19 events.

It is the second instrument. I remember well how the idea appeared, on December 30 or 31 of 2010, when we with colleagues were discussing that such a position had to be introduced, via

PACE or the EU. I said: "Yes, I agree with you. But I think we don't need any PACE or the EU; we can find some very important person within a month or two, a famous expert (which well can be done in the West) and invite the person as a Special Rapporteur from the Committee". Later some other instruments appeared, but this has been the brightest one.

Lawtrend information note:

In February 2011 the CIC made an official announcement about the launch of the position of the Special Rapporteur on the events of December 19, 2010 in Minsk and empowered it to hold an independent public investigation. The Special Rapporteur's mandate included two tasks:

- (1) analysis and assessment of the events on December 19, 2010 from the viewpoint of the international human rights standards;
- (2) assessment of proportionality and reasonability of how force was applied against the demonstrators by the law enforcement agencies.

The mandate was de-facto recognized by several inter-governmental structures, and the Special Rapporteur and members of his expert team were invited with a presentation of results of their work at the highest level – for PACE, the European Parliament and the UN Human Rights Council, and also official delegations of member states of the Permanent Council of the OSCE. Neil Jarman, head of the Council of experts of the OSCE/ODIHR on peaceful assembly, was chosen for the position of the Special Rapporteur (see Neil Jarman's interview in LM #2/3).



LM: What obstacles, both outer and inner, appeared in the Committee's work, and how did the organization respond to the challenges?

AY: There were lots of difficulties, but I would say they were not unexpected – they were all standard. All of them – including entry ban to all 17 people from the Mission – were all expected. We were even ready to harsher events. Meanwhile, we were occupied with absolutely lawful activities from the view of the UN Declaration on human rights defenders, and all leading international pacts and documents related to international concerns over human rights. This is the only topic which has been drawn out of the notion of the absolute sovereignty of states, and in this regard presence of any foreign human rights observer is justified. We even refused

Organizations within the Committee are all equal, although very different. There are small regional organizations, Ukrainian and Russian, which are still interested in personal presence in the Mission. On the other hand, there are huge international groups, like the Human Rights House Foundation, Moscow Helsinki Group, etc. These are huge networks represented in 20 or 30 countries. They are very different, that's why it is sometimes difficult to work together because of difference in the scale of thinking. But it was expected. Moreover, it was one of the main principles – to involve not only international, but also small regional organizations that had never been thinking beyond their region before. For example, the Memorial in the Russian Republic of Komi, or Luga or kharkiv organizations. They suddenly become important actors, even not on

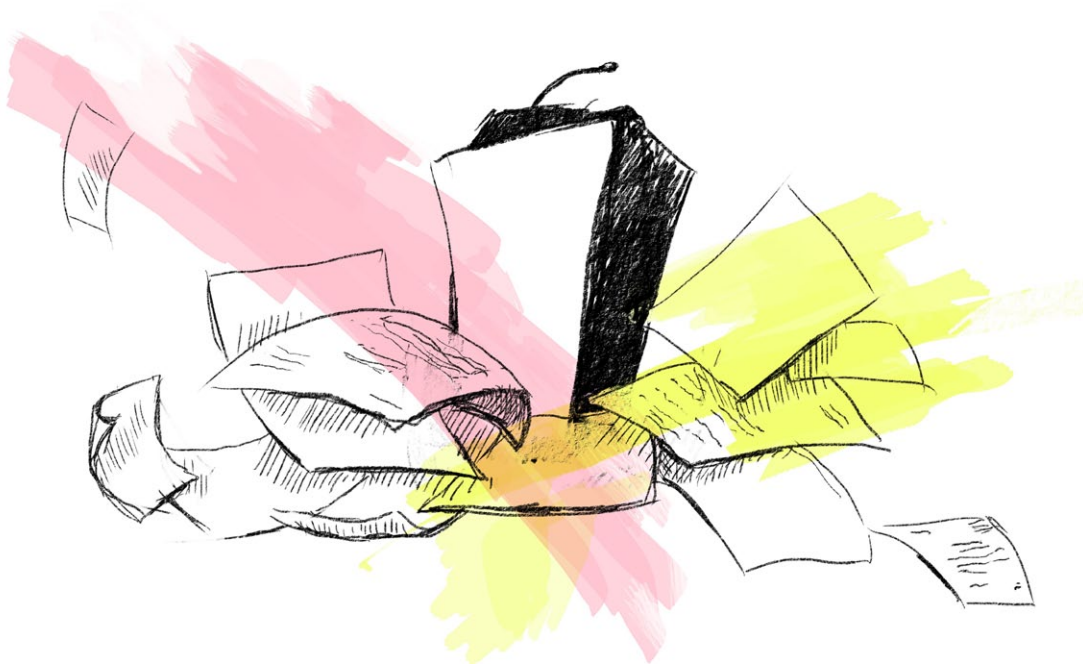
“One more principle of the Mission is not to substitute work of Belarusian professionals”

