Overview of the situation with the prohibition of torture in Belarus

1. Regulations

In Belarus, torture is not a separate criminal offence but is included as a footnote to article 128 (“crimes against security of humankind”). The footnote defines torture as:

> "*any act by which severe pain, physical or mental suffering is intentionally inflicted on a person to compel such person or a third party to perform actions against their will, including for obtaining information or a confession or for punishing them or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by a public official acting in an official capacity or at the instigation of, or with the consent or acquiescence of such public official. This definition does not include pain or suffering arising from procedural or other lawful coercion*."

While this definition is in line with the Convention Against Torture and Other Forms of Cruel, Inhuman, or Degrading Treatment or Punishment, torture thus defined is not directly or fully criminalised – or, more precisely, it is criminalised only partly and with reservations under a number of Criminal Code articles.

Thus, article 128 in the chapter on Crimes against Peace and Security of Humankind criminalises “Deportation, arbitrary detention, enslavement, massive or systematic summary executions, abduction of persons causing their disappearance, torture or acts of cruelty against civilians based on race, nationality, ethnicity, political opinion or religion”.

In other words, article 128 only concerns torture resulting from deportation, arbitrary detention, enslavement, massive or systematic summary executions, or abductions.

Article 394 (“Coercion to give testimony”) in the chapter on Crimes against Justice indicates aggravating circumstances in its parts 2 and 3, namely the use of violence or humiliation to obtain testimony and the use of torture to obtain testimony, respectively. This article only criminalises certain types of torture, where (1) the perpetrator is an inquiry officer, an investigator or a judge and the affected person is a suspect, accused, victim, witness or expert in criminal proceedings, and (2) torture is used specifically with the purpose of obtaining testimony or expert opinion. This article also applies to "other unlawful acts", which makes it too vague. The distinction made in its parts 2 and 3 between coercion using violence or humiliation versus coercion using torture further contributes to uncertainty.

In is worth noting that article 394 allows for fairly light sentences for torture, starting from three years in prison without a subsequent ban on holding certain offices or engaging in certain occupations and up to ten years in prison with a subsequent ban on holding certain offices or engaging in certain occupations .

Article 426 ("abuse of authority or official powers") in the chapter on Crimes against the Interests of Public Service criminalises

> *Deliberate acts committed by a public official which clearly exceed the authority and powers associated with their official position, resulting in large-scale damage or significant harm to the rights and legitimate interests of citizens, the State, or society; its qualifying (aggravating) elements are that acts are committed by a public official in a “responsible position”, or caused grave consequences, or involve "the use of violence, ill-treatment or humiliation of the victim or the use of weapons of restraining devices.*"

The minimum punishment under this article (with qualifying elements present) is three years of deprivation of liberty, without any fine, but with a ban on holding certain positions or engaging in certain occupations.

Most cases in which the qualifying elements of torture are present are prosecuted under article 426 rather than article 128 of the Criminal Code.

In addition, cases involving abuse of authority, excessive use of official powers or inaction, if committed by military personnel, are prosecuted under article 455 of the Criminal Code, with sanctions including deprivation of liberty for five to twelve years, with or without a fine, and with a ban on certain positions or occupations.

The statute of limitations for crimes under parts 3 of articles 426, 455 and 394 is ten years after the date when the offence took place.

These Criminal Code articles apply to public officials, i. e. government agents and civil servants authorised to give orders and make decisions affecting persons other than their subordinates. Public officials "in responsible positions" include judges, prosecutors and deputy prosecutors, heads of investigating or inquiry bodies and their deputies, investigators; heads of government bodies responsible for oversight, internal affairs, national security, border control, financial investigations, customs and taxation, and their deputies.

2. Statistics

The available statistics suggest that most criminal cases with a "torture component" consist of several episodes and include other charges, such as bribery, misappropriation of public funds, etc. No official information is available about cases in which criminal sanctions were imposed specifically for torture and ill-treatment. By reviewing related media publications, one can only get an idea of the overall sentence imposed on all charges combined. Criminal sanctions for abuse of authority can be minimal.

Thus, the administrators of a vocational training institution for juvenile offenders in Mogilev were sentenced to 3 and 4 years of deprivation of liberty for systematic ill-treatment of juveniles in their care; military servicemen found guilty of systematically beating and humiliating their subordinates have usually been sentenced to three to five years in prison (with the only exception in a high-profile case where the victim committed suicide and the perpetrators were sentenced to prison terms of six to nine years on this and other charges combined).

Criminal investigators who covered-up a crime committed by their colleague were sentenced to prison terms (one investigator, a female, received a suspended sentence), while an expert who made a false statement in the case was given a suspended sentence.

