

83rd Session of the Committee on the Rights of the Child

## Belarus

# ALTERNATIVE REPORT by coalition of Belarusian NGOs on implementation of the Convention on the Rights of the Child in the Republic of Belarus



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## Introduction

This report has been prepared in connection with the consideration by the Committee on the Rights of the Child of the combined fifth and sixth periodic reports of the Republic of Belarus on the fulfillment of obligations under the Convention on the Rights of the Child.

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The report was prepared in partnership with the Helsinki Foundation for Human Rights (Warsaw, Poland), which has a consultative status within the United Nations Economic and Social Council (ECOSOC) [hfhr@hfhr.pl](mailto:hfhr@hfhr.pl), <http://www.hfhr.pl/en/foundation/>

The report provides information on certain issues of the implementation by the Republic of Belarus of the rights of the child. The authoring organizations proposed recommendations in each section, the implementation of which will contribute to the implementation of the provisions of the Convention on the Rights of the Child and the improvement of the situation of children in Belarus.

The report is prepared in accordance with the Reporting Process Guide prepared by Child Rights Connect.

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## **I. General measures of the Convention's implementation.**

### **Cooperation with civil society**

1. The Republic of Belarus takes a number of measures aimed at implementing the provisions of the Convention on the Rights of the Child and pays great attention to ensuring child rights in the country. This is evidenced by:
  - integration of the agenda of children's rights in the Interdepartmental Plan for the implementation of the recommendations adopted by the Republic of Belarus following the second cycle of the universal periodic review of the United Nations Human Rights Council, and the recommendations addressed to the Republic of Belarus by human rights treaty bodies for 2016 - 2019 (National Human Rights Plan);
  - adoption of National Plan for the Improvement of the Situation of Children and the Protection of their Rights (National Plan on the Rights of the Child) for 2017–2021, as well as other State programs aimed at ensuring individual rights of the child.
2. Nevertheless, since the State's last reporting to the Committee on the Rights of the Child, certain problems still remain in legislation and practice that require particular attention of the government and greater efforts for full and proper implementation of the obligations set forth in the Convention on the Rights of the Child.
3. Thus, the National Plan for the Rights of the Child was adopted without extensive consultation with civil society, in particular with organizations working exclusively in the field of children's rights. This plan does not include quality indicators for assessing the effectiveness of its activities. The reports on plan performance are not being published.
4. Despite the recommendations of the Committee on the Rights of the Child addressed to the Republic of Belarus following the consideration of the third and fourth joined periodic report (CRC/C/BLR/3-4) on accelerating the process of converting presidential decrees into laws to be approved by parliament in order to ensure greater stability in promotion and protection of children's rights, the realization of children's rights in Belarus continues in some aspects to be regulated by presidential decrees, particularly Decree No. 18 of 24 November, 2006 "On Additional Measures for the State protection of children in dysfunctional families".
5. Belarus still lacks a transparent and reliable system for monitoring and assessment of the situation of children, as well as an independent national body for monitoring and assessing the implementation of the Convention and its Optional Protocols.
6. There is a lack of effective and broad interaction with civil society in discussing the amendments to legislation concerning the situation of children. Thus, the discussion of amendments to the Education Code, which is a fundamental legal act regulating the education sphere, is not held open to experts and representatives of NGOs. There also have been no public hearings of the Code amendments. In fact, civil society is prevented from participating in this process. The Code has been undergoing the update process for three years, and the current version of the draft law is not accessible to experts and representatives of NGOs.

### *Recommendations:*

- actively cooperate with civil society in pursuit of the Convention's provisions, including in the development and implementation of activities set forth in the National Plan for the Rights of the Child and other plans and State programs in the field of children's rights;
- in collaboration with civil society, develop an effective monitoring and assessment system for the situation of children, as well as create an independent national body for monitoring and assessing the implementation of the Convention and its Optional Protocols;
- adopt a practice of broad public consultations with experts and representatives of civil society when working on draft laws and amendments to legislative acts addressing the situation of children and human rights in general; make relevant draft laws available to the public;
- engage the representatives of a wide range of NGOs in the discussion and introduction of amendments to the Education Code.

### **Allocation of resources**

7. Funds to educational institutions are allocated from the republican budget and are additionally supported by local budgets. The Ministry of Education provides only methodological guidance. The amount of funding is determined by the number of teaching and administrative staff and only indirectly by the demographic parameters of students (for example, the number of students for rural schools). Funding of nutrition in school canteens depends on the overall number of children and number of children entitled to benefits (for example, children from households with many children).
8. Thus, in the current model of financing of educational system in Belarus, resources are allocated primary on the grounds of number of teaching and administrative staff in educational institutions, their work-hours. This model of funding does not fully respond to the needs of students, their quantity and specificities. Funds allocation is irrespective of quality of educational services and their outcomes. There are no economic stimuli for educational institutions to implement inclusive practices.
9. In fact, general education institutions provide limited support to children with special needs due to the lack of staff training and poor material and technical capacity. It qualitative education of children with disabilities and special needs. As a result, children are forced to attend special institutions (centers of correctional developmental education and rehabilitation) or to switch to home schooling.
10. In practice inclusion is replaced with mere integration – children with special needs attend general education institutions and physically share the environment with other children, but they are excluded from joint educational process. While inclusion means full participation of a child, in first place, in general educational process.
11. Thus, existing in Belarus model of funding of educational system does not promote inclusion, instead it:
  - a. demonstrates features of a segregative model and, in fact, supports the existence of a special education model by the structure of its expenditures;

- b. demotivates general schools to admit children with special needs;
- c. does not stimulate additional training of teachers to work with special children;
- d. does not stimulate the improvement of the quality of educational services, there is no monitoring or sanctions for poor performance;
- e. at the same time does not prohibit or limit the implementation of inclusive measures at a legislative level;

*Recommendations:*

- revision of funds allocation in educational system, including increase in wages and allowances for implementation of inclusive processes.
- provide recourses for training and re-training of specialists working with children with special needs.

### **Equality and non-discrimination**

12. The lack of comprehensive anti-discrimination legislation remains one of the reasons why many vulnerable groups, including children, are unable to fully exercise the rights by international human rights treaties, including the Convention on the Rights of the Child.
13. The government has not yet adopted a program for social integration of the Roma population providing for measures to facilitate training, employment, etc. for the Roma population, as well as measures to overcome the existing society's negative attitudes and stereotypes towards them.
14. According to the monitoring materials "Socio-economic situation of the Roma population of Belarus" (2019), in which 200 families with children, 375 children aged 7-14 years living in 7 localities were surveyed, the vast majority of families with children (85%) lived below the national poverty line, 6% were identified as in a socially dangerous position<sup>1</sup>. Nevertheless, the authorities have not taken significant measures to improve their social status and facilitate their integration into society.
15. About 5% of Roma adolescents have faced ethnic profiling by internal affairs personnel and arbitrary detentions in which their parents have not been informed about the detentions<sup>2</sup>. Legal acts have been adopted and applied within the Ministry of Internal Affairs providing for restrictions of the rights of the Roma population, for example, the order of the Internal Affairs Directorate of the Brest Regional Executive Committee No. 44 of 12/01/2016 "On Intensifying Work with Roma People" including forced finger-

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<sup>1</sup> Social and economic situation of the Roma population in Belarus, 2019: [http://romaintegration.by/?page\\_id=7](http://romaintegration.by/?page_id=7)

<sup>2</sup> Social and economic situation of the Roma population in Belarus, 2019: [http://romaintegration.by/?page\\_id=7](http://romaintegration.by/?page_id=7)

printing, photo- and video-accounting. The Belarusian Helsinki Committee has requested the Ministry of Internal Affairs to cancel this act, but there has currently been no information about its cancellation.

