



# MONITORING THE RIGHT TO FREE ASSEMBLY

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2017  
2018

BELARUS

 [#right2freeassembly](https://twitter.com/right2freeassembly)



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Published in January 2019



*The monitoring report was conducted as part of the ‘Monitoring the Right to Free Assembly’ regional project, managed by the European Center for Not-for-Profit Law (ECNL). The project is made possible by the International Center for Not-for-Profit Law (ICNL) through the Civic Space Initiative.*

*This publication is wholly financed by the Government of Sweden. The Government of Sweden does not necessarily share the opinions here within expressed. The author bears the sole responsibility for the content.*

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# I. EXECUTIVE SUMMARY

The right to peaceful assembly is guaranteed to everyone by the Universal Declaration of Human Rights and other international documents. The realization of the right can be related to other rights and freedoms, e.g. with the right of freedom of expressing the opinion. The freedom of assembly is very lively and multidimensional right, its' implementation can take different forms and without doubt, contributes to the development of democracy in society.

This report gives an overview of relevant issues and recent events related to the freedom of assembly in Belarus. The issues of provision, assistance and defense of peaceful assemblies on every level are addressed. In this report you can find analysis of realization of the right to peaceful assembly in Belarus in the period of 2017-2018 including the themes and statistics. Special attention is given to the issues of assembly administrating, legislation, non-discriminatory approach to peaceful assemblies, criminalization of protests, analysis of modern challenges and positive tendencies. The report is based on the analysis of national legislation on mass events, monitoring reports of independent observers, results of interviews with stakeholders concerned (participants, organizers, monitors,

mass-media representatives), and also public information. The authors of the report hope that the provided information will be used as a basis for dialog between the State (presented by local authorities, law enforcement agencies and legislature), civil society and other parties concerned.

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## II. BACKGROUND AND CONTEXT



To understand the realization terms of the right to assembly in Belarus quantity and quality of peaceful assemblies in 2017-2018 were analyzed.

Belarusian authorities don't publish the information about peaceful assemblies statistics in the public domain. But there are indirect sources of such information. In October 2018 the UN Human Rights Committee reviewed the report on Belarus submitted under procedure of The Human Rights Council Universal Periodic Review of 2016.

In this report, from the point of peaceful assembly's view, paragraph 353 is of interest: "In the majority of cases the applications for holding peaceable assemblies are agreed. Thus, in 2015 857 applications were submitted to the Executive Committee of the city of Minsk in order to hold 15838 mass events on the territory of Minsk, 15672 of them were allowed (99%), in 2016 – 566 applications in order to hold 9398 mass events were submitted, 9273 of them were allowed (99%)".<sup>1</sup>

Information on the number of applications in 2017-2018 wasn't published and is not presented in the public domain. This situation

clearly states the negative influence of the existing legislation which doesn't separate peaceful assemblies into specific category and regulate them the same way as cultural, sport, religious and other types of mass events. Clearly, 99% of the reported successful applications aren't included into realization of the right to assembly.

In 2017 the usage of peaceful assembly for expression and defense of one's position increased. At the same time, as a response, there came resurgence of reprisals for participation in peaceful demonstrations. Thus, since March 2017, after a year and a half gap, the usage of preventive detentions of activists for participating in demonstrations began. Criminal proceedings were initiated against some activists due to their activity, as an example:



<sup>1</sup> [CCPR/C/BLR/5](#)



- Vyacheslav Kosinero's performance with an official monument;
- The case of the Radio and Electronic Workers Union, which was a consequence of a wave of protests that took place in Minsk and regions after the implementation of the Decree №3 (The President's Decree №3 "On Prevention of Social Parasitism", which was adopted on 2 April, 2015 by the President of the Republic of Belarus. The Decree provided for €200 tax in case of unemployment and lack of regular wage income during at least 6 months. A fine or administrative detentions were envisaged for tax fraud. This particular decree caused protests around the whole country resulting in its temporary suspension on 9 March, 2017 till 2018, and later till 2019);
- or the case of "White Legion" - a group of activists who were engaged in field trainings including training sessions with armaments in case of occupation of Belarus. Besides, they planned securing of the peaceful assembly of 25 March, 2017 collectively with "Young Front" activists, since there was information about possible heavy-handed and violent dispersion of the assembly. However, on 21 March, 2018 detentions of both organizations' activists were started; also Nikolay Statkevich, an opposition politician, and 2 of his assistants were detained. In total, 21 people were arrested before the assembly. They were accused of organization of mass disorder, and the "White Legion" members were later accused of unlawful armed unit formation. Most of the arrested were placed in the KGB detention centre. Part of them were released after 10 days

of detention, the rest were kept there for more than 3 months (till 30 June, 2017). In total, 35 people were involved in the prosecution. The case was dismissed on 27 November, 2017<sup>2</sup>;

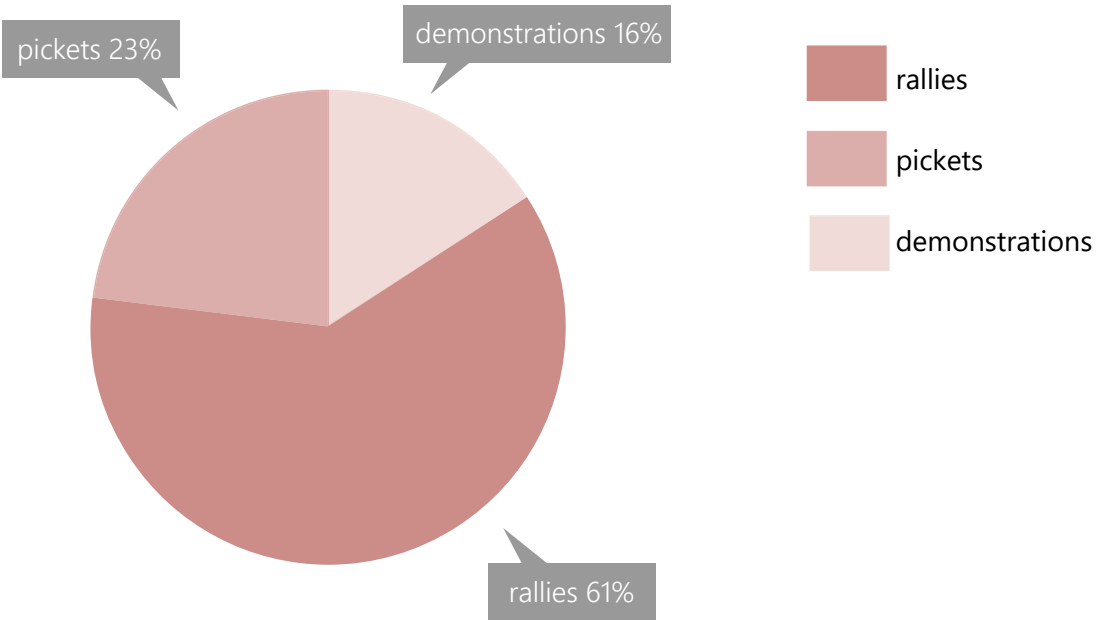
- Dmitry Polienko, an activist, was sent to a colony to serve his sentence. He was accused of resistance to a traffic police (or DMV) during the 29<sup>th</sup> of April 2016 demonstration (the suspended sentence was cancelled for him due to the participation in new demonstrations in the beginning of 2017).

Overall in 2017 there were 69 mass events over the whole country of Belarus<sup>3</sup>. Furthermore, two of them were protracted: since the 20<sup>th</sup> of February to the 6<sup>th</sup> of March 2017 the activists were protecting the memorial "Kurapaty" in Minsk from the building development where duty was held 24 hours a day. Since the 4<sup>th</sup> of April to the 8<sup>th</sup> of April 2017 pickets for the release of the "White Legion" case detainees in front of the KGB took place daily: "Freedom for the people" (near the KGB building Nina Baginskaya, a social activist, organized single-person pickets to support the detained for "mass disorder organization" described earlier<sup>4</sup>).

42 of the rallies happened at the city squares, and 16 of them were static and 11 of them were street marches. We acknowledged about the meetings from the mass-media including social networks.

<sup>2</sup> <https://news.tut.by/society/569643.html?crnd=72005>  
<sup>3</sup> This information is a result of the mass media, face-to-face monitoring and social network analysis. The difference in quantity with the Universal Periodic Review is due to the fact that by law, peaceful assemblies are classified as mass events.  
<sup>4</sup> <https://belaruspartisan.by/politic/375707/>

Types of assembly in 2017



THE CAPITAL CITY AND REGIONAL CITIES	DISTRICT TOWNS	NUMBER OF MEETINGS	THE CAPITAL CITY AND REGIONAL CITIES	DISTRICT TOWNS	NUMBER OF MEETINGS
Minsk		23	Homiel		5
	Maladzyechna	2		village Vedrych, Rechytsa District	1
	Slutsk	1		Mazyr	2
Brest		4		Rahachow	1
	Baranavichy	8		Svietlahorsk	1
	Biaroza	1	Hrodna		5
	Pinsk	2		Slonim	1
Vitebsk		4	Mahilyow		3
	Orsha	2		Babruysk	2
	Polatsk	1			



More than 1/3 (one third) part of meetings were held in the capital city (34%), 21 meeting took place in district towns (31%) and the rest happened to be in 13 smaller localities. The most active is the Brest region: there were 15 meetings, 8 of them were in the city of Baranavichy.

