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COUNCIL OF EUROPE CONSEIL DE L'EUROPE

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# Abuse of the criminal justice system in Belarus

Report
Committee on Legal Affairs and Human Rights
Rapporteur: Mr Christos POURGOURIDES, Cyprus, Group of the European People's Party

*Summary*

The Committee deeply regrets the numerous politically-motivated abuses of the criminal justice system that have taken place in recent years and are still taking place in the Republic of Belarus, including the arbitrary application of specific provisions criminalising legitimate, peaceful activities of opposition parties, non-governmental organisations and independent media, and arbitrary convictions of political opponents, following unfair court proceedings, under general criminal provisions such as embezzlement, fraud, counterfeit or tax evasion.

Abuses of the criminal justice system also include the failure, for political reasons, to properly investigate and prosecute criminal acts committed by state agents against opposition figures, and the abhorrent death penalty practice in this country.

The Committee considers that officials ordering or participating in politically-motivated abuses of the criminal justice system must be held to account personally. It appeals to judges, prosecutors and police officers in Belarus to avoid, to the best of their ability, participating in such abuses and to bring to bear their personal courage and imagination in order to mitigate the effects of the abusive legislation on its victims.

It encourages Belarusian and international human rights defenders to keep a record, in a transparent and objective manner, of both the victims and the perpetrators of politically-motivated abuses of the criminal justice system. It also encourages the European Union and the United States of America to continue imposing targeted sanctions, such as visa bans or the freezing of assets, on Belarusian officials responsible for serious human rights abuses, while using a fair and transparent procedure.

The Committee finally proposes the establishment of a working group also involving local and international human rights defenders whose tasks could include both assistance to victims of human rights abuses and their families and the identification of perpetrators of such abuses, and calls on all Council of Europe member states and in particular the Russian Federation to intervene with the Belarusian authorities in favour of political prisoners.


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## A. Draft resolution

1. The Parliamentary Assembly, recalling its Resolutions 1371 (2004), 1372 (2004), 1482 (2006) and 1496 (2006) as well as its Recommendations 1657 (2004) and 1734 (2006), deeply regrets the numerous politically-motivated abuses of the criminal justice system that have taken place in recent years and are still taking place in the Republic of Belarus.

2. Such abuses take different forms, including:

2.1. the enactment - in particular through the Law of 15 December 2005 ("anti-revolution law") - and the arbitrary application of specific provisions criminalising legitimate, peaceful activities of opposition parties, non-governmental organisations and independent media, in particular through the arbitrary criminalisation of members and activists of non-registered citizens' groups, of organisers and participants of peaceful demonstrations, and of journalists and opposition figures making critical comments in public, including via internet;

2.2. arbitrary convictions of political opponents, following unfair court proceedings, under general criminal provisions such as embezzlement, fraud, counterfeit or tax evasion;

2.3. the failure, for political reasons, to properly investigate and prosecute criminal acts committed by state agents against opposition figures, including:

2.3.1. the high-profile disappearances cases covered by Resolution 1371 (2004) and Recommendation 1657 (2004);

2.3.2. unelucidated deaths of independent journalists and foreign diplomats;
2.3.3. acts of violence committed by security forces against peaceful demonstrators;

2.4. the continued use of the death penalty and the particularly cruel, secretive method of execution by gunshot, without prior information of the condemned persons themselves, until the last moment, or their families. Belarus is the last country on the European continent that still implements the death penalty. The existence of the death penalty excludes any extradition to Belarus, by member states of the Council of Europe, of any person accused of a capital offence.

3. The effects of the criminalisation of the activities of unregistered civic groups by Article 193-1 of the Criminal Code brought in by the Law of 15 December 2005 are aggravated by restrictive administrative rules governing the registration of associations and their arbitrary implementation.

4. The Assembly is outraged, in particular, at the arrests of persons for distributing copies of its own 2004 report on disappearances in Belarus.

5. Persons abusively convicted for political reasons (paragraphs 2.1. and 2.2. above) must be recognised as political prisoners and compensated for their sufferings as soon as possible.

6. Officials ordering or participating in politically-motivated abuses of the criminal justice system must be held to account personally for their responsibility regarding such abuses.

7. The Assembly is confident that the Republic of Belarus will one day join the family of European nations upholding human rights and the rule of law, and that justice will be done – inter alia by compensating victims and punishing perpetrators of the abuses described above.

8. Meanwhile, the Assembly urges:

8.1. the Parliament of the Republic of Belarus to:

8.1.1. repeal Law No 71-3 of 15 December 2005 (so-called "anti-revolution law"), and in particular Article 193-1 of the Criminal Code criminalising activities of non-registered associations;

8.1.2. urgently introduce a moratorium on executions and abolish the death penalty;

8.2. judges, prosecutors and police officers in Belarus to avoid, to the best of their ability, participating in abuses of the criminal justice system and to bring to bear their personal courage and imagination in order to mitigate the effects of the abusive legislation on its victims;

8.3. Belarusian and international human rights defenders to keep a record, in a transparent and objective manner, of both the victims and the perpetrators of politically-motivated abuses of the criminal justice system.

9. The Assembly further encourages:

9.1. the member states of the Council of Europe, through their diplomatic representations in Minsk, and in collaboration with local and international human rights defenders, to continue intervening with the authorities on behalf of political prisoners and their families, and to offer them temporary protection;

9.2. the European Union and the United States of America to continue imposing targeted sanctions, such as visa bans or the freezing of assets, on Belarusian officials responsible for serious human rights abuses;

9.3. the international community to set up a mechanism for assistance to victims of human rights violations in Belarus.

9.3.1. Such a mechanism could be governed by a working group also involving local and international human rights defenders, in Minsk or in a neighbouring capital.

9.3.2. It is essential, for example, to provide those students who have been expelled from Belarusian universities because of their participation in anti-governmental demonstrations with an opportunity to continue their education in Council of Europe member states.

9.3.3. The group's tasks could also include the identification, in a fair and transparent manner, of officials responsible for abuses, with a view to the imposition of targeted sanctions (paragraph 8.3.);

9.4. the Government and Parliament of the Russian Federation to intervene urgently with the authorities in Minsk on behalf of political prisoners and other victims of politically-motivated abuses.