16. Children with HIV are denied the opportunity to engage in most sport activities (with the exception of some). Some of the sports that a child with HIV can engage in include drafts and chess, aircraft modeling, car modeling, billiards, bowling, golf, gorodki, darts, e-sports, dog training, radio sports, rocket modeling, fishing, official dog breeding, sports bridge, sports poker, ship modeling. This prohibition also applies to children on antiretroviral therapy who have normal immunity and no detectable viral load in the blood.
17. Children with HIV may be denied treatment in sanatoria, children's camps, or rehabilitation abroad.
18. HIV-exposure is mentioned even after deregistration (confirmation of the absence of HIV-transmission from mother to child) in outpatient cards, extracts and certificates of children born to HIV-positive mothers, a record of HIV-exposure is stored even after deregistration (confirmation of the absence of HIV-transmission from mother to child). Throughout the observation period in the children's clinic, the outpatient card, extracts and certificates contain information about the HIV-exposure. This reveals the mother's HIV-status, and also sets the stage for stigmatization of children when presenting certificates and extract.

*Recommendations:*

- adopt comprehensive anti-discrimination legislation aimed at creating effective tools to protect the rights of vulnerable groups;
- conduct a full audit of legislation and departmental acts with regard to the existence of discriminatory provisions with respect to children and take measures to exclude them;
- take positive measures for children from vulnerable groups, in particular, adopt a program for social integration of Roma in all spheres of public life, including the education of Roma children.

**Best interests of the child**

19. The general principle of the best interests of the child, set out in Article 3 of the Convention, is not incorporated into domestic legislation. National legislation operates with the concept "legitimate interests of the child". However, this concept does not fully comply with the principle of the Convention, since legitimate interests (that is, stated in legal acts) do not always represent best interests of the child. Moreover, there are no criteria for determining legitimate interests, which leads to abuses in practice. As a result, the child is not perceived as a subject of rights and interests, but is considered as an object of social protection by the state. Implementation of norms in interests of the child does not necessarily lead to rights' violation. For example, if court, in line with the interests of the child, increases the share of joint property of one of the parents in divorce pro-

ceedings (in accordance with article 24 of the Marriage and Family Code). Thus, the concept “legitimate interests”, used in national law instead of principle of “the best interests of the child”, represents a highly narrow interpretation of fundamental principle of the Convention, being limited to the respect for “interests” rather than guaranteeing the rights of the child. It is also illustrated by low reference to the principle of the best interests of the child by officials and judges, and by general interpretations of the Convention provisions in national courts.

20. There is no comprehensive and independent monitoring of children's rights in Belarus. The institution of Ombudsperson for Children has not yet been established. The National Commission on the Rights of the Child, existing in Belarus, is not an autonomous body, but a part of public administration. Moreover, its activity is merely formal in nature (for example, citizens are received only once a month; reports on activities are not published). It does not fulfill the function of coordinating and monitoring of children's rights at national and local levels.

*Recommendations:*

- establish an independent institution of Ombudsperson for children;
- introduce into domestic legislation the concept of “best interests of the child” as having predominant importance in all matters affecting children’s rights, in accordance with the Convention;
- develop and adopt compulsory training programs for public officials, including judges, law enforcement officers and prosecutors, educational workers and staff of other government bodies, on practical implementation of principle of “best interests of the child” and on child-friendly approach in the exercise of their duties.

## **II. Civil and political rights**

### **Right to life**

21. It should be noted the indisputable achievements of Belarus in reducing child mortality. According to the office of the UN Resident Coordinator in Belarus, Belarus is among the countries with the lowest levels of maternal, infant and child mortality in the region. The infant mortality rate (per 1,000 live births) in Belarus decreased from 5 in 2008 to 2.6 in 2018. The infant mortality rate for children under 5 years of age (per 1,000 live births) in Belarus decreased from 6.6 in 2008 to 3.4 in 2018<sup>3</sup>.

22. Nevertheless, the State has made insufficient efforts to treat children with various forms of neuromuscular diseases, in particular, spinal muscular atrophy (SMA). In Belarus there are no special support programs a treatment protocols for children with various forms of neuromuscular diseases, there are no treatment options available for these diseases, nor replacement therapy. Timely medical care and observation has not been adequately organized for children with SMA.

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<sup>3</sup> <https://un.by/novosti-oon/v-belarusi/4892-poseshchenie-zamestitelem-generalnogo-sekretarya-oon-direktorom-ispolnitel-fonda-oon-v-oblasti-narodonaseleniya-gu-rnpts-mat-i-ditya-2>

23. As a result of numerous requests from parents of children with neuromuscular diseases, the Ministry of Health has established the Republican Center for Hereditary Neuromuscular Diseases based on the Minsk City Center for Medical Rehabilitation of Children with Psycho-Neurological Diseases in February 2019. However, the establishment of such center does not address the problem of lacking adequate treatment for such diseases.
24. The State budget does not allocate funding for programs and protocols providing necessary and adequate care and treatment for the diseases mentioned above. There is also a lack of relevant professionals in this field, effective rehabilitation (habilitation) methods, and of material and technical basis to ensure acceptable quality of life for children with such diseases.
25. In Belarus, the Republican Clinical Center for Palliative Care for Children performs symptomatic treatment. However, these services mostly come down to alleviating suffering, but not treating the causes of the disease. The only approved drug used (Spinraza) remains unregistered in Belarus.
26. Despite the lack of necessary specialists in spinal muscular atrophy and other forms of muscular dystrophy in Belarus, State bodies deny medical referrals for child treatment abroad citing “inexpediency”<sup>4</sup>. Nevertheless, the Law on Healthcare provides for the option of sending children for treatment abroad in the lack of appropriate conditions in the Republic of Belarus.
27. Children with the above diseases are not provided fully and adequately with high-quality means of rehabilitation, expendables, and appropriate specialized nutrition. The parents have to seek funds for relevant means of rehabilitation on their own. The State does not provide appropriate compensation for these costs.

*Recommendations:*

- take all possible measures for ensuring the right to life and health to children with various forms of neuromuscular diseases, particularly spinal muscular atrophy (SMA), among other things;
- provide all possible assistance to parents in taking care of such children, as well as take all measures to ensure access in Belarus to effective medicines used in other countries.

### **Freedom of Peaceful Assembly and Freedom of Expression**

28. The right to peaceful assembly in Belarus is severely and disproportionately restricted, both by national legislation and its practical application. The issue has traditionally raised concerns of national and international human rights organizations. Any peaceful assembly requires authorities’ authorization or approval of the notification, as well as payment for police services, medical care and cleaning of the assembly venue. Peaceful assembly can be organized only by adult citizens of the country. Due to those facts it’s

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<sup>4</sup> Vera & Varya Case: <https://imenamag.by/posts/vera-and-varya>

almost impossible for children and adolescents to exercise their right to freedom of expression and assembly.

29. Dissemination of information on civil and political rights of children is limited, for example, children's legal website <http://mir.pravo.by/> contains neither information on the right to freedom of assembly nor any practical recommendations. The text of the Law on Mass Events in the Republic of Belarus is not available free of charge<sup>5</sup>.

*On Oct. 16, 2018, Arseny Dedok, a minor activist of an opposition political party, participated in a peaceful assembly against hazing<sup>6</sup> (dedovshchina) in the Belarusian army. The picket was stopped by law enforcement officers almost immediately after it started, and its participants were detained till the trial. Arseny Dedok, as a minor, was released on the same day, and 2 more participants were fined the day after<sup>7</sup>.*

*15-year-old activist of an opposition youth organization "Young front" Illarion Trusov is an active participant in the protests in the Kurapaty forest near Minsk (the site of mass executions in the 1930s). On July 3, 2019 and Nov. 03, 2019 he was detained by law enforcement officers, who used force, together with other protesters for participating in a peaceful assembly. I. Trusov and his mother (as his legal representative) are constantly persecuted for exercising their right to freedom of expression, i.a. drawn up protocols on an administrative offense, threats of forced placement in a specialized educational institution of a closed type.*

*Recommendations:*

- bring legislation on peaceful assembly in line with international treaties of the Republic of Belarus;
- eliminate unreasonable restrictions on children's rights to peaceful assembly.

