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**FREEDOM OF EXPRESSION IN THE REPUBLIC OF BELARUS IN THE LIGHT
OF INTERNATIONAL LAW**

Master's thesis

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INTRODUCTION

The concept of human rights is based on two core values: the first is human dignity and the second is equality. Human rights can be understood as defining the basic norms necessary to live with dignity, and their universality stems from the fact that all people are equal. In fact, to accept the concept of human rights, it is enough just to recognize these two beliefs or values, and hardly anyone will argue with them. This is why human rights are supported by all world cultures, all civilized governments and all major religions. It is almost universally recognized that the power of the state cannot be unlimited or arbitrary; it must be limited by the need to provide at least minimal conditions to all who are under its jurisdiction so that they can live with a sense of human dignity.

Freedom of expression is a capacious concept that includes freedom of speech, freedom of thought, freedom of assemblies, freedom of religion, etc. Everyone has the right to exercise freedom of expression, as well as other human rights and fundamental freedoms.

Freedom of expression has a long-standing history, and its roots go back to the ancient times, namely to the ancient Greece.¹ Ancient democratic principle “free speech” originated approximately in V century BC, did not depend on the ideology and lots of people had an opportunity to speak out at *hektemoroi* meetings (meeting of farmers cultivated land in exchange for 1/6 of their produce instead of a rent). The next important step for the development of freedom of expression is Bill of Rights 1689 according to which freedom of expression was established as the constitutional right to freedom of speech in the Parliament, which is still in force today.² Universal Declaration on Human Rights became the first instrument to consolidate freedom of speech internationally.

Nowadays, freedom of expression is enshrined not only in international treaties and conventions, but also in the constitution of any democratic country. Freedom of expression plays a rather important role in maintaining the democracy in modern society and serves as an important tool for self-realization of personality and protection of human rights.

1 K. Raaflaub, J. Ober, R. Wallace. *Origins of democracy in ancient Greece*. Oakland: University of California Press 2007, p. 65.

2 E.N. Williams. *The Eighteenth-Century Constitution 1688–1815*. Cambridge: Cambridge University Press 1960, p. 26–29.

This Master's thesis analyses of the situation with freedom of expression in the Republic of Belarus in the context of International Law. Despite the fact that the Constitution of the Republic of Belarus has been created as a democratic and all the rights and freedoms guaranteed seem ideal for citizens. However, recent events clearly display obvious problems with such freedom in the State. Freedom of expression is considered as one of the Fundamental Rights and Freedoms of a person. Protection of freedom of expression is especially important in any human rights instrument.³

The object of this study is freedom of expression in the Republic of Belarus, its legal status in both International law and in domestic law in the scope of International law. The author in his work aims not to simply describe national and international law concerning freedom of expression but also to propose possible steps and actions could be performed in order to improve the situation in the state. Namely, due to the author got bachelor's degree in the Republic of Belarus, gained knowledge about legal system and practice in Belarus will greatly simplify the research and will allow to take a look at the situation from inside and propose something fresh being add to the legislation or implemented in practice.

Unfortunately, in practice, repressive legal norms and presidential decrees, as well as their overly biased interpretation by officials of ministries and judges, infringe on the rights established by the Constitution. The political opposition, human rights organizations, a number of states, as well as international organizations, including the UN Human Rights Committee, argue that in the Republic of Belarus, under the existent authorities, massive and gross violations of human rights have occurred, including media monopolization and political censorship, massive arbitrary arrests and detentions, torture and murder of political opponents of the regime, falsification of elections, infringement of the rights of NGOs and many others. Constant attacks on journalists and other harassment of freedom of speech in Belarus cause deep concern to the international community reliable information that the Belarusian authorities persecuted, severely beat, detained and revoked accreditation of journalists and other media workers covering the election campaign and protests. It is obvious that these repressions are directed specifically against journalists in order to deprive the Belarusian people of the right to freedom of thought and expression.

³ D. Ehlers and others. European Fundamental Rights and Freedoms. Berlin: DE Gruyter Rechtswissenschaften Verlags-GmbH 2007, p. 97.

The rights to freedom of peaceful assembly and freedom of association, along with the right to freedom of expression, are essential to the existence of civil society as a whole. Only if they are observed, citizens get the opportunity to openly express their political convictions, participate in the cultural life of the country, profess a particular religion, and also - in cooperation with other people - defend their own interests.

In Belarus, civil activists who want to unite in order to openly express their own opinions are forced to act within the strict framework of restrictive laws. At the same time, law enforcement practice violates the rights to freedom of peaceful assembly, freedom of association and freedom of expression. For criticism of the authorities, public organizations face closure, and private individuals face criminal prosecution. Any public action, even a single picket, requires permission, which is rarely obtained. Peaceful demonstrators face fines and short prison terms. Protests in Belarus traditionally take place after each presidential election. They usually end with a harsh crackdown on protesters, dozens of courts and criminal cases, and a colony for opposition presidential candidates.

The objective of master's thesis is to determine the status of freedom of expression at the present stage of development of the Republic of Belarus and as mentioned above, develop certain changes that can be made to the current legislation of the as well as to law enforcement practice.

Today in Belarus there are a lot of problems associated with freedom of expression. Firstly, the imperfection of the legislation, as well as, in some cases, its anti-democratic nature, prevent citizens from exercising their civil rights and in particular, freedom of expression. Numerous reports from international organizations and their bodies, as well as reports of human rights defenders on freedom of expression, indicate problems not only at regulatory level, but also in the process of direct application of law. For instance, in the report of Special Rapporteur on the situation of human rights in Belarus presented at the 44th session of the Human Rights Council indicates on the serious restrictions of freedom of opinion and expression, namely, systematic practice of applying article 17.11 of administrative code of Belarus (distribution, production, storage or transportation of products containing extremist information) to activists, journalists and bloggers who criticize the government and express opposition opinions.⁴ In this regard, it

⁴ Report of the Special Rapporteur on the situation of human rights in Belarus, A/HRC/44/55, date 08.04.2020, para 40.

should be said that Belarusian citizens are often brought to criminal and administrative responsibility not only for expressing their opinions by participating in rallies, pickets and demonstrations, but also for wearing national symbols, clothes and accessories of certain colors, and even for reading books of Belarusian authors in public transport.

In 2020, the repression by the Belarusian authorities against the media reached a maximum, especially after the presidential elections 2020 and hundreds of journalists have suffered from their professional activities. Last year, 480 detentions of media workers were recorded, 97 of which resulted in administrative arrests, at least 62 journalists were subjected to violence due to their professional activities after the elections, and many of these cases fall under the definition of "torture".⁵

The practice of prosecuting and prosecuting independent journalists, bloggers and journalists working for foreign media continues. The Minsk office of the Belsat TV channel, which is officially registered in Poland and is considered one of the independent Belarusian TV channels, was searched as part of an investigation on charges of slander.⁶ Special Rapporteur is concerned that the accusations against this channel are aimed at silencing him and self-censoring journalists.⁷

The relevance of the study is confirmed by the deterioration of the situation after the presidential elections held in August 2020. The necessity to reform the legal system of the Republic of Belarus, as well as a change in state power, nowadays are more urgent than ever. Most of the population of the Republic of Belarus no longer trusts the authorities, however, it is quite problematic to change the situation, since the current head of state exercises totalitarian control over the Parliament, executive branch, and judicial system. The judicial system should be separately mentioned in this context. From August 2020 more than 500 criminal cases were

⁵ Ukrainian and Belarusian media communities signed an appeal to the OSCE Representative on Freedom of the Media. 16.04.2021. Available at: <https://www.ukrinform.ru/rubric-world/3228813-ukrainskoe-i-belorusskoe-mediasoobsestva-osudili-narusenia-svobody-smi-v-belarusi.html>.

⁶ Minsk Police Raid and Search BELSAT Office on Slander Charges. Available at: <https://baj.by/en/content/minsk-police-raid-and-search-belsat-office-slander-charges-office-has-been-crushed>

⁷ Supra note 4, para 53.

initiated on charges of citizens of participation in mass riots, the number of cases on administrative offences could not even be counted.⁸

The hypothesis of the research can be formulated as follows: «Despite freedom of expression in Belarus is guaranteed by Constitution, there are several evidences of non-compliance with this right and state should make certain steps to change the situation for the better». This idea is of current interest due to the fact that Belarus possess itself as a democratic state and the authorities express their readiness to cooperate with European Union Member states, where Fundamental Rights and Freedoms are considered as the highest and most important values of the European Union in general. Additionally, current events taking place in Belarus at present times put the problem of abidance of Rights and Freedoms of a person, especially freedom of expression, on the primary position. In this regard, the research question, which can be formulated on the basis of the hypothesis is following: Which steps should Belarus take in order to bring its national legislation in line with the international standards of protection of freedom of expression?

The value of the master's thesis lies in the plane of novelty and relevance of considered issue according to the events take place to the date. The legislation of the Republic of Belarus in the field of freedom of expression in connection with recent events has undergone colossal changes and, unfortunately, for the worse. Belarusian authorities are pursuing the main goal - to retain power by any means, which is expressed in infringement of fundamental rights of the citizens. However, over time, the power in the state will change and the necessity to reform Belarusian legal system will arise. Changes, which are going to be proposed by the author, can be taken as a basis for amendments to legal acts affecting freedom of expression in one way or another.

In master's thesis a variety of sources are intended to be used. Namely, such international legal instruments as International Covenant on Civil and Political Rights, Universal Declaration of Human Rights, various cases from the practice of the European Court of Human Rights, communications submitted to the Human Rights Committee, as well as the jurisprudence of Belarusian courts of the second instance on the administrative cases. Sources also include articles and books of various authors.

⁸ From August 2020 more than 500 criminal cases on the facts of riots and protests were initiated by the investigation committee. 27.03.2021. Available at: <https://sk.gov.by/ru/news-usk-minsk-ru/view/s-avgusta-2020-go-v-minskoj-oblasti-vozbuzhdeno-bolee-500-del-po-faktam-massovyx-besporjadkov-i-protestov-9838/> (in Russian).

Master's thesis consists of introduction, main body, including three chapters, each chapter contains sections, conclusion, bibliography and table of abbreviations.

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The keywords for this thesis are international law, Belarusian law, freedom of expression, freedom of assembly.

1. LEGAL FRAMEWORK OF FREEDOM OF EXPRESSION IN BELARUS

1.1 Definition of Freedom of Expression in International Law

In international law freedom of expression is protected widely and ensured in a variety of international and regional Human Rights Instruments. Firstly, Article 19 of Universal Declaration of Human Rights (hereinafter- UDHR) guarantees the right to freedom of opinion and expression to everyone and clearly explains what is meant by freedom of expression. Substantially, that means ability to express an opinion freely and gain any information and ideas using various sources, such as mass media, the Internet, books, etc. without any restrictions and limitations.⁹

However, UDHR gives quite blurry definition of freedom of expression and it could seem that individual is endowed with limitless possibilities in his or her actions even in case of illegal activity. At the same time articles 29 and 30 of the UDHR impose limits on the individuals and require that every person possess with certain duties with the help of which full development of the personality is possible.¹⁰ Moreover, the conduct of a person can be a subject for a limitation in case of securing anyone's rights and freedoms and can be limited only under the existing law.

UDHR was the first legal instrument where freedom of expression was set in and later it found its way to legally binding international instruments, such as for instance International Covenant on Civil and Political Rights (hereinafter – ICCPR). In ICCPR there are several limitations set on exercising Freedom of Expression. Namely, any individual exercising freedom of expression has a various responsibility in order to prevent possible violations and abuses. Covenant clearly explains the reasons, why freedom of expression can be limited in some cases, including the necessity of protection rights and reputations of others and in case of protection state's security, public order, health and morals.¹¹

⁹ Universal Declaration of Human Rights. Paris 10.12.1948, Art. 19.