Considering localization, the majority of them were at the city squares, some of them thematically beside memorial sites and monuments (e.g. Kievsky Garden Square in Minsk). Only some of them had an official permission of local authorities.

The main theme of the protests in 2017 was the protest against the Decree №3 on “social parasitism”, at which acute social problems were raised. Also there were meetings on the historical themes, eco-march “Chernobyl Shliakh”, prisoners’ support meetings. The activities in defense of the Kurapaty Memorial in Minsk that were held during 15 days non-stop became one of the new meeting themes.

Only 5 of 68 studied meetings of 2017 were held with the local authorities permission (in Minsk).

In the majority of cases the organizers didn’t submit application for assemblies because of the complex bureaucratic procedures of getting permission and frequent dismissals due to spurious basis. In some cases Mikola Statkevich, an opposition politician, directed notifications about the intentions to hold the assembly to the local executive committee. However, it didn’t help to avoid the administrative prosecution of the meeting participants.

On one occasion, the youth wing activists of the BPF Party were given the permission to hold the meeting on the 25<sup>th</sup> of August 2017 in Minsk, but they made the decision to dismiss this particular form of the meeting because of the expensive assembly security provided by the police and the obligation to pay for the ground maintenance. Moreover, the

assembly organizers were fined in court for not informing the Minsk Executive Committee of the meeting cancellation.

An overall tendency of mass events held in 2017 is that the meetings weren’t ceased by force despite the absence of authorization given by local authorities. Nevertheless, some of the assembly’s participants were arrested, administrative protocols were drawn up against them and court orders with penalties or arrest were ordered. The unauthorized demonstration on Freedom Day in Minsk became an exception when the police used physical force towards its’ participants, numerous detentions were made, and the assembly was violently dispelled by the law-enforcement agencies.

In 2017 two examples of the physical force usage against the participants of peaceful assemblies happened:

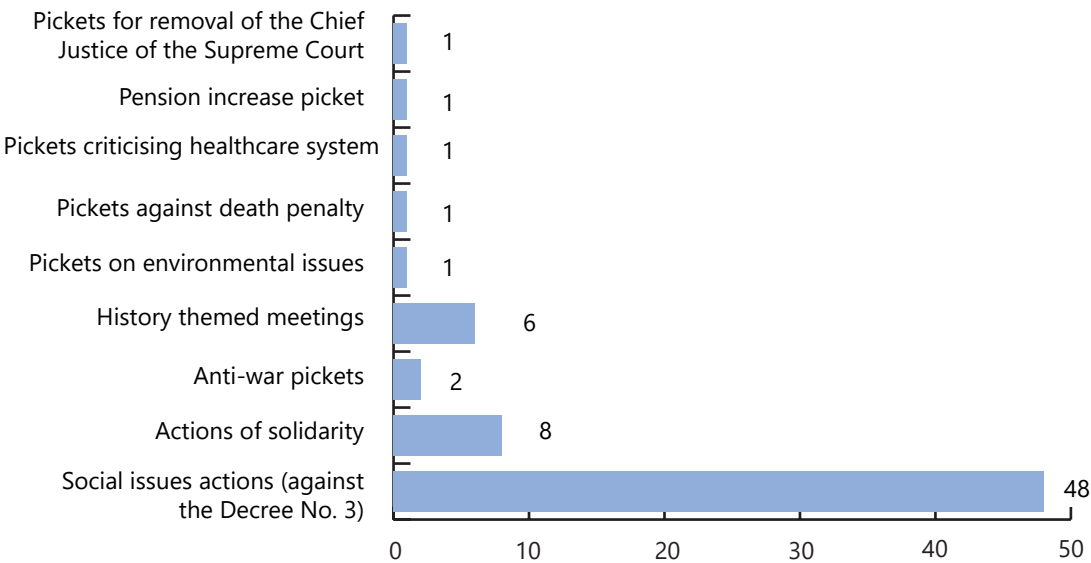
1. On 15 March 2017 in Minsk, after completion of the authorized assembly part of the participants were arrested by the police in civilian clothes right in one of the city trolleybus. The policemen used pepper spray and physical force. After that incident 52 people were accused of wearing masks during the assembly, which is forbidden according to the Belarusian legislation on mass events and constitutes an administrative offence. Because of that they were sentenced to administrative detention for at least 12 up to 15 days;
2. The majority of physical force usage was reported on 25 March 2017 in Minsk: Freedom Day (historical anniversary of declaration of the Belarusian People’s Republic). Before the assembly began, the

office of the Human Rights Centre “Viasna” was attacked by OMON militiamen wearing either uniform or civilian clothes. However, Alexey Loyko (the lawyer of the “Vyasna”) and Oleg Hulak (the Chairman of the Belarusian Helsinki Committee), who happened to stand near the front office door, suffered from the physical force usage. Alexey sustained TBI (traumatic brain injury) and spent about a week at hospital (subsequently these actions were recognized as legal, and the criminal proceedings weren’t instituted against the policemen who used physical force). The people who were in the office during the briefing on assembly surveillance (57 people) were delivered to one of the local police departments and released after 2.5 hours.

It is stated in the annual report on the human rights situation in Belarus<sup>5</sup> during 2017 that by 25 March the authorities brought huge amount of special forces and OMON officers, who demonstrated weapons and the newest equipment for dispersing demonstrations, to Minsk. In the morning the whole area of the assembly was blocked and cordoned off by the police. The metro didn’t stop at several central stations. Despite exclusively peaceful purposes of the assembly many participants were arrested with disproportionate usage of physical force, among those detained were innocent bystanders. Many detainees spent quite a long time waiting for completion of detention deposition in the open air at the police departments territory. During that time they were subjected to violent and inhuman treatment. After the completion of

<sup>5</sup> <http://spring96.org/en/news/88849>

Themes of protests in 2017





the detention deposition documents part of the detainees was released. Many of the participants of the Freedom Day Assembly and the members of solidarity actions that took place at October Square in Minsk on 26 March (total amount – more than 170 people) went through judicial conveyor: 145 in Minsk and 33 in regions – Babruysk (3), Borisov (2), Brest (1), Vitebsk (11), Homiel (14) and Polotsk (2). As a punishment 75 people were arrested, 93 were fined, including at least 57 arrests and 80 fines in Minsk; at least 18 arrests and 13 penalties in the regions.

In total, according to the Human Rights Centre “Viasna”, during 2017 judges delivered at least 425 sentences under Art.34 of the Code on Administrative Offenses (organizing or participation in an unauthorized mass event). About 126 of the participants of peaceful assemblies (among them 94 as part of repression of the Freedom Day actions) were held administratively liable under the Art. 17.1 of the Code on Administrative Offenses (disorderly conduct), at least 8 – under the Art.23.4 of the CoAO (insubordination against a lawful police instruction or request). Therefore, during 2017 more than 600 cases of persecution of civilians within the framework of administrative proceedings for realization of the right of peaceful assembly were registered. In more than 250 cases the court sentenced administrative detention as a punishment.

Thus, 2017 became unprecedented considering the scale of the persecution for participation in peaceful assemblies since 2011.

In the first 10 months of 2018 there were also registered numerous cases of restrictions on the right for peaceful assemblies. Despite

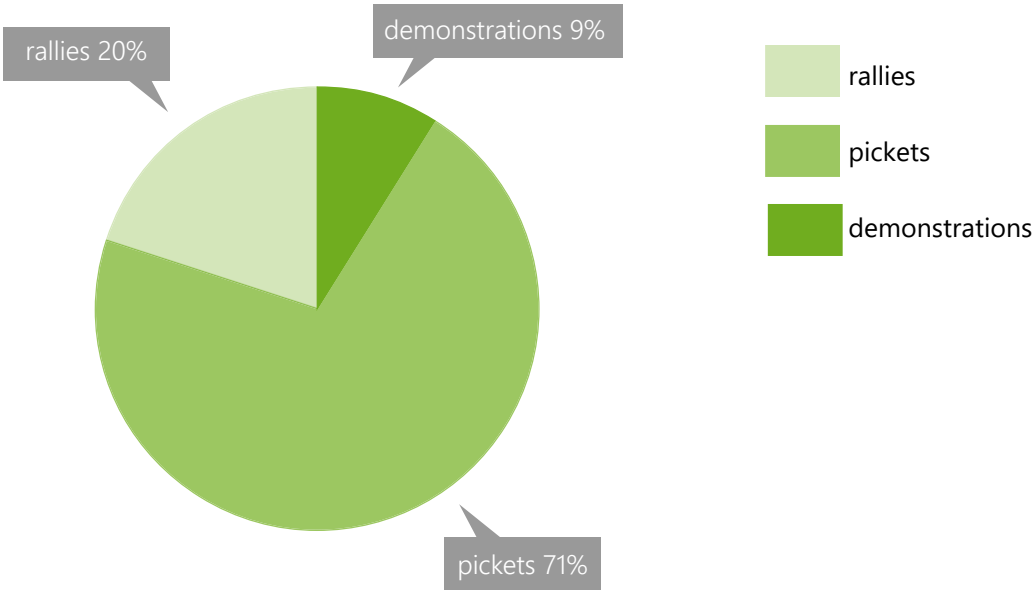
the overall reduction of the quantity of the assemblies after repeal of the Decree №3 on “social parasitism”, the participants of the peaceful meetings are being persecuted.