The UN Committee against Torture expressed regret that "the Criminal Code does not define torture as a separate offence," noting that "the other relevant articles of the Code highlighted by the State party during the dialogue do not include all acts of torture and the purposes for which it is used as stipulated in article 1 of the Convention, and that they do not provide for the punishment of torture with penalties commensurate with its grave nature."[1]

There is no published summary information on investigated torture cases and related court decisions, so this data is largely unavailable.

Similarly, no statistics are available on deaths in custody.

3. Cases of torture documented in 2019

Generally, cases when torture perpetrators get prosecuted and sentenced are rare in Belarus. Information about such cases is not systematised, and neither law enforcement agencies nor courts publish it regularly or even from time to time. When information about sentences against law enforcement officials does becomes public, it is usually due to the efforts of victims and their families, independent journalists, and human rights defenders.

Nothing is known about court-ordered amounts of compensation for torture victims in any of the cases where torture perpetrators were identified and sentenced. None of the victims reportedly claimed such compensation. The prosecutors did not make such claims in favour of the victims either.

In all cases where the investigation was completed, the perpetrators identified, and the cases brought to court, one can see the positive effect of investigation by a body belonging to a different chain of command than the perpetrators.

"Correctional" beatings of inmates in a closed institution
(Director and deputy directors of a correctional school for juveniles convicted and sentenced)

This criminal case was initiated solely due to the severity of injuries caused to one of the juveniles, which the school administration was unable to keep secret. Prior to the case in question, human rights defenders had repeatedly alerted the authorities about the lack of investigation into numerous escape attempts by juvenile inmates, probably linked to the adverse living conditions and ill-treatment at the institution. Despite a lengthy investigation, it appears that not all persons implicated in the ill-treatment of juvenile inmates have been brought to justice.

On 26 November 2017, six inmates escaped from the Mogilev Special Vocational School No. 2 for juvenile offenders (a correctional facility for juveniles aged 11 to 18). They were captured, and one of the fugitives' mother later learned from a hospital nurse that her son was hospitalised with a spinal injury. The mother filed a complaint

[1] Committee against Torture, Concluding Observations on the Fifth Periodic Report of Belarus (2018), available at https://digitallibrary.un.org/record/1631114?ln=en

requesting to prosecute the implicated officials. A criminal case was initiated against the school director and his deputy for abuse of office; both were arrested and detained pending trial. “The Investigative Committee's Office in the Mogilev region is investigating a criminal case under part 3 of article 426 of the Criminal Code of Belarus. The investigation has established that the defendants, while interrogating the six juvenile inmates about the circumstances and reasons for their unauthorised leave [...] beat the juveniles and confined them in a room, thereby limiting their freedom."[2]

In late June 2018, the Investigative Committee announced the investigation complete. The director and his two deputies were charged with abuse of office motivated by personal interest and associated with physical violence and humiliation of the victims. The defendants had punched and kicked the juveniles on the head, face and body, while verbally offending them, using obscene language. Added to the initial charges was that of beating a seventeen-year-old inmate systematically for violations of internal regulations.

The defendants denied the charges under article 426 of the Criminal Code and insisted that “the real perpetrators of physical abuse were left out of the proceedings, not being officials, and their names were not mentioned, due to a verbal agreement.”

On 27 November 2018, Chaussky District Court in the Mogilev region handed down its verdict. The defendants were sentenced to prison terms of three to 5.5 years, to be served in high security colonies, a fine of 200 basic units (about 2,000 euro), and a ban on holding senior administrative positions for 5 years. The sentence was mostly upheld on appeal and became final on 14 March 2019.

Ill-treatment perpetrated by criminal investigators, falsification of evidence in alleged torture cases and fabrication of expert opinions

(An investigator of the Myadel District Investigative Committee Office convicted and sentenced for ill-treatment of a crime victim, and a few senior officers and an expert of the State Committee for Forensic Expertise sentenced for covering up the crime committed by their colleague).

This criminal case against criminal investigators and an expert in the Minsk region illustrates how the mechanism of responding to complaints of ill-treatment works in practice, when the opinion of a state-appointed expert, in the absence of independent expert institutions, is used as conclusive evidence in a criminal investigation. Such expert opinions can easily be falsified, sometimes under pressure from the investigator. It is a widespread practice where a pre-investigation inquiry into allegations of ill-treatment is carried out by one of the alleged perpetrator's colleagues, and the findings from the inquiry are forwarded for approval to their common supervisor.

