



MONITORING
RIGHT TO

FREE ASSEMBLY

Country Report
2016-2017

Belarus



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Brief Description of the Initiative

There is an increased number and intensity of protests and violations around them in the Western Balkans and Eastern Partnership region. To ensure that freedom of assembly rights are better understood and advocacy efforts are strengthened, the European Center for Not-for-Profit Law (ECNL) works with local experts from nine countries (Albania, Armenia, Belarus, Bosnia and Herzegovina, Macedonia, Moldova, Montenegro, Kosovo, Serbia) on mapping the existing environment for assembly in their respective countries. This assessment is a brief overview of topical issues and recent developments related to freedom of assembly in **Belarus**.

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SUMMARY

Belarusian legislation on mass events contains excessive and disproportionate restrictions on the right to freedom of peaceful assembly. In Belarus, a permissive principle of holding meetings operates, burdened by the obligation of the organizers before filing the application for holding the meeting to enter into civil law contracts with public authorities to protect order, clean up the territory and provide medical care. In some cases, these authorities refuse to conclude such contracts without the decision of the local executive committee to authorize a mass event. And in some cases, the local executive committees refuse to authorize a mass event without concluding these contracts. Such an order devalues the meaning of freedom of assembly; the state de facto refuses to fulfil its positive duty to ensure the exercise of the right to freedom of assembly. This situation in Belarus is exacerbated by the fact that the activities of the militia¹ are not aimed at ensuring the law enforcement and protecting participants in peaceful assemblies, even if it was not sanctioned, but for taking disproportional measures, including detention, use of physical force and special equipment.

Since the majority of peaceful assemblies take place in the absence of a special permit from the local authorities, the very fact of participation in an unauthorized mass event gives the militia officers an opportunity to arbitrarily resort to the dispersal of peaceful assemblies and the detention of its participants. In some cases, the militia officers use physical force and special equipment, again - often disproportionately.

BACKGROUND INFORMATION

Unfortunately, the practice of holding peaceful assemblies in Belarus cannot be a good example. Belarusian legislation on street events contains excessive and disproportionate restrictions on the right to freedom of peaceful assembly, which devalue the entire meaning of this right. In Belarus, there is a permission-based principle of holding meetings, which is encumbered by the obligation of organizers to file civil law contracts with government bodies (maintaining public order, clean-up of the territory and providing medical care) before filing an application for holding the meeting. In some cases, the above government bodies refuse to sign such contracts without a respective decision by the local executive committee to authorize the mass event, while local executive committees in some cases refuse to authorize the mass event before such contracts are signed.

The process of preparation for and holding of peaceful assemblies in Belarus involves the following government bodies and organizations:

- local executive committees — in charge of considering the application for a peaceful assembly and allowing the meeting or prohibiting it;
- bodies of internal affairs (police) — in charge of maintaining public order during authorized mass events, apprehending and transportation to the police station and preparation of papers of an administrative violation in case of participation of citizens in a peaceful assembly that was prohibited or not approved by the executive authorities. In addition, the body of internal affairs signs with the organizers of meetings a civil law contract for the provision of law enforcement services;
- city utilities — sign a civil law contract with the organizers for cleaning the territory after the meeting;
- healthcare institutions — sign a civil law contract with the organizers for the provision of medical services during the meetings;
- courts — consider cases of administrative violations by participants of meetings.

According to Article 5 of the Law on Mass Events of the Republic of Belarus, an application for holding a meeting shall be submitted by the organizer to the local executive committee no later than 15 days before the scheduled date of the mass event. The application shall indicate the purpose, type, location and source of funding for the mass event; date, time of its beginning and end; route, information on vehicles (brand, model, registration plate of the vehicle, name, residence of the person who is expected to drive the vehicle, if the mass event will be involve their use), expected number of participants, name of the organizer, his or her citizenship, date of birth, place of residence and work (study), measures to ensure public order and safety during the mass event, measures related to healthcare services, cleaning of the territory after the mass event, and the date of submission.

The local executive committee shall determine the application no later than 5 days before the scheduled date of the meeting.

The law stipulates that the organizer is obliged to appear at the invitation of the head of the local executive body or body of internal affairs to clarify issues related to the holding of the mass event.

In addition, in accordance with the Law on Mass Events, the organizers are obliged to follow every legitimate claim by employees of the internal affairs bodies and to assist in ensuring public order during the meeting.

The law obliges the organizer to ensure compliance with the conditions and procedure for holding a mass event, safety of citizens, preservation of buildings, structures, vehicles and other property, as well as green spaces. The fulfilment of this duty may involve the creation of special squads. In addition, local authorities or bodies of internal affairs can send representatives of the public to perform duties of maintaining public order (stewards) at a mass event.

The law does not provide for the obligation of organizers to insure their responsibility during the mass event.

The organizers are also obliged to cover the protection of public order provided by law enforcement agencies, the costs associated with medical care, and cleaning the territory after the mass event.