## B. Draft recommendation

1. The Parliamentary Assembly, referring to its Resolution … (2008) on abuse of the criminal system in Belarus, invites the Committee of Ministers to:

1.1 urge the Belarusian authorities to:

1.1.1 repeal Law No 71-3 of 15 December 2005 (so-called "anti-revolution law"), and in particular Article 193-1 of the Criminal Code criminalising activities of non-registered associations;

1.1.2. urgently introduce a moratorium on executions and abolish the death penalty;

1.2. discuss ways and means of:

1.2.1. ensuring that the Belarusian authorities refrain from politically-motivated abuses of the criminal justice system in future;

1.2.2. coordinating assistance to the victims of such abuses and their families;

1.3. invite all member states of the Council of Europe to bring to bear their influence on the Belarusian authorities with a view to halting such abuses.

## C. Explanatory memorandum by Mr Christos Pourgourides, Rapporteur

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### I. Introduction

#### *i. Proceedings to date*

1. The motion on abuse of the criminal justice system in Belarus was referred to the Committee on Legal Affairs and Human Rights on 25 November 2005 (Doc 10619, Reference No 3155). The Committee appointed me as Rapporteur on 26 January 2006.

2. At the Committee's meeting on 14 May 2007, I presented an introductory memorandum (AS/Jur (2007) 32 dated 10 May 2007) and obtained the Committee's support for carrying out a fact-finding visit to Minsk. The Bureau of the Assembly subsequently granted the required authorisation, and the Secretary General of the Parliamentary Assembly informed the Belarusian authorities of my wish to visit Minsk.

3. In a letter dated 1 August 2007, the Belarusian authorities informed the Secretary General of the Assembly that they doubted my competence and objectivity as Rapporteur, referring to my earlier report on Disappearances in Belarus. They therefore did not see any point in such a visit.

4. At its meeting on 11 September 2007, the Committee on Legal Affairs and Human Rights took note of the letter from the Belarusian authorities to the Secretary General of the Assembly declining to cooperate with me, and authorised me to finalise the report on the basis of information obtained from diplomatic and non-governmental sources, without carrying out an on-the-spot visit.

5. On 3 October 2007, the Secretary General of the Assembly wrote to the Ambassadors of all Council of Europe member states having diplomatic representations in Minsk inviting them to convey any information to me which they deemed relevant for the report.

6. During the October 2007 part-session of the Assembly, I met with a delegation of civil society actors from Belarus who had been invited to Strasbourg by the Council of Europe.

#### *ii. The political context in Belarus as a backdrop to the abuse of the criminal justice system*

7. The reasons prompting the motion for a resolution at the end of 2005, which led up to this report are unfortunately still valid today.

8. On the occasion of the debate under urgent procedure on the situation in Belarus on the eve of the presidential elections, the Assembly adopted Resolution 1482 (2006) and Recommendation 1734 (2006), in which the Assembly expressed its "extreme concern" that the Lukashenka regime has undertaken a series of measures to prevent any expression of political dissent and to obstruct the activities of democratic forces.

9. The Assembly was particularly critical of the so-called "anti-revolution law", which criminalises many legitimate activities of civil society organisations.

10. Likewise, the Assembly denounced the detention of a number of opposition figures as a result of trials based on questionable charges, confirming the abuse of the criminal justice system for political purposes and the lack of a truly independent judiciary, which has been further undermined by the decree enabling President Lukashenka to suspend judges' powers and dismiss them from office. The Assembly specifically asked for the release of political prisoners Andrei Klimau, Mikhail Marinich, Pavel Severinets, Siarhey Skrebets and Nikolai Statkevich.

11. In the opinion I presented on behalf of the Committee on Legal Affairs and Human Rights, I concluded that the elements presented in the report add up to a characterisation of Mr Lukashenka's regime as a fully-fledged dictatorship. I regret having to say that this has unfortunately not changed over the last two years.

12. In Resolution 1496 (2006) on Belarus in the aftermath of the presidential election of 19 March 2006, the Assembly was once again obliged to call for the release of political prisoners, including those detained in connection with the elections, and the disclosure of information on all those who were arrested or who received medical treatment after the dispersal of peaceful demonstrations, as well as the conduct of a transparent investigation into the acts of violence committed by police and security forces against peaceful demonstrators.

13. Even the bold gesture of President van der Linden, who had hoped to provoke a softening of the regime's attitude by paying a visit to Belarus in January 2007, as an exception from the Assembly's policy of refusing contact at political level with Belarusian officialdom until significant progress is made in the investigation of the high-profile "disappearances" (cf. Resolution 1371 (2004) and Recommendation 1657 (2004)), has not produced the desired results. The President of the Assembly was not even allowed to visit political prisoners in their places of detention, much less to obtain their liberation, as he had requested ahead of his visit.

14. Andrea Rigoni (Italy/ALDE), Rapporteur of the Political Affairs Committee on the situation in Belarus, was able to carry out a visit to Minsk at the end of October 2007. I look forward to hearing about his findings in due course.

15. In a letter to President van der Linden dated 16 April 2007, Alyaksandr Milinkevich, the leader of the Belarusian opposition, informed the Assembly of fresh oppression against young activists. In addition to about 1000 persons being punished under administrative law[1] for such "revolutionary" acts as simply speaking the Belarusian language or distributing leaflets, several student leaders and other activists were sentenced to long forced labour or prison terms, including Paval Sevyarynetz, Artur Finkevich, Zmitier Dashkevich, Alyaxandr Kozakov and Dmitry Zubro. Most shockingly, fresh criminal cases were being prepared against five young members of "Malady Front" aged between 16 and 20 years – Zmitier Fedaruk, Aleh Korban, Anastasia Palazhanka, Barys Harecki, and Aliaxey Ianusheuski. I can only agree with Mr Milinkevich that it is odd that the state is afraid of such young people: "*When these young people walk in the center of Minsk with candles in their hands the authorities call for help from the unit of Special Forces.*"

16. Against this background, reputable international human rights groups, such as Amnesty International, Human Rights Watch and the International Federation for Human Rights, have voiced concern that the Belarusian authorities were abusing the Criminal Code to discourage political opposition.[2]

17. In order to cover up the situation as much as possible, the Belarusian authorities are also systematically refusing to cooperate with international human rights organisations. Our former PACE colleague Adrian Severin, appointed in 2005 as the former UN Human Rights Commission's Special Rapporteur on the human rights situation in Belarus, was consistently refused authorisation for planned visits. The UN Special Rapporteurs on Human Rights Defenders, Hina Jilam, and on Torture, Manfred

[1] The following sanctions are foreseen under the Code of administrative offences: a warning, a fine, compulsory labour (maximum two months), administrative arrest (15 days maximum), deprivation of a special right, prohibition to exercise an activity (for between six months and three years), confiscation of the revenue resulting from the offence, expulsion (of non-citizens), seizure of objects used to commit the administrative offence.