In late February 2018 in Myadel, Olga Dovzhuk, aged 21, called an investigation team complaining about the loss of her phone, handbag, and money. It turned out later that the young woman – who had been consuming alcohol – was mistaken and in fact had spent the money, left her phone behind at a friend's place, and had her bag with her. While questioning her, investigator Maksim Valevko hit her twice with a truncheon as punishment. On the next morning, the young woman developed a hematoma, and her family reported it to the police. A forensic expert signed a false statement, based on which another investigator, with endorsement from her superiors, refused to initiate a criminal case against her colleague. The victim's mother was soon contacted by the State Security Committee (KGB), and then the KGB initiated and investigated the criminal case.[3]

On 22 November 2018, the expert and the investigators who had tried to falsify evidence in the case were found guilty of abuse of power and office and sentenced.

The investigator who had hit the victim was sentenced to four years in prison, and a few others were sentenced to terms of 3 to 3.5 years, all to be served in a strict regime colony. They were also banned from holding certain positions for five years. Another investigator and the forensic expert were each sentenced to 3 years, suspended for 2 years. All defendants had been detained pending trial.

Violence and torture in the army
(The case of Aleksandr Korzhich and other cases of ill-treatment in the armed forces)

A series of cases initiated in response to ill-treatment in the army illustrate how the State can use its investigative capacity where there is a will to investigate: in total, more than 18,000 individuals were interviewed or interrogated in the proceedings.

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[2] https://news.tut.by/society/572567.html

[3] While cases of this type are not normally investigated by the KGB according to article 182 of the Criminal Procedure Code, prosecutors are allowed to assign investigative jurisdiction to various authorities at their discretion.

The starting point in this series of investigations was the case of Alexander Korzhich, a conscript found dead by hanging on the premises of his military unit on 17 September 2017. The circumstances of his death caused Korzhich's mother to question the forensic experts' statement that it was suicide. The case received much publicity. The investigation revealed that junior commanders and officers at the army training centre where Korzhich had been serving routinely abused their subordinates: extorted money; forced to do multiple push-ups, sometimes while wearing gas masks, as punishment for refusal to pay or for breaches of the rules; tied soldiers to radiators before beating them, forced them to clean dirty toilets and to lick the toilet brush, and simply punched and kicked soldiers with heavy boots on various parts of the body.

On 5 November 2018, a court found several junior officers guilty under article 455, part 3, of causing Korzhich's death by incitement to suicide, and also of bribery and theft, and sentenced them to 9, 7 and 6 years in prison. The defendants argued that they had confessed their guilt under torture by the KGB investigators and that a subsequent check into their torture complaints was superficial and did not bring results. Following an appeal to the Supreme Court, the verdict became final in April 2019.

As a result of a large-scale investigation carried out in many units of the Armed Forces, at least 31 cases under article 455 of the Criminal Code were sent to court in 2018; all defendants were direct perpetrators – sergeants, warrant officers and junior officers, but no charges were brought against their superiors in military units. The Minister of Defence announced that a total of 48 criminal cases were initiated (apparently including cases of hazing among servicemen).

According to the Supreme Court, 30 people were convicted under article 455 in 2019.[4] The perpetrators were accused of beating soldiers using sapper shovels, buckled belts, metal rods and gun harnesses, of practicing forbidden punishments such as forcing the victim to do push-ups wearing a gas mask, and of extortion and bribery. One of the convicted officers said that the reason why he beat his subordinates was "not to hurt them but to help them overcome their fear of military equipment." All those found guilty were sentenced to real prison terms.

Thus, Borisovsky District Court sentenced Igor Khishchenko, a warrant officer, to 5 years in prison and to confiscation of property. He was charged with abuse of power, such as hitting his subordinates with a gun harness, a pointer and rolled-up newspapers, and using an electric shocker; his other charges included bribery. There were about 20 victims in this case.

Ideally, the state mechanism of responding to torture must be based on an effective investigation capable of identifying the perpetrators and bringing them to justice. However, not all cases of torture get properly investigated in Belarus. In many cases, the authorities fail to launch an investigation into a torture complaint. Inmates reporting torture in the penitentiary can face pressure or punishment for filing a complaint.

Riot police brutality during protests in Minsk

On 25 March 2017, during an unsanctioned rally and march traditionally held in Minsk to celebrate the Freedom Day, Yana Yatsynovich, a minor under 18, was mistaken for a rally participant and detained by riot police officers (OMON). They grabbed the girl by the hair and dragged her into a police bus, where an officer punched her hard on the back of her head as punishment for taking part in a protest. A week later, Yana developed health problems, such as nausea, vomiting, and frequent epileptic seizures. During the following year, she had to go through numerous medical tests and exams and was on treatment several times in various medical facilities. Yana's parents reported the crime to the Investigative Committee. An investigation was opened, but the investigators failed to establish a causal relationship between Yatsynovich's symptoms, including epilepsy, and the blows on her head. No perpetrators were identified either. The authorities refused to initiate a criminal case, stating that "*no evidence has been found to indicate that riot police officers of the Minsk City Executive Committee's Municipal Department of Internal Affairs committed an offence against Yatsynovich; no witnesses of the incident have been established, and all possibilities of gathering further evidence have been exhausted.*" To remind, according to the Criminal Procedure Code, gathering evidence is not the purpose of pre-investigation inquiry, but only begins after a criminal case is initiated.