Subjects, geography and nature of peaceful assemblies

Traditionally, three authorized protests are held in Belarus every year:

1. demonstration on Freedom Day, 25 March (the historic day of independence of 1918), addressing the issue of the country's independence and criticism of public policies related to sovereignty.
2. Chernobyl Shliakh, 26 April (anniversary of the explosion at the Chernobyl nuclear power plant), highlighting environmental problems and criticizing the government on a variety of issues.
3. demonstration of Dziady (early November) in Minsk (religious tradition of honouring the deceased, remembering the victims of Stalin-era repression). The protest commemorates the victims of repressions and highlights current threats to the country's independence.

These meetings are usually authorized by local authorities. An exception was the meeting dedicated to Freedom Day on 25 March 2017, which was banned by the Minsk City Executive Committee. In its reply dated March 24, the Minsk City Executive Committee did not explain the reasons for refusal, and in the court hearing a representative of the state body told that the venue, claimed for the event, did not comply with the requirements of the legislation, and the organizers started to announce the action before obtaining a permit. Most of the

participants who attempted to gather in central Minsk were for the first time in several years detained or dispersed by riot police.

The themes of the remaining protests are quite diverse. In particular, in 2016 the Human Rights Centre "Viasna" documented 58 protests in 9 cities, which were dedicated to the following topics:

- protest against pressure on entrepreneurs;
- demand for the release of political prisoners or protest against politically motivated persecution of activists;
- pickets of environmental subjects (against the encroachment of a park in Minsk or construction of a pig farm in Maladziečna, the Critical Mass cycling event);
- protest against police-related violence;
- pickets outside the Russian embassy for the release of Nadzeya Savchenko, a Ukrainian pilot detained in a Russian prison;
- march of anarchists in Brest;
- demonstration in support of national symbols, etc.

In 2017, 65 protests were registered. Since February 2017, numerous protests have been held to protest against the President's Decree No. 3 "On the Prevention of Social Dependence", which provided for the payment of a special fee by persons who have been unemployed without a valid reason.

19 cities were affected by the unprecedented wave of protests, after 6 years with no local demonstrations.

These protests were organized by various political forces and individual civil society activists. The protests against Decree No. 3 ("parasitism decree"), popularly labelled as "marches of non-parasites", demonstrated a significant role of opposition politicians and members of independent trade unions, while the majority of participants were ordinary people not affiliated with any organization or movement.

As a positive practice of 2016 and 2017, one can note that, in general, the protests themselves were not dispersed even in the absence of permission of local authorities, which is required by the national law. At the same time, several protests in Minsk (25 and 26 March 2017) and Brest (the "blank sheets" protests) were dispersed, including with excessive use of violence and police gear, and numerous participants in the meetings were detained.

Another positive trend is that some organizers resort to attempts to legalize peaceful assemblies, despite the complicated and expensive procedure for obtaining permission. For example, in some cases the organizers resorted to the practice of notifying the local executive committee about the planned protest.

Speaking about the nature of meetings taking place in Belarus, it should be noted that they are exclusively peaceful. At the same time, they are subject to the supervision of the police.

The main negative trend is that the organizers and participants of peaceful assemblies are brought to administrative responsibility only because of the absence of a special permission

to hold the meetings. However, the fact that in 2016-2017 the meetings themselves were not dispersed in most cases and participants were not subjected to detentions testifies to the absence of a public danger of such actions. In particular, in 2016, in 98% of cases participants received charges by post and were summoned to the court. The courts, as a rule, imposed fines ranging between 2 and 500 euros. A total of 484 facts of bringing to administrative responsibility were documented in 2016¹.

In 2017, the number of prosecutions of participants in peaceful assemblies increased slightly, with about half of the trials ending in administrative detention, compared to 99% of rulings ordering fines in 2016.

Thus, during the reporting period, one of the negative trends was the practice of returning to detention of participants in peaceful assemblies, starting from 3 March 2017, and the dispersal of peaceful demonstrations, e.g. on 25 and 26 March 2017 in Minsk.

A particular problem related to the conduct of peaceful assemblies in Belarus is the low level of openness and communication between the organizers and the authorities. Ahead of regular annual demonstrations, the Minsk city executive committee appoints meetings with the organizers to merely voice their claims to the organizers: abstaining from disturbing public order, moving only along the pavements, crossing the road only at a green light, ban on using "forbidden insignia" (i.e. the symbols of unregistered organizations, while many opposition parties and movements have been denied registration for political reasons).

There are also examples when lack of communication led to negative consequences: the application for the 25 March protest in Minsk was submitted in a timely manner. However, in violation of the law, the executive committee failed to publish its decision 5 days before the protest, but put off the date of the meeting with the organizers to 5 p.m., 24 March, which is less than 24 hours before the start of the demonstration. On 24 March, the meeting was also cancelled on the initiative of the authorities, and on 25 March the peaceful demonstration was brutally dispersed with the use of violence², including against one of the organizers, Dzianis Sadouski, who was fined for participating in the protest. Sadouski later appealed against the violation of the procedure for considering the application, but the court took the side of the executive committee³.