We have investigated 34 assemblies over the period from January to 18 October. This period includes daily protests against restaurant functioning nearby the Kurapaty Memorial (the burial site of people executed by the NKVD during 1937-1940) that are held since 31 May.

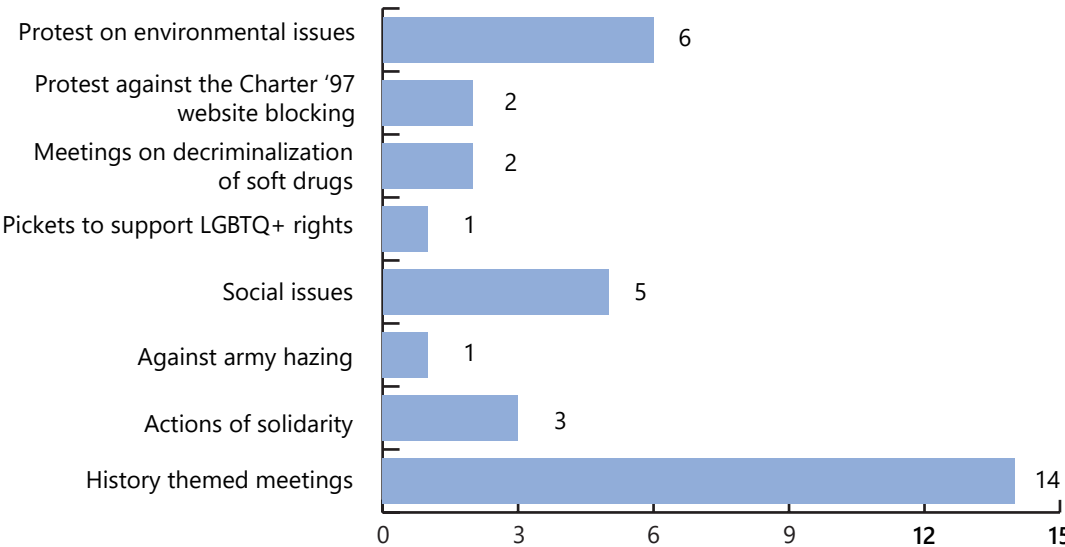
To make the conclusion, in comparison with 2017, static pickets has become more frequent type of assemblies.

In 2018 the assembly themes changed in comparison with 2017: social issues appear to take second place, army hazing assemblies, police mayhem, the closure of hospitals, low wages, overcrowding, limited self-government still stay relevant. The majority of the assemblies are dedicated to the historical events and the protection of the historical memory. Furthermore, demonstrations on ecological issues are growing popular, especially against the new plants construction in Svietlahorsk and Brest. A series of meetings focuses on the solidarity with political prisoners, leaders of the independent Radio and Electronic Trade Union, arrested journalists.

Types of assembly in 2018



Themes of protests in 2018





In 2018 assemblies were registered in 8 cities only:

THE CAPITAL CITY AND REGIONAL CITIES	DISTRICT TOWNS	NUMBER OF MEETINGS
Minsk		23
	Zaslavye	1
Brest		3
	Kobrin	1
Vitebsk		3
	Orsha	1
Homiel		1
	Svietla-horsk	1
Total		34

Even in the regional centers (Hrodha and Mahilyow) no activity has been observed. In Mahilyow the rally due to the 100<sup>th</sup> anniversary of the Belarusian People’s Republic was forbidden and wasn’t held<sup>6</sup>. In Minsk the same rally was allowed only in form of the concert nearby the National Opera and Ballet Theatre. The march dedicated to the anniversary of the BPR declaration in the centre of Minsk was prohibited and involuntary terminated<sup>7</sup>. Before the mentioned action 6 activists were arrested preventively. Immediately before the start nearby the Yakub Kolas Square 6 human rights monitors were detained. From the very beginning of the rally all gathered

6 <https://www.svaboda.org/a/29109575.html>  
7 <https://www.svaboda.org/a/29111040.html>

were arrested, thus the demonstration couldn’t take place. Overall 70 people were detained, including human rights activists and journalists. It is ironic that in the evening, after 8-9 hours, all of them were released, among them were the people under administrative detention.

The authorized concert drew a large audience, the monitors documented up to 11 000 people in the concert area in the presence of no more than 180 policemen<sup>8</sup>.

In 2018 authorized meetings were held in Minsk (3) and Brest (1). Other meetings went without permission or after the denial of authorization. In Brest the local authorities forbid the demonstration against the plant construction 8 times<sup>9</sup>.

Despite a decline in the activity as compared with 2017 the repressive practices towards assembly participants are still ongoing. Indeed, during 10 months of 2018 according to the Human Rights Centre “Viasna”<sup>10</sup> 127 cases of persecution on organization or participation in an unauthorized mass event were registered. Among them 81 people were fined with a total value of €23.370. 14 cases ended up with administrative detention (in total 119 days).

The amount of incidents (arrests or trials) monthly

8 <http://spring96.org/en/news/89625>  
9 <https://www.svaboda.org/a/29445535.html>  
10 <https://spring96.org/persecution?DateFrom=2018-01-01&DateTo=2018-10-18>

MONTH	THE QUANTITY OF INCIDENTS
January 2018	0
February 2018	15
March 2018	17
April 2018	10
May 2018	9
June 2018	9
July 2018	13
August 2018	18
September 2018	17
October 2018 (till 10.20.2018)	17

Also in 11 cases the activists were accused of “disorderly conduct”, although the detentions happened before or during the assemblies.

Daily protests nearby the Kurapaty Memorial since 31 May 2018 represent the new tendencies and peculiar ways to repress peaceful demonstrations. These demonstrations are held in the following way: the protesters stay on the access road in the front of the restaurant which is built nearby the memorial (from a few people to several dozens of them), in most cases they hold white-red-white flags and DIY posters. The participants block the way for the visitors’ vehicles, hand out leaflets and tell about the memorial. The visitors are made to leave the vehicles in the parking lots and enter the territory of the restaurant by foot. The protesters take photos of the visitors and share them on the Internet. There are usually

law enforcement officials in civilian clothes recording what happens on video. The visitors and the protesters often conflict, including insulting and even physical force usage. Some of protesters were struck and run over by an automobile. The DMV officers work at the demonstration place. In the majority of cases they didn’t arrest the participants and didn’t file reports on the violation of the law on mass events. However, daily the DMV officers make reports on the violation of traffic regulations since the protesters come out on the road to stop the visitors’ vehicles. Since 31 May 134 incidents of traffic violation were registered (Art. 18.23 of the Code on Administrative Offenses).

The restaurant location and the form of the demonstration chosen by the participants force them to go out on the road. The authorities don’t take any actions to prevent conflicts and don’t administrate the meeting at the Kurapaty.

On the one hand, almost all of the unauthorized peaceful assemblies participants are being persecuted because of the situation with the realization of the right for peaceful assemblies where people speak out against any social injustice. At the same time there are acute social topics that provoke stronger reaction.

As an example, the persecution of one of the LGBTQ+ activists Victoria Biran who took 3 photos with public institutions in the background as a response to a homophobic statement at the website of the Ministry of the Interior Affairs. After the posting of the photo with a caption “You’re fake, not me” on Facebook Victoria was held administratively responsible for two photos and was fined with



€300 in equivalent<sup>11</sup>.

The brutal reaction also causes demonstrations from anarchists' side: on 5 June 2018 three driving lanes were blocked with banner against the plant construction near Brest. After that incident, up to the middle of the month, the police came to 3 activists (2 in Minsk and 1 in Baranavichy), inspected and confiscated computers, mobile phones and other personal belongings<sup>12</sup>.

On 12 October 2018 2 more activists were inspected due to the case of the administrative offence of posting leaflets in Brest. Their computers and phones, and also their relatives' ones, were confiscated. The official status of the activists was as witnesses. In 4 days the case was dismissed, but the activists' belongings weren't returned to their owners up to the present day.

Analyzing the situation of peaceful assembly freedom during the last years, we can admit the stabilization comparing to 2017, but there is a definite deterioration comparing to August 2015 till March 2017, when peaceful assemblies weren't dispersed by the authorities, and participation in them was only punished by penalties.

<sup>11</sup> <https://www.rferl.org/a/belarusian-fine-for-gay-activist-s-photos-hits-absurd-new-low-amnesty-says/29371802.html>

<sup>12</sup> <http://spring96.org/be/news/89902>



### III. LEGAL FRAMEWORK

*As already noted, Belarusian legislation contains excessive and disproportional peaceful assembly right restrictions which devalue the purpose and meaning of this right. In Belarus it is prohibited to hold any assembly without permission. The organizers are obliged to conclude civil law agreements with public authorities on maintenance of law and order, ground maintenance and health-care service before the application for the assembly. In some cases the mentioned public entities refuse to make such contracts without the permission of local executive committees, and the local executive committees refuse to allow the holding of a mass event without concluding the noted contracts. Thus, the organizers and activists are in a vicious circle which makes it impossible to get the permission to hold a peaceful meeting.*

Belarusian Law "On Mass Events" is constantly criticized by civil society organizations, political parties and international organizations.