[2] For example, International Federation for Human Rights and its member organisation in Belarus, Human Rights Center "Viasna" (statement on the human rights situation in Belarus, 26.06.2007, www.fidh.org); Amnesty International Public Statement, AI Index EUR 49/006/2007 of 07.06.2007); Human Rights Watch News Release 14.05.2007, at: http://www.belarus-actions.org/en/index.php

Novak, were also refused visits they had requested, as was I, as mentioned above[3]. Standards for free and fair elections were not met despite numerous PACE and OSCE recommendations.

18. Not surprisingly, Belarus' bid to join the newly established UN Human Rights Council failed in the General Assembly in view of the regime's dismal human rights record and its failure to uphold democratic standards.

## II. Abuses of the criminal justice system in Belarus

19. On the basis of materials made available by non-governmental and diplomatic sources, three types of abuses of the criminal justice system in Belarus can be distinguished:

i. the enactment and arbitrary application of specific criminal or administrative legislation designed to criminalise, or subject to quasi-criminal administrative sanctions, the legitimate, peaceful activities of the political opposition, civil society groups and independent media;

ii. politically motivated prosecutions against opposition activists under general criminal provisions (tax evasion, fraud, corruption etc.);

iii. other politically motivated abuses of the criminal justice system, in particular the failure to properly investigate crimes against persons linked to the opposition, civil society or independent media, and the horrendous death penalty practice in Belarus.

### *i. Specific criminal and administrative provisions targeting the political opposition, civil society and independent media*

#### *a. Criminal and administrative provisions open to abuse*

20. A complex set of legislation affecting the freedom of action of democratic forces was adopted by parliament days before the announcement of the date of the 2006 elections. Law No 71-3 of 15 December 2005 "On Making Changes and Additions to certain Legislative Acts of the Republic of Belarus on the Issue of Strengthening Responsibility for the Actions Directed against the Person and Public Safety", dubbed "anti-revolution law", amended the Criminal Code, in particular by reformulating its Article 193 and introducing the new Article 193-1[4]. This Law establishes prison sentences *inter alia* for

- organising or taking part in the activities of a suspended or closed non-governmental organisation or foundation (six months to two years, Article 193-1 Criminal Code);

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[3] § 3.

[4] Article 193-1: Illegal organisation of activities of a non-governmental organisation, a religious organisation or a foundation, or participation in their activities

The organisation of the activities or participation in the activities of a political party, another non-governmental organisation, of a religious organisation or of a foundation against which a competent State body has taken a decision, which has come into force, of dissolution or suspension of its activities, as well as the organisation of or participation in the activities of a political party, another non-governmental organisation, of a religious organisation or of a foundation, which has not undergone the official registration process,

is punishable by a fine or by an administrative detention of up to six months, or by a term of imprisonment of up to two years.

Comments:

1. By "participation in the activities or participation in the activities of a political party, another non-governmental organisation, of a religious organisation or of a foundation" is understood in this article any actions aimed at attaining the objectives pursued by the organisation or foundation, in particular according to its statute or other documents.

2. The present article does not apply to the activities or participation in the activities of a political party, another non-governmental organisation, of a religious organisation or of a foundation, against which a competent State body has taken a decision, which has come into force, of dissolution or suspension of its activities, as well as the organisation of or participation in the activities of a political party, another non-governmental organisation, of a religious organisation or of a foundation, which has not undergone the official registration process, which are intended to eliminate the violations that motivated the suspension, or to the organisation of or participation in activities of these bodies aimed at fulfilling the formalities of official registration.

3. A person who voluntarily ceases to carry out the acts described in the previous article and who indicates this to the state authorities is exempt from criminal responsibility provided his/her actions do not constitute another criminal offence. The present rule does not apply to persons who commit similar acts in the two years following the voluntary cessation of the acts described in the present article.

- training or financing the training of persons to take part in street protests (from six months to three years, Article 293 Criminal Code)[5];

- "misrepresenting" the situation in Belarus to foreign countries or international organisations (Article 369-1 Criminal Code) and asking them to act against the country's security, sovereignty and territorial integrity, or distributing material or information containing such appeals (from two to five years, Article 361 Criminal Code)[6].

21. The new Article 193-1 criminalising the activities of non-registered groups must be read in conjunction with Statement No 49 of 13 September 2005 of the Ministry of Justice of Belarus, which effectively extends registration requirements (as enforced by Article 193-1) to different types of citizens' groups which had previously been allowed to function without registration as legal persons[7].

22. The type of actions criminalised in this way is illustrated by the following citation from the statement opening the criminal case brought by the KGB for Minsk and the Minsk Region under Article 193-1 of the criminal code against **Zmitier Fedaruk** and **Aleh Korban**, young activists of the "Malady Front". According to this statement, the young men were to be held criminally responsible "*for the actions pursuing the following aims and methods: uniting and training young people on the basis of the Belarus national idea, erection of the civil society on the basis of democracy, free market and other aims, as well as the methods of attaining the aims, including holding mass actions, conducting enlightenment work and sociological studies, publishing newspapers and other information materials, during the time period from September 2006 to the present time.*"[8]

23. This is a quotation from an accusatory document, not from an application for a human rights prize. The activities of Mr Fedaruk and Mr Korban, as described by the KGB, are perfectly legitimate in view of the rights and freedoms stipulated by the Constitution of Belarus and this country's international obligations in the sphere of human rights, in particular the International Covenant on Civil and Political Rights, which became, upon its ratification, an integral part of the law of the Republic of Belarus.[9]

24. Earlier laws, enacted after the 2004 referendum and parliamentary elections

- criminalise foreign assistance to political parties, non-governmental organisations and civil society;

- oblige political parties and non-governmental organisations to be located in public buildings.