It is also worth noting that on 21 and 22 March, a few days before the demonstration, the KGB arrested several activists charging them with plotting riots on 25 March⁴. Similar reasons were used to detain numerous observers hours before the demonstration⁵.

¹ http://spring96.org/files/misc/review_2016_en.pdf

² <http://spring96.org/en/news/86740>

³ <http://spring96.org/en/news/87106>

⁴ <http://spring96.org/en/news/86387>

⁵ <http://spring96.org/en/news/86441>

Another issue of concern is the lack of an efficient contact group on the part of the police during the mass events: for example, only in some cases the meetings are attended by representatives of the press service of the city's police department in Minsk. However, the officers actually fulfil the function of informing the participants of the illegal nature of the meeting and possible responsibility for attending the protest. They are also tasked with warning the journalists about the dispersal of meetings, but refuse to communicate with observers or provide basic information, for example, the number of police officers present during the protest or reasons for the detention of participants⁶.

⁶ <http://spring96.org/en/news/86742>

OVERVIEW OF THE RIGHT TO FREE ASSEMBLY IN 2016-2017



Legislation and implementation

Have there been any changes (or proposals for change) to the law relating to freedom of assembly in the timeframe covered by this report?

Have there been any positive / negative developments in relation to how the law is administered (including policing of assemblies)?

Belarusian legislation on mass events contains excessive and disproportionate restrictions on the right to freedom of peaceful assembly. In Belarus, there is a permission-based principle of holding meetings, which is encumbered by the obligation of organizers to file civil law contracts with government bodies (maintaining public order, clean-up of the territory and providing medical care) before filing an application for holding the meeting. In some cases, the above government bodies refuse to sign such contracts without a respective decision by the local executive committee to authorize the mass event, while local executive committees in some cases refuse to authorize a mass event before such contracts are signed. These circumstances devalue the entire meaning of this right, as the state de facto refuses to fulfil its positive duty to ensure the exercise of the right to freedom of assembly. This situation in Belarus is exacerbated by the fact that the activities of the police are not aimed at ensuring public order and protecting the participants in peaceful assemblies, even if they are not authorized, but at taking disproportional measures, including detention, use of physical force and police gear.

Since the majority of peaceful assemblies take place in the absence of a special permit from the local authorities, the very fact of participation in an unauthorized mass event empower the police officers to arbitrarily resort to the dispersal of peaceful assemblies and the detention of its participants. In some cases, the police officers use physical force and police gear, which are also applied disproportionately.

It is important to note that the Joint Opinion of the Venice Commission and the OSCE ODIHR on the Law on Mass Events of 2012 noted that the national law does not comply with a number of principles applicable to the exercise of the right to freedom of assembly, in particular the presumption in favour of holding assemblies, the state's positive obligation to protect peaceful assembly, as well as principles of legality, proportionality, non-discrimination and good administration⁷. The Opinion notes that the Law on Mass Events is characterized by a detailed overregulation of the procedural aspects of holding assemblies. The Law creates a complicated procedure of compliance with a rigid and difficult authorization procedure, while at the same

⁷ [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2012\)006-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2012)006-e)

time leaving administrative authorities with a very wide discretion on how to apply the Law. This procedure does not reflect the positive obligation of the State to ensure and facilitate the exercise of freedom of peaceful assembly and freedom of expression. The Law also fails to envisage adequate mechanisms and procedures to ensure that these freedoms are practically enjoyed and not subject to undue bureaucratic regulation. Such overregulation is likely to restrict excessively the exercise of the freedom of assembly and of freedom of speech⁸.

During the past few years, the Law on Mass Events has been periodically amended and supplemented, which, on the whole, further worsened the situation with freedom of assembly. In particular, after the "silent protests" (when the protesters gathered in the centre of Minsk to clap their hands), which took place in Minsk in the summer of 2011, the law was amended to prohibit joint pre-arranged presence of citizens in a certain place at a certain time for the commission of any actions (or inaction).

Over the past two years, the Law on Mass Events has been amended twice with several changes of a minor character. In particular, on 10 January 2015 Article 11 was amended, which prohibited the participants of mass events from hiding their faces, including using masks or other means that make it difficult to establish their identity. On 20 April 2016, another change in Article 11 of the Law on Mass Events prohibited participants from carrying explosives and ammunition, objects the destructive effects of which is based on the use of combustible substances, their simulators and hoax versions, as well as specially manufactured or adapted objects, the use of which can pose a threat to life and health of people or cause material damage to citizens and organizations. This was the Belarusian legislators' reaction to the active use of the so-called "Molotov cocktails" during the protests in Ukraine in 2013-2014.

In the last two years, the authorities have changed the tactics of responding to unauthorized mass events. In particular, police officers stopped dispersing unauthorized meetings and detaining their participants. Instead, the police charge the organizers and some participants with administrative offences, after which the courts issue disproportionately high administrative fines (from 200 to 500 euros for each protest). Such tactics resulted in many activists facing large debts on fines. Following failures to pay the fines, some of them were contacted by bailiffs seeking to distrain property in fulfilment of obligations to pay the fines.