¹⁰ Ibid., Art. 29,30.

¹¹ International Covenant on Civil and Political Rights. New York 16.12.1966, entry into force 23.03.1976, Art. 19.

When considering the international legal guidelines, one debatable question arises: where is the line between the realization of freedom of expression by a person and the restriction of freedom of expression by state?

According to the norms of international law, such restrictions must comply with the law, have a legitimate aim and must be necessary and adequate. The interpretation of the right to freedom of expression and its limitations are contained in General Comment № 34 of the UN Human Rights Committee.¹² According to the Committee, everyone has the right to freedom of expression and this right includes the freedom to seek, receive and impart all kinds of information and ideas, regardless of state borders, orally, in writing or through print or artistic expression, or in other ways of their choice. Such freedom protects all forms of expression and dissemination of opinion: speech and writing, images and art objects, books, newspapers, clothing and other materials which are not prohibited by law.

In General Comment № 34, the Committee established that such restrictions must be prescribed by law and must meet the requirements of necessity and proportionality and be consistent with the provisions, purposes and objectives of the ICCPR. Proportionality in this context is understood as measures of the state that are appropriate to fulfill its protective function, furthermore, they should be the least restrictive means by which the desired result can be achieved as well as they must be proportionate to the interest protected.¹³ Formation of a position in a General Comment regarding article 19 of the ICCPR builds on the previous decisions of the Committee on Individual Communications and in their interpretation.¹⁴ General comment № 34 imposes obligations on states not only to comply with article 19 of the ICCPR, but also on its correct interpretation in accordance with this remark.

Human Rights Council in its resolutions calls freedom of expression as one of the most important foundations of a democratic society and one of the fundamental conditions for its progress and development. In support of this assertion, Human Rights Council, which replaced

¹² Human Rights Committee, General Comment No. 34 (2011), CCPR/C/GC/34, 12.09.2011, para 11.

¹³ Human Rights Committee, General comment No. 27 (1999), CCPR/C/GC/27, 02.11.1999, para 14.

¹⁴ Communication No. 1173/2003, Benhaj v. Algeria, date of communication 31.03.2003, views adopted by CRPD Committee 20.07.2007; Communication No. 1334/2004, Mavlonov and Saidi v. Uzbekistan, date of communication 23.09.2004, views adopted by CRPD Committee 19.03.2009; Communication No. 726/1996, Zheludkova. v. Ukraine, date of communication 28.03.1994, views adopted by CRPD Committee 29.10.2002.

the UN Commission on Human Rights, renews the mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

Special Rapporteur collects all relevant information related to violations of the right to freedom of opinion and expression, discrimination, threats or violence, harassment or intimidation against individuals seeking to exercise or promote the exercise of the right to freedom of opinion and expression. Every year, Special Rapporteur submits reports to the UN General Assembly and Human Rights Council, which examine current problems and tendencies in the restriction of the right to freedom of expression by states, as well as provide an objective assessment of such actions. For example, in 2016 report “Contemporary challenges to freedom of expression”, Special Rapporteur expresses concerns about the use of broad language that empowers the authorities with significant powers to restrict freedom of expression.¹⁵

Provisions about the right to freedom of speech, opinion and expression are contained in American Convention on Human Rights (Pact of San José, Costa Rica) (1969), African Charter on Human and Peoples' Rights (1981), Declaration of Principles of Freedom of Expression in Africa (2002) and European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – ECHR) (1950). Article 10 of ECHR emphasizes that everyone has the right to freely express their opinion, without the admissibility of interference by public authorities, however, the application of this right is associated with certain formalities, conditions, restrictions or sanctions that are provided by law and are necessary in a democratic society in the interests of national security, territorial integrity or public order, in order to prevent disorder or crime, protect health and morals, reputation or rights of others, to prevent the disclosure of confidential information, or to ensure the authority and impartiality of justice.¹⁶

Considering the practice of the European Court of Human Rights (hereinafter – EctHR) on cases about violation of article 10 of the ECHR, it is worth pointing out the fact that ECHR most often notes the pattern of exceeding the powers of the state. For instance, in case *Oberschlick v. Austria*, EctHR notes that freedom of expression, guaranteed by Article 10, is

¹⁵ Report of the Special Rapporteur on the contemporary challenges to freedom of expression, A/71/373, 06.09.2016, para 13.

¹⁶ European Convention on Human Rights. Rome 04.11.1950, entry into force 03.09.1953, Art 10.

one of the basics of a democratic society, one of the fundamental conditions for progress and self-realization of each of its members. Being a subject to the restrictions set in paragraph 2 of article 10, it is extended not only to information or ideas that are considered in the society as favorable, harmless or neutral, but also those that insult, shock or cause concern for the state or part of its population. These are the requirements for pluralism, tolerance and open-mindedness, without which there is no democratic society.¹⁷

Nihal Jayawickrama in his book about judicial application of human rights law argues that freedom of expression refers to the mutually supporting rights and plays an important role in democratic society as well as for any individual, even when such opinion appears controversial.¹⁸

Concluding the section, it should be said that freedom of expression in international law along with other rights and freedoms holds a rather important place in the system of human rights. Universal Declaration on Human Rights can be considered as a fundamental document, which laid the foundation for the development of such legal institution as freedom of expression. Onwards, freedom of expression received its further development in ICCPR and some regional human rights instruments, such as for instance ECHR. ICCPR gives broader interpretation of freedom of expression, including several restrictions while exercising freedom of expression, which state can impose in exceptional cases. Thus, right to freedom of expression cannot be considered as an absolute right and has certain limitations, however only to the extent that may affect the rights, freedoms or interests of other individuals, as well as for the protection of state security, public order, health or morality of the citizens.

1.2. Interpretation of Freedom of Expression in Belarussian Law and Law Enforcement Practice

According to its Constitution the Republic of Belarus is a democratic state. Among the other rights and freedoms article 33 of the Constitution guarantees for everyone freedom of opinion and the right to express that opinion freely without any limitations.¹⁹ In addition to this, no one can be forced to express their beliefs or to renounce them. Speaking about freedom of

¹⁷ Application No. 11662/85, *Oberschlick v. Austria*, date of communication: 29.07.1985, judgement 10.05.1989.

¹⁸ N. Jayawickrama. *Judicial application of Human Rights law: National, Regional and International Jurisprudence*. Cambridge: Cambridge University Press 2017.

¹⁹ Constitution of the Republic of Belarus. Adopted 15.03.1994, entry into force 30.03.1994, Art 33.

expression in general, one question should be asked: can the thought on its own be constrained? The unequivocal answer to this question is no. But the point is that the state can limit freedom of expression for the sake of its own interests, using for this for instance educational institutions, mass media and other resources, which will be studied in more detail further. In Belarus it is forbidden to set obligatory ideology, which is mentioned in Article 4 of the Constitution, and the violation of this is expressed in the form of insulting the opinions and beliefs of a person, and restrictions for freedom of speech.

At the same time, Constitution of the Republic of Belarus reflects freedom of expression in other articles together with article 33. Namely, freedom to hold public events (article 35), referendum (article 37), carrying out national and local elections (section 3), ability to appeal to state bodies with complaints and suggestions (article 40), freedom of choice of language of education (article 50) are all forms of exercising freedom of expression. Furthermore, not only ordinary citizens possess freedom of expression: members of Parliament are free to express their own opinion, what can be expressed in the adoption of laws. Second paragraph of article 33 of the Constitution prohibits to compel someone to express opinion or renouncing them. But anyway, certain laws oblige person to give some information in the context of criminal proceedings (victim²⁰, witness²¹) in order to simplify the investigation of a crime.

Further two decisions of the city court will be considered, which have been adopted on the basis of the complaints, where citizens have been convinced that their freedom of expression was violated by the decisions of the courts of first instance.

The court of the city N received a complaint from citizen K. on the decision of the district court dated December 2, 2019, as a result of which K. was fined for 637 rubles (approx. 220 €). On the 8th of November 2019 ,in the period from 18:00 to 19:30, K., being near the city hall, in violation of article 10 of the law on mass events in the Republic of Belarus took part in picketing, not related to the election campaign of candidates for deputies of the House of Representatives of the National Assembly of the Republic of Belarus, held without the appropriate permission of the city executive committee, in order to publicly express his attitude

²⁰ Criminal Procedure Code of the Republic of Belarus. Adopted 22.12.1999, entry into force 11.01.2000, Art 50.

²¹ Ibid., Art 60.

to the results of the upcoming elections, during which he shouted the slogan “Long life for Belarus”.

In the complaint, K. indicates his disagreement with the decision, considers it illegal and unfounded due to one-sidedness, incompleteness, biased investigation of the circumstances of an administrative offense, incorrect application of the rules establishing administrative responsibility. He believes that he did not commit an administrative offense but exercised his right to freedom of peaceful assembly and freedom of expression, his actions were consistent with the Constitution of the Republic of Belarus, the electoral code, as well as with the International Covenant on Civil and Political Rights. He asks to abolish and terminate the court decision against him.

Despite this, having considered the complaint brought by K., having examined the legality and validity of the decision, the judge of the city court comes to the following conclusions: while considering the case by the district court, K. did not deny that on the 8th of November 2019, he took part in picketing near the city hall, shouting the slogan "Long life for Belarus". Moreover, K.'s guilt is confirmed by the explanations of witnesses L. and A. - police officers-, according to which on the 8th of November 2019 K. with a group of citizens were picketing near the city hall and that picket was not related to the election campaign of candidates for deputies of the House of Representatives of the National Assembly of the Republic of Belarus, carried out furthermore without the appropriate permission of the city executive committee.

The court had no grounds to doubt the validity of the explanations of witnesses, as well as grounds for slandering K. by them. The explanations of witnesses are confirmed by the written materials available in the case, including a protocol on an administrative offense, a report of a police officer, video recordings, which are sources of evidence and carriers of information obtained in accordance with the procedure established by law, which allowed the court to admit that K. took part in unauthorized picketing, violating the established procedure for holding mass events in the Republic of Belarus. In this regard, the arguments of the complaint about one-sidedness, incompleteness, biased investigation of the circumstances of an administrative offense, incorrect application of the rules establishing administrative responsibility are unfounded. In such circumstances, the arguments of the complaint about K.'s innocence are

unreasonable. Based on the foregoing, the court decided to leave the decision of a district court unchanged, and the complaint was dismissed.²²

Another decision of the city court is connected with the freedom of expression on the Internet. V. was found guilty of posting in 2019 on the YouTube video hosting a video, which contained an image with the inscription "A.C.A.B." That inscription was included in the republican list of extremist materials in 2018. By this action, V. distributed information products (using the global Internet) that were included in the republican list of extremist materials.

In the complaint, V. indicates disagreement with the resolution, considers it illegal and unreasonable, subject to cancellation due to the incorrect application of the rules establishing administrative responsibility. He believes that he did not commit an administrative offense, but exercised his right to freedom of expression, his actions were in accordance with the Constitution of the Republic of Belarus, as well as with the ICCPR, asks the court to cancel the decision and send the case for a new trial.

Having considered the case, the legality and validity of the decision, the court found the decision of the first instance court lawful, substantiated and fair, and the complaint was not subject to satisfaction. Firstly, V.'s guilt in an administrative offense is confirmed by the written materials available in the case, including protocol on an administrative offense, inspection protocol, video recording and screenshot. Secondly, according to the decision of the district court dated 14 December 2018, the inscription, written by V., was recognized as an extremist material. A copy of this decision was received by the Ministry of Information and the relevant information indicated in the court decision was included in the republican list of extremist materials. In this regard, the arguments of the complaint about the incorrect application of the norms establishing administrative responsibility are unfounded, as well the violations of the procedural law, entailing the cancellation or amendment of the decision. Moreover, V.'s constitutional rights and the provisions of international norms have not been violated. Based on the above, the city court dismissed V.'s complaint.²³

²² The Decision of the N. City Court, date 14.11.2020.