25. I draw particular attention to the obligation placed on political parties and non-governmental organisations to be located in public (non-residential) buildings. This requirement, combined with the systematic practice of denial or termination of leases vis-à-vis any groups that are perceived by the authorities as having links with the opposition, has led to the suspension or closure of numerous NGOs, thus exposing their members and activists to criminal sanctions under the "anti-revolution law"[10].

26. Another disturbing feature of the legislation targeting civil society is the fact that the same acts punishable under the Criminal Code, as described above, are also outlawed in the newly redrafted Code of Administrative Offences. Articles 9.9 and 23.39 of the new Code of Administrative Offences deal with the same actions connected with the participation of citizens in the activities of parties, public associations

[5] Articles 293 or 342 of the Criminal Code (depending on whether the group activities in question "seriously violate public order").
[6] Article 369.1 of the Criminal Code ("discrediting of the Republic of Belarus").
[7] Cf Expert Opinion of the Conformity of Article 193-1 of the Criminal Code of the Republic of Belarus to the Constitution of the Republic of Belarus and International Acts Ratified by Belarus, by Hary Pahaniaila, Chairman of the Legal Commission of the Belarusian Helsinki Committee (page 4); the Opinion was transmitted to members of the Sub-Committee on Belarus of the PACE Political Affairs Committee by an Open Letter dated 21.09.2007 signed by Aaron Rhodes, Executive Director of the IHF and Tatsyana Pratsko, Chair of the Belarusian Helsinki Committee, inviting the Assembly to ask the Venice Commission for an opinion on the conformity of Article 193-1 with the Belarusian Constitution and her international commitments.
[8] Cited from the expert opinion by Hary Pahaniaila (footnote 7 above), at p. 5.
[9] Cf Hary Pahaniaila, *ibidem* (footnote 7).
[10] Even the Belarusian Helsinki Committee was threatened with closure after the lease for its premises was not renewed in December 2006; only after massive international protests (cf. US Department of State, Belarus: Eviction of Belarus Helsinki Committee, Statement of 29.01.2007, at: www.state.gov; Statement by the European Union on the Belarus Helsinki Committee, 648th Meeting of the Permanent Council, PC.DEL/72/07, 01.02.2007) was the lease renewed for another year. Most other NGO's in the human rights and civic education field were not so fortunate (see for example Statement by the Belarusian Helsinki Committee at the OSCE Supplementary Human Dimension Meeting on Protection and Promotion of Human Rights, Vienna, 12-13.07.2007, at: www.belhelcom.org).

(including religious ones), which have been liquidated or suspended or failed to be registered by the state. Administrative punishments can include crippling fines, or arrest (imprisonment) for up to 15 days.

27. As the criteria for distinguishing criminal and administrative liability are not made explicit anywhere, the authorities have a large amount of discretion as to the harshness of their reaction against civil society activists. This grey zone facilitates "flexible" intimidation tactics oscillating between harsh criminal sanctions and more "lenient" administrative sanctions, depending on the internal and international climate, and violates the legal security requirement of the rule of law and of the principle of *nulla poena sine lege*.

### *b. Some examples of the abusive application of the specific provisions targeting civil society*

28. It should be made clear from the outset that it is neither possible, nor necessary, to include in this report all cases of the abusive application of the above-mentioned norms. Due to the lack of cooperation of the Belarusian authorities, I have also not been able to confront the information received from different sources (non-governmental organisations, diplomatic sources) with the official position of the authorities. I cannot even be sure that all the political prisoners mentioned below are still in prison, or, if I indicated that they were set free, that they have not been arrested again.

29. This being said, I still consider it useful to point out some specific cases to illustrate the practical consequences of the legislation described above:

- In October 2006, 60 year-old human rights activist **Katerina Sadouskaya** was sentenced to two years in a penal colony, for "insulting the honour and dignity of the Belarusian leader".

- In November 2006, youth activist **Zmitser Dashkevich** received an 18-month prison sentence for "activities on behalf of an unregistered organisation"[11].

- In April 2006, five leading members of the Belarusian opposition (**Alyaksandr Milinkevich, Alyaksandr Bukhvostov, Zmitser Dashkevich and Sergei Kalyakin**) were tried and convicted and sentenced to 14-15 days' detention for "organising an unsanctioned meeting" (Article 167-1 Code of Administrative Offences). The charges related to a peaceful commemoration of the Chernobyl nuclear disaster on 26 April. The marchers had received permission to march to Bangalore Square in Minsk, where speeches were to be given. The "crime" in this case: Mr Milinkevich was accused of having addressed the crowd before the March began.[12]

- In August 2006, four members of a citizens' election-monitoring group (**Mikalay Astreyka, Enira Branizkaya, Tsimafey Dranchuk and Alyaksandr Shalayka)** were sentenced to prison terms of between six months and two years for "organising and running an unregistered organisation that infringes the rights of citizens" (Article 193-2 Criminal Code).[13]

- During the mass demonstrations in Minsk after the Presidential elections of March 2006, hundreds of demonstrators were brutalised by the police and arrested. On 21 March in Minsk alone, according to the Human Rights Center "Viasna", 65 persons were sentenced to short prison terms for participation in non-authorised meetings and "hooliganism". These demonstrators had braved the announcement of the chief of the KGB that post-election protesters would be considered as "terrorists" and were subject to the death penalty.[14]

- Dozens of activists were arrested and condemned to short terms of prison or administrative fines under different pretexts in the run-up to the 'European March' on 15 October 2007[15].