Nevertheless, in the specified period there were documented cases of imposing administrative detention for up to 15 days for participation in unauthorized mass events, and up to 25 days in cases where activists were charged with two offences.

In early October, it was reported that the government had submitted to the Parliament a draft law "On Amendments and Additions to Certain Laws of the Republic of Belarus on Issues of Mass Events". The draft provides, inter alia, for the notification-based procedure for holding mass events in locations specially allotted for the purpose by local executive bodies. In order to hold a mass event, the organizers will only have to notify the local executive committee not

⁸ CDL-AD(2012)006-e Joint opinion on the law on mass events of the Republic of Belarus adopted by the Venice Commission at its 90th Plenary Session (Venice, 16-17 march 2012), paragraph 38

later than 10 days prior to the scheduled date of the assembly. In addition, the draft amendments suggest that the procedure for payment for public order maintenance, medical care and cleaning of the territory associated with the conduct of a mass event should be determined by the government's separate regulation. Currently, the procedure is established by local executive committees.

The bill was passed in a new version on 25 October. Although we do not possess exact information on the expected time of its entry into force, we expect that it will have been approved and sent to the President's Office by the Parliament's autumn session.



Policing of Assemblies

Do the police usually engage in forms of dialogue/communication with organisers before, or during an assembly?

Do the police generally facilitate and enable spontaneous / non-notified assemblies; simultaneous assemblies; counter protests; peaceful assemblies that block roads / traffic; sit-ins or occupations of buildings?

Do the police ever use force at assemblies? What is the range of weapons and the types of other equipment used? Is there generally medical assistance available to people who might need it?

Are undercover police ever used at assemblies?

What types of surveillance & imagery collection do the police use at assemblies? Do the police permit participants in assemblies to video / film / photograph police actions?

Ahead of major protests, the local executive body invites the organizers to a meeting. In cases where the local authority is not satisfied with the place or time of the event, it prohibits the meeting or unilaterally decides to change the place and time for the event. These meetings are not aimed at a joint search for solutions, but at clarifying positions and dictating terms on the part of the authorities.

To date, there are no public meetings of the police after the events, which would involve the organizers and the media.

According to the Belarusian legislation, spontaneous and unauthorized demonstrations are prohibited. In the case of holding such assemblies, the participants are brought to administrative responsibility even if the meetings are peaceful and public order is not violated by its participants. In the case of filing applications for the same time and place by different organizers, usually one of the applications is refused. Sometimes the authorities themselves initiate their own events or use GONGOs for refusing to hold an event. In case of a spontaneous counter-demonstration, police officers usually do not intervene and do not fully protect the participants.

The Belarusian legislation also strictly prohibits walking on the roadway during the meetings and blocking off the roads. In the case of such attempts, police officers restrain the crowd and return the participants to the pavement by force. Sometimes such behaviour creates a threat to the life and health of the demonstrators. For example, during the march on 17 February 2017 in Minsk, a large crowd of 3,000 demonstrators were forced to use an underground passage running the risk of causing a stampede, although the organizers attempted to lead the participants across the street, but faced opposition from police officers in civilian clothes⁹. On 5 March 2017, the participants in a march in Brest blocked for several minutes one of the city's main thoroughfares, as a result of which many participants were detained and later subjected to administrative detention.

Occupation of buildings and structures is also prohibited under the Belarusian legislation. Attempts to commit such actions are qualified as riots, e.g. during the events of 19 December 2010 in Minsk.

In Belarus, there are restrictions on the place of holding mass events. In particular, Article 9 of the Law on Mass Events introduces restrictions on locations where it is impossible to conduct mass events:

- in places, the use of which for these purposes is prohibited by decisions of the relevant local executive and administrative bodies;
- at facilities of underground, railway, water and air transport;
- at a distance of less than 200 metres from the buildings of the official residence of the President of the Republic of Belarus, the National Assembly of the Republic of Belarus, the Council of Ministers of the Republic of Belarus, underground pedestrian crossings, underground stations;
- at a distance of less than 50 metres from the buildings of national government, local representative, executive and administrative bodies, diplomatic missions and consular offices, courts, prosecutor's offices, territories of organizations that secure the defence, state security and public life (public transport, water, heat and power supply, institutions of preschool education, institutions of secondary education);
- at a distance of less than 100 metres from the buildings of healthcare organizations;
- at a distance of less than 300 metres from the territories of nuclear facilities, facilities designed for the production or storage of radioactive substances and materials;
- at a distance of less than 100 metres from the buildings and facilities in charge of manufacture, storage or sale of weapons, ammunition, explosives and materials, manufacture or storage of pyrotechnic products;
- at a distance of less than 200 metres from the buildings and facilities housing the organizations, which are entrusted with the functions of editorial offices of television and radio broadcasting media, as well as radio and television transmitting stations and radio transmitting stations;

⁹ <http://spring96.org/en/news/86086>

- at a distance of less than 100 metres from the territories of hazardous production facilities.