Svetlana Sokolovskaya[5] suffered similar ill-treatment when she asked riot police officers why they were detaining her acquaintance on the night of 1 January 2018. A police officer slammed a heavy metal door on her finger, and then Sokolovskaya was hit hard on the back of her head, causing her to faint.

An inquiry continued for three months but did not lead to a criminal case being opened. Together with her lawyer, Sokolovskaya sought access to the inquiry findings, but the authorities denied the lawyer's access either without giving reasons or by requiring the lawyer to submit paperwork which is not required by the Criminal Procedure Code, such as a power of attorney and a contract with the client (the provision of which would violate

[4] Not all convictions are for prohibited ill-treatment
[5] Not her real name

the client-attorney privilege). After a media campaign launched by the Viasna Human Rights Centre and appeals on behalf of the victim to the UN Special Rapporteurs on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, on the Independence of Judges and Lawyers, and on Violence against Women, the refusal to investigate was quashed and the inquiry resumed. The victim and her lawyer were able to access the inquiry findings only in November 2019, after yet another refusal to initiate a criminal case. At the end of November 2019, a complaint was filed with the supervising prosecutor to overturn the investigator's order. In addition to non-compliance with the effective investigation standards, the authorities also denied the victim her right to effective legal assistance, since without access to the inquiry findings she was unable to plan her further steps in her defence.

The presidential elections held in Belarus on 9 August 2020 resulted in massive public disagreement with the election outcome announced by the authorities. This public discontent and the authorities' refusal to engage in a dialogue led to large-scale protests in Minsk and other Belarusian cities. Although the protests were mostly peaceful, the Ministry of Interior used disproportionate force, riot control equipment and vehicles, as well as weapons to disperse them, causing serious injuries to hundreds of people and killing at least three: two during the protests (A. Taraikovsky and G. Shutov) and one in custody due to denial of urgent medical assistance (A. Vikhor).

In August 2020 and the following months, law enforcement officials attacked peaceful protesters against the election fraud and other citizens suspected of disloyalty and dissent, acting in an arbitrary, unfounded, and disproportionate manner, using physical force, weapons and special devices, obviously with permission from their superiors. The authorities committed massive and systemic violations of the right to be free from torture and prohibited ill-treatment and, in some cases, the right to life. The details of this post-election campaign of violence and intimidation by the police and other law enforcement agencies in Belarus are described in the report of Belarusian human rights defenders, *Belarus after the Elections*, that documents in a systematic manner the numerous known cases of torture and ill-treatment.

According to the Belarus Investigative Committee's report, as of 17 August 2020, “more than 600 citizens complained about injuries sustained at the hands of law enforcement officials during arrests and about 100 people reported being injured while in detention.” The Investigative Committee has not published any updates, but the chief of the Leninsky District Police Department in Minsk Vitaly Kapilevich, during a meeting with the district residents, mentioned 1,800 complaints from citizens about the use of force against peaceful protesters during the arrests. In February 2021, the Belarusian government reported to the UN that the authorities in charge of the preliminary investigation had received 4,644 reports (complaints) from citizens about the use of physical force and special devices by the police, of which 1,050 complaints had been rejected, as the authorities refused to initiate criminal cases against the police officers.

None of the country's senior officials has condemned the use of torture and ill-treatment against peaceful protesters and other citizens.

The authorities have failed to give proper consideration to reports of torture and ill-treatment and have refused to initiate criminal cases and to take appropriate investigative steps.

A distinctive feature shared by most official refusals to prosecute potential torture perpetrators across the country is the absence of any details on suspected police officers or any records of questioning them; this information is withheld as part of "measures to protect the police officers' honour, dignity, and service reputation, and to ensure their safety."

Similarly, the authorities have failed to take proper steps to discover and document evidence of crimes against citizens. Some refusals to prosecute have been appealed to courts and prosecutors, and in a few cases, the refusals have been quashed.

Seventeen OSCE participating States invoked the OSCE’s Moscow Mechanism on 17 September 2020 to examine alleged human rights violations in Belarus, and Professor Wolfgang Benedek was appointed OSCE rapporteur**.** In November 2020, he presented a report in which he documented human rights violations that occurred before, during, and after the presidential elections in Belarus, highlighted the incidents of torture, and made recommendations.

Since the summer of 2020, the Belarusian authorities have made detention conditions particularly hard for political prisoners by confining them arbitrarily to punishment cells, staging provocations against them, imposing restrictions on food rations and exercise, and holding them in an unsanitary environment.