from observing one of the rights vested in the International Covenant and claimed that we would not observe the elections or assess them. It was a very important aspect, as election is a very dramatic issue, closely tied with politics. In order to keep distance from any politics, we claimed that we would deal with the whole range of fundamental human rights, except for the right to elect, the right to free expression of popular will. We did it in order not to irritate the authorities or other public forces, to be neutral, independent and not politicized as far as possible. Another reason for the decision was that there were many Belarusian organizations which were working with it very seriously and professionally. One more principle of the Mission is not to substitute work of Belarusian professionals. Why, if there are enough things made with expertise and high quality. The Mission does not have aims to make PR for itself, show how smart we are, take reports of the Belarusians, our own label, stick it up and distribute everywhere. The main purpose was to do what Belarusian organizations were not able to do, due to lack of forces, time, resources.

the national, but on the international level. It was a very interesting experiment – to broaden their horizons, and it was somewhat successful.

There has always been a problem with European bureaucrats (I use the word “bureaucrat” without negative connotation). It is clear that European officials are clever, clear etc. people. On the other hand, it takes long to set off for them, they have a complicated diplomatic language, long endless procedures, and to tell the truth, not really much influence on the situation in Belarus. We realize that many international structures have now lost their influence, and even the sharpest statements of authorities of many countries, not only of Belarus, cause lesser concern. In this regard we expected a positive effect if the number of international statements, the volume of the international response to the Belarusian situation were accumulated within a year or two, then the quantity would transform into quality. It still hasn't. It is not unexpected – we rather have a kind of sadness about this fact. Now I must state that there is no improvement in the Belarusian situation, except for the release of many political





prisoners. It is clear that it still takes place thanks to international pressure.

Civil society in Belarus is very discrete, and this is neither good nor bad – this is norm. It would be strange if all Belarusian organizations had one single opinion. It would mean then not a versatile Belarusian civil society, but some gang of like-mindedness. But this automatically means that in some issues you get “yes, do it” answer from one organization and “no, not in any case” from another one. And, of course, coordinating their standing takes some time. But if anyone says “no, don’t do”, it is a conditional veto, we start more serious talks, we need to get a deeper understanding of the view. One of our prior aims is to keep solidarity with everybody. We are talking now about human rights organizations, it is clear. We don’t consult with politicians. It is essential for us to keep constructive, kind, not only business,

but also friendly relations. It means that many things are to be coordinated much longer or more complicated, rather than if we were some international organization and coordinated with our own policy.

On the one hand, the Committee is independent of Belarusian organizations, they are not in the Committee; on the other hand, it is still dependent, like it should be between friends and partners. If you are a friend, you depend on your friend’s opinion, it is natural, you cannot be indifferent to it. I don’t see anything bad about this dependence; moreover, it is the only right type of dependence. All these obstacles do exist, but they are possible to cope with.



LM: How can you assess effectiveness of the CIC?

AY: The Committee and its separate organizations have done a lot, for example, to push forward the position of the UN Special Rapporteur on Belarus, in which we succeeded. We claimed from the offset that we would demand this: it was discussed at the very first sessions in 2011. In June 2011 at the meeting of the UN Human Rights Council we successfully lobbied the adoption of the resolution. Even then we talked that at the autumn session we would have to raise the question about the next step unless the authorities responded positively to the resolution.