30. These cases, and many more that I have not been able to list for reasons of time and space, are manifestations of raw intimidation tactics. This view is supported by remarks reportedly made by Lubomir Rehak, Slovakian chargé d'affaires in Minsk, with reference to the above-mentioned 'European March': "*During several weeks we witnessed intimidation of people, arrests and detention for distribution of information about the European March.*" Mr Rehak's gesture of meeting two young activists, **Zmiter Barodka** and **Leanid Navitski** at the prison gate when they were released after doing their time (15 days for alleged

[11] Cf Statement by Christopher Smith, US Helsinki Commission Co-Chairman on the Belarus Democracy Reauthorization Act (07.12.2006), www.charter97.org/eng/news/2006/12/13/dem, at p. 1.
[12] Source: Amnesty International Report 2007: Belarus (23.05.2007).
[13] Source: Amnesty International (footnote 12 above).
[14] Source: Amnesty International, EUR 49/003/2006, 22.03.2006.
[15] See "list of activists detained on the eve of European March", published on the website of www.spring96.org/en/news

use of "obscene language") is particularly commendable[16]. The inhuman character of the system of persecution of young activists is illustrated by the fact that one of the young men, **Zmiter Barodka**, was kept in prison while his wife gave birth to twins.

31. Intimidation is sometimes countered with a dose of humour by young activists. For example, **Siarhei Parsiukevich** of the "Movement for Freedom", in order to avoid being framed for "foul language", reportedly taped his mouth shut as soon as his car was stopped by policemen near his house who said that his car was on a wanted list and took him to the police station. A few days earlier, **Uladzimir Katsora**, a member of the same group, had been detained under the same pretext, and later sentenced to seven days in prison for "dirty swearing in public". These events occurred in early October 2007.

32. **Valery Levaneuski**, chairman of the All-National Strike Committee of Vendors, and his deputy **Alyaksandr Vasilyeu**, were sentenced on 7 September 2004 to two years of imprisonment for "public slander of the President" (Criminal Code Article 368 paragraph 2). The verdict reportedly states that the sentence "*come and say that you are against somebody's skiing in Austria at your expense*", printed in leaflets, contains an insult to the honour and dignity of the President of the Republic of Belarus[17].

33. Last but not least, the case of **Alyaksandr Kazulin**, leader of the Belarusian Social Democratic Party (Hramada), former presidential candidate in March 2006 and former rector of the Belarusian State University, shows that prosecutions under the "anti-revolution" articles of the criminal code are by no means limited to fines or short prison terms. Professor Kazulin was arrested on 25 March 2006 and charged with "hooliganism" (Criminal Code Article 339 paragraph 2) and the "organisation of group activities that breach public order" (Criminal Code Article 342 paragraph 1) and sentenced, on 13 July 2006, to five and a half years of imprisonment. Interestingly, the EU visa ban against certain Belarusian officials responsible for human rights violations was reportedly extended in September 2006 to include those who were directly involved in the sentencing of Professor Kazulin[18].

### *ii. Politically motivated prosecutions under general criminal provisions*

34. More dangerous still for the persons targeted than the application of mostly[19] short prison sentences under the specific provisions described above is the fabrication of criminal cases under "general" provisions such as fraud, tax evasion, corruption etc. Such prosecutions are more dangerous for two reasons: firstly, the offences in question usually carry longer prison terms, and secondly, it is more difficult for national and international human rights defenders to intervene, given that the forms of legal proceedings under criminal provisions that exist in similar terms in all countries are usually more or less respected. Human rights defenders, who often lack access to first hand information, are reluctant to criticise court proceedings, or to expose themselves to accusations of supporting common criminals.

35. In such cases, the first line of defence against politically-motivated abuses is the professional conscience of the actors of criminal proceedings themselves, i.e. of the judges, prosecutors, police investigators and, last but not least, the defence lawyers. It is first and foremost their responsibility to ensure that justice is truly done.

36. Unfortunately, in some cases that have been brought to my attention, this line of defence has quite obviously failed. Whilst I am myself, as a practising lawyer, extremely reluctant to criticise court proceedings and their outcomes, the following cases are so obviously fabricated that I cannot but add my voice to those who criticise the verdicts. Again, these are but examples. Experience shows that where structures are in place that allow manipulations of court proceedings for political motives - in particular a judiciary lacking independence - such manipulations do occur, and the cases that become known to the outside world are just the tip of the iceberg.

37. One such case is that of **Mikhail Marinich**. A prominent opposition figure and presidential candidate in 2001, former Minister for External Economic Relations and Ambassador of Belarus, Mr Marinich was convicted in December 2004 of "embezzlement by means of his official position executed on a large scale" and sentenced to five years' imprisonment in a hard labour colony with confiscation of property. Marinich's detention began in April 2004 with an arrest for a driving offence. He was released after confiscation of his possessions, including money, and later summoned to the KGB offices where he was told that his money

[16] See article "Democratic activists were met from the prison by Slovak Embassy Head", Charter 97, 16.10.2007 (www.charter97.org).
[17] See article on this case dated 15.02.2006 published at http://www.charter97.org/en/news/
[18] Cf Amnesty International USA, Amnesty International Concerns in 2006, AI Index EUR 49/003/2007 at p. 3.
[19] But see § 31 above (the case of Mr Kazulin).

was counterfeit. KGB officers then took him to his dacha, where an unlicensed pistol was "found". Whilst he was acquitted of the fire-arm charge for lack of evidence, he was convicted for embezzling IT equipment used by the NGO he was presiding, Delovaia Initsiativa. The absurdity of this conviction is illustrated by the fact that the equipment that he was accused of embezzling was officially on loan to his organisation by the US embassy. The US State Department stated publicly in response to these charges that *"[t]he equipment has at all times remained the property of the U. S. The U.S. makes no claims against Ambassador Marinich or his organization regarding disposition of this equipment"*[20]. Amnesty International considers him to be a prisoner of conscience, and his liberation from prison has also been requested by the Parliamentary Assembly[21]. He was finally released on 14 April 2006, after he developed serious health problems in prison.