As noted in the Joint Opinion of the European Commission for Democracy through Law (the Venice Commission) and OSCE/ODIHR (Opinion 655/2011, adopted by the Venice Commission at its 90th Plenary Session, 16-17 March 2012), *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 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 speech<sup>13</sup>.*

The Venice Commission and OSCE/ODIHR in order to bring the legislation into conformity with international standards provided the following guidance:

*A. To include the key principle of a presumption in favour of holding assemblies, inter alia through abolishing the existing system of requiring a permit from State authorities for holding an assembly and replacing it with a*

<sup>13</sup> [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2012\)006-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2012)006-e)



system based on notification of an assembly;

B. To revise all provisions in the Law that amount to blanket prohibitions, including the provisions pertaining to time and location of peaceful assembly and to safeguard in the Law the possibility of holding spontaneous assemblies, simultaneous assemblies and counter-demonstrations;

C. To ensure that the definition of assemblies is clear and in accordance with international standards and does not work to the exclusion of certain types of assemblies;

D. To ensure that all persons can exercise their right to freedom of assembly, in Belarus. The Law should allow for the exercise of the right by nationals and non nationals, and all categories of people, including juveniles and migrants; all these categories should enjoy the right to freedom of peaceful assembly not only as participants, but also as organizers.

E. To revise provisions restricting who may be an organiser of an assembly;

F. To amend the Law so that the organization of large public assemblies is not limited only to registered organizations, which leads to the exclusion of unregistered associations or groups and individuals;

G. To remove the restrictions on assemblies gathering more than 1,000 persons and remove the unfettered discretion of authorities to limit or prohibit assemblies based on time, date, place, weather conditions, etc.;

H. To remove unreasonable and burdensome obligations (and ensuing sanctions) on the organisers, in particular those which are the exclusive responsibility of the State-organizers should not be held liable for damage and

violations inflicted by others; organizers should be exempted from liability for failure to perform their responsibilities, provided that they have made all reasonable efforts to do so, or for unlawful actions or misbehaviour of concrete participants or third persons;

I. To ensure that under the Law, every public space is seen as fit to host a public assembly; the prohibition of assemblies in the immediate vicinity of hazardous facilities may be limited only to those areas that are not accessible to the general public;

J. To bring the provisions concerning the termination of assemblies in line with the legality and proportionality principle, as well as the principle of necessity in a democratic society, and to ensure that the only allowable reasons for prohibition or termination of an assembly, which is a measure of last resort to be only considered when a less restrictive response would not meet the purpose of safeguarding other relevant interests, are the imminent threat of using violence or the use of violence, which turns the assembly from peaceful into a non-peaceful one;

K. To ensure that coercive measures are taken only against those individuals who violate public order, incite hatred or instigate violence, and not against the whole assembly;

L. To ensure that political parties, trade unions and other organizations are not threatened by dissolution solely for not meeting requirements of this Law.

The guidance made for Belarus during the 2<sup>nd</sup> cycle of Universal Periodic Review (May 2015) is dedicated to the necessity of the legislation improvement on mass events and bringing it into conformity with international standards

(recommendations 129.71, 129.91-129.93).

As we can see, the result of the criticisms of the Law "On Mass Events" and the practice of holding peaceful assemblies presented in the following measures taken by the authorities:

On 24 October 2016 the Government approved the inter-ministerial plan for realization of recommendations for Belarus according to the 2<sup>nd</sup> cycle results of Universal Periodic Review in the United Nations Human Rights Council and recommendations addressed to the Republic of Belarus by human rights treaty bodies for the period of 2016-2019 (further – the inter-ministerial plan). One of the activities of the plan is dedicated to international experience in conducting of mass events, consideration of usefulness of taking it into account in national practice.

In 2017 the modification project of the Law "On Mass Events" came to light (the proposed amendments are described below). The development of the modification project was made by the Ministry of Internal Affairs and the National Centre of Legislation and Legal Research without taking into account the opinions of civil society representatives who specialize in the matters of peaceful assemblies. As it was mentioned on the House of Representatives' website, the changes of the legislation aim at further improvement of legal framework governing relations considering organizations and holding of mass events.

At the end of September 2017 the Government introduced the project on amendments and additions to the Law "On Mass Events in the Republic of Belarus" in the House of Representatives of Belarus. On 25 October 2017 it was adopted in the first reading.

Civil society was invited for the discussion on the proposed changes and additions to the Law only after the first reading. The representatives of civil society were invited to the extended meeting of the working group of the House of Representatives in order to finalize the draft of the Law "On Amendments and Additions to some laws on questions of holding mass events". Except the parliament deputies the representatives of the National Centre of Legislation and Legal Research, Ministry of Internal Affairs and the Ministry of Foreign Affairs, human rights organizations, including the Belarusian Helsinki Committee, the Belarusian Association of Journalists, the Justice Initiative, the Lawtrend, the Human Rights Centre "Viasna" and others took part in the meeting of the working group on 6 March 2018. The human rights organizations presented their proposals on the improvement of the Law "On Mass Events" that include:

1. the proposal to shift the responsibility to pay for community policing, health care assistance and ground maintenance from organizers to local authorities;
2. the proposal to define the criteria of prohibition of mass events at particular places, or to establish the exhaustive list of such places;
3. the proposal to guarantee holding of simultaneous assemblies;
4. to exclude one-person pickets from the application of the law.

But proposals of the human rights organizations they weren't taken into account.

On 7 June 2018 the Law was adopted by the House of Representatives. 28 June 2018 the Law



was approved by the Council of the Republic (the upper house in Belarus' Parliament).

On 6 July 2018 during open court sessions the Constitutional Court of Belarus considered the constitutionality of the Law "On Additions and Amendments to the Law "On Mass Events" in the exercise of obligatory preliminary review and came to a conclusion that it is fully in accordance with the Constitution. In its decision the Constitutional Court noted that holding mass events upon notification established by law meets international standards enshrined in the Guidelines on Freedom of Peaceful Assembly (CDL-AD(2010)020) adopted by the Office for Democratic Institutions and Human Rights and the European Committee for Democracy through Law (the Venice Commission) at the 83rd plenary meeting (Venice, 4 July 2010) under which the State's primary responsibility is to create the necessary mechanisms and procedures that allow the realization of peaceful assemblies without excessive bureaucratic regulations (point 2.2 of paragraph 2).

The CC also admitted that in line with approaches developed in the jurisprudence of the European Court of Human Rights, "the necessity to make a notification for getting a permission to hold a public event does not infringe on the right stipulated in Art. 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms since the aim of such procedure is to give the authorities the possibility to develop reasonable and feasible measures for holding peaceful assemblies of any character including political, cultural and others" (paragraph 40 of the Regulation of 10 July 2012).

On 17 July the Law was signed by the President and will come into force on 26 January 2019.

The principal innovations are the following:

1) The special article is introduced, 9.1, which provides a special procedure of mass events at permanent locations for such events. To hold an event one should apply to local executive and administrative bodies no later than 10 days before the suggested date of the mass event.

However, the law amendments mean that local executive and administrative bodies are obliged to inform the organizer (organizers) of an event about the prohibition of the mass event in written form no later than 5 days before the date in the following cases:

- if earlier another person has applied for holding the mass event at the same place and the same time to the local executive and administrative bodies, they are obliged to inform the organizer who applied later;
- the application does not comply with legal requirements.

The amendments do not change the fact that when conducting a mass event, the organizer should cover charges for the security provided by the police, medical service and the ground maintenance after the mass event.

2) *The journalists are obliged to have the identification document and also press ID registered on the territory of Belarus, or a document confirming the foreign media journalist's accreditation in Belarus. Besides, journalists have to wear clearly visible insignia of the media representative.*

3) *The list of activities under the Law "On Mass Events" is expanded. So, other mass*

events requiring the permission of the local executive and administrative bodies (except sport, artistic or religious events) include cultural events. The reason of this amendment isn't clear enough, but officially it expands the scope of the law which is not entirely positive.

4) *Additional requirements for the mass event organizers are implemented.*

Citizens with an unexpunged or unserved sentence for crimes against peace and humanity, crimes against public security, crimes against public order and public morality or crimes against the State and government aren't allowed to become organizers of mass events according to the new legislation. Earlier the law stipulated that mass event organizers shouldn't be persons who had committed any violation of organization and holding of mass event within a year after the imposition of an administrative penalty for such violation.

5) *The prohibition to call for organization and holding the mass event before getting the permission to hold the meeting (or even before the application to hold the assembly), including announcement on the Internet, mass media or other information networks about the date, place and time of the mass event.* It's also forbidden to prepare and disseminate any leaflets, posters and other information materials about the mass event. Before this amendment it was prohibited only to announce the holding of a mass event before obtaining permission, and now it is not possible also to call for the organization and holding of a mass event. So the amendment slightly clarified the actions that are prohibited to perform: to

call and announce.

*We truly believe that the adopted amendments improve the Law "On Mass Events" insignificantly even though the reason for their introduction was to show that a serious improvement in the situation with holding mass events took place in Belarus.* In particular, the necessity to notify local authorities about holding mass events at permanent locations for mass events could be a positive step towards the realization of the right to freedom of assembly in case the permanent locations for holding such events were convenient and close to the target audience. At the moment the permanent locations for conducting mass events are determined by local executive and administrative bodies. *The analysis of the decisions shows that these places seem extremely inconvenient, located far from the center and local government buildings (also parks, public gardens and stadiums).*

Nevertheless, according to the amendments, local executive and administrative bodies have the right to inform the organizer who applied for conducting the meeting, about impermissibility of the mass event if the application does not comply with the formal requirements of the Law. It should be pointed out that in the majority of cases this is the most frequent reason of dismissal – inconsistency between the application and requirements of the Law "On Mass Events".