In addition to torture and beatings, people in police custody have suffered from severe cell overcrowding, lack of food and adequate drinking water, lack of exercise, and denial of other legally-established guarantees for administrative detainees.

This impunity perpetuates ill-treatment and torture in Belarus.

Ethnic profiling and brutality in the detention of suspects and in the investigation of a criminal case

The 16–19 May 2019 events in Mogilev stand out as a particularly outrageous human rights violation. Based on allegations of Roma involvement in the abduction of a police officer, police raided the local Roma community and detained a large number of Roma men, women and adolescents aged 12 and older. In most cases, the law enforcement officers were rude and violent as they escorted the detainees to a local police station. By various unofficial data (no official information is available), the number of ethnic profiling victims was about 230.

On May 18, an Investigative Committee's spokesperson denied[6] that anyone had been detained in the criminal case. However, more than 50 people were actually held in custody for up to three days. After their release, some detainees reported having been tortured in custody to force them to self-incriminate. It turned out that the detentions were formalised on administrative grounds, such as disorderly conduct ("petty hooliganism"), rather than as part of a criminal investigation. As a result, the detainees were denied the procedural guarantees accorded to suspects in criminal proceedings, such as the right to defence, legal representation for minors, the right to know what they are suspected of, and others.

It was eventually revealed that the alleged abduction and killing of a policeman by Roma community members was fabricated to cover up a police officer's suicide.

The police raid was carried out under direct command of the Ministry of Interior senior officials (one of the deputy ministers, according to some reports).

Ales Bialiatski, chairman of the Viasna Human Rights Centre, requested the Prosecutor General's Office to check the legality of detentions of Roma community members in Mogilev on May 16. The prosecutorial response to Bialiatski said that “by the order of the Prosecutor General of the Republic of Belarus, a working group was set up to give an assessment to the actions of the law enforcement officers who detained persons of Roma ethnicity in Mogilev in May 2019." It is worth noting that the Criminal Procedure Code does not provide for such thing as setting up "working groups" to verify crime reports and investigate crimes.

The Ministry of Interior senior officials (including the Minister) have failed to admit the violations committed by their officers. At a private meeting in Mogilev, Natalya Kochanova, Head of the Presidential Administration, apologized to representatives of Roma families for the incident. Deputy Prosecutor General Aleksey Stuk, addressing a press conference on 25 June 2019, mentioned the mass detentions of Roma on May 16 in Mogilev and elsewhere in Belarus. He said in particular that the working group set up to assess the police officers' conduct during the detentions of Roma in Mogilev had “investigated the case right away”. According to Stuk, the police had good reasons to check into the Roma diasporas on a mass scale, adding that the working group consisting of employees of the Prosecutor General's Office and the regional Prosecutor's Office did not find any violations in the police conduct. Thus, there was no real investigation into the reports of torture.

Torture of a detainee in a criminal case

Kirill Antikhovich was arrested on 20 May 2014 on suspicion of a criminal offence and subsequently sentenced to 17 years in prison.

Antikhovich complained to the Prosecutor General's Office that the key evidence in his case was based on his initial explanations and statements given to the police under psychological and physical duress and asked the prosecutors to take appropriate steps.

The Pervomaisky Investigation Department of Minsk, a division of the Investigative Committee, carried out a series of inquiries, each time resulting in refusals to initiate a criminal case; these refusals were subsequently found to be based on incomplete evidence and quashed by the prosecutorial authorities and superior Investigative Committee's offices. In 2019, Antikhovich's new lawyer complained to the Prosecutor General's Office about the refusal to investigate. In his complaint, the lawyer referred to a body of evidence in the case file which refuted the authorities' version of events concerning the causes of the victim's injuries. In particular, the lawyer referred to evidence which confirmed that Antikhovich had a plastic bag placed on his head making him faint from suffocation, was beaten with a truncheon and tortured with an electric shocker to force him, inter alia, to name other persons

[6] https://sk.gov.by/ru/news-ru/view/sledstvennym-komitetom-ustanavlivajutsja-obstojatelstva-ubijstva-sotrudnika-gai-v-mogilevskoj-oblasti-8000/

involved in illicit drug dealing. It was also revealed that another suspect in the same criminal case had reported similar torture. The lawyer further showed that the inquiry into the case had been superficial. The reasoning part of the decisions to appoint forensic medical examinations omitted Antikhovich's own explanations, and the medical experts were not asked whether Antikhovich's injuries could have been caused under the circumstances indicated by the latter. However, the lawyer's complaint was denied.