²³ The Decision of the M. City Court, date 03.04.2020.

Cases considered above have a lot in common with each other, however it is worth paying attention to important details. The first case is connected with the freedom of expression, as well as the freedom of assembly. The applicant draws attention to that and underlines, that the court of the first instance violated his right to freedom of assembly together with the right to freedom of expression, whereas in the second case, according to the applicant, only the right to freedom of expression was violated. However, this is not the most important thing in these two cases.

Namely, in the first case a court refers to the materials of the case, as well as directly to the decision of the court of first instance, underlining the fact that the picketing was held in violation of the law on mass events and does not provide sufficient justification which could indicate on a violation of the organization and conduct of such events. In other words, the decision of the court of first instance by its nature does not comply with the law, since reference is only made to the law on mass events, which must be consistent with the constitution and its provisions. The slogan “Long life for Belarus” cannot be considered as illegal and from the point of view of linguistic interpretation does not inherently carry calls for illegal actions and, furthermore, it cannot be regarded as an election campaign. Moreover, the court did not provide evidence that K's actions could be considered as picketing. Based on this, K. could not be fined for carrying out any actions, which are subject to the law on mass events. In this regard, the city court considered the arguments on the complaint incompletely and biasedly, which was reflected on its decision.

In contrary, the court decision on the second case could be considered as reasonable and made in accordance with the law. Specifically, the court indicates in its decision that the court of first instance made a reference to the fact that the inscription, written by V. was included in the list of extremist material before on the basis of a court decision taken in 2018. In this regard, it is important to remember the provisions of ICCPR, which allows to restrict freedom of expression including for the protection morals.²⁴

In Belarusian legislation conception of national security exists, where could be found a definition of “national interest”, which is the totality of the needs of the state for the implementation of the balanced interests of the individual, society and the state, allowing to

²⁴ Supra note 11, Art 19, para 3.

ensure constitutional rights, freedoms, high quality of life of citizens, independence, territorial integrity, sovereignty and sustainable development of the Republic of Belarus.²⁵ From that definition follows that even in the conception there is no precise definition of “national interest” or “actions which can harm national interests” terms. Thus, Belarusian legislature should be specified by implementing independent legal act, which could assign certain information to the extremist. However, special legal act on countering extremism exists, its provisions are rather vague and for the most part equate extremism with nazism. Furthermore, law on countering extremism contains the list of government bodies responsible for countering extremism and anti-extremism measures.²⁶

Just recently, a new draft law on countering extremism appeared on the Internet and Belarusian authorities are planning to change the interpretation of the concept of "extremism", create a special register of unreliable citizens, which will include all organizations and individuals recognized as extremist. Inclusion in the list will entail for foreign citizens - a ban on entry and the right to engage in medical, pedagogical, publishing activities, etc., for citizens of Belarus - a ban on holding public office within five years from the date of serving a sentence, people who have been recognized as "extremists" will be prohibited to carry out financial transactions in excess of 18000 euros (in equivalent) without special control, to engage in medical, pedagogical and publishing activities for five years; foreigners (those who received the citizenship of the Republic of Belarus) can be deprived of citizenship and deported, and, what is the most important about this changes, the actions aimed at discrediting the bodies of state power and administration, a representative of the government will also be considered extremism.²⁷ This list is not exhaustive and includes many more restrictions. Thus, if these changes will be approved by the Belarusian parliament and come into force, it can be seen as a kind of iron curtain and in this case freedom of expression in Belarus would become out of speech.

Further, it is important to mention about mass media since they play a rather important role in the state and their rights are often violated as well. Third paragraph of article 33 reflects the

²⁵ Conception of national security of the Republic of Belarus. Adopted 09.11.2010, entry into force 09.11.2010. Art 4.

²⁶ Anti-extremism law of the Republic of Belarus. Adopted 20.12.2006, entry into force 04.01.2007. Chapter 4.

²⁷ This will affect everyone: A draft law on extremism has been leaked to the network, which may be adopted very soon, 18.02.2021. Available at: <https://www.the-village.me/village/city/news-city/287271-extrem-new> (In Russian).

legal status of mass media in Belarus: “Monopolization of mass media by the state, public associations or individual citizens, as well as censorship are not allowed.”²⁸ Article 5 of Belarussian mass media law duplicates the provisions of the Constitution²⁹ Mass media, being one of the main ways for expressing opinion, have a huge impact on the formation of opinions and beliefs of citizens. That’s why mass media law strictly regulates activity of mass media in the state (printed and internet mass-media). Furthermore, as mentioned above, article 33 of the Constitution prohibits monopolization of mass media by the state, public associations or citizens, but at the same time there is a possibility of creation of mass media by citizens, which follows from article 34 of the Constitution (right to distribute information).

In 1995 Constitutional Court of the Republic of Belarus reviewed the decree of the president of the Republic of Belarus concerning the activity of the National TV and Radio Company for constitutional compliance.³⁰ The issue was that according to the decree National State Television and Radio Company of Belarus (hereinafter – NSTRC) (TV and radio broadcasting service) was declared as a state body. According to the constitutional court the NSTRC acts simultaneously as a media and as a public administration body, endowed with executive, administrative and control powers in the field of television and radio broadcasting. According to the opinion of the constitutional court, combination in one agency the functions of a government body and the media contradicts the provisions of article 13 of the Constitution (everyone has equal rights to exercise economic and other activity and guarantees equal protection by the state and equal conditions for development of any form of property).³¹ And consequently, giving NSTRC powers of authority ensures its advantageous position and allows it to dictate its own terms. This means an establishment of a monopoly in the sphere of TV and radio broadcasting. Ultimately, constitutional court in its Opinion declared presidential decree as a contrary to the Constitution.

In the case Informationsverein Lentia and Others v. Austria Austrian authorities rejected to issue a license for the establishment of local radio and television enterprises.³² Applicants claimed that they applied to the Austrian Constitutional Court, which referred to the Article 10

²⁸ Supra note 19, Art 33.

²⁹ Law on mass media of the Republic of Belarus. Adopted 28.06.2008, entry into force 17.07.2008. Art 5-7.

³⁰ Constitutional Court of the Republic of Belarus, Compliance of the Decree of the President of Belarus with the Constitution, 28.09.1994.

³¹ Ibid.

³² Application No. 13914/88, Informationsverein Lentia v. Austria, date of communication: 16.04.1988, judgement 24.11.1993.

of ECHR, according to which Member States are free to issue licenses for TV and radio broadcasting and claimed that a State is not obliged to issue a license for everyone. In his claim applicant argued that it is not necessary to have a state monopoly in TV and radio broadcasting just to protect public opinion from manipulations, otherwise it would be necessary to possess such license by press as well. And the only objective of Austrian authorities was to keep their political control over broadcasting. In the result, ECtHR in its decision admitted violation of Article 10 of ECHR by Austria.

Belarusian authorities often use administrative charges to harass civic activists and independent reporters. The same methods are used against Internet activists. The most common scheme includes charges of committing "petty hooliganism" (in accordance with Article 17.1. of the code of administrative offenses).³³ In particular, it was used against moderators of communities on social networks that criticize the existing regime. Vyacheslav Dianov, one of the leaders of the Revolution through Social Networks movement, had to leave the country after the 2010 presidential elections and the subsequent crackdown on civil society. Dianov was a member of the campaign headquarters of one of the opposition candidates, Yaroslav Romanchuk, and moderated the Future Movement group on one of the popular social networks in Belarus.

On the 27th of August, several journalists gathered at Svoboda Square in Minsk to cover the upcoming peaceful protest. At the very beginning of the action, about 50 journalists have been taken to the police department. For several hours the documents and contents of their mobile phones have been checked. Several journalists who refused to provide access to their mobile phones were brought to administrative responsibility for participating in an unauthorized mass event. Swedish photojournalist Paul Hansen was deported from the country with an entry ban for 5 years.³⁴

Thus, independent media in Belarus are under constant threat of government repression. In recent years, there have been frequent cases of searches in the offices of non-state media outlets and the apartments of journalists, as well as the detention of reporters covering opposition street actions and damage to their professional equipment. The articles of the criminal code providing

³³ Code on the Administrative offences of the Republic of Belarus. Adopted 18.12.2020, entry into force 06.01.2021. Art 17.1.

³⁴ Belarus protests: DW correspondent released after journalist detentions, 27.08.2020. Available at: <https://www.dw.com/en/belarus-protests-dw-correspondent-released-after-journalist-detentions/a-54721995>.

for liability for libel and insult have been repeatedly applied to journalists who wrote about high-ranking government officials, including the country's president. In addition, there is a problem with the accreditation and prosecution of journalists who collaborate with foreign media.

In the scope of the legal framework of freedom of expression, some words should be said about hate speech and its consolidation in the Belarusian legislature. Hate speech can be considered as one of the forms of expressing one's own opinion, however, the form of such expression is indecorous and contrary to moral foundations and principles. Hate speech can be defined as a negative phenomenon, which is expressed in demonstration of violence towards certain groups of people based on social status, sexual orientation, gender, beliefs and etc.

In practice it is extremely important to make a distinction what can be considered as a hate speech and what cannot. Hate speech is completely opposite to the freedom of expression. According to the UN Strategy and Plan of Action on Hate Speech, hate speech can be presented in various forms of communication, including oral and written forms or a hostile behavior towards one person or group of people based on the above-mentioned criteria.³⁵

In European Union, Recommendations of the Committee of Ministers of the Council of Europe № R (97) 20 is a legislative basis for the detection, prevention and suppression of hate speech, according to which hate speech is defined as all forms of self-expression that include dissemination, provocation, stimulation or justification of xenophobia, anti-Semitism or other forms of intolerance, including intolerance in the form of aggressive nationalism or ethnocentrism, discrimination towards minorities, migrants and people with emigrant backgrounds.³⁶

Regarding hate speech in the Republic of Belarus, a research of a group of Belarusian journalists should be mentioned in this context. Namely, initiative group monitored the using of hate speech in print media and electronic sources of information in Mogilev region in the first quarter of 2017 and consequently it has identified certain cases of using the ethnonyms

³⁵ United Nations Strategy and plan of Action on Hate Speech, May 2019, Available at: <https://www.un.org/en/genocideprevention/documents/UN%20Strategy%20and%20Plan%20of%20Action%20on%20Hate%20Speech%2018%20June%20SYNOPSIS.pdf>.

³⁶ Recommendation No. R (97) 20 of the Committee of Ministers to Member States on "Hate Speech". Adopted 30.10.1997, scope.

containing hate speech. In the summary of incidents, published in one of the regional newspapers, there is mention of the ethnicity (individuals of Roma origin) of the suspects in the criminal case was founded. The research group came to the conclusion that the indication of the ethnicity of persons who are suspected of committing a crime cannot be regarded as a necessity, since the absence of the mention of the ethnonym would not change the informational integrity of the note. Furthermore, criminal investigation by the moment of publication of the study was not completed and representatives of other nationalities could also be criminals. Finally, such an indication violates Article 16 of the criminal procedure code of the Republic of Belarus, which declares the presumption of innocence.³⁷

This is only one example of hate speech among others, which the research group has discovered while analyzing the publications of press made in 2017. Journalists came to the conclusion that the main demonstration of hate-speech in the press is expressed in the form of establishing gender, social and ethnic stereotypes and the labeling and one of the sources of hate-speech can be representatives of state institutions and law enforcement agencies, which can be regarded as a demonstration of the state's negative policy towards vulnerable social groups.³⁸

The analysis of similar sources regarding the facts of hate speech in Belarus leads to the conclusion that hate speech as a negative phenomenon is certainly presents in the Republic of Belarus not only at the level of interaction between citizens, but also at the level of state bodies and mass media. Representatives of the authority as well as the journalists, should refrain from manifesting intolerance on racial, ethnic and any other grounds.