# IV. ADMINISTRATION OF FREEDOM OF ASSEMBLY



This law ("On Mass Events") doesn't designate peaceful assembly as a separate category, but regulates all the mass events (meetings, street marches, demonstrations, pickets, sport and cultural events, religious events and others held in open air or indoors). Application for holding a mass event should be submitted to local executive and administrative bodies of the territory where the mass event would take place. If there are several areas where organizers plan to hold the meeting, or the number of participants exceed 1000 people, the application should be addressed to the city or regional executive committee, e.g. in Minsk – to the Executive Committee of the City of Minsk.

The application to assemble peacefully is submitted in a written form no later than 15 days before the planned date of the assembly. In the application there should be an extensive list of data:

- aim, type, venue, source of funding of the mass event;
- date, start and end time of the assembly;
- traffic route, information about vehicles (including make, model, license plate, full name and address of the owner) in case of usage of the vehicle during the mass

event;

- estimated number of participants: full names of organizers, their nationality, date of birth, place of work (or study), contact phone number, and if organizer is an entity – name of the entity, legal address, full names, dates of birth, addresses, phone numbers of those responsible;
- information about pyrotechnic articles (type and quantity) and open fire if they are used;
- measures of public order provision during the mass event. Organizers are also responsible for the presence of the squad and stewards;
- measures of health service and ground maintenance provision after the mass event;

It's necessary to attach to the application an obligation of organizers or those responsible for organization and holding the mass event in written form. However, the law doesn't include such form of the application, and the legal force of this obligation stays unclear. Organizers are obliged to conclude contracts for chargeable services of maintenance of law and order, ground maintenance and medical assistance. It's important to note that the law



does not establish what should be done in the first place: a permit for a peaceful assembly has been received from the authorities or a service contract has been concluded.

*This situation creates confusion, since the executive body is able to deny permission because of the absence of the contracts, and the police, public utilities and medical services refuse to conclude contracts without permission to assembly.*

The announcement on the holding of mass event is considered by the head (or his/her deputy) of the local executive or administering bodies, and the written response (about permit or ban) should be provided no later than 5 days before the suggested date of the assembly. The legislation includes the commitment to note the reasons of banning the assembly. E.g. commonly used wording is another meeting at the same location and the same time. The activities of the BRUU (the Belarusian Republican Youth Union) are often used as an excuse<sup>14</sup>. The law doesn't cover the mechanism of documentation and publishing the applications for mass events in the public domain, what gives the authorities the chance to refer to the events held by the Belarusian Republican Youth Union and other GONGOs in order to refuse on formalistic grounds. The authorities only exceptionally take action to promote realization of the right to assembly by providing other locations, dates or time. As a positive example, we can admit the alignment process of the application to assemble peacefully on 26 April 2018<sup>15</sup>, when the organizers were offered other route, and they accepted the offer of the executive

<sup>14</sup> <http://spring96.org/ru/news/90803>

<sup>15</sup> <http://spring96.org/en/news/89885>

committee.

The procedure of application and authorization is covered in the Law "On Mass Events", the full description of all requirements to the application can be found in Art.6 of the Law. At the same time, on the national legislative portal <http://pravo.by> the text of the law is not presented, there you can find only general information and will be redirected to the search engine of <http://etalonline.by/>. It's important to note that the mentioned website was created by the state agency of National Center of Legal Information of the Republic of Belarus, the main objectives of which are gathering, processing, organizing, storage and updating of legal information, its' distribution and official publication of legal acts. However, on <http://etalonline.by/> the text of the Law "On Mass Events" is shown in a summarized (or demonstrative) version, and the full text of the document is available only through the system of registration and payment.

As an exception we can note the website of regional executive committee of Minsk<sup>16</sup> where you can find detailed information on procedure with the model of application and the organizers' obligations.

*All the facts mentioned above point out the lack of provided information on the procedure of organizing and holding the public assemblies for the parties concerned including organizers and participants. Measures taken by the State are not enough for free access to the information on peaceful assemblies, they exacerbate legal illiteracy and do not contribute into realization of the right to assembly peaceably in the country.*

<sup>16</sup> [http://www.mrik.gov.by/ru/org\\_mass\\_meropr-ru](http://www.mrik.gov.by/ru/org_mass_meropr-ru)

The Law "On Mass Events" contains a number of limitations considering the locations of peaceful assemblies. E.g. it's forbidden to hold meetings within 200 meters of mass-media facilities and within 100 meters of health-care facilities, etc. The mentioned law regulations adversely affect the principle of the sight and hearing for the protesters, which means the possibility to be in the sight and hearing of their target audience or a larger number of people to express their opinion.

At the same time with the noted restrictions local authorities determine permanent locations for assemblies, and places where they are forbidden. E.g. in the district city of Sviethahorsk with population of 67 000 people there is only one location for peaceful assemblies: the stadium of sports school for children "Bumazhnik" (the right tribune). In September-October 2018 activists submitted several applications for holding the picket at the "Bumazhnik" stadium to the Sviethahorsk executive committee in order to draw attention to the ecological problems of the city. All the applications were dismissed because during the offered dates there was training of the children sports school. Clearly, the location isn't adapted for peaceful assemblies in the first place, and it doesn't meet international standards considering peaceful assemblies.

Possibilities for appeal of decisions regarding dismissal of peaceful assembly are quite restricted. In case of disagreement with the authorities' decisions on prohibition or changes of date, location and time of peaceful assembly organizers can appeal in court against the lawfulness of the decision. In 2018 there were no cases of revoking the ban of peaceful assembly. Commonly the courts

support the executive committees' decisions. It also should be mentioned that the legislation of Belarus doesn't provide for the expedited procedure of dealing with complaints on the mass event dismissal in court.

The accountability of the administration of peaceful assemblies is low, the mechanisms of influence on local executive bodies by civil society are not effective and are few in number. As already mentioned above, in the public domain there is no information on the number and quality of peaceful assemblies, on the order of their administration.

Since the majority of existing laws and legislation on peaceful assemblies in Belarus do not meet international standards, a fundamental change of legal regulation is needed. Human rights activists developed the law project on the freedom to assembly peaceably in Belarus, presented it and sent it out to legislation entities. Among the main features there are implementation of the registration principle, presumption of peaceful assemblies' holding, specific regulation of peaceful assemblies and other mass events<sup>17</sup>.

<sup>17</sup> <http://www.sxod.by/ru/biblioteka-dokumentov/>



## POSITIVE PRACTICES OF ADMINISTRATION OF PEACEFUL ASSEMBLIES

*Unfortunately, in 2018 it's quite difficult to point out positive practices of authorities' actions for support the realization of the right to freedom of peaceful assembly. However, some actions of authorities during the organization of the peaceful assembly of 26 April 2018 can be considered as an example of positive practice. This assembly is traditional and is always a march dedicated to the anniversary of the Chernobyl Nuclear Accident of 26 April. (Monitoring report<sup>18</sup>):*

We can note the following positive moments:

1. Organizers submitted the application to the Executive Committee of the City of Minsk, so they were offered other route of march and time of peaceful assembly. The organizers agreed, and on 20 April 2018 the assembly was allowed. Since the assembly was planned for several hundreds of people on the streets with busy traffic in the evenings, the discussion of format and other details should be focused on the most convenient and safe format of peaceful assembly. Authorities of peaceful assembly should find balance between the right to assembly and safety, but never allow the unlawful restrictions of the right.
2. At the peaceful assembly no obstacles for mass-media representatives and independent monitors were registered. Both of the groups fulfill important functions including documenting of

peaceful assembly and its' evaluation from the view of international human rights standards. The analysis of the information published by mass-media and human rights activists can be a cause for changes of the authorities actions and all parties concerned in order to provide the freedom to assembly in Belarus.

3. The march participants were escorted by the traffic police - Department of Motor Vehicles (DMV), and ambulance vehicles. Obviously, easy access to health services is a positive feature which should be practiced further.
4. At the final destination of the march the meeting took place where everyone had a chance to speak. Censorship of speeches wasn't registered.
5. 4 participants of the assembly were wearing gas masks. Law enforcement officials requested taking them off, because it is prohibited to hire faces according to the Law. The request was respectful and correct and the participants fulfilled the request. Although usage of gas masks was a part of look and were related to the theme of assembly, policemen assured participants to act according to the Law. Obviously if the participants didn't take off the gas masks, they would be prosecuted. Productive dialog between different parties, the ability to resolve conflicts correctly and respectfully, contributes to holding the assembly in a peaceful and calm environment.
6. At the place of participants' gathering the information unit of the internal affairs department of Minsk City Executive

Committee was present. They wore special jackets and were equipped with a megaphone. Organizers and participants of assemblies, observers and mass-media need to understand functions and jurisdiction of the law enforcement authorities, and to have possibility to clarify some details.