Homophobic torture and ill-treatment of a detainee

According to Vadim Nikitin, on 12 September 2017, a group of police officers broke into his apartment, assaulted and humiliated him on homophobic grounds, and sexually abused him to suppress his will. Nikitin was then delivered to a police station, where the beatings, threats and intimidation continued. In an effort to stop the torture, Nikitin attempted suicide.

Nikitin's lawyer filed a formal complaint of alleged ill-treatment. Police officer Voinov serving with the Drug Control and Human Trafficking Division of the Partizansky District Police Department in Minsk reviewed the complaint and refused to initiate a criminal case.

At the same time, an investigator of the Investigative Committee's Frunzensky District Division conducted an inquiry into the allegations of the victim's ill-treatment in his home during at the time of his detention. According to a medical assessment report, the victim had a cut wound on the right side of his neck, a mild craniocerebral injury and a hematoma of the right eye. The medical expert failed to document bruises from handcuffs on the victim's wrists and bruises on the back of the victim's head and on his buttocks from being kicked with heavy boots. On 25 October 2017, the investigator refused to institute criminal proceedings.

Fearing further cruelty and pressure, Nikitin left Belarus. In December 2018, Nikitin's lawyer requested access to the materials from the inquiry into Nikitin's case but was refused, as the investigator insisted that Nikitin should show up personally if he wanted to familiarise himself with the inquiry findings. In June 2019, Nikitin appealed to the Prosecutor General's Office by mail requesting an additional inquiry, but no criminal proceedings were initiated as a result.

Prisons. Deaths in custody

Prison healthcare in Belarus is a non-transparent institution subordinate to the Ministry of Interior's Department of Finance and Logistics; currently, prison healthcare is facing a deep crisis. No impartial investigations are undertaken into all suspicious deaths in prisons, SIZOs, and correctional colonies. Likewise, no information is publicly available about mortality in correctional treatment institutions, such as psychiatric and TB facilities where convicted individuals are placed by a court order. Investigations of suicides to establish the causes of suicide, any circumstances of possible inducement to suicide, or associated abuse of authority are never carried out.

The quality and timeliness of healthcare in colonies can be described as unsatisfactory. In addition, access to healthcare is controlled by the prison administration, and prison medics often refuse to believe the health complaints brought by prisoners and accuse them of faking symptoms. By doing so, prison physicians make their practice subordinate to the penitentiary institution’s goals of control and coercion, and this dual loyalty conflict can only be resolved by changing the subordination of prison healthcare services, so they are no longer under direct command of the penitentiary authorities. Deaths in custody reflect the existing problems with healthcare delivery as well as a failure by the penitentiary administrations to meet their positive obligation of protecting the safety of inmates. In most cases, no proper investigations are conducted into prisoners' deaths.

Maxim Rudko, convicted for drug trafficking, committed suicide in correctional colony No. 22 on 8 March 2019. This colony, known for its extremely strict internal rules, experienced a serious conflict between the inmates and the administration in early November 2018 over arbitrary enforcement of disciplinary punishments. Shortly before his death, Rudko was punished for being unshaven, a sanction which could make his anticipated release on parole impossible.

On 23 May 2019, Andrei Tereshchenko, a diabetic patient aged 45, died in the prison hospital of SIZO-1 in Minsk. According to Tereshchenko's wife, he had fallen into coma seven times over the two months prior to his death. He told his wife about his first coma three months earlier and also said that the SIZO administration accused him of faking his illness. The Ministry of Interior Department of Corrections confirmed Tereshchenko's death.

Oleg Bogdanov, a resident of Minsk, died of acute heart failure on 29 January 2016 in Zhodino prison No. 8. Bogdanov had undergone heart surgery and needed continuous monitoring by a cardiologist. While in custody, he repeatedly complained to his family about the lack of medical assistance. Then Bogdanov filed a complaint with a court, in which he also made his will, and died soon afterwards. For more than eight months following Bogdanov's death, his mother kept trying to get the authorities to initiate a criminal case, but all inquiries ended in refusals to prosecute. It was only in October 2016 that criminal proceedings were initiated under article 162 (2) of the Criminal Code ("improper performance of medical duties by medical personnel"). On 12 May 2017, the

preliminary investigation was dropped due to absence of corpus delicti. After a series of complaints, the investigation was resumed but then dropped again with for the same reason, as stated by the investigators in their 20 March 2019 reply to an inquiry.

Evidence collected in the case is contradictory. For example, the first forensic expert assessment did not examine the video footage of the last minutes of Bogdanov's life. It was established that soon after Bogdanov was found lying on the floor still alive, no first aid was given to him, but all medicines which he had in his cell were removed and subsequently disappeared. A paramedic's statement about giving an injection to the patient was refuted by the expert's conclusion that there were no traces of injections on the man's body. However, after questioning, the expert corrected his conclusions stating that he had found traces of injections but did not reflect this finding in his earlier report.