Now, after the description of the definition of hate speech, let's move to the situation with the hate speech in Belarus. As mentioned in the previous chapters, Republic of Belarus recognizes general principles of international law and besides the article in the Constitution concerning freedom of expression, opinion and belief, contains several articles, which are devoted in one way or another to the protection of citizens, their right and freedoms by guaranteeing freedom of conscience and allowing everyone to express religious views, conduct religious ceremonies which are not prohibited by law, article 35 guarantees freedom of assembly, meeting, street

³⁷ Supra note 20, Art 16.

³⁸ Hate speech in Mogilev region, first quarter of 2017. Available at: <https://mspring.media/wp-content/uploads/2017/10/hate-speech-1-kv.pdf> (in Russian).

marches, demonstrations and picketing in accordance with the law and not violating the rights of other citizens of Belarus.³⁹

But the question is: How does it correspond with the hate speech?

The answer lies on the surface. If we look at the events that are taking place in Belarus nowadays, it can be concluded that Belarusian authorities in violation of constitutional provisions allow themselves to express false judgement about people, who disagreed with the presidential elections results and protested against violation of electoral legislation and frank facts of vote rigging taking place at electoral precincts. After the events of 9-10th of August 2020 president of Belarus A. Lukashenko allowed himself to call protesters drunkards and drug addicts, who receive instructions about how to act from abroad.⁴⁰ Undoubtedly, this fact can be considered as a hate speech towards people, who have different political views and furthermore, falls under the articles 188 and 189 of the criminal code of Belarus, namely libel and insult contained in public speaking.⁴¹ This is a classic example of hate speech, but at the level of official authorities of the state, in particular the president of the state.

As mentioned above, Belarusian criminal code and code on administrative offenses contain articles about insult, which intertwined with this thread with the hate speech. The only difference about this article is a form of such insult. While administrative code punishes intentional humiliation of the honor and dignity of a person, expressed in an indecent form (which can be considered as a definition of insult), a mandatory attribute of insult as a crime is the expression of offensive thoughts through a public speech or in mass media.⁴²

Frankly speaking, it is complicated sometimes to find the line between hate speech towards certain population groups or persons and exercising freedom of expression. In other words, Belarusian legal system is arranged in a way, when certain privileged individuals are free to express any opinion without fear of responsibility, while another individual will be convicted of a careless dictum against the opponent during an Internet dispute. But let's go back to the legal aspects of hate speech.

³⁹ Supra note 19, Art. 35.

⁴⁰ Lukashenka called protesters drug addicts and drunkards. 11.08.2020. Available at: <https://ura.news/news/1052444566> (in Russian).

⁴¹ Criminal Code of the Republic of Belarus. Adopted 24.06.1999, entry into force 01.01.2001. Art 188-189.

⁴² Supra note 33, Art 9.3.

It follows from the above-mentioned that there is no specific article in Belarusian criminal, administrative or civil codes punishing hate speech as such. However, such offences as insult and slander (including special articles about the same actions committed against the president of the state) exist and regularly (though not so often) persons are found guilty of these crimes or misdeeds.

According to the General Recommendation №35 of the Committee on the Elimination of Racial Discrimination, when referring certain statements to the hate speech, certain evaluation criteria should be included, such as the content and form, position of the speaker, objective of the speech and etc.⁴³ Furthermore, if take into account what is meant by hate speech, it becomes apparent that hate speech by its definition seems similar to the actions, prohibited by the article 189 of the Belarusian criminal code. It follows that there is no need to include special article to the criminal code concerning hate speech since it is covered by another article in the criminal code. But where is the difference between hate speech and criticism towards government official and its actions or simple citizens having other position?

Undoubtedly, insults based on the gender, sexual orientation, color of the skin and etc. are obviously unacceptable and must be punished in accordance with the law. But what about political views? Should people having opposite to the existing government political views be considered as spreading hate speech? Definitely, the answer is “no”. Such actions are covered by the freedom of expression guaranteed by the international legal instruments and Constitution of the state. However, legal practice of the state shows that citizens are often punished in accordance with above-mentioned articles of the criminal code for political reasons.

Concluding this section, it should be mentioned that constitution of the Republic of Belarus in its article 33 guarantees freedom of opinion and its expression for everyone. However, as mentioned above, freedom of expression can be limited in some cases for the purpose of protection national security, rights and freedoms of other citizens, but it is unacceptable to set limitations on freedom of expression solely for the purpose of pursuing certain state interests and obtaining material or immaterial benefits. Undoubtedly, provisions of the Belarusian constitution seem democratic and comply with generally recognized principles of international

⁴³ General Recommendation of the Committee on the Elimination of Racial Discrimination No. 35, 26.09.2013, para 15.

law. Belarusian legislation concerning freedom of expression is based mostly on the provisions of the Constitution and separate legal acts, which mention freedom of expression indirectly, prohibiting setting limits, including journalistic activities. Furthermore, Belarusian criminal and administrative codes admit libel and insult as crimes, but with the condition of such actions in public speech or on the Internet. Constitutional court practice concerning freedom of expression is rather limited and is reduced only to verification of laws, including those that indirectly contain provisions on freedom of speech, for compliance with the constitution. However, the practice of courts of general jurisdiction is more extensive and includes cases on administrative offenses.

1.3. Position of International Law in the Republic of Belarus

Before speaking about the position of international law, it seems logical to mention about the hierarchy of legal acts in Belarus. Law on normative legal acts of the Republic of Belarus clearly regulates the structure of normative acts in Belarus. Paragraph 2 of article 3 of above-mentioned law establishes the following structure of legal acts in Belarus:

1. Constitution of the Republic of Belarus;
2. decisions made on the Republican Referendum;
3. laws of the Republic of Belarus;
4. decrees of the President of the Republic of Belarus;
5. resolutions of the Council of Ministers
6. normative legal acts of the Supreme Court of the Republic of Belarus, the General Prosecutor's Office, rule-making bodies subordinate to the President of the Republic of Belarus;
7. decisions taken by a local referendum, decisions of local Councils of Deputies, executive and administrative bodies;
8. other normative acts.⁴⁴

Thus, international treaties and other acts of international organizations do not appear in this structure. Moreover, constitution of Belarus does not contain a direct indication of the place of

⁴⁴ Law on normative legal acts of the Republic of Belarus. Adopted 29.06.2018, entry into force 17.07.2018, Art 3.

international treaties in the system of normative acts of the Republic. As Belarusian legal scholars mention, there is no general formulation in Belarusian legislation, according to which concluded in accordance with the constitutional procedure international treaties constitute an integral part of the republican legislation.⁴⁵

However, constitution of Belarus contains a provision, according to which Constitutional Court of Belarus determines the compliance of laws, decrees and international treaty and other obligations with the Constitution and international legal acts ratified by Belarus. It becomes apparent that Belarusian constitution recognizes international law as a source of law and furthermore, endows Constitutional Court with the duty to monitor for the compliance of national legislation with the sources of international law, such as treaties, conventions, agreements and additionally international commitments undertaken by Belarus.⁴⁶

The Republic of Belarus by the 1st of January 2020 participates in 2615 bilateral and 1316 multilateral treaties.⁴⁷ According to these treaties Belarus took on certain obligations, including those concerning human rights and freedoms.

Fulfilling international obligations in connection with participation in international treaties, Belarus submits national periodic reports for consideration by the UN treaty bodies, however sometimes with delays. In this connection, Belarus, within the framework of cooperation with UN treaty bodies, updated Common Core Document which is an integral part of the national periodic reports.⁴⁸ It reflects general situation in the field of the promotion and protection of human rights in Belarus. Special Rapporteur about situation on human rights in Belarus visited Belarus five times and made the report about freedom of expression as well in May 1997. Furthermore, Special Rapporteur had to visit Belarus in 2016 to collect information concerning freedom of expression, but the visit did not take place.⁴⁹ That report will be considered in more detail in the next chapter.

⁴⁵ G. Vasilevich. Normative legal acts of Belarusian state bodies. Supplement to the journal «Law and Economics». Minsk, 1999.

⁴⁶ Supra note 11, Art 116.

⁴⁷ Law of international treaties. Website of the Ministry of International Affairs of the Republic of Belarus, accessible in Russian: https://www.mfa.gov.by/policy/international_law/treaties/.

⁴⁸ Ibid.

⁴⁹ Visits of Belarus by Special Rapporteur. Website of the Office of the High Commissioner, available at: <https://spinternet.ohchr.org/ViewCountryVisits.aspx?visitType=all&country=BLR&Lang=en>.

The fundamental international documents which establish the principles of international law are the UN Charter (1945), Declaration on Principles of International law concerning Friendly Relations and Co-operation among states in accordance with the Charter of the United Nations (1970), Final Act of the Conference on Security and Cooperation in Europe (Helsinki Accords) (1975). These acts are intended to form the framework of the system of international law, its moral and legal content. The principles indicated in them are the basis for the interaction of subjects in the process of creating and implementing the norms of international law. They reflect the content of all existing norms and all other norms must comply with them.

The mechanism for the implementation of the norms of international law was first enshrined in the Constitution of the Republic of Belarus in 1994. The amendments made to the Constitution in 1996 did not affect it. According to the Constitution of the Republic of Belarus as amended in 1996, the priority of the generally recognized principles of international law and ensuring compliance with the legislation of the Republic of Belarus is recognized (Article 8).⁵⁰

However, the legislation of Belarus, adopted in 1993-1999 (including codified), testifies to the recognition of the priority not only of ordinary norms (generally recognized principles), but also of contractual norms. Most of the laws contained an article on the application of the provisions of an international treaty in the event of a conflict with the rules established by the relevant laws (law on the rights of the child 1993, law on external labor migration 1998 (is no longer in force, but a similar newer law contains identical provisions)).

The legal category "generally recognized principles of international law" established by the Constitution of the Republic of Belarus, to which the Constitution gives priority and guarantees the compliance of national legislation, takes into account the named concepts of the basic principles of international law, general principles of law recognized by civilized nations, as well as the legal category of *jus cogens*.

National legislation of Belarus must fully comply with the general principles of law. As an international legal category, the category of general principles of law can be considered as a standard of civilized law, which must be respected in the legal system of each state. Immediate elimination as inconsistent with generally recognized principles of international law in the

⁵⁰ Supra note 19, Art 8.

sense of article 8 of the Constitution should be subject to any norms establishing punishments without legal grounds, norms allowing non-fulfillment of obligations assumed, norms discriminating subjects of law on racial, national, religious and other grounds, norms restricting judicial protection of subjective rights and etc. In addition, international treaties concluded by the Republic of Belarus should not collide with *jus cogens*.

It should be noted that the formulation of article 8 of the Constitution removes problems from the Belarusian law enforcement practice, which, in particular, have been solved for many years in Russian legal system. Russian Federation as one of the states that recognize **any** norms of international law as part of the national legal system.⁵¹ The approach proposed by the Constitution removes from the agenda the issue of the application of generally recognized principles of international law by the courts. However, in case of reference to international norms during the trial, the court will most likely not take into account such norms and the decision will still be made on the basis of the current legislation of Belarus, there will also be no direct references to any international instruments in decision, judgment or court order.

Thus, in accordance with article 8 of the Constitution, the Republic of Belarus recognizes the priority of the generally recognized principles of international law and ensures their compliance with national legislation. An analysis of the fundamental international documents gives grounds to refer to such "generally recognized principles" the basic principles of international law concerning friendly relations between states in accordance with the UN Charter and the general principles of law recognized by civilized nations. The broad interpretation of the concept of "generally recognized principles of international law" has no legal basis.