### **Right to freedom of thought, conscience and religion**

30. There are cases when state bodies ignored the right to choose a religion by minors. When parents complained that their minor children (they were several months old until adulthood) were attending events of religious organizations of a religion other than the one to which they themselves belong without their consent, state authorities considered that in such situations illegal involvement of minors in the activities of religious organizations, and conducted discussions with representatives of such organizations about the inadmissibility of a violation of the law.

31. Belarus establishes restrictions on freedom of religion, by virtue of which many religious organizations cannot register, or because of their beliefs refuse state registration, which may entail the application of measures of administrative responsibility under Article 23.88 of the Administrative Code of the Republic of Belarus (until July 18, 2019 - criminal under Article 193-1 of the Criminal Code of the Republic of Belarus), they do not have accessible places of worship (complicated procedures for allocating land for religious

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<sup>5</sup> <http://etalonline.by/document/?regnum=H19700114>

<sup>6</sup> An informal hierarchical system in the army, based on psychological and physical coercion

<sup>7</sup> <http://spring96.org/ru/news/91127>

buildings or the inaccessibility of acquiring their own, restrictions on holding religious events in non-worship rooms). In such circumstances, religious organizations cannot fully ensure the satisfaction of the religious needs of believers, both adults and children, in particular, by creating opportunities for religious education, ensuring the right of parents to raise their children in accordance with their own attitude to religion (Article 5 of the Law of the Republic of Belarus “On freedom of conscience and religious organizations”).

32. Until now the practice of government bodies requesting lists of children attending Sunday schools from religious organizations still exists. The purposes and grounds for collecting such information are unknown.
33. The state has created a legal mechanism for the interaction of educational institutions with religious organizations in the education of students, in the framework of which such interaction is carried out only by organizations that are part of a religious association that has concluded an agreement with the Ministry of Education. Such an agreement is concluded only with the Belarusian Orthodox Church. This means that educational institutions cannot invite representatives of religious organizations of other faiths and denominations to conduct educational events, even if the students themselves or their parents, legal representatives wish.

*Recommendations:*

- align the legislation on freedom of conscience and religious organizations with international treaties and standards of this law;
- create equal conditions for interaction of educational institutions and religious organizations of various faiths in matters of education to meet the needs of students and their parents and legal representatives;
- include issues of international standards of freedom of thought, conscience and religion in the system of training and advanced training of employees of state bodies.

### **III. Violence against children**

34. Authorities do not ban all forms of corporal punishment at home/school and other institutions. Physical coercion of children is still considered an acceptable parenting method. Public discourse describes corporal punishment of children as acceptable. In the absence of effective protection mechanisms, children find themselves in an extremely vulnerable situation. Children's right to physical integrity and to be protected from violence by the state are virtually ignored.

*A great public outcry was caused by an incident in one of Gomel schools, where on September 12, 2019, a teacher shouted at a fourth-grade student, using obscene expressions, and used physical coercion. Classmates filmed those events and the video was downloaded on the regional portal "Hard news" (Silnyje novosti)<sup>8</sup>. The incident, due to its exceptional nature both in*

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<sup>8</sup> <https://www.youtube.com/watch?v=YPGMutfLjWE&feature=youtu.be>

*case of the school and the entire Belarusian education system, resulted in a number of actions undertaken by educational authorities: a Commission from the Regional Executive Committee visited the school, an emergency meeting with parents was held, the teacher was fired. On September 19, the President spoke in support of the teacher<sup>9</sup>, as a result the teacher was reinstated, and the Director of the school was forced to resign.*

35. According to the National study evaluating violence against children in the Republic of Belarus, about 50.1% of parents use physical or psychological violence, when raising children, i.e. 29.2% used corporal punishment, and 44.5% used psychological disciplinary methods; the study also revealed high level of tolerance to violence against children in case of various experts, as well as problems with timely detection and response to cases of violence against children<sup>10</sup>.
36. There is no official information on measures aimed at improving the legal framework for the protection of children from domestic violence. On October 5, 2018, the President of Belarus severely criticized the draft of the law<sup>11</sup>, prohibiting the use of all forms of violence, including violence against children, and consequently the bill was put on hold. Civil society does not have up-to-date information about the bill's fate, and no official statements have been made as yet. Public consultations on the bill are also non-existent.
37. Non-government organizations have credible information on the use of torture and other cruel or degrading forms of punishment or treatment against juvenile prisoners, convicted under article 328 of the Criminal Code (illicit trafficking in narcotic drugs).
38. The closed nature of correctional facilities, the lack of a national preventive mechanism against torture, lack of effective NGO's monitoring in places of detention, the lack of direct legal prohibition of torture create conditions for possible violations by employees of correctional facilities, as well as law enforcement officers. Such conditions make juvenile prisoners a particularly vulnerable group, completely unprotected from various forms of cruel or degrading treatment or punishment.

*Recommendations:*

- publicly and unequivocally condemn at the highest level any acts of violence against children, sending a clear message to society that such acts are unacceptable;

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<sup>9</sup> The president during a meeting on economic issues stated the following: "you have gone, arranged wrangles, gathered civil servants from top to bottom ... decided to punish this poor teacher. If I were this teacher, I would have twist the neck of this puppy (he meant the 4th-grade student): <https://news.tut.by/society/654144.html>

<sup>10</sup> <https://www.unicef.by/uploads/models/2018/04/unicef-belarus-vac-report-2018.pdf>

<sup>11</sup> In this public speech, the president allowed for the use of physical violence against children as a method of education: "Victor, as a senior son, was often punished by me. The middle one, Dima, saw how Victor was punished, and stood with a steady position nearby. I never punished the youngest, he is fifteen, he didn't deserve it. "The head of state noted here that" And not a slap, but a good belt is also sometimes useful for a child ... ":

<https://www.belta.by/president/view/lukashenko-zhestko-raskritikoval-zakonoproekt-o-protivodejstvii-do-mashnemu-nasiliju-320484-2018/>

- implement the recommendations of the UN Committee against torture, as well as introduce additional measures to ensure effective civic control in institutions where juvenile prisoners are imprisoned;
- establish a working group for drafting a Law on combating domestic violence, including representatives of the competent authorities and a wide range of civil society organizations;
- hold broad public consultations on the draft of the Law on combating domestic violence, involving all interested stakeholders;
- include into the above mentioned Law provisions, introducing the principle of "best interests of the child" and respect for the rights of children as one of the most vulnerable groups;
- adopt a comprehensive Law on combating domestic violence, providing for both preventive measures and measures for effective investigation of violence cases and the consequent punishment;
- introduce into criminal law provisions that hold domestic violence offenders accountable, entitle public prosecutors to bring charge, and exclude such options as mediation and reconciliation with the offender;
- actively disseminate information (leaflets, posters in educational institutions, other relevant organizations) among children/adolescents in order to improve legal literacy and prevent cover-up of violence incidents;
- ensure provision of free, anonymous psychological services to children-victims of domestic violence.

## **IV. Family environment and alternative care**

### **Children deprived of family environment**

39. Presidential Decree No. 18 'On Additional Measures for the State Protection of Children in Vulnerable Families' continues to be applied despite reports from different regions of Belarus on formal character of decisions on non-judicial removal of children by local authorities. Decisions on the removal of children were often rendered on formal grounds that are set out too broadly in paragraph 1 of Decree No. 18. For example, children should be protected and placed under state support if it is established that parents "otherwise improperly fulfill their responsibilities for upbringing and support of children."
40. A matter of concern is the practice of placing children removed from families in accordance with Decree No. 18 in children's social and pedagogical centers (shelters). It is a common practice to temporarily place children in shelters or hospitals rather than foster families.
41. The Decree has not been transformed into a law containing all the necessary guarantees prescribing non-separation of children from their parents unless such a separation is necessary to ensure the best interests of the child.