It is hard for me to assess success: on one hand, it seems to me that we have reached several goals, but they are rather strategic ones, or I would say, of general systemic character; meanwhile, I feel that we have failed to reach serious targets within the country. I have dissatisfaction or disappointment in this regard. Again, I don't understand what we've failed to do, although many of us worked to overstrain absolutely for free for year and a half. Still, the result for the country is insignificant. On the other hand we often discuss it in post-soviet countries: what we as human right defenders have gained for ten years? This has got worse, that has got worse. But what if we ask it another way: what would have happened if there hadn't been such strong solidarity? Perhaps, the situation would have been much worse, we don't know it, either. We want to see a positive result, but we may also assume that our steps and the raised international concern have mitigated the situation.

Still I don't think that the situation now is much worse than two years ago. It is difficult to talk about success. We don't have the measurement: what would have happened if we hadn't done something. It is an essential moment; we in fact created fashion for solidarity, not for big organizations, like Amnesty International or Human Rights Watch which have always worked this way, but for smaller ones. There have been several missions – to Zhanaozen (Kazakhstan),



Kyrgyzstan, i.e. it has become a kind of new trend for human rights defenders in the CIS countries, and others. The trend will develop only if backed by other organizations — ecological, antifascist, civil, anticorruption.

And of course it is an experiment on using a series of techniques. I think our mission technique — studying the experience of the last 3 — 4 years — has been the most successful. When we set up the mission, we based on little experience of a small five-day international observation mission to Georgia in August 2008 after the armed conflict. It was a very important piece of experience of small international observatory that tried to put forward information to the public and set an example of such reaction and solidarity. We attempted to demonstrate a really human rights defending, very neutral, weighed and balanced approach. But for many of us it was a demonstration of human rights defenders' solidarity. Countries may quarrel, but human rights defenders of both Georgia and Russia will keep on being friends because we have one purpose — human rights defence, and the human — be it a Georgian, a Russian, a Belarusian or a Jew — stays all the same, equal to others.

The second important example is an initiative at the end of 2009 which is still at work — a consolidated mobile group in Chechnya. It has been created by the initiative of quite a big number of Russian organizations. The group mostly works with legal issues and public investigations. Naturally I took part in the Georgian mission and in the consolidated mobile group. It happened that I spent my New Year 2010 in the introductory mobile group in Grozny, and 2011 — in the international observation mission in Minsk. Two New Years at once in such working conditions. By the way, one more mission preceded in July — August 2010: it was a small mission to Osh after the horrible events on the south of Kyrgyzstan. It means the International Observation Mission and the CIC was the fourth initiative within four years.

LM: What methods of influence on the state or international governmental organizations are used by the CIC, and are these methods effective?

AY: We have several methods to influence international organizations. Clear that the main method, used almost by everyone, is direct pressure, petitions, appeals, etc. The problem is that sometimes even if international countries adopt decisions or resolutions, it practically changes nothing for the addressee country. It is a problem of insufficient influence. It is not clear what instruments are really effective in the modern world. I mean the existing instruments are of little effect, they work only in the countries where the authorities willingly observe the international law, acknowledging its importance. When the state refuses to observe it, the instruments are not effective. There are no mechanisms which are nonviolent — it is essential, — but stricter for to induce states to implement the obligations once taken on by themselves. We are not talking now about some additional issues — we are saying that state authorities must implement what they have promised to. If you don't want to — leave the UN, leave the international treaties. You are either a party to a treaty — and you observe it, or you don't observe it — then you leave it. The matter must be taken more seriously. That's why there has been an initiative to exclude several countries from the OSCE. Of course, it is a radical viewpoint, but we realize: (a) nobody would exclude them and (b) maybe it is not really useful, but the question must be raised so that other countries would set to think if they need to continue all this — all this senselessness and ruthlessness.