*All the examples mentioned above demonstrate that Belarusian government has the overall competence and is capable of compliance with positive obligations in sphere of the freedom to assembly. Unfortunately, few similar positive examples are documented in fact. In the majority of cases authorities use all available mechanisms to forbid peaceful assemblies and to repress organizers, participants and other parties concerned.*

<sup>18</sup> <http://spring96.org/en/news/89885>





## V. POLICING OF ASSEMBLIES

Since the process of making a report didn't allow us to interview the MoIA officials responsible for policing organization during holding mass events, we can only present the analysis of legislation and law enforcement.

According to the current legislation police officers have the right to disperse mass event in the following cases:

1. if the application wasn't submitted, the prohibition on the mass event was adopted;
2. if the lawful procedure for holding mass event was violated;
3. if there is threat to human life and health.

Such measures are taken if participants or organizers of mass event refuse to fulfill the oral requirement of the head of local authority (or its deputy) or the head of internal affairs body on the termination of mass event.

In particular, the police officers have the right to arrest participants including using of physical force and special means, to file an administrative offense report on them. Oral requests about termination of assembly made by police officers are followed by using of physical force and detainment.

The terms and conditions for the use of physical force and special means by police

officers is described in the Law "On internal affairs agencies". In particular, according to Art. 26.2 of the mentioned law, physical force, special means, armaments, military and special equipment are used depending on the situation within the discretion of internal affairs officers in cases provided by this Act. *"The use of physical force, special means, weapons, military and special equipment should be preceded by clearly expressed and apparent for person warning about the intent to use them except for the cases when any delay in applying them will create direct threat to citizens' lives or can involve other serious consequences. Besides that, the legislation system provides for the duty of police officers to provide medical assistance to those affected by using of physical force and special means".*

In terms of the MoIA's structure there is the General Directorate of enforcement of law and order and violation prevention in which there is the Department of mass events. In Minsk and regional cities respective territorial units were created. Their functions include law enforcement during mass events including planning, organization, policing provision and termination of assemblies.

As already mentioned in the report,



authorization of all types of mass events is demanded in Belarus, including spontaneous assemblies and one person pickets, but in case of absence of relevant permit to hold the assembly police officers as a rule disperse the assemblies or take administrative measures (detention of participants including the usage of physical force or filing the protocols against them).

It's quite difficult to determine any tendency or criteria police officers use when making decision about termination of assembly or detainment of participants. We can suggest that decisions are taken on a high political level and arise from political feasibility. Thus, in 2015-2016 abrupt changes in behavior of police officers towards unauthorized mass events were registered: instead of detainment of the participants police officers filed protocols against them during the event or after.

Concerning authorized mass events, police mostly acts professionally. However, up to this moment the following actions of police officers during assemblies seem to be problematic:

1. Number of police officers wears civilian clothes at mass events. Such officers also detain assembly participants;
2. in some cases traffic policemen block the march at traffic lights during demonstrations. There are positive moments when police officers facilitate marchers' movement and do not divide them restricting the traffic;
3. information unit of police department is absent at some mass events;
4. police officers do not always respond to aggressive behavior of passers-by or

people who are against participants of assembly.

In our view police is not involved enough into dialog with assembly organizers. There is a practice when decision about permit or denial to hold meeting is made based on opinion of internal affairs administration (police). During assembly there are two kinds of situation:

1. in case of holding unauthorized meeting – policemen make warnings about participation and the necessity to leave the place of the meeting;
2. in case of holding authorized meeting – internal affairs bodies send special information units which is obliged to communicate with organizers and participants. Also, police officers can address the organizers identified by special bands or jackets in order to solve any conflicts.

There are a few educational institutions that provide retraining and skills enhancement for active staff of community policing. Retraining based on higher education with a specialization in "Public Order and Security" granting the qualification of the specialist in community policing sphere is held over 20 months.

There is no public information about skills enhancement and taking advantage of the best international experience by Belarusian police officers in the sphere of public order and security on mass events. According to the Bild newspaper in 2010 "at least one major and one captain" went through the training, one of the tasks of which was the dispersal of large demonstrations and detainment of organizers and the most active participants. According to the DerTagesspiegel, in November 2010

Belarusian security agencies were allowed to monitor the actions of German policemen during disperse of demonstration who protested against the transportation of radioactive waste to repositories of Gorleben (Lower Saxony) by "Castor" train. Water cannons, tear gas and rubber truncheons were used then. Overall, 500 officers of law enforcement agencies went through training in Germany and in Belarus.

During mass events police officers often use video recording of assembly participants' actions. In some cases they do it blatantly (especially at unauthorized meetings) in order to influence participants of assemblies since it's not clear what happens to the tapes after all (where and for how long they are storage, is there any catalog of assembly participants, etc.).

Considering filming of policemen made by participants, journalists and monitors, as a rule it's made without restrictions. Although in some cases, e.g. while capturing illegal actions of police officers, they usually impede the footage by closing the lenses of cameras with their hands. Sometimes they demand deleting the photos or videos.

### APPEALS AGAINST ACTIONS

According to the Law "On internal affairs agencies" one can appeal against police officers' actions to a higher public authority, prosecutor or court. *However, there are no examples of recognition of unlawful actions by police personnel even if they used physical force and assembly participants were injured.*

One of the reasons is that police officers are not easy to identify since many of them wear

civilian clothes (mostly unlawful actions are made by policemen without uniform). As a rule, the assembly participants aren't able to identify police officers even if they are wearing the uniform since they carry badges with ID-number in small font. *It's important to note that there is no Commissioner for Human Rights in Belarus to whom one might address such complaints against the police actions during assemblies.*

### MASS-MEDIA AND PEACEFUL ASSEMBLIES

According to national and international experts, the government regulations of mass-media in Belarus is one of the strictest in Europe. At the same time in June 2018 Belarusian legislation has been amended in order to strengthen control of mass-media, especially of the Internet<sup>19</sup>. One of the main occurrences of 2018 is increasing pressure on freelance journalists for the production of mass-media materials and cooperation with foreign media. 11 cases of journalists' detentions and creating other obstacles for their work are registered in the period January-June 2018<sup>20</sup>. In 2017 the Belarusian association of journalists documented 69 administrative fines on journalists based on part 2 of Art. 22.9 of the Code of Administrative Offences (which is more than the total of the period of 2014-2016).

<sup>19</sup> [https://baj.by/ru/analytics/smi-v-belarusi-no2-55-yanvar-iyun-2018?fbclid=IwAR1sQnyl5DuFUWqFYkyAXvbtPRpw-WZFk4n\\_OPqSg2LU6i9qU8MbEsr6HZA](https://baj.by/ru/analytics/smi-v-belarusi-no2-55-yanvar-iyun-2018?fbclid=IwAR1sQnyl5DuFUWqFYkyAXvbtPRpw-WZFk4n_OPqSg2LU6i9qU8MbEsr6HZA)

<sup>20</sup> [https://baj.by/en/analytics/repressions-against-journalists-belarus-2018-chart-updated?fbclid=IwAR1vde0qFOnwye5wj4iT2a2sRy2OMR\\_P8sHIQVGQsOkLN2o7GCZUqtBMBuY](https://baj.by/en/analytics/repressions-against-journalists-belarus-2018-chart-updated?fbclid=IwAR1vde0qFOnwye5wj4iT2a2sRy2OMR_P8sHIQVGQsOkLN2o7GCZUqtBMBuY)

*In 2018 there is a clear deterioration of the situation. In October 2018 89 fines imposed to journalists of total more than €30 000 were registered<sup>21</sup>. On 25 March 2018 while covering unauthorized peaceful assembly there were at least 10 journalists' detentions recorded<sup>22</sup>.*

It should be clarified that part 2 of Art. 22.9 of the Code of Administrative Offences establishes liability for illegal manufacture and/or distribution of mass-media products<sup>23</sup>. A very interesting situation happened on the stage near the Opera Theater in Minsk where an authorized concert took place on March 25, 2018. About 10 drones which were broadcasting the event disappeared from the assembly venue. The drones' owners including different media representatives believe that the law enforcement agencies are responsible for their missing. At the moment there is no confirmation or rebuttal of this version of the events.

On 9 August the Minsk Central District's Court fined Ekaterina Andreeva<sup>24</sup>, a journalist, and Sergey Kovalev, a camera operator, to €400 each. They were accused of the mass-media legislation violation for the coverage of demonstrations of 19 July in Minsk<sup>25</sup>.

It's important to highlight the repressions

<sup>21</sup> [https://baj.by/ru/analytics/smi-v-belarusi-no2-55-yanvar-iyun-2018?fbclid=IwAR1sQnyl5DuFUWqFYkyAXvbtPRpw-WZFk4n\\_OPqSg2LU6i9qU8MbEsr6HZA](https://baj.by/ru/analytics/smi-v-belarusi-no2-55-yanvar-iyun-2018?fbclid=IwAR1sQnyl5DuFUWqFYkyAXvbtPRpw-WZFk4n_OPqSg2LU6i9qU8MbEsr6HZA)

<sup>22</sup> <https://baj.by/en/analytics/repressions-against-journalists-belarus-2018-chart-updated?fbclid=IwAR1vde0qFONwye5wj4iT2a2sRy2OMRP8sHIQVGQsOkLN2o7GCZUqtBMBuY>

<sup>23</sup> <https://baj.by/en/analytics/fines-journalists-violating-article-229-administrative-code-chart-update?fbclid=IwAR01T6YG7mv2nthERX-ydB5l4a5zKHnoUwArzc4Du6l8tbxli869H-LSkd4>

<sup>24</sup> <http://spring96.org/en/news/90552>

<sup>25</sup> <http://spring96.org/ru/news/90362>

against citizen journalists and bloggers. Such bloggers as Maxim Philippovich, Sergey Petrukhin, Alexander Kabanov are being persecuted, imposed penalties and are even arrested. On 12 May the police have examined the flat of Sergey Petrukhin, a blogger from Brest. During the inspection a laptop, a tablet, a phone and a camera were confiscated<sup>26</sup>.