According to human rights defenders, the investigator in charge of the pre-investigation inquiry had destroyed some key evidence, making proper investigation impossible.

4. Protection and safety of torture victims. Rehabilitation

The administrators of penitentiary facilities have virtually unlimited powers allowing them to pressure prisoners and discourage their attempts to seek justice and restore their rights. In particular, prisoners who exercise their right to lodge a complaint are subsequently placed in solitary confinement and beaten.

Pyotr Kuchura, an inmate at correctional colony No. 15, attempted to challenge a disciplinary punishment and wrote a complaint appealing the first instance court decision on 21 March 2019. But the colony administration did not allow his complaint to leave the colony and placed the inmate in a punishment cell on the next day. According to the prisoner's wife, the colony director Aleksey Lazarenko assaulted Kuchura in the punishment cell, hitting him five times, and insisted that the inmate should write a statement that "he had no grievances against the colony administration." Kuchura refused and after his release from the punishment cell, on April 3, appealed to the Investigative Committee's Division in the Mogilev region, asking to initiate criminal proceedings against the colony director for abuse of authority. According to Kuchura's wife, an investigator and a forensic expert visited Kuchura in the colony to collect evidence only 75 days after the incident, when most traces of the beating had healed.

The investigator refused to initiate a criminal case, but Kuchura's lawyer appealed the refusal to the prosecutor's office. Kuchura's wife requested a personal appointment with the Minister of Interior and handed him her complaint, which was subsequently denied; she was not allowed to view the findings of the internal inquiry as these were "for official use only." Her complaint to a court was left without consideration; the reason given to her was that she had no standing to appeal to court about this matter. Kuchura continues to face pressure for insisting on his rights and for his appeal to the Investigative Committee.

As for protection and rehabilitation programmes for torture survivors, no such programmes are available in Belarus.

5. Key factors inhibiting the implementation of the prohibition of torture

Where torture incidents got investigated and reached court, only the direct perpetrators of ill-treatment were held accountable. The only exception was the Myadel case in which four investigators and an expert faced criminal charges for attempting to cover-up the ill-treatment. However, none of the police officers who witnessed the incident but did not interfere were brought to justice.

Likewise, not all perpetrators of ill-treatment at the Mogilev Special Vocational School No. 2 for juvenile offenders were held accountable, according to the defendants in the case.

No charges have been brought against chiefs of military units where ill-treatment of servicemen was revealed.

The impunity of senior officials whose tacit consent or acquiescence enables torture continues to be one of the biggest barriers to torture prevention in Belarus.

Lack of effective investigation into reports of torture

Belarus does not have a specialised independent body tasked with investigating reports of torture. The procedure of initiating criminal cases into torture complaints is excessively long.

Officials who receive and investigate reports of torture include the Investigative Committee or KGB investigatos and prosecutors. Prosecutors often avoid initiating criminal proceedings and forward complaints alleging torture and ill-treatment to the Investigative Committee instead. As a result, an investigator with the local Investigative Committee division may be tasked with investigating a complaint against police officers of the local Ministry of Interior division with whom the investigator normally collaborates on other cases; moreover, an

investigator may be required to investigate a complaint against his or her colleague at the Investigative Committee. This obvious conflict of interests is not addressed in the Criminal Procedure Code. Sometimes, reports of ill-treatment are investigated by officers without sufficient expertise in this type of offences.

There is also a risk that a complaint alleging ill-treatment may end up being forwarded to the supervising authority of the institution where the incident took place – or even to such institution itself. In particular, an Investigative Committee division may refuse to find signs of a crime in the circumstances described in a prisoner's complaint and avoid making a procedural decision, forwarding the complaint, as if it were a simple appeal, to the Department of Corrections. Similarly, prosecutor's offices regularly treat incoming complaints as simple appeals, forwarding them for verification to the Department of Corrections; in doing so, prosecutors refer to the Presidential Decree "On additional measures of responding to appeals from citizens and legal entities" stating that all appeals from individuals and entities, regardless of where they are first filed, must be forwarded to the local authorities or to the relevant government body. This has become a widespread practice, although it contravenes the mandates of the Investigative Committee and the prosecutor's offices.

Before a criminal case can be initiated, there is a pre-investigation inquiry which in practice often replaces a full-fledged criminal investigation. According to the Criminal Procedure Code, the purpose of a pre-investigation inquiry is to determine the presence (or absence) of signs indicating a criminal offence. Yet in practice, such inquiries often pursue objectives normally associated with a preliminary criminal investigation, such as evidence collection and assessment, establishing the circumstances of the alleged crime, identifying potential perpetrators, and bringing them to justice. There are substantial limitations as to what steps can be taken as part of an inquiry, e. g. face-to-face confrontations and crime re-enactments are not allowed, while alleged perpetrators cannot be suspended from office.