The second method is creating one's own institutes. We have a good experience, in my view, with the Special Rapporteur on December 19 events in Belarus. Now perhaps some more instruments will be made. We will surely try to launch the position of the special rapporteur on prisoners of conscience and political prisoners in Belarus. It must be a really respected neutral person, very famous in Europe who would be able



to act in all platforms, from Moscow to Brussels. It is essential that the person is not a political figure, so that even Belarusian authorities would take it as a serious legal institute who would raise the issue wider than the Amnesty. The issue is very serious about how to define the prisoner of conscience and the political prisoner. Perhaps we need to introduce a new terminology, more complex, with several gradations.

LM: Will the reputation of the special rapporteur be based on the personality and the reputation of the organizations that are part of the Committee of the International Control?

AY: And plus the person's approach to starting a serious discussion. Also, not in Belarus only, but in general concerning people who are in custody for political reasons. The question is whether the person will try to talk not only about the necessity to release political prisoners, but also about the necessity to introduce seriously human rights standards. Perhaps, the standards could be formed via some guidelines adopted by international institutes, such as the Parliamentary Assembly of the Council of Europe or the OSCE.

It is necessary to introduce human rights into a purely political topic. For instance, Mubarak, the toppled dictator – was he a political prisoner or not? Because when we become political, then political prisoners are only good, and those bad ones we claim criminals, fascists, dictators etc. These are not legal assessments, but swearwords. If we want to give up swearwords and start some legal actions, we must realize that political prisoners are different. It may be a former dictator, or a head of special services who took terrible political decisions, for which he is serving the term now. If we consider the Belarusian situation, it is clear here: everybody looks so white and fluffy, they must be set free. But the situation in many post-soviet countries is more complicated. And either we become fully aware and accept that the situation is complex and many-sided or we stay on at the level of an ordinary politician who sees everything black and white. But the right

is something different, as well as human rights is something different. And ordinary people not always understand this. We are either subject to emotions, revenge and other, or we want to keep human rights principles, even contradicting to public opinion. It is a difficult task. The Committee always sets such goals, for us Belarus is in such focus where we can see all the complex of the modern situation connected with human rights in a general sense, including political civil freedoms. It is a very serious issue that we raise at the example of Belarus, gradually advancing beyond.



Famous human rights defenders and civil activists give their view of the Committee in Lawtrend interviews and in the publication of our colleagues *“New tactics of human rights defence and civil actions: the Committee of International Control over the Situation with Human Rights in Belarus as an example of complex tactics of human rights defence in post-soviet countries”* (Voronezh, publishing house Artefact, 2012:

Yury Dzhibladze, *Center for the Development of Democracy and Human Rights (Russia)*

The Committee is the first large coalition in history that deals with human rights situation in one country where the leading role is played by non-governmental organizations of post-soviet states. Emergence of such coalition is a symbol of a new, nontypical actor, a sign of abandoning the actual monopoly of large international non-governmental organizations on which organizations of post-soviet countries depend. Such initiatives give rise to new dynamics in relations in international civil society.

Tatsiana Reviaka, *Belarusian human rights defender, president of the Belarusian Human Rights House (in exile)*

Setting up the Committee of International Control and organizing work of the International Observation Mission in Belarus is a great idea worth being developed for spreading the experience in other countries. Everybody knows about missions of international organizations which take much time and effort to prepare. But such prompt reaction of human rights defenders in the most urgent moment when we lacked time and people – this aid was invaluable. I consider such form of solidarity very effective.

Uladzimir Matskevich, *Belarusian methodologist, political scientist and philosopher*

This is one of few examples of effective work in actual conditions. It is hard to overestimate the work of the International Observation Mission. It was set up within several days while most structures were shocked and confused. This mission was first to submit documents on real violations during mass detentions and arrests. For several weeks the materials of the International

Observation Mission were the only source of information to work with.

Ales Bialiatski, *nominee of the Nobel Peace Prize, head of the human rights center Viasna*

Although the Mission does not have any mandate legitimate for Belarusian authorities, and it would be quite easy to take the representatives of the initiative out of the country, the authorities must put up with the fact that there are the mission representatives from the countries with which Belarus keeps diplomatic relations. Such aid is badly needed in critical moments. But the crisis period lingers on, and we will have to work further by ourselves. New challenges appear, and it is clear that the Mission won't be able to be present here all the time. Though, if our foreign colleagues find a possibility to keep on working here, we'll be only glad.