42. Removal of children from families can be used as a mechanism of manipulation by the state within the legislation in effect. The legislation allows for situations that are potentially socially dangerous to be interpreted in ways contrary to the spirit of 'the best interests of the child'.
43. Ambiguity of the wording of legislation regulating the criteria for giving a family a status 'at social risk' allows abuse of a number of situations. The signs of vulnerability of family include, for example, "prolonged unemployment of one parent (both parents) as well as a frequent change of employment places"; "the presence of frequent diseases and injuries of children"; "complete indifference of parents and lack of care and attention to the child" and others. Thus, these subjective factors can be used by guardianship authorities as justification for making decisions on giving a family a status 'at social risk' leading to a formal decision that has negative legal consequences for the child.
44. The fact of giving a family a status at 'social risk' in general does not resolve the conflict situation and does not create a safe environment for the child. Often if administrative proceedings are initiated against an aggressor in the family of the child, the burden of paying the aggressor's fine is transferred to the family budget, which ultimately negatively affects the financial support of the child. A woman who makes one attempt to defend herself against the aggressor and calls the police may face threats from the police of taking her child away instead of receiving protection from the state. This "freezes" her attempts to protect herself and her own child.
45. The existing system of state bodies in relation to families at social risk is inefficient since the stay of children and women in shelters / temporary shelters for victims of violence is temporary. After a certain period children have no other choice than to return to the same dwelling and continue to live with the aggressor. There is no effective work with aggressors on the part of state bodies.
46. The family rehabilitation plan is formal in nature and does not take into account exceptional features of each family and the best interests of a child. It represents a set of recommendations, rather than real effective actions / steps to remove social risk, which lead only to a temporary and formal reconciliation of the parties. Therefore, a child is forced to continue to live in stressful conditions.
47. Belarus has maintained a stable practice of separation of children from families on the basis of disability of one or both parents<sup>12</sup>. From 2016 to 2019 human rights organization 'Office for the Rights of Persons with Disabilities' considered 10 complaints on the removal of a child from the family due to disability. In most cases, it was due to mental and intellectual disability. The ground for that was conclusions of medical commissions adopted in violation of the law. Almost in all cases, the process of removal of children was not accompanied by a preliminary stage of helping the family to reconcile.

*Recommendations:*

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<sup>12</sup> <https://onlinebrest.by/novosti/stolinskiy-rayon-u-materi-otobrali-syna-potomu-chno-ona-invalid.html>

- apply the measure of separation of children from families solely as a last resort, if any other measures to protect children are not available, subject to the following conditions: a separation can be considered if no other measure is available to provide the child with protection; a separation should be a temporary measure for shortest time possible; the decision should be carried out in a way that reunification with the parent is not unnecessarily impeded; all the above should not exclude the possibility that the best interest of the child demand that the separation from parents is final.
- perform awareness-raising work with employees of the relevant organisations involved in the decision-making process on giving families a status ‘at social risk’; on the need to work in accordance with the principles of humanity, legality and safeguarding individual approach in order to prevent arbitrariness, increase the literacy of employees regarding the correct interpretation of the Convention and the practice of its application and prevention of exceeding their authorities in the decision-making process.
- give priority to investments in child protection services, support of families and communities in order to prevent separation of families and children.
- stop arbitrary practices of separation of children on the basis of parental disability; carry out all measures of influence towards guardianship authorities on the basis of and in the spirit of the Convention on the Rights of the Child and UN recommendations on alternative methods of guardianship.
- create a sustainable system of services and support for preservation of family and support of its independent living.

### **Alternative care**

48. In Belarus, a steady decline can be identified in the number of children living in ordinary boarding schools (places of permanent residence). We also commend the State’s efforts in developing independent living units.
49. In 2018, 685 children with severe multiple developmental disabilities aged 4-18 years lived in 10 boarding schools run by the Ministry of Labor and Social Protection, 435 of them were social orphans. 9 of the institutions remained in Belarus by 2019 as a result of reorganization of one of them into a neuropsychiatric boarding school for elderly and handicapped people. However, the number of pupils under 18 has not changed sufficiently.
50. Given the overall decline in the number of pupils in boarding schools for children with special needs in psychophysical development run by the Ministry of Labor and Social Protection, there have been no significant changes in conditions and realization of the rights of such children.
51. It should be noted that Belarus has not developed a single state mechanism aimed at assisting in ensuring conditions for independent living of children after emancipation. Until now, the vast majority of boarding schools’ graduates are sent to adult institutions. State mechanisms for fostering independent living have no means of interagency and legal regulation.

52. Instead of homestay, full-care policy is predominant in the State's budgeting.
53. One of the current problems is that the time spent by parent-educators on care work with orphans and children left without parental care in private and state educational institutions (children's villages / towns) and family-type orphanages does not count as special work experience allowing entitlement for retirement pension to certain categories of teaching staff.
54. In some cases parents-educators are subject to great load in family-type orphanages. Since children with particular health and development conditions are rarely adopted and stay either in orphanages or in family-type orphanages, some of such families may have several children with special needs, wherein the load on parent-educators may increase significantly. Because of this, it is very difficult to ensure in practice proper care for every child brought up in such families. Family-type orphanages cannot refuse to accept the child sent by a local education department since the legislation allows the adoption of up to 10 children.
55. Early marriages are practiced in Roma community. Their number varies by region and on average amounts to about 30% of all marriages, both registered and unregistered<sup>13</sup>. Roma girls in early marriages are deprived of access to educational institutions.

*Recommendations:*

- develop and adopt a national deinstitutionalization program containing both measures preventing children from entering institutions (including support for parents with disabilities) and those aimed at deinstitutionalization of children with disabilities.
- adopt the basic principles of Community Based Rehabilitation (CBR, 1978)<sup>14</sup> with a view to creating a system of support services for families to prevent children's placement in institutional care facilities;
- create conditions for inclusive education and social development of children living in boarding schools;
- support systematic monitoring of the rights of children under institutional care, as well as those in alternative care, by independent public commissions of civil society representatives.

### **Adoption**

56. According to article 120 of the Code on Marriage and Family, adoption of brothers and sisters by different persons as a rule is not allowed unless the adoption is in the interests of children. However, in practice there are situations when the guardianship office gives consent to the candidates for adoption of one child who has close family ties with his or her brothers and / or sisters. The opinion of a child who has siblings is not always taken into account. Thus, both a child and his or her siblings may be traumatised as a result of adoption.

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<sup>13</sup> [http://romaintegration.by/?page\\_id=7](http://romaintegration.by/?page_id=7)

<sup>14</sup> <https://www.who.int/disabilities/cbr/guidelines/ru/>

57. Children who are on state provision and deprived of a parent or parents have the right to be adopted. In practice, however, relatives of a child are not duly notified of the procedure, of legal consequences and of the procedure for appealing the decision. This leads to loss of family relationship between the child and the family. The best interests of the children are not taken into account.

*Example. After a woman was deprived of parental rights her mother became the only relative of the woman's children. The grandmother repeatedly expressed her intention to the authorised body to establish custody of all her grandchildren. Under various circumstances she was refused. Local authorities abused her confidence, as a result of which the process of filing a complaint about the refusal to provide custody was inhibited. As she was filing another application for custody of all grandchildren, she became aware that the youngest grandson had been adopted. She was later recognised as the guardian of her other three grandchildren. The possibility of transferring a grandson to her grandmother, as well as her desire for custody was ignored by relevant authorities. The grandmother is also not vested with the right to appeal the decision in court, since according to Art. 139 of the Code of the Republic of Belarus on Marriage and Family. The right to demand the cancellation of the adoption of a child is vested in his parents, adoptive parents, adopted child (over 14 years old), guardianship authority, and a prosecutor.*

*This situation clearly demonstrates the formal approach in making a decision that violates the right of the child to primary placement in the family of relatives and non-separation of siblings. The guardianship authorities did not take into account the best interests of the child in the first place. As a result of the adoption, not only the rights of the grandmother as the only close relative were violated but also the rights and best interests of the adopted child as well as his siblings who due to small age cannot independently attain to exercise their rights.*

58. Under national law, the child's consent to be adopted is required if the child is ten years old or older. Thus, a child under ten years of age can be adopted even without his/her consent. That is, in practice, the principles of meeting the best interests of the child and of the non-separation of brothers and sisters are often violated over adoption.