38. Another case is that of **Andrei Klimau**, a former deputy of the Supreme Soviet of Belarus and pro-democracy activist. He has cumulated widely recognised trumped-up convictions for economic crimes (six years in prison in 1998 for alleged embezzlement of funds and counterfeit) and for organising a public meeting (one and a half years in 2005). Four months after he was released from prison, he was arrested again in April 2007 and convicted, on 1 August 2007, to two more years in prison for a literary article published on the internet for "calling for the overthrow of the Government" and for "insulting the President" – reportedly the first conviction under Article 361 of the Criminal Code.[22] The article in question discusses ways and means of changing the political system in Belarus, and links President Lukashenka to the disappearance of Viktar Hanchar, one of the victims of the high-profile disappearances which were the subject of a report adopted by the Assembly in 2004[23]. Ales Bialiatski, Vice-President of the International Federation of Human Rights and a professional literary critic, rightly qualifies the trial and conviction of Mr Klimau as "absurd", given that the article in question is not in any way a program of action, but a work of literature[24]. This is also the first conviction, in Belarus, of the alleged author of an internet publication. According to Reporters without Borders, Mr Klimau's mother, who visited him in prison on 17 September 2007, found him depressed and physically diminished. He is most obviously a prisoner of conscience and must be released most urgently.

### *iii. Other politically motivated abuses of the criminal justice system*

39. Whilst the cases described above concern the unjustified prosecution of innocent persons, the opposite can be just as abusive: the failure, for political motives, to properly investigate and prosecute criminal acts committed by state agents against members of the opposition.

#### *a. Failure to hold to account those responsible for the disappearance of prominent opposition figures and the cover-up of responsibilities*

40. The disappearance of Yuri Zakharenka, former Minister of the Interior, Viktar Hanchar, former Vice-President of the Parliament of Belarus, Anatoly Krasovski (businessman and supporter of Mr Hanchar) and Dmitri Zavadski (cameraman for the Russian TV channel ORT) in 1999/2000 was the subject of Resolution 1371 (2004) and Recommendation 1657 (2004)[25]. In the underlying report, completing the work begun by an ad hoc sub-committee chaired by our former colleague Sergey Kovalev, I had come to the conclusion that steps were taken at the highest level of the state actively to cover up the true background of the disappearances, and to suspect that senior officials of the state may themselves be involved in these disappearances. These officials are Mr Sheyman (former head of the Presidential Administration, then Prosecutor General), Mr Sivakov (former Minister of the Interior, then Minister of Sports), and Mr Pavlichenko (a colonel of the special forces). The evidence, collected under difficult circumstances in Minsk, is presented in detail in the above-mentioned report, which, so I was told by many Belarusian interlocutors, is well-known in this country.

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[20] US State Department, Prosecution of Belarusian Opposition Figure Mikhail Marinich, statement, Washington, 23.12.2004 (cited in: Amnesty International USA - Belarus, Mikhail Marinich, opposition politician imprisoned for his political beliefs, published at www.amnestyusa.org).

[21] Cf Resolution 1482 (2006), § 12.7.

[22] Cf Statement by the Belarusian Helsinki Committee and the International Helsinki Federation for Human Rights, 12.04.2007 "Belarus: Arrest of Andrei Klimau for Alleged Internet Statements Shows Use of the Criminal Code to Suppress Dissent"; Statement by Reporters sans Frontières, 10.09.2007, *Deux ans de prison ferme pour l'opposant Andrei Klimau: la justice rend public son verdict un mois après la condamnation*.

[23] Cf Doc 10062 of 04.02.2004; in this report, I had myself come to the conclusion that the former head of the Presidential Administration and Prosecutor General of the Republic of Belarus, Mr Sheyman, is highly suspect of having been involved in these disappearances or their cover-up.

[24] Cf "Ales Bialiatski: the trial and the verdict to Klimau are absurd", 27.09.2007, Human Rights Center "Viasna" (www.spring96.org).

[25] http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta04/erec1657.htm; http://assembly.coe.int//main.asp?link=http://assembly.coe.int/documents/WorkingDocs/doc04/EDOC10062.htm

41. The case of Viktar Hanchar is also being followed by the Committee on Human Rights of Parliamentarians of the Inter-Parliamentary Union. The Belarusian authorities had recently submitted to the said committee a paper purporting to refute the Assembly's report. On behalf of the Assembly's Committee on Legal Affairs and Human Rights, I participated in a hearing of the said committee in Geneva in July 2007 and took position on the Belarusian paper. In short, the Belarusian paper actually further comforts my earlier findings, as even the purported "errors" concern only minor details and not the main chain of evidence. Without going into detail, I should like to give but one example: during my inquiry in 2003/2004, I had been informed (and obtained a copy) of a handwritten note by Police General Lapatik, who had summed up the results of the police investigation in a way that corresponds largely to my own conclusions. Mr Sivakov and the press spokesman of the Prosecutor General's office are on record for having stated publicly that General Lapatik's note, which had been leaked to the media, was a fake, a politically-motivated "provocation". After Sergey Kovalev and I had offered to carry out a graphological expertise, Mr Sivakov and Mr Sheyman admitted in their interviews with me in Minsk that the note in question was not a fake after all, but a mistaken "version" (among others) which had indeed been prepared by the elderly and ill general. Despite my insistence, I was not offered any other "versions" of General Lapatik's note. In their recent paper addressed to the Inter-Parliamentary Union, the Belarusian authorities now claim that it had never been their official position that General Lapatik's leaked note was a fake. The spokesman of the Prosecutor General's office and the Minister of the Interior, Mr Sivakov, had merely expressed their private opinions. But during my interview in Minsk with Prosecutor General Sheyman, I asked him whether his spokesman had to obtain his prior agreement for public statements of any importance made on behalf of his Office – and Mr Sheyman made it very clear that this was of course the case, as it would be in any country.

42. As shown by their behaviour before the Inter-Parliamentary Union, the Belarusian authorities have in no way followed the Assembly's recommendations, which included the initiation of criminal investigations with a view to clarifying, and punishing, as the case may be:

- the alleged involvement of the three persons mentioned above in these disappearances;
- and the crime of perversion of the course of justice possibly committed by certain other high-ranking officials who have been involved in the investigations carried out so far and who may have falsified, dissimulated or destroyed evidence in their possession in order to protect the true perpetrators of the crimes.[26]

43. Instead, they have harassed[27] those who demand justice and keep alive the memory of the disappeared persons, who have become a symbol of resistance against the Lukashenka regime much in the same way as the Gongadze affair in Ukraine had galvanised popular protest against the Kuchma regime.