In this regard, applications seeking permission to hold mass events in the city centre are either rejected or their locations are changed so that local executive committees could circumvent the restrictions listed in the law.

Thus, the majority of places where the meetings can be held in accordance with the law are not suitable for communicating claims to the government bodies or expressing opinions against government policies.

The Law on Mass Events prohibits participants from installing tents or other temporary structures. In the case of installation of tents or attempts to install them, police officers demand that such actions be stopped, and in case of disobedience, they are removed. Persons who attempt to install a tent are brought to administrative responsibility.

Use of physical force and police gear by police officers. Special vehicles

The use of violence by police officers at mass events is a common practice. Violence is used in the following cases: if the meeting is not authorized by local authorities police officers use force to disperse the meeting and detain participants. There are cases when violence is also used during authorized mass events, in particular, when the participants of the meeting commit any actions that are prohibited by the Law on Mass Events, e.g. install tents, hide faces, shout out slogans, display posters (for example, insulting representatives of the authorities), etc.

The lack of permission to hold a mass event leads to the fact that the bodies of internal affairs (police) can take measures to end the mass event on formal legal grounds, disperse its participants, detain them and bring them to administrative responsibility. According to Part 1 of Article 12 of the Law on Mass Events, a mass event, as well as preparation for it, must be stopped at the request of the head or deputy of the relevant local executive committee or police department in the following cases:

- if no application has been submitted or a decision has been taken to prohibit the mass event;
- if the provisions of the Law are violated;
- in case of emergence of danger to life and health of citizens.

In accordance with Part 2 of Article 21 of the Law, in case of refusal of the participants of a mass event to comply with the claims of the head of the local executive committee or the internal affairs body to stop the mass event, the internal affairs bodies are entitled to take the necessary measures to terminate the mass event in accordance with the legislation of the Republic of Belarus. The provision is a reference rule; in case of refusal to terminate the mass event, the actions of the police are regulated by a special regulatory act — the Law on Internal Affairs Bodies.

In particular, Part 2 of Article 24 of the Law on Internal Affairs Bodies provides the right of the police to detain and hold the persons in places of detention, place the persons charged with

an administrative offence and the persons subjected to administrative detention in other premises of the police subdivisions.

According to the Procedural and Executive Code for Administrative Offences of the Republic of Belarus, a person may be detained for more than 3 hours (including pre-trial detention) for committing an administrative offence for which administrative detention is provided. Article 23.34 of the Code of Administrative Offences of the Republic of Belarus provides for the responsibility for violating the procedure for organizing and participating in a mass event in the form of an administrative fine or administrative detention for up to 15 days. This circumstance allows the police officers to detain the participants in unauthorized mass events and hold them before the trial at detention centres.

It should be noted that the decision to detain the participants in unauthorized mass events is taken arbitrarily by the police officers, without any clear criteria. It is not clear why the participants in some mass events are detained, while the participants in others are not. In a number of cases, the detentions are accompanied by the use of physical force, in rare cases police gear is used.

The conditions and limits of the use of physical force, police gear, weapons and special equipment are defined in Article 26 of the Law on Internal Affairs Bodies. The basic principle of the use of force and police gear is that, firstly, they are used in the fulfilment of tasks to protect life, health, honour, dignity, rights, freedoms and legitimate interests of citizens, the interests of society and the state against criminal and other unlawful attacks, and, secondly, the fulfilment of these tasks is not possible in other ways.

According to Part 2 of Article 26 of the Law on Internal Affairs Bodies, physical force and police gear are applied at the discretion of a police officer based on the current situation.

The use of physical force, police gear, weapons, and military equipment must be preceded by a clear and obvious warning to the person against whom they are applied, except when delay in their application creates an immediate danger to the lives of citizens or may entail other grave consequences.

It should be noted that police officers often ignore these provisions during the dispersal of unauthorized mass events. In most cases, the detentions of individual participants in mass events are not preceded by warnings.

During the meetings, public order is protected by both uniformed police officers and those wearing civilian clothes. At the same time, the majority of police officers are often present at mass events wearing civilian clothes. The service dress includes wearing a special badge with an identification number. However, it is difficult to be seen even from a short distance.

Police officers in civilian clothes are present at all peaceful assemblies. At the same time, they can be identified by distinctive signs: the presence of walkie-talkies, earpieces, hand-held cameras and specific behaviour. Police officers in civilian clothes usually move among the demonstrators and take videos of the participants. During the protest in the spring of 2017, police officers in civilian clothes often took part in the detention of people, without presenting their IDs or formal charges.

The video footage is used as evidence of a person's participation in a peaceful assembly and triggers the start of an administrative case. It also serves as evidence in court hearings. At the same time, there were documented cases when citizens asked the court to screen the records, but these requests were rejected.