59. People living with HIV on a third and fourth clinical stage are forbidden either to adopt a child or to be guardians and parents-tutors.

*Recommendations:*

- follow the established adoption procedure in terms of recognising the priority of adoption by relatives and respect the rule of non-separation of siblings.
- take all measures to identify all possible relatives and duly notify them in writing or via the Internet about the possibility of adoption with explanation of their rights and obligations;

- expand the circle of people with the right to appeal the decision on adoption in court including grandparents, aunts and uncles;
- eliminate discriminatory provisions regarding availability of child adoption for people living with HIV.

## V. Right to education

60. The UN Convention on the Rights of Persons with Disabilities (hereinafter - the CRPD) prohibits the exclusion of an individual from general education system on the grounds of his or her disability (par. 2 a, article 24). However, the Resolution of the Ministry of Health of the Republic of Belarus of December 22, 2011 No. 128 “On the definition of medical indications and contraindications for education” continues the practice of exclusion of a wide group of children from the general education system based on medical grounds continues. The Resolution does not only exclude entire groups of children from the general education system, but the special education system itself embodies the idea of segregation, directing each type of deficit (indicated in medical documents) into a separate type of educational institution. These norms are discriminatory in their nature and lead to a formal approach in determining an educational route for a child, where the medical diagnosis becomes more significant than real potential and needs of a child.

61. The educational route of a child as well as structure and severity of a physical and / or mental impairment of a child should be established during the procedure of “psychological, medical and pedagogical examination” (hereinafter referred to as PMPE), which is regulated by the Resolution of the Ministry of Education of the Republic of Belarus of August 16, 2011 No. 233 (hereinafter referred to as Resolution No. 233) “On centers of correctional developmental education and rehabilitation”. In fact, the duration of PMPE is about half an hour, and the medical documents, already submitted to the commission, become crucial in determining of an educational route. Parents, not being aware of legal consequences of a diagnosis for the further educational route, often do not doubt or object to any medical diagnosis neither parents follow the diagnostic procedure since they do not consider it as a threat to a further education of a child. Many errors occur, however, even at the diagnostic stage.

*For example, psychologists of medical institutions use the Wechsler Intelligence Scale for Children (WISC) to diagnose mental retardation. The test is often not adapted to the special needs of a particular child. For example, communication difficulties, perception problems and the need to overcome problematic behavior before conducting the test are not taken into account for children with ASD. Children with cerebral palsy may experience physical difficulties in performing the tasks of the test due to the limited motor abilities (the ability to use hands voluntary).*

62. In general, there is no uniformed comprehensive system for diagnosing mental retardation, which would involve a variety of methods and stipulate standards for their implementation. The WISC being only one of the methods and having its limitations, de facto became the only method for determining mental retardation.

63. There is no practice of child's dynamics monitoring by the same specialist or a team of specialists. In the vast majority of cases, the psychological-medical-pedagogical commission (PMPC) sees the child for the first time, and at the diagnostic stage in the health institutions, the observations of a psychologist or teacher, who are in a long-term care of a child, are not requested and / or taken into account.

*Case: The child A. was diagnosed with slight mental retardation after the WISC (with a further consequences of specific educational program and educational institution, established by 128). The legal representative of the child claims that it takes several hours or even days for her daughter to establish contact with new people. The presence of the mother in the room where the test took place was forbidden, that could affect the level of stress and willingness of the child to communicate with professionals. The legal representative insists on the irrelevance of such a diagnostic procedure and requires a change in the methodology of procedure and / or testing procedure itself. As a result, the only possible solution for the legal representative was to find another psychologist who was trained to use other methods of examining the child.*

64. Legally, the PMPE decision have to be discussed to be agreed with parents. However, if a parent disagrees, the commission often demonstrates lack of interest in further dialogue and cooperation with a parent and uses administrative resources for pressure. For example, if a parent refuses to send a child to a specialized school, the commission may recommend continuing education in a regular school without relevant adaptation of the environment. Since a child cannot attend a general school without adaptation (e.g. special education teacher lessons, class with a reduced number of students, individual assistant), parents are actually forced to agree to a specialized school prescribed for them or to switch to home schooling.

*Case: Child M., who has moderate mental retardation up to grade 5, was trained in integration under program of the first department of the auxiliary school. After grade 5, the PMPK, on the basis of moderate mental retardation, insisted on the second department of the auxiliary school, ignoring the arguments of the parent that the child coped with the program of the first department.*

65. Many types of educational institutions are discriminatory in terms of assessing students' performance and their access to the next stage of education.

*For example, if a child is enrolled in school under the program for children with learning difficulties, he/she graduates from school with a certificate of general education, but generally, with low marks. It is difficult for him/her to enter a vocational school or another type of educational institution of the next stage of the general education system on a general basis due to low marks. The same student, having graduated from a special education institution, can apply for reserved places for children with special needs in educational institutions of the next stage. Thus, accessibility of the next stage of education for a student with special needs depends on formal procedures and not on his/her real needs and potential.*

66. When implementing general secondary education curricula (grades 5–9), children are divided into groups of boys and groups of girls during lessons on the subject ‘Labor Training’. During these lessons girls are taught cooking, embroidery, sewing and other activities traditionally associated with “women’s” occupations, whereas boys are taught carpentry. However, children do not have the right to choose these occupations. Such a division during ‘Labor Training’ lessons reinforces gender stereotypes and establishes a traditional value system in children which, in the future, will expect from a woman to be primarily responsible for housekeeping and homework. Taking into account the value of the educational process and the important role of information acquired in childhood, such a division and the curriculum content promotes the instilling of values inherent in patriarchal society from an early age and constitutes gender discrimination.
67. About 11% of school-age Roma children do not attend school because their parents do not insist on this, for their poor in-class performance, and due to the insufficient resources in their families to buy school clothes and supplies<sup>15</sup>. In 2017, the Committee on the Elimination of Racial Discrimination made it visible for Belarusian authorities with a recommendation to ensure that all children, including Roma children, can exercise their right to inclusive and quality education<sup>16</sup>.
68. Despite the state recognizes Russian and Belarusian as the two official languages, and despite many parents consider Belarusian as native for their children, the corresponding right to receive Belarusian-based education is artificially restrained by the authorities. The share of children studying in the Belarusian language dropped from 12.1% in the 2014/2015 academic year to 9.7% in the 2018/2019<sup>17</sup> which reflects the inequality of the two languages in the education system. Despite parents demand that their children attend Belarusian schools and kindergartens, the authorities do not always take all corresponding measures<sup>18</sup>.
69. The right by national (such as Polish, Ukrainian) minorities to receive education in their native language also remains unattended by the authorities, even when parents persistently request it for their children, even where national minorities reside compactly in certain regions, in disregard of the article 90 of the Education Code. Thus, despite the Polish minority is the second largest in Belarus and amounts to about 294,000 people, only about 1% of their children receive education in their native Polish language. The authorities even limit the presence of Polish teachers, citizens of the Republic of Poland working in public schools as volunteers. Statistics of children studying in their native language is not publicised and inaccessible to civil-sector experts, including from organizations of national minorities.

*Recommendations:*

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<sup>15</sup> [http://romaintegration.by/?page\\_id=7](http://romaintegration.by/?page_id=7)

<sup>16</sup> CERD/C/BLR/CO/20-23, para 23-24

<sup>17</sup> <https://budzma.by/news/schoolmova.html>; <https://naviny.by/article/20190104/1546595736-gomelchanin-prodolzhaet-suditsya-za-pravo-docheri-uchitsya-na-move>

<sup>18</sup> <https://budzma.by/news/schoolmova.html>

- Implement practice of determining educational route on the basis of best interests of the child, including a comprehensive assessment of his/her educational needs and potential (for example, through the competency-based approach).
- Abolish Resolution No. 128 and substantially amend Resolution No. 233 with aim to ensure practice of determining educational route on the basis of best interests of the child, including a comprehensive assessment of his/her educational needs and potential with participation of legal representatives of a child.
- Launch information services system for legal representatives on the rights and state's obligations related to the right to education.
- Ensure provision of such information services to children with disabilities and their families at educational and health institutions involved into the diagnosis procedure, educational services, administrative procedures (especially for the first time identified children).
- Introduce legislative norms ensuring accountability of public officials for the provision of false information about the rights guaranteed to children with disabilities.
- Abolish the distinction on the basis of sex for the lessons of the subject 'Labor Training', update and diversify the curriculum on this subject, excluding references to "female" or "male" occupations, and give children the right to choose them;
- Conduct a monitoring of primary and secondary school curricula on gender discrimination and change them, if necessary, so that they become gender-neutral.
- Take effective measures to ensure the realization of the right to study in the mother tongue.