Danuta Przywara, *Helsinki Human Rights Foundation (Poland)*

The Committee is a good platform for experience exchange, initiated by international public actions in Belarus. At the start the Committee was taken mainly as a step of solidarity with the Belarusians, it was necessary “to shout loud” at the international level about the situation in Belarus. Now it is different, nevertheless it is essential that the Committee continue its work: it is well-known, and cessation of its work would mean a success for the authorities of Belarus, it would do harm to other initiatives.

Elena Tonkacheva, *Legal Transformation Center Lawtrend (Belarus)*

Setting up the Mission and the Committee of International Control just after December 19 the events are some of the few examples of good practices of the contemporary European human rights defence. It is important that real cooperation between the leading human rights groups of “old” and “new” Europe has been established. Besides, the processes were initiated by representatives of the latter group, i.e. human rights defenders from the CIS countries.



STANDARDS OF FAIR TRIAL: INDEPENDENCE OF JUDGES IN BELARUS



The Belarusian court is not independent – these are the conclusions of international experts made in 2000, which stay relevant up till present days. Belarusian human rights defenders share this opinion. Dependence of the judiciary on the executive power is conditioned by the imbalance of the branches of power vested in the amendments to the Constitution of 1996. The president and the executive bodies enjoy wide powers in appointing, dismissing judges, imposing disciplinary penalties, career promotion, material support of judges, which places the judiciary in the subordinate position and contradicts the principle of separation of powers.

Let's begin with the very basis. Article 124 of the Code on the Judicial System and Status of Judges provides grounds for forced termination of judges' mandate. These grounds include expiry date of the judge's mandate. It should be noted that under article 99 of the Code judges are appointed for five years' term, and can be reappointed, and also appointed for an undefined time span. Whereas the judge appointed for an undefined term can perform duties up to the age limit of 65 – provided work is done in a professional and diligent way, – the judge appointed for a five-year term might have an entirely different motivation.

Everyone who came across with the contract system in Belarus obviously sees the analogy, as the basic principle is common here: the employer fires the employee when the contract ends without explaining reasons (and the real reasons do not have to be connected with the professional qualities of the employee). So who is the employer for judges? Let's turn to the legislation. The president dismisses all judges and the chairperson of the Supreme Court, with a notification to the Council of the Republic.



AD DISPUTANDUM*

Article 84 of the Constitution also establishes the president's right to appoint judges in the court of law. At the same time the Constitution does not provide for the president's right to dismiss them. Nevertheless, article 124 of the Code on the Judiciary envisages that this is the president's decision to dismiss judges from their position. President also decides which of the judges deserves an undefined term, who deserves a five-year term, and who needs to look up for another job.

Let's get back to the judges with undefined term. Up till 65 years old, at least formally, they are secured from the presidential dismissal in five-year period because of term expiry. But at 65 some judges face with such definition of article 99 of the Code: "Judges in public position, included into the personnel register of the Head of the State of the Republic of Belarus, who have reached the age of 65 – the limiting age for being in public office – can stay in their position with their own consent according to the procedure, established by the President of the Republic of Belarus".

According to this very procedure, established by the president, the chairperson of the Supreme Court of Belarus Valentin Sukalo has stayed in public office, who has recently turned 70.

Of course, these are not all reasons and pretexts laid in the state structure of Belarus that prevent international experts and human rights defenders from viewing our judicial system as impartial and independent of the executive power. Several other, not obvious reasons connected with the procedure of nominating and appointing judges, with disciplinary responsibility, material guarantees and promotion have as much negative impact.