In recent years, there has been an increase in the popularity of social networks such as Facebook, Vkontakte and various instant messengers in Belarus. Naturally, they were used by activists and organizers to coordinate actions before and during peaceful assemblies. Posts about upcoming assemblies often gain a large number of reposts. As mentioned above, under current law it is forbidden to publish information about a peaceful assembly until getting a permission from the authorities. This requirement is obviously disproportional restriction of the freedom of assembly and does not comply with international standards. Single cases of administrative charges for publishing information about planned peaceful assemblies on social networks are fixed. However, the existence of such a possibility of authorities should be considered as a negative practice.

All the mentioned circumstances indicate generally negative situation considering the human rights in Belarus. This is particularly evident that the authorities aspire to control all the spheres concerning freedom of expression, right to collect and distribute information and right to assembly peacefully which can serve as an instrument of realization of the rights mentioned above.

<sup>26</sup> <http://spring96.org/en/news/89667>

## REPRESSIONS AGAINST THE MONITORS OF PEACEFUL ASSEMBLIES

Over the past two years, 2017-2018, in Belarus there were registered several cases of limitation of rights during the monitoring of peaceful assemblies. Monitoring of peaceful assemblies is held by two human rights organizations – the Belarus Helsinki Committee association and the Human Rights Centre “Viasna”. The monitors always carry identification documents, they wear blue jackets and always follow the Code of Conduct of Observers. The main principles of the Code include: independence and political neutrality, the description of the facts, non-interference, commitment to human rights principles, avoiding violent and discriminatory practice, courteous conduct. Monitors usually separate themselves from other participants. Monitoring reports are published on the Internet (e.g. Monitoring report on the street action on 1 May in Minsk<sup>27</sup>), they include description of the facts, conclusion and recommendations for all interested parties of peaceful assemblies. It is important to note that both national and international legislation guarantee the right to observe peaceful assemblies.

Repressions against independent monitors are captured constantly, e.g. in 2015 the authorities tried to impose a sentence of administrative liability on two observers for participation in peaceful assembly<sup>28</sup>. However, over the past 2 years pressure has increased and is taking new forms.

On 25-26 March 2017 Pavel Levinov, a monitor, observed peaceful assemblies in

<sup>27</sup> <http://spring96.org/en/news/88299>

<sup>28</sup> <http://spring96.org/en/news/81480>

Vitebsk having the identity certificate and the monitoring order made by Belarusian Helsinki Committee. He was arrested at the assembly, accused of participating in an unauthorized mass event and sentenced to 15 days of jail time<sup>29</sup>.

As described earlier, on 25 March 2017 the observers were arrested before the monitoring of the unauthorized peaceful assembly in Minsk. All the detainees were delivered to local police department and released in 3 hours<sup>30</sup>.

Nevertheless, the procedural documents weren't prepared and no charges were brought against them. At that time, while the monitors were arrested, in the centre of Minsk law enforcement agencies dispersed the peaceful assembly participants using physical means and special tools. The monitors couldn't make face-to-face monitoring, but they published the report based on the information presented in the mass-media<sup>31</sup>.

A year after the described events on 25 March 2018 traditional celebration of the Freedom Day was planned in two formats, one of them was authorized, another one was not. The monitors planned to monitor both assemblies, but they were detained at the place of unauthorized assembly<sup>32</sup>.

At the same time at the place of authorized peaceful assembly there were no obstacles registered. The detainees spent 8 hours at the police department, they were charged for participation in an unauthorized mass event and disobedience of official requirements

<sup>29</sup> <https://spring96.org/ru/news/86912> <http://spring96.org/en/news/87094>

<sup>30</sup> <http://spring96.org/en/news/86441>

<sup>31</sup> <http://spring96.org/en/news/86740>

<sup>32</sup> <http://spring96.org/en/news/89560>



(that is, law enforcement officer). One of the monitors was subjected to abusive and inhuman treatment during the process of taking mug shots and fingerprinting<sup>33</sup>. The monitors' administrative cases were brought to court, but weren't sent to further development, and the monitors weren't prosecuted. As a result of these events, the monitors weren't able to fulfill face-to-face monitoring of unauthorized peaceful assembly<sup>34</sup>.

On 3 July 2018 an unauthorized peaceful assembly organized by Nikolay Statkevich, an opposition politician, was planned in Minsk. Independent monitors were detained as soon as they appeared at the place of assembly gathering. The monitors and the participants were delivered to the police department where they were questioned without procedural documents issuance. They were released after 3 hours of detention and were not charged in future<sup>35</sup>.

All the mentioned cases of monitors' detention during peaceful assemblies have several common features and consequences:

All cases were registered at unauthorized peaceful assemblies.

Monitors and participants of the peaceful assemblies were detained simultaneously.

Actual administrative charging or penalty for law violation wasn't recorded.

Monitors' detention precludes monitoring of peaceful assemblies.

It's quite obvious that the aim of authorities' actions is creating obstacles for monitoring of

peaceful assemblies and repressions against monitors.

<sup>33</sup> <http://spring96.org/en/news/89861>

<sup>34</sup> <http://spring96.org/en/news/89625>

<sup>35</sup> <http://spring96.org/ru/news/90251>

## VI. CRIMINALIZATION OF PROTESTS

We should note that in Belarus different forms of persecution for protests exist: over recent years criminal liability for “Mass Events” (Art.293 of the Criminal Code with up to 15-year imprisonment) and “Group action of public order violation” (Art.342 of the Criminal Code with up to 3 years of imprisonment) was implied. However, Art. 369-3 of the Criminal Code “Violations of the rules on holding mass events” hasn’t been used yet. Due to this Article the responsibility for the damage made by mass event is channeled through the organizers with the threat of 3 years imprisonment that is contrary to the international standards of the freedom to assemble. Also, other articles are often used, but, in fact, the prosecution is exercised on the motif of prosecution for protests.

In 2018 there were no criminal proceeding concerning with organization or participation in mass events in Belarus. In this report we will describe some of the cases induced by previous peaceful assemblies or connected with them indirectly were considered further.

1. At the beginning of 2018 the social activist Dmitry Poliyenko is still in custody for participation in the cycling event “Critical Mass” on 29 April 2016. He was accused of

“obstruction of police officer”. Later, after social media inspecting, he was accused of “distribution of pornography”. Dmitry spent 8 months in custody before the trial which resulted in suspended deprivation of liberty for 2 years.

During the suspense Dmitry continued demonstrating his position and was detained for participation in peaceful assemblies in early 2017, and since 7 April 2017 the suspense was cancelled by court order, so Dmitry was directed to serve a sentence to the Bobruisk colony. Despite his acceptance as prisoner of conscience by the credible international human rights organization Amnesty International, he served his sentence, and he was under pressure of administration during imprisonment<sup>36</sup>. Dmitry was freed only on 24 October 2018 after the sentence had been served despite the international response<sup>37</sup>.

2. In spring 2018 at the 122th session of the UN Human Rights Committee adopted views on the merits of Sannikov’s case against

<sup>36</sup> <https://www.amnesty.org/en/documents/eur49/8024/2018/en/>

<sup>37</sup> 16 April 2018 Strasbourg called on the authorities to respect human rights and release all the political prisoners the European Parliament adopted resolution about Belarus and [https://belapan.by/archive/2018/04/19/eu\\_952575/](https://belapan.by/archive/2018/04/19/eu_952575/)





The Committee members called for thorough impartial investigations of the allegations of torture and to subject the guilty parties to criminal prosecution. They also expressed the need to extinguish Sannikov's record of conviction and compensate the damage. Belarus also has to take measures to prevent such violations from recurring. Experts noted with regret that despite the obligation of the States to cooperate with the Committee, Belarus didn't take part in the proceedings of Sannikov's case<sup>39</sup>, and also refused to implement the Committee's recommendations.

3. Another reverberation of 19 December 2010 (a numerous protests against the falsification of the results of voting in the presidential election) and persecution for participation in the demonstration became preventive supervision of Vladimir Eremenok, an activist of "Young Front", who was arrested for participation in "mass disturbances" on the day of President's election in 2011. Vladimir was released in an amnesty of 2011, but because of the participation in peaceful assemblies he was a subject for preventive supervision which forced him to be at home at nighttime, report daily to the police station and leave the city only with permission of police inspector.

Due to the regime violation he was convicted again for 3 months of imprisonment in 2013. He might be repeatedly subjected to preventive supervision for participation in the meetings, and it happened in May 2018 (he was arrested for participation in the series of meeting for defense of the Kurapaty Memorial in Minsk). The supervision has been lasting for

6 months<sup>40</sup>.