In conclusion of this section, it should be underlined, that Belarusian legislature does not include international legal instruments, such as the provisions of the conventions and covenants, decisions of international courts and acts of international organizations, into the system of national legislation. However, Constitution of Belarus indicates the recognition of the priority of generally recognized principles of international law and ensures the compliance of legislation with them. Furthermore, legal act, which regulates the practice of the constitutional court does not impose judges with the obligation to verify the legality of laws or

⁵¹ Pavlova L., International law in the legal system of states // Belarusian Journal of International Law and International Relations. 1999.№ 3, page 3.

other normative act adopted by the parliament for the compliance with the sources of international law. In this regard, from the point of author, Belarusian legislation should be supplemented with the clear definition of the place of international law in the system of national law, however, this will be discussed in more detail further.

2. COMPLIANCE WITH THE RECOMMENDATIONS OF INTERNATIONAL HUMAN RIGHTS MONITORING BODIES

2.1 Recommendations of UN Human Rights Committee and concluding observations of Treaty monitoring bodies

Speaking about the Recommendations of UN Human Rights Committee it should be mentioned that the Republic of Belarus periodically sends reports to the Human Rights Committee in accordance with the obligations taken under international treaties. As mentioned in the previous Chapter, Belarus signed and ratified a number of Conventions and Treaties, in particular concerning human rights and participates, although occasionally with some delays in reporting cycles regarding different international human rights instruments.

Republic of Belarus signed ICCPR in 1968 and ratified in 1973. Currently Belarus is in the 6th reporting cycle and is obliged to submit next state party report in 2022. In 2018 it had completed five full cycles of reporting and review. For the 5th cycle, UN Human Rights Committee prepared a list of issues the state had to report about and one of them was the situation with freedom of expression. Namely, Committee makes a reference to the previous concluding observations and persistent reports about arbitrary *de jure* and *de facto* restrictions on freedom of expression such as restrictions on access to information of public interest, government control over the media, restrictions on the expression of personal opinion on the Internet, blacklisting and making pressure to the radio stations forcing not to broadcast certain musical compositions.⁵²

Thus, UN demanded a report from Belarusian authorities concerning existing facts of harassment of journalists and politically motivated court sentences. However, in Fifth periodic report submitted by Belarus in 2017, authorities do not provide any specific answers to the questions and explanations about the facts raised in the List of Issues of the Committee. Report is written mostly in descriptive style and provides extracts from administrative, criminal legislation and mass media law. Furthermore, report ignores the facts provided in the List of Issues, namely facts of detention of human rights activists before World Ice Hockey Championship in May 2014 and events that took place after presidential elections in 2010.

⁵² Human Rights Committee, List of issues prior to submission of the fifth periodic report of Belarus (2015), CCPR/C/BLR/QPR/5, 19.08.2015, para 29.

Report authors underline the necessity of obeying the law on mass events and mass media law, providing the statistics of accreditation of foreign media at the ministry of foreign affairs. The articles of criminal code concerning criminal liability for prosecuting citizens for criticism as well as for obstructing the professional journalistic activity.⁵³ In addition, Belarusian authorities pointed out that the legislation does not contain a separate legal definition of "human rights defender" and does not define his legal status. Moreover, so-called "political prisoners" are not considered as such, appearing as persons violated legislation and serving sentences appointed by court.⁵⁴

In this way, the only conclusion could be made from the Report is that officials responsible for its compiling did not answer properly to the questions posed on the merits, simply citing existing legislature concerning mass media and mass events. This is evidence of the fact that the legacy of the Soviet past is still preserved in Belarus, when such kind of reports do not reflect the real situation in the state. The report of Special Rapporteur which will be considered in the next section confirms that.

If study the Concluding observations on the fifth periodic report of Belarus, Human Rights Committee along with the positive aspects expressed in changes of legislation, ratification of certain conventions, a lot of negative sides are noted.⁵⁵

"The Committee is concerned about laws and practices that do not appear to comply with the principles of legal certainty, necessity and proportionality as required by the Covenant, and that severely restrict freedom of opinion and expression, namely restrictions on Internet-based expression such as the amendments to the mass media law, extending State control to online media and introduce an obligation for news portals to implement mandatory identification of website visitors; the power of the executive to shut down media and the extensive practice of using warnings to media; broadly formulated provision of article 38 of the mass media law defining which information is forbidden to distribute among the mass media, especially information from non-registered organizations and information "harming the national interest"

⁵⁴ Human Rights Committee, Fifth periodic report submitted by Belarus under article 40 of the Covenant pursuant to the optional reporting procedure (2017), CCPR/C/BLR/5, 14.06.2017, para 210.

⁵⁵ Human Rights Committee, Concluding observations on the fifth periodic report of Belarus (2018), CCPR/C/BLR/CO/5, 22.11.2018, para 48.

as well as the reported harassment and persecution of journalists working for foreign, unaccredited media...”⁵⁶ According to the information provided in the Report, Belarusian authorities adhere to vague formulations when creating regulatory legal acts and then they can easily manipulate them in a convenient way.

Some words should be said about recently issued Resolution of Human Rights Council, adopted at the 46th Session and being a part of agenda.⁵⁷ The resolution concerns the situation with human rights in Belarus ahead of and after the 2020 presidential elections. In the resolution Council in general expresses concern about the human rights situation in Belarus and its deterioration in the run-up to and after the presidential elections on 9 August 2020. Examining the resolution in more detail, it is possible to identify the main aspects on which the council focuses.

Firstly, Council emphasizes condemnation of gross violations of human rights in Belarus, including the systematic violation of human rights and fundamental freedoms, arbitrary detention and arrest of opposition members, journalists and media workers, human rights defenders and citizens in general for exercising their rights person and fundamental freedoms, as well as punishment in the form of imprisonment, assigned to media workers for the performance of their professional duties.

Furthermore, human rights violations were committed in Belarus ahead of and after the 2020 presidential elections, including numerous acts of torture, enforced disappearances, abductions and arbitrary expulsions, arbitrary detention and arrest, acts of sexual and gender-based violence, arbitrary deprivation of life, intimidation and arbitrary deprivation of liberty, including of human rights defenders, civil society representatives, journalists and other media workers, as well as people seeking to peacefully exercise their civil and political rights, denial of the right to freedom of peaceful assembly as well as the denial of the right to freedom of opinion and expression, both online and offline, including through attacks on the media and regular intimidation of journalists who perform their legitimate functions in the context of

⁵⁶ Ibid., para 49.

⁵⁷ Human Rights Council, Resolution on situation of human rights in Belarus in the run-up to the 2020 presidential election and in its aftermath (2021), A/HRC/46/L.19, 15.03.2021.

assemblies, through the revocation of accreditation of foreign media workers, blocking websites of independent media and disconnecting the Internet.⁵⁸

Frankly speaking, that Report contains fairly accurate and truthful information about the events that took place in August 2020. A lot of facts of detention of journalist were confirmed by videos captured, even in case journalists had badges and assignments from the redaction (which could confirm the fact that journalist is carrying out its professional activity), the police officers did not take this into account, however, a lot of journalists were released after identifying. Separately special attention should be paid to the recommendations of the Human Rights Council regarding changes in the situation in Belarus. The Council calls on the authorities to stop using excessive force against peaceful demonstrators, as well as torture and other cruel, inhuman or degrading treatment or punishment and enforced disappearances, to stop resorting to arbitrary detention, arrest and imprisonment of people for the exercise of their human rights and urges calls on the Belarusian authorities to immediately and unconditionally release all political prisoners, journalists, human rights defenders, members of strike committees, students and those who were detained during and after the presidential elections for the exercise of their human rights and fundamental freedoms.

One of the most important roles in Belarus in connection with current events play journalists and human rights activists, who document and monitor human rights violations. Indeed, even today, there is a permanent “vigil” of human rights defenders near penitentiary institutions, who carry out the formation of lists of detainees, draw up a list of items necessary for transferring to detainees and other activity. Coming back to freedom of expression, here several recommendations from the Council should be mentioned, such as compliance by the Belarusian authorities with their international obligations regarding, in particular, freedom of peaceful assembly and association, as well as freedom of expression, both online and offline, including obligations related to freedom of the media and freedom of information. And finally, Human Rights Council calls upon Belarus to cooperate fully with the Special Rapporteur on the situation of human rights in Belarus, in particular by granting free, full and unhindered access to the country's territory, including unhindered access to all places of detention, and to cooperate fully with thematic special procedures of the Human Rights Council.

⁵⁸ Ibid., para 4.

2.2 Position of Committee Against Torture on Freedom of Expression in Belarus and Guidance from UN Special Rapporteur.

One of the substantial international legal instruments which should be considered in this section is CAT. The Republic of Belarus signed it in 1985 and ratified two years later, in 1987. Currently Belarus is on the 6th reporting cycle, which dues in 2022. At first sight, this Convention is hardly referring to the freedom of expression, however, all the facts of inhuman and degrading treatment in Belarus took place through the entire history of independent Belarus and especially before and after presidential elections. According to the Article 12 of the Convention, “each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.”⁵⁹.

In this regard, among the issues prior to submission of the fifth periodic report of Belarus, Committee against Torture requested to provide them with the information about an effort of Belarusian authorities to investigate cases of disappearances such persons as Yury Zakharenko, Victor Gonchar and Anatoly Krasovsky.⁶⁰ But why does the Committee has chosen these names? The answer lies on the surface. Victor Gonchar is a former associate of Lukashenka, who has changed his point of view about the Lukashenko’s campaign and subsequently became a part of the opposition, heading the alternative elective commission during alternative presidential elections in 1999; Anatoly Krasovsky was his close friend.⁶¹ Yury Zakharenko served for some time as Minister of Internal Affairs after Lukashenko won the presidential elections, but after some time because of political reasons was removed from the post of minister.⁶² All names mentioned above somehow of other opposed the policy of current president of the Republic of Belarus. Thereby, all these people were deprived of freedom of speech, but with the help of the most radical method.

⁵⁹ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, New York 10.12.1984, entry into force 26.06.1987, Art 12.

⁶⁰ List of issues prior to submission of the fifth periodic report of Belarus, Committee against Torture, CCPR/C/BLR/QPR/R.5, 18.05.2015, para 23.

⁶¹ Missing in Belarus: 15 years no answer, 16.09.2014. Available at: <https://www.dw.com/ru/без-вести-пропавшие-в-беларуси-15-лет-нет-ответа/a-17923558> (In Russian).

⁶² Decree of the president of the Republic of Belarus №149 on the demotion of the former Minister of Internal Affairs of the Republic of Belarus Y. Zakharenko for gross financial violation and omissions in work, 16.04.1996.

Belarussian authorities, in turn, in their report under CAT merely mentioned the issue of sudden disappearance of above-mentioned persons: “the Investigative Committee is carrying out initial inquiries into a criminal case brought on evidence of a crime involving the disappearance of Mr. V.I. Hanchar, Mr. A.S. Krasouski and Mr. Y.N. Zakharanka” and “despite the additional measures taken to conduct an effective investigation into these cases, it has not been possible, to date, to establish the whereabouts of Mr. Hanchar, Mr. Krasouski and Mr. Zakharanka or the people who might be involved into their disappearance”.⁶³

And then, in Concluding observations about Belarusian report Committee against torture noted the fact that Belarus could not conduct objective investigation about the disappearance of politicians mentioned above.⁶⁴ The state was recommended to conduct fair and effective investigation of all the cases of people’s disappearance and prosecute offenders in accordance with the law and, moreover, provide families of the victims with the remedies (compensation, possible psychological, financial and other support if necessary).⁶⁵

According to the NGO’s Report on compliance by the Republic of Belarus with CAT, relatives of Mr. Zakharenko were refused to implement the decision of the Committee against Torture referring to the recommendatory nature of the Committee. Furthermore, comprehensive investigation of the cases of disappearance does not conduct, but the imitation of investigation is being carried out, as well as the relatives of victims and their representatives do not have an opportunity to familiarize with the materials of the investigation, receiving unmotivated refusals.⁶⁶

In this regard, the necessity of such legal instrument as CAT should be explained here. The main reason why Committee Against Torture was mentioned in this section is that most of the torture, the facts of which were documented, among other things, by journalists and human rights organizations during the events of August 2020 are inextricably linked with the expression of citizens' opinions. Namely, the abovementioned resolution of the Human Rights Council regarding Belarus confirms the fact that all people detained during the protests in

⁶³ Committee against Torture, Consideration of reports submitted by States parties under article 19 of the Convention pursuant to the optional reporting procedure: Belarus (2016), CAT/C/BLR/5, 12 January 2016, para 157.