### *b. Other alleged cases of failure to hold to account the perpetrators of crimes against persons linked to the opposition*

44. The murder of **Veronika Cherkasova**, an outspoken journalist working for the independent weekly "Solidarnost", who was found dead in her apartment with multiple stab wounds in October 2004, has not yet been elucidated. Her stepfather, Mr Meleshko, and her son, Anton Filimonov, aged 16 and suffering from chronic kidney and heart disease, were declared suspects, though the charges were later dropped. Anton Filimonov was released on bail on 13 March 2006, after an international campaign in his favour. Amnesty International had been concerned that his detention (for alleged counterfeiting of banknotes) was motivated by the intention to pressurise him into confessing to the murder of his mother, or to incriminate other relatives.[28] According to Reporters Without Borders, Veronika Cherkasova had been investigating a possible arms deal between the Belarusian Government and Saddam Hussein.[29] The Committee to Protect Journalists had complained that the possible link between her death and her work was never properly investigated[30]

45. In October 2005, journalist **Vasiliy Grodnikov**, who worked for the opposition daily Narodnaya Volya, was found dead inside his locked apartment. Whilst his brother, who had found the body, reported signs of a struggle, police closed the case in November, concluding that Grodnikov fell while intoxicated.

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[26] Recommendation 1657 (2004), § 1.i.
[27] I have been informed of at least two cases of young activists who were arrested for distributing copies of the Assembly's report, which was translated into Belarusian and distributed in large numbers thanks to the efforts of Mr Krasovski's widow.
[28] Cf Amnesty International USA, ibid. (footnote 12), at pp. 3-4.
[29] Statement of 10.03.2005 at www.rsf.org/print/php3?id_article=12753
[30] Committee to Protect Journalists, Attacks on the Press in 2006 at www.cpj.org

After reopening the case, the Prosecutor General's office announced in December 2005 that no crime had been committed as Grodnikov died as a result of "his careless actions".[31]

46. **Ryszard Badon-Lehr**, a Polish diplomat, was found unconscious in his residence on 22 March 2006 in Hrodna (Belarus) and subsequently died at a Polish hospital without having regained consciousness. A criminal investigation was launched by Polish prosecutors into allegations that he had been beaten before his death and the possibility of involvement of the Belarusian authorities, who denied the beatings and concluded that the cause of death was a stroke.

47. Another mysterious death involving a foreign diplomat and intelligence officer occurred on 23 August 2006. **Vytautas Pociunas** fell to his death from the 9th floor of the hotel in Brest that he was staying at[32]. Whilst the Belarusian authorities quickly spoke of an accident, Vitautas Landsbergis, MEP and former President of Lithuania, called the incident a "political murder".[33]

48. Last but not least, the **numerous cases of police violence** against peaceful demonstrators[34], including very young or frail elderly persons that have been described in much detail by the victims themselves and independent witnesses such as journalists and foreign diplomats have not given rise, to my knowledge, to any prosecutions against the perpetrators - police officers, special forces troopers, and KGB officers. In my view, this is not a coincidence, but part of the systematic abuse of the criminal justice system for the purpose of intimidating opposition activists.

### *c. The death penalty practice in Belarus as an abuse of the criminal justice system*

49. Belarus is the only country in Europe which still pronounces and carries out the death penalty. Official statistics are not published[35]. Execution is reportedly carried out by gunshot in the back of the head. According to Amnesty International, neither relatives nor death row inmates themselves are informed of the date of the execution in advance. Relatives are sent a death certificate once the execution has been carried out; however, the notification can take several weeks. After the execution, the state even refuses to reveal where the body has been buried.[36]

50. I consider this barbaric practice as another abuse of the criminal justice system which the Assembly must oppose. In my view, it is no coincidence, but fully in line with this barbaric practice, that the same pistol which was used for "official" executions in the SIZO-1 prison in Minsk under the responsibility of Colonel Alkayev was most likely also used for the execution of the "secret death penalties" in the above-mentioned disappearances cases[37].

51. The death penalty practice in Belarus must of course exclude any extradition from a member state of the Council of Europe to this country of a person who risks being subjected to capital punishment. The Assembly must therefore support the recent appeal by human rights defenders to the Ukrainian authorities not to extradite **Igor Koktysh** to Belarus[38]. Igor Koktysh, a rock musician, was accused of murder after antagonising and being threatened by local police for organising rock festivals and setting up a Catholic youth group to combat drug addiction and other social problems in the town of Baranovici. He was first acquitted by the Brest district court in December 2001, and the decision was confirmed by the Supreme Court of Belarus one year later. But following another appeal by the Prosecutor General, the case was returned to court for a re-trial, after which Mr Koktysh moved to Ukraine, where he was arrested in June 2007.

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[31] See US Department of State, Country Reports on Human Rights Practices 2006 (06.03.2007), Report on Human Rights Practices in Belarus, at p. 2.
[32] see the Baltic Times of 30.08.2006 at www.baltictimes.com/news/articles/16214
[33] Lithuanian diplomat and secret service officer dies in mysterious circumstances in Belarus, Belarus News and Analysis, 24.08.2006, http://www.data.minsk.by/belarusnews/082006/129.html; source: http://www.axisglobe.com/article.asp?article=1040
[34] See for example Amnesty International, communiqué of 22.03.2006 (AI Index EUR 49/003/2006); US Department of State (ibid., footnote 31 above), at pp. 2-3; Viasna 96: Review of human rights violations in Belarus, March 2006 (12.04.2006, published at www.belarus-actions.org)
[35] See the official presentation of the Belarusian death penalty practice by the Belarusian Embassy in Washington at: http://www.belarusembassy.org/humanitarian/criminalcode.htm
[36] Cf Statement of 04.10.2004, AI Index: EUR49/016/2004, at: http://web.amnesty.org/library/Index/ENGEUR490162004?open&of=ENG-BLR
[37] See Doc. 10062 – Colonel Alkayev was one of the witnesses who testified before the ad hoc sub-committee on disappearances and has since found political asylum in Germany.
[38] Cf Amnesty International Urgent Action 264/07 of 16.10.2007 (EUR 50/005/2007) at: http://www.amnestyinternational.be/doc/spip.php?article11917

## III. Conclusions

52. In view of the above, it is obvious that the criminal justice system is frequently abused in Belarus.

53. Persons abusively convicted for political reasons must be recognised as political prisoners and compensated for their sufferings as soon as possible.