In Belarus, there is no special law for the protection of personal data. The current legislation does not regulate in detail how long the imagery and personal data of participants in mass events can be stored. Moreover, there is every reason to believe that the personal data and images of the participants are stored in police databases without time restrictions and are used in the future, including for exerting pressure on the activists.

Uniformed police officers usually do not object to photo and video shooting, but may impede by verbal prohibition. Police officers wearing civilian clothes often cover their faces with hats or hoods. There were documented cases of bans and threats against observers during the shooting of police officers in civilian clothes. In the event that the detention and use of force are used by police officers in civilian clothing, no warnings are usually used. At the same time, the police officers do not give their names, present their IDs or give any explanations. There were documented cases of detention of activists in public transport following the end of the peaceful assembly¹⁰. Police officers in uniform usually give their names and warn about their actions.

Before unauthorized meetings, riot police officers, when patrolling the venue, use a modified submachine gun MP-5.

At the meetings, the use of the following types of weapons by police officers was identified: a carbine with a special nozzle for firing gas grenades, a hand smooth-bore gun (type of ammunition unknown), a Makarov pistol (worn with a special safety line), irritating spray aerosols, rubber sticks, handcuffs and other binding devices (plastic clamps), light and sound distracting devices.

In addition, in some assemblies, police officers wear protective anti-shock helmets, body armour, plastic protective shields for the forearms, hands and feet, kneepads and elbow pads, shockproof metal shields, gas masks, first-aid kits, flashlights, whistles, walkie-talkies with a hidden earpiece, megaphones, and video cameras.

Special vehicles used during the meetings include a BR6 Predator water cannon equipped with surveillance and recording systems, a bulldozer blade and searchlights, an armoured vehicle Lis with an anti-tank rocket launcher Shershen, a Ford pickup (official name: special vehicle Zabor-Barier) equipped with a special lattice frame around the body, an armoured car based on a Ford SUV, cars for transporting prisoners.

It should be noted that water cannons or other special vehicles have not yet been used to suppress protests in Belarus. Dispersal of demonstrations is carried out mainly by the riot police with the assistance of police gear and (or) physical force.

¹⁰ <http://spring96.org/en/news/86592>

During mass events, the place of gathering of participants is fenced with metal frames.

Over the past two years, protective shields were used by the riot police only once — during the dispersal of the demonstration on 25 March 2017 in Minsk.

Provision of medical assistance to participants in the meeting

When conducting authorized meetings, the organizers should pay for the services of emergency medical care. In the case of the use of force by the police, medical assistance is delayed, especially if the protesters are transported to the police station. As a rule, medical care is provided in the presence of obvious signs of injuries. In such cases, an ambulance is called, which renders first aid right at the police station. In rare cases, when it is obvious that the participant of the meeting has serious injuries, he or she is taken to a medical institution.

The legal advice office of the Human Rights Centre "Viasna" interviewed 130 people who sought assistance after serving administrative detention in the period from 15 March to 19 April 2017 as a penalty for participating in unauthorized protests. Among other things, the survey focused on medical examination and medical care. Based on the results of processing the information, the human rights defenders voiced concerns about cases of malpractice by the administration of detention facilities during the procedure of medical examination of citizens confined to the facilities. 33% of the detainees were not subjected to medical examination, 23% were interviewed by a medical officer. Due to the continuous admission of peaceful protesters, the administrations of places of administrative detention violated the procedure of medical examination or did not perform it at all. During admission procedures at the detention facility of Žodzina, medical examination was not carried out in 35% of cases. 30% of detainees were interviewed for health complaints. The rights of detainees were violated when they complained about health problems to employees of the places of administrative detention. There were instances when the administrations of detention facilities ignored requests for an ambulance (17%). In the detention facility of Žodzina, 13% of interviewees were denied medical assistance¹¹.



Media and Assemblies

Is the mass media able to report freely at assemblies?

Are citizen journalists or non-accredited journalists able to report freely at assemblies?

Are human rights defenders and or monitors able to observe freely at assemblies?

As a rule, media representatives are rather free to carry out their professional activities at mass events. However, it is not uncommon for police officers to obstruct the work of journalists. In particular, according to the Belarusian Association of Journalists, 123 cases of violations of the

¹¹ <http://spring96.org/en/news/87079>

rights of journalists related to the performance of their professional activities were documented in March, including 94 detentions and 6 instances of violence by the police¹².

At the same time, it should be noted that the problem of obstacles in the work of journalists that do not belong to the conventional mass media is still acute in Belarus. This is due to the fact that the Belarusian media legislation contains two definitions of the journalist: "journalist of a mass media" and "journalist of a foreign mass media" (Article 1 of the Law on Mass Media of the Republic of Belarus). Legislation does not protect, in particular, freelance journalists or journalists of foreign media who have not been accredited in Belarus. In the event of their detention, they are not entitled to enjoy immunity from detention and administrative liability. This leads to the fact that they can be detained and brought to administrative responsibility as participants in a mass event.