⁶⁴ Supra note 54, para 35.

⁶⁵ Ibid.

⁶⁶ Committee against Torture, NGOs report on compliance by the Republic of Belarus with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2018), para 143-145.

August participated in the protest movement against the actions of the current government, expressing, inter alia, their opinion and attitude towards the election results.

Furthermore, according to the author, Committee Against Torture will play an important role, including in the direct consideration of the report of Belarus in pursuance of the provisions of the Convention, where the facts of torture of citizens in the exercise of their freedom of expression most likely be established. All facts of inhuman and degrading treatment were somehow connected with political prisoners. That's why the author considers the role of the Commission as one of the most important in investigation of facts of violation of human rights by Belarussian authorities.

Office of the UN High Commissioner regularly publishes reports about human rights situation in every Member State. Republic of Belarus is not an exception here. In 2012 Human Rights Council by its Resolution 20/13 established Special Rapporteur mandate about the situation concerning human rights in Belarus.⁶⁷ This mandate is renewed every year and respectively, Special Rapporteur is changing regularly. Now the Republic of Belarus is on its fifth reporting cycle in Universal Periodic Report process.

If study the National Report of Belarus submitted to the United Nations, the annex about freedom of expression presents the growth of the number of media providers, mass media law is mentioned in the context of prohibition of mass media discrimination and at the same time mentions possible categories of information prohibited for distribution. In short, the report was composed with the context that the Republic of Belarus is a democratic country and everything possible is made to help mass media enjoy their freedom of expression. However, the real situation completely differs from the ideals mentioned in the report.

The report of Special Rapporteur on the situation of human rights in Belarus reflects the reality that exists in Belarus nowadays. The report dated by the 2019 draws attention to the numerous violations of such fundamental freedom as freedom of expression. Special Rapporteur notes that «...the reporting period was marked by renewed pressure on independent journalists and

⁶⁷ Special Rapporteur on the situation of human rights in Belarus, Office of the High Commissioner for Human Rights, available at: <https://www.ohchr.org/en/hrbodies/sp/countriesmandates/by/pages/srbelarus.aspx>.

media»⁶⁸. After that Rapporteur gives an example of Alies Lipaj case, the head of independent news agency, who was accused of tax evasion and banned from leaving Belarus up to the end of criminal investigation.⁶⁹ In the result, investigation was discounted due to the death of accusing person. Under the point of view of Belarusian human rights defenders, all these accusations were politically motivated and connected with the professional occupation of Alies. Furthermore, the Report mentions the initiation of criminal cases against independent journalists under article 349(2) of criminal code for «unauthorized access to computer information leading to significant harm». And the basis of charge was pretty ridiculous: sharing the password for the access to the governmental news agency BelTA web-content available only with paid subscription.⁷⁰ It was the second time in the history of modern Belarus when a media editor-in-chief was tried for professional activity.

In this context, Rapporteur mentions so-called “BelTA case”, when Chief Editor of one of the most popular Internet news portal TUT.BY Marina Zolotova was accused firstly of getting unauthorized access to the computer information (the Article mentioned above), but then the case was re-qualified to the Article 425 of the criminal code (inaction of the official) for not taking decisive measures when discovered about the illegal actions of her subordinates.⁷¹

Certainly, brief discussion of the politically motivated criminal case above is one of the dozen examples of discrimination of journalists in connection with their professional activities. Along with the criminal responsibility, independent Belarusian journalists were politically persecuted under certain articles of administrative code which concerned professional journalistic activity and even extremist activity. These facts were noted by a number of human rights protection organizations and mentioned in the report about situation with human rights in Belarus.

Concluding this section, it should be argued that the level of compliance with the recommendations of the UN Human Rights Committee still remains at a fairly low. Despite Belarusian government in its State reports under ICCPR and CAT tried to pay attention to the

⁶⁸ Human Rights Council, Report of the Special Rapporteur on the situation of human rights in Belarus (2019), A/HRC/41/52, 08.05.2019, para 6.

⁶⁹ The head of BelaPAN news agency is suspected of tax evasion, 14.06.2018, available at: <https://news.tut.by/economics/597017.html> (in Russian).

⁷⁰ Supra note 41, Art 425.

⁷¹ The chief editor of the TUT.by portal Marina Zolotova was fined, 04.03.2019, available at: <https://euroradio.fm/ru/glavred-portala-tutby-marina-zolotova-oshtrafovana-na-7650-rublej> (in Russian).

decent level of the legislature in the field of protection of the freedom of speech and counteraction to the Torture, facts of sudden and traceless disappearance of former politicians and other individuals, who do not agree with the current policy of the state in general and president in particular, still not properly been investigated and criminals are not punished. Moreover, authorities do not provide an opportunity for relatives and their representatives to get acquainted with the investigation materials. Apparently, this has been done in order to hide substantial facts that, to one degree or another, may compromise certain persons, who occupy high positions in government bodies.

3. IMPACT OF INTERNATIONAL PRACTICE AND POSSIBLE STEPS COULD BE MADE TO IMPROVE THE POSITION OF FREEDOM OF EXPRESSION IN BELARUS

3.1 Compliance with the jurisprudence of the United Nations Human Rights Committee

As mentioned in the previous chapters, Republic of Belarus according to its Constitution confesses the priority of the generally recognized principles of international law and ensures the consistency of legislation with them.⁷² However, rights of individuals under the ICCPR are violated by the judicial and other authorities regularly. Republic of Belarus has ratified Optional Protocol to the International Covenant on Civil and Political Rights on the 30th of September 1992. In this way, according to the Article 2 of the First Optional Protocol to the International Covenant on Civil and Political Rights (hereinafter – Optional Protocol), individuals who claim that any of the rights enumerated in the ICCPR have been violated and who have exhausted all available domestic remedies may submit a written application to the Human Rights Committee for consideration.⁷³ By now about 140 Communications⁷⁴ were submitted to the Human Rights Committee about violations of the provisions of the ICCPR.⁷⁴ This section is devoted to the jurisprudence of the United Nations Human Rights Committee and consideration of the received applications.

One of the Belarusian "pioneers", whose case on violation of the right to express one's opinion was considered by the UN Human Rights Committee, was a resident of Mogilev Vladimir Laptsevich.

On March 23, 1997, he distributed leaflets in the center of the city of Mogilev dedicated to the anniversary of the proclamation of the independence of the Belarusian People's Republic. During the distribution of leaflets, officers of the central district department of internal affairs of the city of Mogilev approached the author, confiscating 37 copies of leaflets remaining from the author, and then charged the author under article 172, Part 3, of the code of administrative offenses for distributing leaflets without release data.⁷⁵ On the basis of this charge, the

⁷² Supra note 11, Art 8.

⁷³ Optional Protocol to the International Covenant on Civil and Political Rights, New York 16.12.1966, entry into force 23.03.1976, Art 2.

⁷⁴ Statistics of the acceptance of individual complaints procedures for Belarus, UN Human Rights Bodies website.

⁷⁵ Code of Administrative Offenses of the BSSR, 06.12.1984, entry into force 01.06.1985, Art 172.

administrative commission fined the author. The author appealed against this decision to the central district court of Mogilev, which dismissed his complaint. Subsequent complaints to the regional and Supreme Court were also dismissed.⁷⁶ After exhausting all available domestic remedies, the author filed an individual complaint against Belarus with the UN Human Rights Committee.

In the complaint, the author claimed that he was a victim of a violation of his right to freedom of expression, enshrined in paragraph 2 of article 19 of ICCPR. The author argued that the sanctions against him were unlawful, since in his case, article 172, part 3, of the code of administrative offenses was not applicable. He noted that the leaflet contained information about the circulation and the name of the organization that issued it, and the circulation of 200 copies was indicated on the leaflet precisely in order to make it clear that the press law does not apply to this publication. In addition, noted that the leaflets are neither periodicals nor publications intended for sale, and that they cannot be assigned a serial number, index or registration number. He also made a reference to articles 33 and 34 of the Constitution of the Republic of Belarus, which guarantee the right to freedom of opinion, expression and the right to disseminate information.⁷⁷

The Government of Belarus submitted its observations to the UN Human Rights Committee on the merits of the author's communication. In the introductory part, the Government noted that the author did not dispute the fact that he had distributed printed leaflets containing not all the imprint required under the law on the press and other mass media.⁷⁸ However, he committed an offense in accordance with article 172, part 3 of the code of administrative offenses. The government of Belarus noted that “the content of the leaflets distributed by the author distorts the history of the formation of the Belarusian state, points to the alleged occupation by the Bolsheviks, the armed struggle of Belarusians against the «occupiers», and calls to imitate“ this struggle ”for the independence of Belarus at the present time.”⁷⁹ The Government also

⁷⁶ The procedure of appeals against decisions that have entered into legal force is follows: a person who files a complaint cannot apply it directly to the Supreme Court, but he or she should submit it to the authorized person of the regional prosecutor's office or the regional court, and in case this person finds the decision of the second instance court unlawful, he or she submits a supervisory appeal to the Supreme Court. See art. 404, 407-408 of Criminal Procedure Code of the Republic of Belarus.

⁷⁷ Supra note 19, Art 33-34.

⁷⁸ In 1997 in Belarus law on the press and other mass media was in force. Article 26 had certain requirements for the dissemination of information and data to be contained in a printed publication, including the serial number of the issue and the date of its publication. See Law on mass media of the Republic of Belarus, Art 26.

⁷⁹ Communication no. 780/1997, Vladimir Laptsevich v. Belarus, date of communication: 13.04.2000.

argued that Belarusian legislation and law enforcement practice in this area fully comply with the State party's obligations under article 19 of the Covenant.⁸⁰

Disputing the fact that the leaflets “distort the history of the formation of the Belarusian state”, the author stated that he received higher education at the history department of one of the best universities in Belarus and that all the dates and facts stated in the leaflet are historically correct. He agreed that he called the Bolsheviks “occupiers” but pointed out that the Republic of Belarus is a “non-ideological” state, therefore any punishment based on the use of this expression is contrary to article 19 of the Covenant.

Considering all the arguments presented by the parties in the case, the UN Human Rights Committee noted that, in accordance with Belarusian law, publishers of periodicals are required to indicate certain outputs, including the index and registration number, which can only be obtained from the administrative authorities. The Committee considered that by introducing such requirements for leaflets with a circulation of 200 copies, the Republic of Belarus has established obstacles that limit the author's right to disseminate information enshrined in paragraph 2 of article 19 of the Covenant. Even if the sanctions imposed against the author under domestic law are permitted, the State must prove that they are necessary for one of the legitimate purposes provided for in paragraph 3 of article 19. The right to freedom of expression is of paramount importance in any democratic society, therefore any restrictions on the implementation this right must be fully substantiated.⁸¹

Equally interesting from the point of view of the right to freedom of expression is the communication submitted by Viktor Korneenko.

During the 2006 presidential elections in the Republic of Belarus, Viktor Korneenko, being a member of the election headquarters of the candidate Alexander Milinkevich, transported 28,000 electoral leaflets from Minsk to Gomel in his private car. Thirteen thousands of these leaflets consisted of a one-page photograph of Alexander Milinkevich with the words “Milinkevich is the new president” written on them, while the remaining 15 thousand leaflets consisted of a two-page printout of the candidate's election program.