54. Officials ordering or participating in politically-motivated abuses of the criminal justice system must be held to account personally for their responsibility regarding such abuses when the time comes.

55. I am confident that the Republic of Belarus will one day join the family of European nations upholding human rights and the rule of law, and that justice will be done - by compensating victims and punishing perpetrators of the abuses described above.

56. Meanwhile, the Assembly should urge:

- the Parliament of the Republic of Belarus to repeal Law No 71-3 of 15 December 2005 (so-called "anti-revolution law"), and in particular Article 193-1 of the Criminal Code criminalising activities of non-registered associations and to abolish the death penalty;

- judges, prosecutors and police officers in Belarus to avoid, to the best of their ability, participating in abuses of the criminal justice system and to bring to bear their personal courage and imagination in order to mitigate the effects of the abusive legislation on its victims;

- Belarusian and international human rights defenders to keep a record, in a transparent and objective manner, of both the victims and the perpetrators of politically-motivated abuses of the criminal justice system.

57. The Assembly should further encourage:

- all member states of the Council of Europe, through their diplomatic representations in Minsk, and in collaboration with local and international human rights defenders, to continue intervening with the authorities on behalf of political prisoners and their families, and to offer them temporary protection;

- the European Union and the United States of America to continue imposing targeted sanctions, such as visa bans or the freezing of assets, on Belarusian officials responsible for serious human rights abuses;

- the international community to set up a mechanism for humanitarian assistance to victims of human rights violations in Belarus. Such a mechanism could be governed by a working group also involving local and international human rights defenders, in Minsk or in a neighbouring capital. The group's tasks could also include the identification, in a fair and transparent manner, of officials responsible for abuses, with a view to the imposition of targeted sanctions;

- the Government and Parliament of the Russian Federation to intervene urgently with the authorities in Minsk on behalf of political prisoners and the other victims of politically-motivated abuses.

*Reporting committee*: Committee on Legal Affairs and Human Rights

*Reference to committee*: Doc 10856, Reference No 3214 of 29 May 2006

*Draft resolution and draft recommendation* adopted unanimously by the Committee on 12 November 2007

*Members of the Committee*: Mr Dick **Marty** (Chairperson), Mr Erik **Jurgens**, Mr György Frunda, Mrs Herta Däubler-Gmelin (Vice-Chairpersons), Mr Athanasios Alevras, Mr Miguel Arias, Mrs Aneliya Atanasova, Mr Abdülkadir **Ateş**, Mr Jaume Bartumeu Cassany, Mrs Meritxell Batet, Mrs Marie-Louise **Bemelmans-Videc**, Mr Erol Aslan **Cebeci**, Mrs Pia Christmas-Møller, Mrs Ingrīda **Circene**, Mrs Alma Čolo, Mrs Lydie Err, Mr Valeriy Fedorov (alternate: Mr Alexey **Aleksandrov**), Mr Aniello Formisano, Mr Jean-Charles **Gardetto**, Mr József Gedei, Mr Stef Goris, Mr Valery Grebennikov, Mrs Carina Hägg, Mr Holger **Haibach**, Mrs Gultakin Hajiyeva, Mrs Karin Hakl, Mr Andres Herkel, Mr Serhiy **Holovaty**, Mr Michel Hunault, Mr Rafael Huseynov, Mrs Fatme Ilyaz, Mr Kastriot Islami, Mr Željko **Ivanji**, Mrs Kateřina Jacques, Mr Karol Karski, Mr Hans Kaufmann, Mr András **Kelemen**, Mrs Kateřina Konečná, Mr Nikolay Kovalev (alternate: Mr Yuri **Sharandin**), Mr Eduard **Kukan**, Mrs Darja Lavtižar-Bebler, Mr Andrzej Lepper, Mrs Sabine **Leutheusser-Schnarrenberger**, Mr Humfrey **Malins**, Mr Andrija Mandic, Mr Pietro **Marcenaro**, Mr Alberto Martins, Mr Andrew McIntosh (alternate: Lord John **Tomlinson**), Mr Murat Mercan, Mrs Ilinka **Mitreva**, Mr Philippe Monfils, Mr João Bosco **Mota Amaral**, Mr Philippe Nachbar, Mrs Nino Nakashidzé, Mr Fritz Neugebauer, Mr Tomislav **Nikolić**, Ms Ann **Ormonde**, Mr Ángel Pérez Martínez, Mr Claudio Podeschi, Mr Ivan **Popescu**, Mrs Maria Postoico, Mrs Marietta de Pourbaix-Lundin, Mr Christos **Pourgourides**, Mr John **Prescott**, Mr Jeffrey Pullicino Orlando, Mr Valeriy Pysarenko, Mrs Marie-Line Reynaud, Mr François Rochebloine, Mr Francesco Saverio Romano, Mr Paul **Rowen**, Mr Armen **Rustamyan**, Mr Kimmo Sasi, Mr Ellert **Schram**, Mr Christoph Strässer (alternate: Mr Jürgen **Herrmann**), Mr Mihai **Tudose**, Mr Vasile Ioan Dănuț **Ungureanu**, Mr Øyvind **Vaksdal**, Mr Egidijus Vareikis, Mr Miltiadis Varvitsiotis (alternate: Mrs Elsa **Papadimitriou**), Mrs Renate **Wohlwend**, Mr Marco Zacchera, Mr Krysztof Zaremba, Mr Vladimir Zhirinovsky, Mr Miomir Žužul

N.B.: The names of the members who took part in the meeting are printed in **bold**

*Secretariat of the Committee*: Mr Drzemczewski, Mr Schirmer, Mrs Maffucci-Hugel, Ms Heurtin