## **VI. Disability, basic medical services and social welfare**

### **Assistance system for children with ASD (children with autism spectrum disorders)**

70. Despite the rapidly growing number of children with autism (world average: 2016 - every 62nd child. According to the latest data of 2018, every 42nd child), there is no adequate work with this problem in Belarus.
71. Child psychiatrists and neuropathologists rely on outdated protocols, postponing the diagnosis for later age periods (in average, a diagnosis is made at the age of 4-6 years instead of 1-1.5 years). As a result, the invaluable time for effective intervention is often completely lost and the child gains disability.
72. In addition, even when ASD is diagnosed, the state system is not able to offer effective and accessible assistance. The education system does not teach specialists on modern and well-proven methods of working with children with ASD. It is impossible to obtain education on Applied behavior analysis (ABA) in Belarus. Education on alternative communication techniques is outdated in many aspects and does not reflect modern developments.
73. Education system also does not prepare tutors (assistants) for accompanying children with ASD in their educational route, while it is often the only way to ensure inclusion of

a child in educational processes. Creation of such a specialty / profession and organization of appropriate training are not even discussed.

74. As a result, children diagnosed with ASD almost completely drop out of the education system and lose their right to quality education. Taking into account the above-mentioned facts, no positive changes are foreseen even in the mid-term perspective of 5-8 years.

*Recommendations:*

- establish a system of early detection of child autism and a comprehensive system of further assistance for children with ASD;
- develop and provide training programs for specialists in Applied behavior analysis and alternative communication methods.

### **Living standard**

75. The increase in children facing risk of absolute poverty noted in 2016 was largely offset by raised benefits for families with children in subsequent years, including owing to the amount of benefits for families with children under 3 years old being linked to the average wage<sup>19</sup>. However, in spite of this positive trend approximately one in ten children in Belarus lives below the national poverty level<sup>20</sup>. The share of children among the poor is 37.3%<sup>21</sup>.

76. The level of absolute poverty among children has decreased from 12.7% to 9.5%, but it remained much higher than the national average, which, combined with the large size of this social group, determines the significant impact of child poverty on the total number of people below the poverty line<sup>22</sup>.

*Recommendations:*

- ensure the collection of disaggregated data for identifying vulnerable groups, develop and adopt more targeted social support measures for families with children living on the verge of poverty.

### **Right to social security**

77. Alimony for the maintenance of a child is paid by a non-custodial parent on a declarative basis through an application to a court at the request of the custodial parent. In situations of domestic violence, it is extremely difficult for a victim of domestic violence, who most frequently is a woman with children, to obtain alimony. In a situation where there

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<sup>19</sup> Poverty and socially vulnerable groups in Belarus. Demographic and economic factors of poverty. IPM Research Center, 2019: <http://www.research.by/webroot/delivery/files/poverty2019.pdf>, page 7

<sup>20</sup> Poverty and socially vulnerable groups in Belarus. Demographic and economic factors of poverty. IPM Research Center, 2019 : <http://www.research.by/webroot/delivery/files/poverty2019.pdf>, page 2

<sup>21</sup> Child Poverty and Social Assistance. Poverty Factsheet <https://www.unicef.by/uploads/models/2018/06/povertyfs.pdf>

<sup>22</sup> Poverty and socially vulnerable groups in Belarus. Demographic and economic factors of poverty. IPM Research Center, 2019: <http://www.research.by/webroot/delivery/files/poverty2019.pdf>, page 7

is a threat to life and health, the woman focuses primarily on saving her own life and the life of her child, reducing communication with the aggressor to the minimum possible extent. In the future she may also choose not to engage in time-consuming judicial procedure of obtaining alimony since it does not guarantee a positive outcome and may lead to secondary psychological trauma. Such a choice has a negative impact on the financial situation of a woman and her child.

78. State targeted social assistance (in the form of a monthly social allowance) is provided only after the mandatory exercise of the right to alimony. This means that families with children who have not exercised it, including in situations of domestic violence due to reluctance to communicate with the aggressor or because of fear of the latter, are not entitled to rely on this measure of state support. This requirement also restricts the rights of children from deprived backgrounds and applying for this financial support to enjoy the benefits of social security. The state, in its turn, does not take all necessary measures to achieve the full realisation of this right.

*Recommendations:*

- exclude the mandatory exercise of the right to alimony as a requirement for receiving state targeted social assistance (in the form of a monthly social allowance).

## **VII. Special protection measures**

### **Administration of juvenile justice**

79. The Supreme Court denies the necessity to establish specialized juvenile courts. At the same time, the statistics cited in the state report seriously undermines the justification of such approach: according to the authorities, there were 778 cases per judge in Belarus per year, hence all juvenile cases (in 2016) could be decided by two judges. The explanation is misleading as the given number includes all categories of cases and materials that a judge is supposed to consider. Meanwhile, in Belarus, about 38 thousand criminal trials end with a conviction every year. Thus, taking into account the current number of judges in the courts of first instance (about 1 thousand), there are about 40 criminal cases per judge per year. Thus, at least 20 judges would have been needed to hear 998 juvenile criminal cases in 2018.

80. In addition to criminal cases, children's interests are also affected by cases of termination of parental rights (in 2018, courts received 2,875 cases involving 3,298 children), adoption (in 2018, 835 children), recovery of child maintenance (in 2018, 12,618 cases were processed) and other categories of cases: referral of children to closed educational and medico-educational institutions, determination of a child's place of residence, determination of visitation rights and other custodial arrangements for a noncustodial parent, communication between grandchildren and grandparents.

81. Procedural safeguards provided by criminal procedure law to minors suspected or accused of crime do not meet the objectives of juvenile justice. In accordance with article 126 of the Criminal Procedure Code of the Republic of Belarus preventive measures in

the form of detention and house arrest can be applied to minors suspected or accused of crime under almost the same rules as to adults (these rules, in turn, have been criticized by the UN Treaty bodies<sup>23</sup>) either by the investigator, with the approval of a prosecutor or Chairpersons of the Investigative Committee and the State Security Committee (an insignificant difference is the mandatory interrogation of a minor when authorizing detention or house arrest and verification of the possibility to apply direct parental supervision) or by the court, after referral of the case. A minor may be detained or placed under house arrest, when suspected or charged with committing a crime in case of which the term of imprisonment exceeds two years, with the exception of some serious economic crimes. In case of minors suspected or accused of a serious or particularly serious crime against the peace and security of mankind, the state, a war crime, a crime endangering human life and health, these preventive measures may be applied on the grounds of the gravity of the crime alone. Detention cannot be excluded even in case of criminal negligence charges.

82. Minors stay in the same pre-trial detention facilities as adults, although separately from them; nevertheless, in each cell for minors there is an adult prisoner, who is supposed to monitor their activities. Parental visits during this period are allowed with the approval of the investigator, hence, parents cannot freely discuss with detained children any issues pertaining to their situation or defense.