⁸⁰ Supra note 11, Art 19.

⁸¹ Supra note 79.

In his complaint to the UN Human Rights Committee, Viktor Korneenko stated that he had copies of all the necessary documents for the production and transportation of election materials. His car was stopped in the town of Zhlobin and searched by the transport police, as a result of which the electoral flyers were seized.

On March 21, 2006, in the absence of the author, the Zhlobin district court of the Gomel region ruled that by transporting leaflets containing information suggesting that “Alexander Milinkevich is the new president”, Viktor Korneenko violated Article 167-3 of the administrative code. According to the court, the author's guilt was established by the seized material, the testimony of several witnesses, an examination of his car, a police report, and other evidence. The court not only charged the author with an administrative fine, but also ordered the seizure and destruction of all 28,000 of the presidential candidate's election materials.

Having gone through all domestic remedies, the author in his complaint to the UN Human Rights Committee said that by fining him because of the content of Alexander Milinkevich’s election materials, as well as destroying the electoral materials of a presidential candidate, the Republic of Belarus violated him and the candidate’s right under article 19 of the ICCPR. In addition, the author claimed that the facts he disclosed indicated a violation by the country of the presidential candidate's rights under articles 25 (the right to vote and to be elected) and 26 (discrimination for political reasons is prohibited) of the ICCPR.⁸²

The UN Committee in this case considered that by seizing and destroying without sufficient justification shortly before election day one quarter of the presidential candidate's election materials, the state violated the right to freedom of expression of Mr. Korneenko and Mr. Milinkevich in accordance with article 19 of the Covenant.

The Committee recalled that the right to freedom of expression is not absolute and that it may be subject to some restrictions in accordance with article 19 of the Covenant. However, such restrictions are permissible only when they are prescribed by law and are necessary to respect the rights or reputations of others or to protect national security, public order, health or morals. The Committee reiterates in this context that the right to freedom of expression is of paramount

⁸² Supra note 11, Art 25-26.

importance in any democratic society and that any restrictions on its exercise must be strictly justified.

The Government of Belarus has not provided any explanation as to its arguments as to why the restriction of the right of Mr. Korneenko and Mr. Milinkevich to impart information was necessary for one of the legitimate purposes provided for in article 19 of the Covenant, other than its claim that the confiscation and destruction of electoral leaflets were legal. In this situation and in the absence of further information in this regard, the Committee concluded that the rights of Mr. Korneenko and Mr. Milinkevich under article 19, paragraph 2 of the Covenant had been violated.⁸³

Communication of Svetlana Goldade to the Human Rights Committee dated 11th of April 2013, submitted on her own behalf and on behalf of two Belarusian citizens could be the first example of ICCPR provisions violation in general and the Article concerning freedom of expression in particular.⁸⁴ In 2012 Svetlana and two more persons applied to one of the Belarusian local municipal authorities with an application for a picket which should have taken place in one of the central squares of the city of Gomel in support of A. Belyatsky and other political and human rights activist. Mr. Belyatsky was prosecuted in 2011 for tax evasion⁸⁵ and received 4.5 years of imprisonment in a maximum-security colony with confiscation of property.⁸⁶

In July 2012 Executive Committee refused to carry out the picket because of not following the requirements of local regulation, provisions of which oblige to conclude contracts with police and hospital, which should enforce law and order during event and provide medical assistance if necessary, as well as with the cleaning services to clean up after the event. All these rules, as mentioned above, has been prescribed by the decision of Gomel City Executive Committee № 299 “On mass events in the city of Gomel” (by now the legislative act has expired). The next step was the submission of the appeal to the Gomel District Court on the decision of local government. But the Court rejected the appeal and stated that the decision was made correctly in accordance with law. And finally, the applications to the Gomel Regional Court and the

⁸³ Communication no. 1274/2004, Viktor Korneenko v. Belarus, date of communication: 10.11.2006. para 11.

⁸⁴ Communication no. 2330/2014, Svetlana Goldade v. Belarus, date of communication: 11.04.2013.

⁸⁵ Supra note 41, Art 243.

⁸⁶ Belarusian human rights activist Bialiatski sentenced to 4.5 years in prison, available at: <https://www.dw.com/ru/белорусский-правозащитник-беляцкий-приговорен-к-45-годам-лишения-свободы/a-15554068> (in Russian).

Supreme Court were rejected as well.⁸⁷ Thereby, all available national remedies have been exhausted.

In the complaint, S. Goldade argues that above-mentioned decision of Gomel Executive committee about the rules of holding mass events in Gomel “restricts her and the alleged victims’ freedom of expression and the right of peaceful assembly by imposing on the organizers of public events an obligation to conclude service contracts with the local police, medical personnel and local road maintenance entity, and by designating a single remote location for all public events held in Gomel, a city of 500,000 inhabitants”.⁸⁸ Furthermore, an applicant underlines that there was no necessity and proper designation to refuse to hold a mass event for the aim of protection of national security and public order and above-mentioned services were not necessary; and it violates rights under articles 19 and 21 of ICCPR.

The position of State party about this issue relies mainly on procedural points, namely Belarusian authorities rely on the inadmissibility of representing the interests of third parties by the applicant (article 1 of Optional Protocol). Moreover, in their opinion, Mrs. Goldade did not exhaust all possible remedies and there is no official or legal interpretation of the word “effectiveness”, mentioned in the article 2 of the Optional Protocol, and Goldade could not decide on her own, whether remaining legal mechanisms are effective or not. Based on the foregoing, Belarus ceased the cooperation with Human Rights Committee on that issue.

Thus, the position of the Republic of Belarus on this issue is focused rather on the violations of communication submission procedure, than on substantive assessment.

In comments, provided by the author of communication about the position of Belarus concerning this issue, S. Goldade references to the views of the Committee in *Kalyakin v. Belarus*, where along with the violation of Mr. Kalyakin’s rights, HRC found the violation of twenty other individuals and according to that, she had a right to specify an unlimited number of persons, whose rights has been violated.⁸⁹ Regarding the exhaustion of all domestic remedies, author focuses on the effectiveness of such remedies, but not on the availability of them and argues, that she refused to complain to the prosecutor’s office due to the ineffectiveness of supervisory procedure.

⁸⁸ *Supra* note 84, para 2.

⁸⁹ Communication No. 2153/2012, *Kalyakin v. Belarus*, date of communication: 15.11.2011.

Indeed, if consider the statistics of the proceedings in the court of the supervisory instance on received supervisory protests (criminal cases) for 2017, out of almost 40,000 criminal cases heard, only 129 protests were filed with the Supreme Court and 81 of them were granted. Thus, only 3.23 % of entered into force sentences were appealed and 2 % of them have been changed.⁹⁰ Moreover, it is necessary to take into account the fact that a prosecutor or a judge of a regional court can file a protest without having a supervisory complaint (on his own initiative) as well as cases from previous years may be reviewed, which makes the percentage of reviewed cases even less. Therefore, the argument about the ineffectiveness of the supervisory appeal procedure is consistent.

Another point author mentions concerns the competence of HRC to consider the communication and here the emphasis is placed on the fact that if Belarus ratified (or accessed in our case) Optional Protocol, the competence of Committee, along with recognition of the presence or absence of any violations of Covenant provisions, consists in transmitting its reports and comments to the State parties, according to the section 4 of the Article 40 of the Covenant. In this way, Committee creates the jurisprudence along with the interpretation of the provisions. And based on that, the main argument of Goldade here was the refusal of Belarus to recognize such standarts and working methods, what contradicts *pacta sunt servanda* international law principle and casts doubt on the further necessity and effectiveness of remaining the Republic of Belarus as a Member State under ICCPR in general and Optional Protocol in particular.⁹¹

The position of the Committee should be divided into several parts. Firstly, the Committee took into account the statements of Belarus regarding the refusal of further cooperation about this issue and at the same time reminded that since Belarus ratified Optional Protocol, it took certain obligations, namely recognition of the competence of the Committee to receive and consider communications from the individuals, whose rights, guaranteed by the Covenant, have been violated. Moreover, if Belarus actively references Optional Protocol and indicates the necessity to comply with its provisions, State party itself should follow the obligations under it and in addition, State party should not take any actions which violate that treaty. In this regard, Belarus

⁹⁰ Statistical data on the activities of courts of general jurisdiction for 2017, 14.02.2018, available at: <https://pravo.by/novosti/obshchestvenno-politicheskie-i-v-oblasti-prava/2018/february/27675/> (In Russian).

⁹¹ Supra note 84, para 5.

by rejecting the cooperation about that communication with HRC and according to its position, took actions that could prevent the Committee from considering this communication on the merits and violated the procedure established in the Optional Protocol. In addition, it is in the Committee's competence to make a decision whether to submit the communication or not. According to that, by rejecting to accept the competence of the Committee about taking decision about the possibility of communications' registration and explicit disregard of Committee's decision, Republic of Belarus violated the provisions of the Optional Protocol, namely Article 1.⁹²

In *considerations of admissibility*, HRC indicates that according to the rule 97 of procedural rules, communication can be considered under the communication's procedure due to the fact that the same issue has not been examined under another existent procedures of investigation.⁹³ Moving forward, the Committee has taken into account the remark of Belarus concerning not filing supervisory complaint, as well as the position of S. Goldade about that issue. Moreover, the Committee refers to the jurisprudence, where the petition to the prosecutor's office took place (*Alekseev v. Russian Federation*, *Lozenko v. Belarus* and other cases), and accordingly comes to the conclusion that such procedure cannot be considered as a remedy, which should be exhausted.

In *consideration on merits*, Committee noted that "the author's claim that her and the alleged victims' right of peaceful assembly under article 21 of the Covenant was violated by the refusal of the municipal authorities to allow the picket to be held".⁹⁴ However, the Committee pointed out the fact that ban on holding public events in that case can be considered as the violation of the Article 19 of ICCPR. Under that, the Committee references to the General Comment №34 devoted to the freedom of expression, where is stated that freedom of expression is an essential condition for the all-round development of the individual and for any society, being a fundamental element of every democratic society.⁹⁵ Moreover, the restriction on the freedom of expression, according to the paragraph 3 of the Article 19 of ICCPR, may be imposed only to the extent that those restrictions are provided for by law and only if they are necessary for

⁹² Article 1 of the Optional Protocol proclaims that every State party recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant.

⁹³ *Supra* note 53, para 7.

⁹⁴ *Ibid.*, para 8.

⁹⁵ Human Rights Committee, General comment No. 34 (2011), CCPR/C/GC/34, 12.09.2011, para 2.

respect of the rights or reputation of others; or for the protection of national security or public order; or of public health or morals.⁹⁶

In addition, taking into account that S. Goldade was refused to hold public event on the grounds of the local government act, the Committee points out on the absence of proper explanation of any public authorities, including courts, why the organizers of public events should conclude contracts with police, ambulance and cleaning services in order to carry out mass event and whether such requirements are justified pursuant to the conditions of necessity and proportionality set out in Article 19 of the Covenant. Due to the absence of any explanations from the State party concerning that issue, HRC concludes that the rights of S. Goldade, guaranteed by the Article 19 of ICCPR were violated as well. And finally, HRC came to the conclusion that Belarus violated the rights of S. Goldade and other individuals, guaranteed under the Articles 17 and 19 of the ICCPR. According to that, Belarus should provide above-mentioned victims effective remedy as well as an adequate compensation.