RECOMMENDATIONS OF THE OSCE ODIHR OBSERVATION MISSION RELATED TO INDEPENDENCE OF JUDGES IN BELARUS:

1. *To reform and improve the system of judicial self-governance with a view to freeing it from executive/Presidential decision-making on issues such as discipline or benefits and bonuses by establishing an independent judicial council for selection, promotion and disciplining of judges; in particular eliminate the power allowing the President to impose any disciplinary measure on any judge without instituting disciplinary proceedings;*

2. *To reform the judicial appointment system, eliminating the executive's role until the final stage; at a minimum institute a selection mechanism that gives the primary role to an authority independent of the executive and legislative powers within which a substantial number of those who sit are judges elected by their peers;*

3. *To refrain from the practice of temporary judicial appointments which may be prone to abuse and strengthen the lifetime tenure model for judges; allow public, transparent and directly accessible competition for recruitment of judicial vacancies rather than through court chairs and executive authorities; make all decisions on judicial appointments public;*

(Extracts from OSCE/ODIHR Report: Trial Monitoring in Belarus (March – July 2011), Warsaw, 10 November 2011)

www.osce.org/odihr/84873

* for discussion



Jan BERGMAN: WE WORK ACCORDING TO THE PRINCIPLE OF FREEDOM UNDER CONTROL



Lawtrend Monitor has had the honour to talk to Jan Bergman, the Judge of the Higher Administrative Court of state Baden-Württemberg. Mr. Bergman has a pretty interesting biography: he started his career path with being a judge of a Social Court (dealing with social security issues), later he came to be a judge in the Administrative Court of Stuttgart, a judge of the Federal Constitutional Court in Germany, then he worked in the apparatus of the Higher Administrative Court of state Baden-Württemberg, and at the moment, beside the judiciary work, does teaching at the politics department of the University of Stuttgart.

Lawtrend information note:

In many countries appeals against decisions and actions of authorities (officials, policemen) are considered by special administrative courts. Their task is to ensure that citizens are protected in their relations with state bodies and agencies.

This system is also actual in Germany. Article 92 of Grundgesetz (Constitution of the FRG) says: «The judicial power shall be vested in the judges; it shall be exercised by the Federal Constitutional Court, by the federal courts provided for in this Basic Law, and by the courts of the Länder».

Establishing federal courts is regulated by article 95. Article 97 says: «Judges shall be independent and subject only to the law».

The court system of the FRG includes subdivision of the judicial power into the constitutional justice and five separate branches, with respective supreme Federal courts at the top: the Federal Court of Justice, the Federal Administrative Court, the Federal Finance Court, the Federal Labour Court and the Federal Social Court. Some other specialized courts are established, like the Federal Patent Court or Military Criminal Court.

Let's see the system of administrative court in detail. They include: the Administrative court of lower instance – *Verwaltungsgericht*, the Superior Administrative courts of the state – *Verwaltungsgerichtshof*, and the Federal Administrative Court – *Bundesverwaltungsgericht*.



EXEMPLA DOCENT*

LM: Mr. Bergman, what is the role of the administrative court system in human rights advocacy, in your view?

Bergman: I'd say it is pretty big. In our system any decision made by the state can be appealed. For instance, it concerns the right to asylum, as well as decisions related to building of car roads or financing schools. In fact it means that the whole state falls under control with the help of administrative courts. This is why we often have cases of a great political importance that evoke wide public response.

For example, Stuttgart has recently been caught in a discussion over building a new railway station. Within the project of the reconstruction of the station it was necessary to completely rebuild the center of the city. Of course, such actions of the local authorities provoked dissatisfaction of citizens. In this regards, a lot of city-dwellers of Stuttgart filed a complaint to the administrative court in order to cancel this decision. The number of the complaints filed was so large that the authorities had to conduct an opinion poll among the public.

“violation of the principle of public trial is a sufficient reason to cancel the judgement”

Most cases that we work with do not attract great public interest and attention. However, 10% of them are quite resounding, so while dealing with such cases, we are all the time under control of the media.

LM: What does a judge need in order to make a just decision?

Bergman: In order to have a possibility to make a just decision, I need to master the specific of administrative cases. It is a special kind of

knowledge that not every judge has. That's why legal specialization is important. In order not to turn blind eye on life, a decision in the first instance court is made by five judges. Three of them are professional judges, and two of them are common citizens who still have the vote equal to those of the qualified judges.