Opportunities of observation

In general, human rights defenders are free to observe the conduct of mass events. However, in the last two years, there have been several cases of attempts to bring observers to administrative responsibility as participants in an unauthorized mass event. Administrative charges against the observers, however, did not eventually result in an indictment. On 7 December 2015, a judge of the court of the Maskoŭski district of Minsk ordered a re-investigation of the charges brought against two observers, Natallia Satsukevich and Siarhei Kaspiarovich. Later, the police refused to continue the prosecution of the observers.

In addition, for the first time in several years, the authorities prevented independent monitoring of a peaceful assembly. The observation is traditionally conducted by the Human Rights Centre "Viasna" and the Belarusian Helsinki Committee. In particular, on 25 March 2017, the human rights defenders were not able to monitor the peaceful assembly dedicated to Freedom Day, after riot police officers detained all observers during a briefing before the meeting. As a result, more than 50 observers, journalists and representatives of international organizations were detained and brought to the police station. After about three hours, all those detained were released without charges.



Social Media and Assemblies

Do organisers of, and participants in, assemblies use social media before, during or after assemblies?

Has the government or other authorities imposed any restrictions on use of social media in relation to assemblies?

¹² <https://baj.by/en/analytics/e-newsletter-events-hot-spring-belarus-bulletin-151-january-april-2017>

Organizers and participants of mass events make extensive use of social networks when organizing and holding protest. At the same time, the Law on Mass Events prohibits announcing information about the meeting in the media and social networks before it is formally authorized. If this requirement is violated by the organizers, the local executive committee has the right to prohibit the holding of the meeting.

Even more extensive use of social networks during the mass events is made by the observers of the HRC "Viasna" and the Belarusian Helsinki Committee. This includes online reports of the meetings on Twitter: https://twitter.com/control_by

The authorities very rarely resort to blocking websites during mass events, but such cases take place in Belarus. In particular, on 15 March 2017, on the eve of a protest in Minsk, at least one opposition online resource, charter97.org, was blocked. The website is known for its harsh criticism of the Belarusian authorities.



Responsibility of Organisers

Are the organisers of an assembly held liable for behaviour of others?

If there is no identifiable organiser, how do the police respond?

The legislation provides that the organizers are responsible for the actions of the participants in the meeting. In particular, according to Article 15 of the Law on Mass Events, political parties, trade unions and other organizations whose responsible persons did not provide the proper order for organizing and (or) holding of a meeting, rally, street procession, demonstration and picket, which caused damage in a large amount or substantial harm to the rights and legitimate interests of citizens, organizations or public or public interests, can be dissolved in accordance with an established procedure for a single violation of legislation regulating mass events in Belarus.

In addition, the organizers can bear property liability for the harm caused by the actions of the participants in the meeting.

Article 23.34 of the Code of Administrative Offences provides for a separate offence punishable by responsibility for organizing an unauthorized event (Part 2 of Article 23.34). In this case, the organizer can be sentenced to an additional fine of 100 euros and administrative detention of up to 15 days. In 2017, there were three documented cases of administrative charges against

the organizers of peaceful assemblies: in two cases, the court ordered the strictest punishment possible, detention of 15 days¹³.



Detention and Prosecution

Are people ever arrested or detained in advance of an assembly? If so, are they given easy access to legal advice or medical assistance?

Has there been an increase in the scale of punishments imposed on people arrested at assemblies in recent years?

Are the courts generally seen as neutral and impartial?

In 2016, pre-emptive detentions of activists before the assemblies were not practiced in Belarus, but the practice was revived in March 2017.

In Belarus, the very fact of participation in a meeting that was not authorized by local authorities is grounds for bringing to administrative responsibility, even if the assembly was peaceful and did not violate public order. In 2016, in only one case, the participant of a peaceful assembly was detained after the assembly (in Maladziečna) and was sentenced to 7 days of administrative detention¹⁴. In 2016 and 2017, the main peculiarity of the tactics used by the authorities was that activists are not detained during the protest. However, a few days later they are invited to the police station to face charges of an administrative violation and are summoned to court. Since 5 March 2017, the courts have issued numerous decisions involving administrative detention, while earlier they generally practiced heavy fines (up to 550 euros) for the same offences. In the case of pre-emptive detention or in cases of mass dispersals (e.g. on 25 March 2017), participants are also charged with other offenses (obscenity or resisting arrest). Sometimes there were two charges at a time.

According to the law, from the moment of administrative detention there is the right to have a defender. However, police officers usually do not explain the rights and obligations of detainees, and in case the presence of a lawyer is requested by the detainee, they tend to ignore the request or even prevent the defender's meeting with the client. On 27 March 2017, observers attended 45 trials of protesters detained in Minsk on 25 and 26 March. Defence lawyers were allowed to attend only eight hearings, three of them were lawyers on duty, and five were contracted by the defendants. There were no lawyers at the 38 remaining trials¹⁵.