The duration of an inquiry depends on the amount of materials to be examined and can take up to three months with pauses pending the results of expert examinations.

Repeated refusals to initiate a criminal case, quashed by heads of investigative units or by lower-rank prosecutors and followed by new refusals to prosecute, have become a routine practice. As neither senior investigating authorities nor senior prosecutors review the quality of the inquiries, the lower-ranking investigators feel free to delay the proceedings for years without providing an assessment of the alleged perpetrators' actions, while traces of crimes and other evidence can disappear and witnesses can forget important circumstances of the case.

Crime scene examination is among the few steps allowed by the Criminal Procedure Code before a criminal case is formally initiated. Yet very often, investigators take too long before inspecting the crime scene, allowing important evidence of torture to be destroyed or to disappear naturally. In other cases, investigators inspect the alleged torture or ill-treatment scene superficially as a mere formality or fail to inspect it at all.

On 1 July 2013, the State Forensic Expertise Committee reporting directly to the President was set up; since then, this institution has virtually monopolised the sphere of forensic expertise. Despite its declared procedural independence, the Committee operates as a military chain of command with a strict hierarchy, promotions and qualifications systems, and uniform guidelines which the experts must follow in carrying out all types of examinations. Therefore, SFEC experts cannot be considered truly independent.

The Law on Forensic Expert Activity adopted on 18 December 2019 and effective as of 1 January 2021 limits the collection of physical and psychological evidence of torture and ill-treatment to a physical examination with documentation of injuries and questioning of the alleged victim about the nature, severity and causes of the injuries. There is no requirement to gather mental health history, nor even to perform a mental health assessment, unless explicitly ordered by the investigator; photos of injuries are rarely attached to expert reports. Although the national guidelines for documenting evidence of torture do contain certain elements of the Istanbul Protocol, the Protocol itself is not explicitly used as guidance in the investigation of alleged torture.

The overall manner and logic of asking questions is focused on proving the officials' guilt or innocence rather than confirming (or disproving) the fact of torture. Therefore, experts' probabilistic conclusions are interpreted in favour of the suspects, rather than the victims, and have been used as grounds for refusing to initiate criminal proceedings or for discontinuing the investigation.

It is only at the end of an inquiry or an investigation that torture survivors are notified of the findings and provided with copies of procedural decisions and related materials. Once a decision is issued, it can be appealed to the head of the investigating unit, a prosecutor, or a court. Applicants are not informed of any progress made in the inquiry (or the investigation if it has been initiated) until it is completed. Finally, suspending an investigation on grounds such as a failure to identify the suspects may deny the victim access to investigation findings altogether.

At the inquiry stage, the applicants' rights are not defined in the law and related decisions are often left at the sole discretion of the investigator. While the victim's rights at the preliminary investigation stage are defined in the Criminal Procedure Code, many important aspects are omitted – in particular, no timelines are established for notifying the victim of a decision to appoint an expert examination, limiting the victim's ability to formulate their questions for the expert in time; the investigator has discretion in selecting an expert, while the de facto monopoly

of the State Forensic Expertise Committee on providing forensic expertise in criminal cases makes it impossible to obtain an alternative independent opinion. The victim can request the investigator to question witnesses and experts on their statements or to take specific investigative steps.

The key problems faced by survivors of torture and ill-treatment are as follows:

- torture and ill-treatment have not been condemned at the highest level of government;
- not all types of torture and ill-treatment are addressed and criminalised by national law;
- there is no independent body tasked with investigating reports of torture;
- criminal cases are not initiated promptly even where signs of torture are present and no barriers exist to opening criminal proceedings;
- instead of a full-fledged criminal investigation, torture reports are subject to pre-investigation inquiry without using the full range of investigative measures;
- officials do not get suspended or removed from office during an inquiry or investigation into their alleged implication in torture;
- national legislation fails to specify the victim's rights in criminal proceedings in sufficient detail, making it impossible for many torture victims to access adequate legal assistance;
- effective investigation of torture is hindered by the fact that there is no independent forensic expertise, nor a requirement that every individual admitted to a detention facility must be promptly examined by an independent physician;
- the Criminal Procedure Code does not specify with sufficient precision the moment when a detainee must be given access to a lawyer, resulting in a lack of legal counsel in the first hours after arrest;
- the absence of a national preventive mechanism or prison visits;
- Public Monitoring Commissions have merely token rights (they need the Ministry of Interior's permission to visit colonies and prisons, cannot receive complaints directly from prisoners during visits, are not allowed to use photo and video equipment to document signs of torture, etc.)