LM: How often judges of German administrative courts in making a decision consult with provisions of the Constitution and international human rights agreements?

Bergman: It is hard to tell a definite number or assess the quality of such decisions. If I work with an ordinary case related to building, for instance, our law on construction will surely play the determinative role. Although in this situation a right to private property is considered, it does not play a significant role in ordinary sentences. The situation of political asylum cases is pretty different, and the law on human rights prevails here. On the one hand, as a judge I must check the right to get an asylum based on the provisions

of the general law. On the other hand, my decision to grant a political asylum must comply with the norms of the Convention Relating to the Status of Refugees. Besides, my decision must not contradict the law of the European Union. Thus, 100% of court decisions will be based upon the Constitution, as well as international human rights agreements. There are also such areas where international law is of great significance. These are all situations with a foreign component, for example, economic arguments or cases on getting an asylum.

* *examples teach*



LM: While exercising the right to fair trial, publicity of the process is important, when not only its participants, but any citizen must have the right to access judicial documents, court decisions in the first place. How is the right ensured in Germany?

Bergman: The right to a fair public trial is vested both in the German Constitution and in article 6 of the European Convention on Human Rights. It means that all judicial processes are public, except for those when the participants need special protection. For example, in cases that involve children, or connected with sex crimes. To make the process non-public, it is necessary to observe a special procedure. Meanwhile, any citizen can make objection to making the process non-public. It means that 99% of court processes are totally open for the public.

The schedule of all court hearings is available for any citizen, no matter whether they are open or closed. If there are not enough places in the court room for all people interested in the case, the list of those who will stay in the room is defined by casting ballots. If the number of people interested in the case is really large, the court administration must divide all places in the court room into halves — one for citizens and the other for the media. The process of casting ballots is simple: you tell that you want to attend the process, and then tables with names are drawn. And then it is a matter of fortune. In any case the sentence must be announced publicly. Besides, any citizen has the right to request for a written form of the court decision. To get the text, one needs to pay a certain fee for administrative work. At present the fee in state Baden-Württemberg is 13 euro. Decisions on cases of great public interest are published on the website of the court, to provide a possibility for anyone to get the decision free of charge. All Higher Courts of German states publish catalogues of court decisions in many

volumes. These collections are in all public libraries where you can make a copy of any sentence. At the same time, all demands on protection of personal data are observed. Copies of court decisions do not contain personal data — names, addresses, etc.

The European Court on Human Rights in Strasbourg takes the right to fair trial very seriously. In a process with a Russian Biryukov a decision was made that there should not be a secret justice. If a judge violates some laws related to publicity of a process — it might be just an accident. It's like when a court manager closes the door during a process when passing by. Anyway a process will set off which will be impossible to stop or prevent — a process of judicial mistake. And a violation of the principle of public trial is a sufficient reason to cancel the judgement.

LM: How is the question of mass media work in courts regulated?

Bergman: There are cases very important for the public. These are very loud processes where a huge number of the press tries to get in. As a journalist, you can attend any court proceeding. The court secretary must inform the media representatives that recording can be made only before the judge enters the room. After the proceedings start, recording is forbidden, but not because the court does not want to make it available for the public, but because audio, video and photo recording influence essentially the course of the proceedings. An exception is made for the Constitutional Court: all proceedings there can be recorded, which is stipulated by appropriate legal norms.



There is also a special profession in Germany – artists who make sketches in court room during hearings. They do it very well, in a very realistic way, in a form of cartoon strips. The sketches do not influence the course of the process, but a camera or a photo camera would.

We work according to the principle of freedom under control, i.e. it is not like a free freedom. But I think that you face with this phenomenon more often than we do.



Our friend and colleague Gerd Greune is gone

On August 24, 2012 a bright person dies, who was a civil activist of the international pacifist and human rights movements. Colleagues and friends from many countries will remember his sincerity and principality. He was always ready to offer help where it was badly needed. Gerd was one of those who inspired to publish the human right magazine.

We are proud to have known Gerd, to have worked with him.