¹³ <https://spring96.org/persecution?JDateFrom=2017-01-01&JDateTo=2017-10-04&ArticleID=71>

¹⁴ <http://spring96.org/en/news/83087>

¹⁵ <http://spring96.org/en/news/86832>

There is a mixed practice with regard to the detained participants in the mass meetings. In the last two years, the majority of those detained during unauthorized protests were released a few hours (usually not more than three hours) after being detained. After being delivered to the police station, the participants of the meeting are subjected to the procedure of compulsory fingerprinting; administrative charges are formally presented and explanations are taken. After some time, the participants of the meetings are summoned to the court, which, as a rule, orders the imposition of an administrative fine.

In recent years, one can witness an increase in the amount of fines imposed on the participants in unauthorized mass events. According to Article 23.34 of the Code of Administrative Offences of the Republic of Belarus, in case of violation of the procedure for holding a mass event, the fine amounts to between 5 and 300 euros. The organizers face a fine of 200 to 400 euros. In case of a repeated violation within a year, the fine ranges between 200 and 500 euros. A sharp increase in prosecutions for participation in peaceful protests occurred in 2016, when 484 cases of bringing to administrative responsibility were documented, which was a sevenfold boost as compared to 2015¹⁶. In 95% of cases, the participation in unauthorized assemblies resulted in the imposition of heavy fines. As of early October 2017, there have been court hearings in 391 cases dealing with participation in peaceful demonstrations. In about 40% of the court decisions, the judges sentenced the defendants to detention for up to 15 days.

Of particular concern is the lack of fair trial guarantees in administrative cases of participants in peaceful assemblies. The court bases its decision relying mainly on the testimony of police officers, while rejecting the possibility of interrogating defence witnesses. In Belarus, the judicial system is completely dependent on the executive. Examples include the following facts that occur in cases involving participants in unauthorized meetings:

- police officers always act as witnesses in administrative cases (even in cases of obscenity charges in a public place and resisting arrest). In the presence of other witnesses, the court gives preference to the testimony of the police officers;
- there are instances of announcing “synchronous decisions”, as different judges issue the same rulings in respect of the same group of people. For example, 100% of verdicts involving detention for participants of the 15 March protest in Minsk, which only varied in the period of sentence (from 12 to 15 days).

As a separate problem, one should note that courts ignore all references to the country’s international obligations in the field of securing the right to peaceful assembly and base their decisions on formal criteria: responsibility only for the fact of participation in a meeting, which has not received the permission of local authorities, even if it was peaceful and did not violate public order.

¹⁶ http://spring96.org/files/misc/review_2016_en.pdf

As a result of monitoring the trials on 27 March 2017, the human rights defenders reported the hasty procedure of hearing administrative cases, when the judges failed to provide sufficient information on the procedural rights of the defendants and restricted their access to a lawyer¹⁷.



Accountability

Is it possible to hold any state authorities (ministry, municipality) or the police to account for their behaviour and actions relating to assemblies?

According to Article 7 of the Law on Mass Events, the decision of the head of the local executive and administrative body or their deputy to prohibit a mass event or change its date, place and time of conduct can be appealed in court.

In Belarus, there are no specialized courts to consider appeals against actions and decisions of local authorities. As a result, such cases are dealt with by regular courts and according to the standard procedure. In addition, there is no ombudsman in Belarus who could resolve such disputes.

Police actions during mass events are appealed according to the standard procedure: their actions can be appealed to a higher-ranking police officer, prosecutor or court. However, to date, there is no known case of prosecuting a police officer or representative of local authorities for an unjustified refusal to hold a mass event.



Overall Assessment

Is the right broadly respected, facilitated and protected by the state?

In general, Belarusian legislation regulating the organization and holding of mass events does not comply with international standards in the field of freedom of peaceful assembly. Overregulation of the procedure for holding meetings, the permission-based procedure, the obligation of organizers to sign agreements for cleaning the territory after the meeting, protection of law and order and provision of positive obligations of the state to ensure the full exercise of freedom of assembly.

¹⁷ <http://spring96.org/en/news/86832>

The situation is further aggravated by the absence of an independent judicial system that could level out the shortcomings of the law by proper enforcement and direct application of the rules of the Constitution and international obligations of Belarus.

RECOMMENDATIONS

The Republic of Belarus should begin systemic work to reform legislation on mass events involving a wide range of stakeholders, including representatives of civil society and political parties. At the initial stage, changes should be introduced, including, in particular:

- a. notification-based principle of holding peaceful assemblies;
- b. disapplication of the duty of the organizers in peaceful assemblies to sign contracts for cleaning the territory of the meeting venue, medical care and law enforcement, since these actions result from the positive obligations of the state to implement the right to peaceful assembly;
- c. removing unreasonable restrictions on the venues of mass events.

Before adopting the appropriate amendments to legislation on mass events, the bodies of internal affairs should refrain from disproportionate use of physical force against participants in peaceful assemblies, as well as detaining and charging them with administrative violations. They should fulfil their positive obligations to facilitate and protect peaceful assemblies.