*Parents of Emil Ostrovko, a minor, learned about his attempted suicide that took place during the first days of his detention only a few months later, after Emil's conviction and imprisonment. Detained minors are transported to the courts in handcuffs and during the hearing are kept in a metal cage.*

83. There are no uniform and transparent rules for continuing education and passing obligatory school exams for minors in pre-trial detention facilities.
84. There are no uniform and transparent rules for continuing education and passing exams in the school program for children in pretrial detention centers.
85. The Criminal Code establishes special procedure for sentencing minors. The law 'On amendments and additions to the Criminal Code of the Republic of Belarus on combating illegal trade in narcotic drugs, psychotropic substances, their precursors or analogues' lowered the age of criminal responsibility for drug trafficking crimes to 14 years. It is known that at least four minors (Aziz Togaev, Emmanuel Pavlovsky, Egor Solovkov and Yulia Belskaya) were sentenced to eight years in prison each for several incidents of drug distribution that took place while there were 15 years old. In such cases, 8-year imprisonment is the minimum term that both in case of minors and adults can be adjudicated at the trial stage. Currently, the minimum term for this crime is reduced to 6 and 3 years of imprisonment consequently, in accordance with art. 328 p. 3 and p. 2 of the Criminal Code, but not all sentences in case of minors have been reviewed so far. There

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<sup>23</sup> CCPR/C/BLR/CO/5, para 31 и 32.

was no investigation into the reasons behind minors' involvement in criminal activities in any of the known cases, when minors were convicted for drug trafficking.

86. In addition, there is information about over 70 minors sentenced to various terms for illegal drug distribution (art. 328 p. 2-4 of the Criminal Code) in 2017, 2018, first half of 2019, varying between 6 and 11 years 7 months of imprisonment. Due to the 2019 Amnesty for Prisoners, some of the terms have been reduced to two years; those minors who had committed several minor disciplinary offenses while serving the sentence (for which they had already been held liable), did not fall under the amnesty decree. Also, minors convicted for drug trafficking as part of an organized group (art. 328 p. 4 of the Criminal Code) did not fall under the amnesty: we know about at least five minors sentenced to 10 or more years of imprisonment (Vasily Savchenkov, Vladislav Sharkovsky, Milad Nasser and a girl Valeria Kupchenya).
87. In the Penitentiary Code the legal status of minors that have been deprived of liberty is not regulated in any special way. Their rights and duties are basically the same as those of adult prisoners. The Penitentiary Code in case of minors introduces some preferential conditions pertaining to their living conditions and belongings, allotment of parcels and visitors, use of disciplinary measures. 59.3% of deprived of liberty minors are first-time offenders. When dealing with prison administration, minors cannot turn for assistance to their legal representatives, i.e. parents, even when being held liable for disciplinary offenses; convicted minors cannot benefit from the stipulated in the legislation legal assistance of a lawyer *ex officio*.
88. There is no effective public mechanism for monitoring conditions in which convicted minors serve their sentences. Civic monitoring commissions, which are rightly criticized by the UN Treaty bodies<sup>24</sup>, monitor only the conditions in one educational colony for young offenders and do not monitor pre-trial detentions and educational institutions of the closed type. Meanwhile, in 2019, three officials of the Mogilev State Special Vocational School of the closed type were prosecuted for violence against children; the investigation has confirmed that beatings of minors are widespread in this institution.
89. As part of civil procedure minors maybe referred to educational institutions of closed type. It is not obligatory for a defense lawyer to be present during the hearing of such a case, *ex officio* lawyers do not represent minor's interests as well.
90. In Belarus, existing special educational and medico-educational institutions of a closed type (one school and three colleges) are in fact correctional facilities, where minors between 11 and 18 years old can be detained up to two years for repeated minor offences, actions that can be characterized as offences or crimes for which the minors cannot be held liable due to their age, as well those sentenced in a criminal procedure to "educational measures" in the form of placement into special educational or medico-educational institution (art. 14 of the Law of the Republic of Belarus "On the Basics of the System for Prevention of Neglect and Juvenile Delinquency"). Thus, in 2018, in the Krivichi

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<sup>24</sup> CAT/C/BLR/CO/5, para 33 и 34; CCPR/C/BLR/CO/5, para 35-36

special medico-educational vocational school of closed type 78 minors aged 12-17 were detained<sup>25</sup>, in the Mogilev special educational vocational school of closed type 68 minors aged 14-18 were detained<sup>26</sup>. Over 40 girls aged 13-17 were detained in the Petrikov special vocational school of closed type.

91. Administrative offenses of minors aged 14-18 are considered by commissions on juvenile affairs with local executive bodies (with the exception of offenses committed by foreign and stateless minors who do not permanently reside in the Republic of Belarus, as well as when confiscation can be ordered, as such cases are considered by the court). Administrative detention of minors lasts up to three hours; if an administrative offense may result in deportation, the detention of a minor is carried out in line with the same procedure as detention of adults and may last indefinitely until the actual deportation.
92. There are no procedural safeguards ensuring the presence of parents and teachers during the minor's interview: the presence of a teacher is obligatory only when interviewing a minor under 14; when interviewing a minor aged 14-16 teacher's presence depends on the decision of an official in charge of the administrative procedure; when interviewing a minor aged 16-18, participation of a teacher is not provided for by legislation. Parents or other legal representatives, as well as a psychologist may be present during the minor's interview only "if it is necessary" (art. 10, 11 of the Procedural and Penitentiary Code of Administrative Offences). A defense lawyer may join administrative offence proceedings at the request of a minor or his/her legal representative. Decisions of a commission on juvenile affairs can be appealed to the court.
93. Although child-friendly interview rooms exist, their work is not provided for by the legislation, there is no legal obligation to interview a minor in such a room, there is no mandatory rehabilitation of such minors (lack of mechanism, specialists, such option is not offered as a rule). Parents and specialists are not informed that interview in such a room is an option, at all stages multiple violations of the procedure are identified, while minors experience multiple traumatization.

*Recommendations:*

- establish specialized juvenile courts;
- review legislation stipulating criminal penalties for juvenile offenders, aiming at maximum use of non-custodial measures;
- to introduce into criminal, administrative and civil procedural laws safeguards ensuring that the rights of juvenile offenders are respected in accordance with the international obligations of the state, i.a. ensure that juvenile offenders receive parental care and assistance of a lawyer at all stages of the administration of justice or taking an administrative decision;

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<sup>25</sup> <http://lvukrivichy.unibel.by/arhiv.htm>

<sup>26</sup> <https://www.sb.by/articles/shans-dlya-trudnykh.html>

- review legislation and its application so that no minor is deprived of liberty unlawfully or arbitrarily, and arrest, detention or imprisonment of a minor shall be used only as a measure of last resort and for the shortest appropriate period of time;
- bring the procedure for referral to special educational and medico-educational institutions as well as related rights and guarantees in line with those provided for in the case of deprivation of liberty for the commission of a crime;
- establish special rules for juveniles imprisoned in correctional facilities so that they can be fully assisted by parents and lawyers in their dealings with the administration of correctional facilities.

### **Protecting children from drugs**

94. Legislative, administrative, social and educational measures, undertaken by the state in order to protect children from illegal use of narcotic drugs and psychotropic substances as well as to prevent the involvement of children into illegal drug trafficking and distribution, were untimely and insufficient. As a result, 716 minors were convicted for drug trafficking during 4.5 years (between 2015 and first half of 2019). Previously, the market of "legal" psychoactive substances had existed for quite a long time in Belarus. During that time authorities did not undertake sufficient and effective measures allowing for timely classification of newly emerging substances as prohibited. Undertaken by the authority's measures aimed at combating drugs actually turned into disproportionate persecution of children involved in the criminal activities of national and international groups.

#### *Recommendations:*

- undertake effective legislative, administrative, social and educational measures, aimed at protecting children from the illicit use of narcotic drugs and psychotropic substances;
- prevent the involvement of children into the trafficking of narcotic drugs and psychotropic substances;
- create a system for the prevention of involvement of minors in drug trafficking in accordance with the standards of the rights of the child.

### **Protection of minors from economic exploitation**

95. Protection of minors from economic exploitation in the Republic of Belarus is also insufficient, since forced labour in various forms is widely practised, such as via unpaid labouring during "subotnicks", and through the mobilisation of non-agrarian enterprises and organizations for agricultural works in state agricultural enterprises, primarily harvesting. Educational institutions become involved in these involuntary works only too often, which affects even minor secondary-school pupils, not to speak about older schoolchildren, students of technical colleges and first-year university students. Both pupils and students involuntarily involve in such work by the will of their educational institutions that, in their turn, follow orders of local executive bodies. This mobilisation receives its official endorsement in terms of the interests of economic development of either a particular region or the country at large.