At the moment, because of the preventive supervision, he should stay at home from 10 p.m. to 6 a.m. For violation of supervision Vladimir might face persecution and imprisonment. The Human Rights Centre "Vyasna" considers this fact as the politically motivated prosecution of the opposition activist of "Young Front" which confronts the current political regime in the country<sup>41</sup>.

4. On 24 August 2018 Gennady Fedynich and Ihor Komlik, activists of the independent Radio and Electronic Industry Trade Union, are sentenced for Art. 243.2 of the Criminal Code ("concealment of incomes on an especially large scale"). Leaders of the trade union are sentenced to restriction of liberty without sending to open institutions with a term of 4 years without confiscation of property and with prohibition to hold senior posts for 5 years. National and international human rights organizations and trade unions call Belarusian government for repealing the sentence and stop repressing of independent trade unions<sup>42</sup>. In our view, one of the motifs of trade unions persecution became the fact that they took an active part in the protests against the Presidential Decree "On Social Parasitism" in 2016-2017.

In Belarus the protesters usually violate only administrative procedures because of their disproportional and excessive restrictions of peaceful assemblies. Thus, in 2018 about 80% of events were unauthorized by local authorities.

<sup>40</sup> <https://euroradio.fm/maladfrontaucu-yaromenku-pryznachyli-preentyuny-naglyad-na-paugoda>

<sup>41</sup> <http://spring96.org/en/news/90048>

<sup>42</sup> <http://spring96.org/en/news/90728>

From time to time participants wear masks during events. In one case in 2018, besides wearing masks, participants blocked three out of four lanes of Magistral Route №1 near Brest for a few minutes.

The mentioned violations stipulate administrative liability according to Art. 23.34 of the Code of Administrative Offences of the Republic of Belarus "Violations of the rules on holding mass events". Depending on the paragraph of the Article, the sentence varies from cautions or penalties to arrest for 15 days. Administrative offense reports are filed by police officers, but cases are examined by court of general jurisdiction of the lowest level (district court). Police officers usually appear as witnesses in courts, and the court trusts their testimony primarily since it doesn't see any reason to distrust. During the process participants are allowed to have a defense counsel and submit petitions, to provide evidence, but courts usually do not give the necessary attention for objective consideration of the case.

Courts rarely declare a person innocent. Normally they do it in a disguised way – they return the case back to the police department, and it never comes back in time. Only 2 of more than 100 incidents were sent back to the police department for further development according to the Art.23.34 of the Code of Administrative Offences: the first case is related to 6 protocols made by BHC monitors arrested on 25 March 2018<sup>43</sup>, the second one is the case of Victoria Biran (for the photo with KGB in the background and a "provocative" poster)<sup>44</sup>.

<sup>43</sup> <http://spring96.org/en/news/89861>

<sup>44</sup> <http://spring96.org/ru/news/90475>

Punishment for peaceful assemblies is mostly similar to the last year tendencies – part of people is released without completing the protocols, another part is fined or arrested.

Decisions rendered by courts of first instance may be appealed to a higher court (regional or of the city of Minsk). The deadline for filing an appeal depends on penalty – 5 days in case of administrative detention and 10 days in case of getting a fine or a caution. Person is obliged to pay a fee and file a complaint to court which ordered decision. Since the penalty of imprisonment is fulfilled immediately, and arrest is usually more than of 5 days, it's extremely difficult to file a complaint individually. It's possible only if there is an attorney representing the applicant's interests. Attorney can make a complaint, pay a fee, visit the arrested person and transmit the complaint to him. Complaints must be considered within a month. It's also possible to file a complaint to the hierarchically superior court, but the case processing will not be public then.

Considering experience of 2018, the hierarchically superior court leave orders of first instance courts unchanged.

Due to the procedure doubts arise with regard to the objectivity, neutrality and impartiality of judicial system, and it is also connected to the executive branch considering persecution of activists for participating in assemblies. Courts in Belarus are nominally independent, however, judges are appointed by the President and can be dismissed from the position the same way. That's the reason why judges often execute repressive functions and operate in the framework of the national legislation ignoring international standards of freedom of assemblies.

<sup>39</sup> <https://news.un.org/ru/story/2018/04/1328662>



## PREVENTIVE DETENTION

Unfortunately, the government of Belarus practices preventive detention of activists and opposition politicians on a regular basis in order to minimize civic engagement and non-participation in assemblies. Normally preventive detentions happen at home or while leaving home on the way to meeting. As before, preventive detentions in Belarus are made by police officers who come to the activists' home, or approach them on the street and ask to be taken to the police station. There they are drawn up for participation in earlier actions or accused of contrived offenses ("foul language" or "insubordination").

On 23 February, the eve of environmental protests against battery plant construction in Brest, two popular bloggers were arrested: Sergey Petrukhin, Brest's citizen, and Alexander Kabanov, Beryoza's citizen<sup>45</sup>.

Before the demonstration of 3 July 2018 opposition politicians Vyacheslav Sivchik, Nikolay Statkevich and other activists were detained.

Most of the cases of preventive detention in 2018 were recorded before March 25, when mass actions were planned in Minsk on the anniversary of BPR's (Belarusian People's Republic). The most significant cases are below:

- On 21-22 March 2018 the activists belonging to the BPR's (Belarusian People's Republic) 100<sup>th</sup> anniversary celebration committee were arrested. Vyacheslav Sivchik, Maxim Vinyarsky, Leonid Kulakov, Evgeny Afnagel, Vladimir Neklyayev announced their readiness to participate

<sup>45</sup> <http://spring96.org/ru/news/89279>

in the demonstration. They were arrested for terms varying between 5 and 10 days and placed at the Centre for temporary confinement of the Ministry of Internal Affairs. In the morning of 25 March 2018 (the day of celebration) Nikolay Statkevich was arrested<sup>46</sup>.

- Around midnight of 23 March at the exit of the United Civil Party's office in Bobruisk Galina Smirnova, the leader of the Bobruisk UCP's organization and Bobruisk division of the Radio and Electronic Industry Trade Union, was arrested. She was in the temporary detention isolators in Bobruisk, and eventually she was accused of the Art. 23.34 of the Criminal Code violation. At the same day Brest blogger Sergey Petrukhin was detained. In the morning of 24 March the police officers detained Alexander Kabanov. They said that his arrest was related to the administrative case for participation in unauthorized mass event of 18 March in Brest<sup>47</sup>.
- In the morning of 25 March 2018 at the Baranavichy railway station Ruslan Konovalov, an activist who was to participate in the celebration meeting and concert dedicated to the 100<sup>th</sup> anniversary of the BPR in Minsk, was preventively detained. The man had the Russian Federation citizenship and had been living in Belarus for about 10 years, and at that moment he had spent more than 90 days on the territory of Belarus without leaving. Because of that fact the citizenship and migration institutions made a decision of Ruslan's expulsion from the country for 5

<sup>46</sup> <http://spring96.org/en/news/89625>

<sup>47</sup> <http://spring96.org/en/news/89586>

years<sup>48</sup>.

<sup>48</sup> <http://spring96.org/ru/news/89568>





## VII. RECOMMENDATIONS

Based on the analysis of the realization of the right to peaceful assembly in Belarus, in order to improve the situation concerning the freedom to assembly and to enhance interaction between authorities and organizers, and for clearer preparations and execution of meetings, we recommend:

### TO THE GOVERNMENT OF BELARUS:

1. In close consultation with civil society and other parties concerned to develop and adopt national legislation on peaceful assemblies that meets international standards, including:
  - a. notification system of holding all meetings aimed for the exercise of the constitutional right to freedom of expression without exceptions
  - b. abrogation of the obligation of organizers to pay for ground maintenance after meetings, ambulance assistance and policing since it's one of positive State obligations;
2. to abandon the practice of persecution of activists for participation in peaceful assemblies only for the absence of permit to hold the meeting, including preventive

detention;

3. to abandon the practice to detain and persecute monitors and journalists due to their legitimate activities of covering the process of peaceful assemblies;
4. to fulfill the UN Human Rights Committee's considerations adopted on the communication on the violation of Art. 21 of the International Covenant on Civil and Political Rights;
5. to invite the Special Rapporteur of the UN on the right to freedom of association and peaceful assembly for objective assessment of the situation;
6. For representatives of the internal affairs bodies – to be more open with monitors and to provide high level of awareness of safety measures at peaceful assemblies;

### TO THE INTERNATIONAL COMMUNITY:

7. To continue monitoring the necessity to improve freedom of assemblies legislation system in Belarus in order to meet the international standards, also improve the practice of realization of the right to peaceful assembly and facilitate the promotion of international standards of human rights in this field.





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*The right to free assembly is an indispensable element of democracy and a healthy civil society. Recent years have seen a new era of mass protests, but also a significant increase in practical restrictions on the right in Western Balkan and Eastern Partnership countries. The European Center for Not-for-Profit Law (ECNL) supports its network of local partners (in Albania, Armenia, Belarus, Bosnia and Herzegovina, Croatia, Macedonia, Moldova, Montenegro, Kosovo, Serbia and Ukraine) to monitor local laws, observe protests, report challenges and engage in the legal reform process to protect and promote this fundamental right.*

*This year's monitoring reports build on previous efforts and explore issues that are of relevance for all the participating countries. Accordingly, beyond the legal framework, the reports also look at the role of civil administration, policing, criminalization of protesters, as well as the overarching issue of accountability manifesting in all of these aspects.*



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