*By way of example, on 29 September 2016, when schoolchildren from Molodechno were harvesting potatoes, a 13-year-old Victoria Popchenya died under a truck. Though the driver and two teachers were criminally prosecuted, officials of the local executive committee received only disciplinary reprimands.*

*Recommendations:*

- discontinue practices of the economic exploitation of children, such as by prohibiting for the children to perform any work that could interfere with their education, and could be dangerous to their physical and mental health as well as deleterious to their moral and social development; and
- apply appropriate punishments and sanctions to violators of the ban on the economic exploitation of children.

### **Children of migrants and refugee children**

96. Some international treaties to which Belarus is a party and national legislation allow to restrict the freedom of children for the purpose of their identification and/or forced removal.
97. Belarus is a party to the Agreement of Cooperation of States-Members of the Commonwealth of Independent States on the Return of Minors to their State of Residence (2002, hereinafter – the Chisinau Agreement). This Agreement forms a legal basis for regulation of detention of migrant children in closed specialised institutions through which they are returned from Belarus to other countries. In Belarus, migrant children are detained in the reception-distribution center for minors. Such restriction of liberty may be imposed on unaccompanied migrant children not only in relation to offences committed by them and/or the need to establish their identity but also in relation to the need of their return from Belarus to the country of permanent residence.
98. Operation of the reception-distribution center is regulated by the Law of the Republic of Belarus of 31 May 2003 “On the basis of the system for the prevention of child neglect and juvenile delinquency”. In effect, this leads to the criminalisation and deprivation of liberty of children for the sole reason of their migration status. The law provides that children, whose identity is not established or who do not reside permanently in Belarus, may remain in the reception-distribution center for up to 60 days. This term may be prolonged for 15 days pursuant to a court’s decision. This term does not include the period of quarantine, a child’s illness, and the term for review of complaints. The term of detention of migrant children is unreasonably long and could impact negatively children’s emotional and physical condition. In such institutions normal schooling, especially for migrant children who do not speak Belarusian or Russian languages, cannot be provided and full development and communication of children cannot be realised.
99. Moreover, detained migrant children are held in the reception-distribution center together with children, who are in conflict with the law. Finally, independent observers

cannot monitor respect for the rights of detained children and conditions of detention as they do not have access to the reception-distribution center.

100. If it is not possible to establish identity of migrant children, who violated laws on legal status of foreigners and stateless persons, the state's border regime, the regime at the border checkpoints, or intentionally illegally crossed the state border, within 72 hours, national legislation permits to detain such children. National legislation permits to detain migrant children to ensure their deportation (deportation may be imposed as a penalty for an offence). "As a rule", migrant children under the age of 16 are not detained to ensure their expulsion (expulsion is a type of removal applied in order to protect interests of national security, public order, public morals and/or health, and rights and freedoms of nationals of Belarus and other persons and after a person is released from a penal institution). At the same time, it is not provided, when detention may be imposed on a child under the age of 16 to ensure his/her expulsion. National legislation does not provide for measures alternative to detention.
101. In all three mentioned instances decision to detain a migrant child is issued by a state organ, which had decided to subject the child to the identification procedure, deportation, or expulsion, given that a prosecutor sanctions detention. Such detention may last, respectfully, until a minor's identity is established or until deportation or expulsion is executed.
102. National legislation does not provide for periodic judicial or other review of the reasonableness of continued detention imposed to secure identification, deportation, or expulsion. Migrant children may file an appeal against detention imposed to secure identification or deportation with a prosecutor or a court; in case of detention imposed to secure expulsion, an appeal is first filed with a superior administrative authority, and then with a court. In the latter case, the superior administrative authority may review the complaint for up to 30 days.
103. Another vulnerable group is asylum-seeking children. In Belarus, there is no comprehensive legislation, which would address the issue of detention of underage and adult asylum-seekers. For this reason, detention of asylum-seeking children is regulated almost by the same legal framework as detention of migrant children.
104. National legislation explicitly provides that unaccompanied asylum-seeking children, who lack identity documents or who presented forged documents, may be placed into the reception-distribution center for the term necessary to establish their identity. They are placed in the center pursuant to a decision of an officer of the Ministry of the Interior, not to that of a court. National legislation does not provide for measures alternative to detention. A guardianship authority is informed from the moment a child applies for international protection. Detention may last until a child's identity is established.
105. National legislation does not provide for periodic judicial or other review of the reasonableness of continued detention imposed to secure identification of an unaccompanied asylum seeking child. Unaccompanied asylum seeking children may file an appeal

against detention imposed to secure identification with a superior administrative authority and/or with a court.

106. Apart from detention of unaccompanied asylum seeking children for the purpose of identification national legislation does not provide explicitly for other instances, where asylum seeking children may be detained. At the same time, Belarusian authorities may detain asylum seeking children, whose deportation or expulsion they want to secure in case an international protection application is rejected, under legal provisions applicable to detention of migrant children. In this case, legislation regulating detention of migrant children for the purpose of deportation or expulsion would be applied in entirety.

107. Accordingly, an asylum seeking child detained for the purpose of deportation or expulsion may remain in detention for more than 8 months. As a general rule, refugee status determination procedure lasts for up to 6 months. In case an international protection application is rejected, appeal proceedings before a court may last for 2-4 months.

108. The Law “On Legal Status of Foreigners and Stateless Persons in the Republic of Belarus” gives state organs the right to refuse to issue and the right to terminate permissions for a stay in Belarus and the right to deport and expel foreigners. In realisation of these rights, the authorities do not balance interests of the society and rights of a particular person and his/her family. National legislation does not contain a list of mitigating circumstances that should be taken into account in the decision-making process: in particular, the term of living in Belarus, the presence of close family members – nationals of Belarus (due consideration should be given to the right to family life and the prohibition of intentional severance of family ties), and the best interests of the child. In this vein, in 2018-2019, a number of decisions have been made on the expulsion of foreigners whose children are nationals of Belarus, which could have lead to separation of families and violation of children's rights. Only due to public outcry, some expulsions were canceled, for example, expulsion of Ukrainian national Sergey Protsenko.

*Recommendations:*

- Belarus should bring national legislation applicable to the restriction of the freedom of migrant children in compliance with Article 9 of the International Covenant on Civil and Political Rights and paragraphs b, c, and d of Article 37 of the Convention on the Rights of the Child. In particular, national legislation should:
  - exclude the possibility of detention of children for the sole reason of their migration status;
  - establish that any restriction on the freedom of migrant children could be imposed only by court;
  - provide for periodic judicial review of the reasonableness of continued detention imposed for any purpose;
  - exclude the possibility of indefinite detention of foreign children;
  - establish that detention of migrant children may be used only as a measure of last resort and for the shortest appropriate period of time;

- establish measures alternative to detention and provide for their widespread application;
- unambiguously identify situations where the freedom of asylum seeking children may be restricted;
- ensure that migrant children have direct access to a court to appeal detention imposed to secure expulsion.
- Prevent law-abiding migrant children from detention in the reception-distribution center and in other conditions that do not correspond to their dignity and needs;
- Exclude the possibility of detention of migrant children in places of deprivation of liberty with children, who are in conflict with the law;
- Belarus should amend its legislation to encompass the need to take into account the best interests of the child in the migration decision-making process.

### **Pregnant minors and minor parents**

109. Belarusian legislation has a significant gap in the regulation of the rights of pregnant minors and minor parents. So, they do not participate in decisions regarding their children. Foster parents do not take custody of underage pregnant orphans or minors who have children. If an orphaned girl who studies at an educational institution and lives in a dormitory becomes pregnant, she cannot live in a dormitory with a child.

110. The system of sexuality education and the prevention of early pregnancies is not developed in Belarus.

#### *Recommendations:*

- promote a system of assistance to minor parents, including medical, social and educational activities.