Furthermore, Belarus as a State party to the ICCPR and Optional Protocol should take all possible steps to prevent reiteration of similar situations in future. The Committee expressed a desire to receive from Belarus the information about the measures taken to give effect to the Committee's Views. However, no steps were taken by the Belarusian government. Concluding observations of Human Rights Committee are optional and cannot be considered as compulsion to perform certain actions from Member States. Studying the statistics of communications submitted to the Human Rights Committee in terms of violation of rights guaranteed by the ICCPR by Belarus, from more than 100 communications only 2 were given follow-up from the state.⁹⁷ This indicates that Belarus is clearly not fulfilling the obligations assumed by it on the basis of the ICCPR and does not provide victims with effective remedies, either material compensation or reinstatement.

In conclusion to this section, it should be mentioned that Article 19 of the International Covenant on Civil and Political Rights and the practice of its application today is most relevant for Belarusian citizens in general and journalists in particular when exercising their inalienable right to freedom of expression. It became the basis for many individual communications from

⁹⁶ *Supra* note 11, Art 19.

⁹⁷ UN Treaty Body Database, Acceptance of individual complaints procedure for Belarus, CCPR-OP1, available at: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=BLR&Lang=EN.

Belarusian citizens to the UN Human Rights Committee. And although the practice of the UN Committee on Freedom of Expression does not yet know cases when a particular Belarusian journalist defended his right at the international level, I believe that the analysis of the cases below will help everyone to correctly understand the permissible restrictions on freedom of expression.

3.2 Possible steps could be made to improve Compliance with Freedom of Expression in Belarus both in law enforcement practice and lawmaking levels.

Firstly, it is reasonable to divide all steps or measures into practical and theoretical. In other words, changes in legislature and law enforcement practice.

Firstly, the Constitution of the Republic of Belarus should be changed in terms of determining the place of international treaties in the system of legislature. For instance, Constitution of the Estonian Republic determines that International treaties are an integral part of the Estonian legal system.⁹⁸ However, the system of Estonian legal acts does not include international treaties as the sources of law, the legislation of Estonia is creating in accordance with the legislation of the European Union and does not contradict it. In this regard, Belarusian Constitution should be supplemented with the provision, which would be clearly indicate on the place of international treaties in Belarusian legal system.

As mentioned in the previous chapters, article 8 of the Constitution mentions the priority of generally recognized principles of international law and ensures the legislation to be complied with them.⁹⁹ Thus, article 8 should be supplemented with the indication on the place of international treaties in the national system of legislation. In this connection, law of normative legal act should be supplemented as well. In other words, existing structure of legal acts do not include international legal instruments as sources of national law. For our opinion, international treaties ratified by the Republic of Belarus should be placed in between “decisions made on the Republican Referendum” and “laws of the Republic of Belarus”. In this regard, all laws adopted in the state should be in compliance with the international treaties, along with the Constitution. The same should be mentioned in the law of international treaties of the Republic

⁹⁸ The Constitution of the Republic of Estonia, adopted 28.06.1992, entry into force 03.07.1992, Art 3.

⁹⁹ Supra note 19, Art 8.

of Belarus as it has been done in the federal law of the Russian Federation of the international treaties in the article 5, which contains a direct indication on the place of international treaties in the Russian legal system and furthermore stipulates that if an international treaty of the Russian Federation establishes rules other than those provided for by law, then the rules of the international treaty should be applied.¹⁰⁰ This implies also the necessity to adjust the jurisdiction of the Constitutional court.

Today the competence of Constitutional court is determined by the constitutional justice law, entered into force on the 8th of January 2014. Competence of Constitutional court is identified in the Article 3 of the law and includes verification of the constitutionality of laws adopted by the Parliament of the Republic of Belarus, in the order of mandatory preliminary control, verification of the constitutionality of international treaties of the Republic of Belarus that have not entered into force in the order of preliminary control, verification of the constitutionality of normative legal acts in the order of subsequent control and some other credentials.¹⁰¹ As follows from the above, Constitutional court possess the competence to monitor the compliance of all laws of the State with the Constitution of the State. In this way, it seems necessary to endow Constitutional court with the competence to monitor the compliance with international treaties ratified by Belarus.

The changes in the legislature provided above are not accidentally mentioned in this Chapter. This will make it possible to more effectively establish the process of the implementation of international treaties into the national legal system of the Republic of Belarus and, at the same time, monitor compliance with international treaties more precise. Concluding above-mentioned, the main changes should affect such legislative acts as the Constitution of the Republic of Belarus, law on international treaties, law on normative legal acts and at the same time, it is proposed to amend the procedure of monitoring the compliance of newly issued normative legal acts with not only the Constitution, but international treaties as well.

Now let's get closer to the freedom of expression. The following changes are proposed to be implemented into the law on the mass media of the Republic of Belarus. Article 7 of the mass

¹⁰⁰ Federal Law of Russian Federation N 101-FZ On international treaties of the Russian Federation, adopted 16.06.1995, entry into force 15.07.1995, Art 5.

¹⁰¹ Constitutional Justice Law of the Republic of Belarus, adopted 16.12.2013, entry into force 08.01.2014, Art 3.

media law of the Republic of Belarus prohibits illegal interference into the activities of the media, which can be expressed in censorship, suspension or termination of the release of mass media in violation of the requirements of mass media law, violation of the rights of a journalist, etc.¹⁰² At the same time, the law also contains provisions that one way or another violate freedom of expression and prevent the provision of reliable and objective information. For instance, ministry of information can block access to online resources without a court decision if two warnings were issued to the owner within 12 months or foreigners are prohibited from owning more than 20 percent of shares or other participation of this kind in any Belarusian media, including online media.¹⁰³

OSCE Representative on Freedom of the Media Dunja Mijatovic at the meeting of the OSCE Permanent Council in Vienna stated that the amendments tightening state control of the Internet in Belarus pose a serious threat to freedom of speech and freedom of expression, namely, they are based on vaguely formulated legal provisions and give the state a broad right to interfere with any information published on the Internet and impose quasi-censorship functions on disseminators of information.¹⁰⁴ We believe that the above-mentioned amendments to the law on mass media should be abolished, since they can be used to obstruct the legitimate activities of journalists.

At the end of December 2020, the most popular media portal of Belarus was deprived of the media status by the decision of the economic court of the city of Minsk.¹⁰⁵ This was preceded by warnings issued by the Ministry of Information to the portal for an article about violations identified at polling stations, which undoubtedly jeopardized the reputation of the authorities. In the result, the Economic Court of Minsk rejected the appeal of TUT BY Media against the decision to deprive TUT.BY of the status of a media outlet, and since January 19 it officially entered into force.¹⁰⁶

¹⁰² Supra note 29, Art 7.

¹⁰³ Ibid, Art. 10,17.

¹⁰⁴ Office of the OSCE representative on Freedom of Media, discussion on Freedom of Expression for Tolerance and Non-Discrimination, Vienna 18.12.2014.

¹⁰⁵ Economic Court Of Minsk Deprives TUT.BY Of Its Mass Media Status, 03.12.2020, available at: <https://belarusfeed.com/court-deprives-tut-by-media-status/>.

¹⁰⁶ TUT.BY loses its media status, 19.01.2021, available at: <https://news.tut.by/society/715437.html> (in Russian).

That was one of the examples of using the legislation by the authorities in their own interests in order to restrict citizens' access to information. In this regard, certain changes into the mass media law should be made, namely, the empowerment of the ministry of information to issue warnings to the media without a court decision on this issue should be excluded, since this limits the right of the mass media to disseminate information and, at the same time, violates article 34 of the Constitution, which guarantees citizens the right to receive, store and disseminate complete, reliable and timely information about political, economic, cultural and international life and the provisions of certain international treaties, ratified by the Republic of Belarus, namely ICCPR.¹⁰⁷

Moreover, the provision about the prohibition of ownership of more than 20 percent of shares by foreign legal entities and individuals should also be excluded. This contributes to the receipt of more objective and reliable information from a variety of sources by citizens, while maintaining state regulation and supervision of media activities respecting democratic procedures. In addition, the owners of online resources today are responsible for illegal content posted on them, including materials considered extremist, or other information, the dissemination of which could harm the national interests of the Republic of Belarus. On this basis, the procedure of classifying various materials as extremist should be reviewed, in order to prevent the ban of certain information for political reasons.

One more crucial amendment to the legislation concerns freedom of peaceful assemblies. There has historically been a fairly close relationship between freedom of speech and freedom of assembly and association. Obviously, in the absence of freedom of speech, meetings, processions, picketing and demonstrations are deprived of their immediate goal.

On the other hand, without a guarantee of freedom of assembly, freedom of speech itself risks losing one of the most important forms of its realization. For instance, European Court of Human Rights agrees in its legal position that freedom of speech, freedom of assembly and freedom of association are closely interconnected and mutually conditional on their implementation. The Court notes, in particular, that the freedom of expression guaranteed by Article 10 of the Convention would be of limited importance if it would not be accompanied by the guarantee to be able to share one's beliefs or ideas collectively, in particular within the

¹⁰⁷ Supra note 19, Art 34.

framework of an association of persons with the same beliefs, ideas or interests.¹⁰⁸ The right to freedom of expression is consistently viewed by the Court as one of the goals of freedom of peaceful association and freedom of assembly.

Coming back to the amendments, the law on mass events should be revised and changed, together with the local acts of legislature directly regulating the rules of organizing such events. Current law on mass events provides a fairly extensive list of requirements imposed on the organizers of public events, which can be considered as disproportionately tough. Namely, individuals are prohibited from organizing mass events with more than 1000 participants (in this case, only political parties, trade unions and other organizations of the Republic of Belarus can act as organizers), furthermore, foreign citizens and legal entities cannot organize such event; in the application for holding a mass event, it is also necessary to indicate the source of funding, which is also devoid of common sense.¹⁰⁹ Furthermore, local executive bodies also establish certain restrictions (for example, most often a rather limited number of venues are provided where mass events are allowed).¹¹⁰

For comparison, the procedure of organizing and holding public events in Tallinn is determined by the decree of the Tallinn City Council of May 29, 2014, and besides basic rules and requirements for a mass event (organization, security, deadlines for filing an application, etc.), does not contain any restrictions regarding the organizers or other conditions that in any way could hinder the exercise of the right of citizens to freedom of assembly or expression.¹¹¹

In the decision of the city court of Minsk G. was found guilty that on December 20, 2019 at 18:00, as part of a group of citizens, he took part in an unauthorized mass event held without the permission of the Minsk city executive committee, in order to publicly express his attitude to “protecting the independence of the Republic of Belarus”, which was expressed in gathering on “O” square in front of the building "D", which violated the established by art. 10 of the law of the Republic of Belarus on mass events the procedure for holding a mass event.

¹⁰⁸ Salvia M. Precedents of the European Court of Human Rights. Judicial Practice Guidelines Relating to the European Convention for the Protection of Rights and Fundamental Freedoms. Judicial practice from 1960 to 2002, 2004, pp 826-834.

¹⁰⁹ Law on the mass events in the Republic of Belarus, adopted 19.12.1997, entry into force 30.12.1997, Art 4-5.

¹¹⁰ An example of such a decision has already been given above, when Gomel executive committee approved only two permanent locations for public events.

¹¹¹ Tallinna linnas avaliku ürituse korraldamise ja pidamise kord, adopted 29.05.2014, entry into force 01.07.2014, para 3,5,7 (in Estonian).

In the complaint, G. indicates his disagreement with the decision, considers it is illegal and unfounded. He believes that he did not commit an administrative offense but exercised his right to freedom of peaceful assembly and freedom of expression, his actions were in accordance with the Constitution of the Republic of Belarus, as well as the International Covenant on Civil and Political Rights. He asks to abolish the court decision against him, to terminate the proceedings. Having considered the complaint brought by G. in the case of an administrative offense, revised the legality and validity of the decision, the court came to the decision, that the arguments provided in the complaint about the one-sidedness, incompleteness, biased study of the circumstances of the administrative offense, the absence in the act of G. of the composition of the administrative offense imputed to him are unfounded.

Having correctly established the factual circumstances of the incident, the district court gave a proper assessment to G.'s explanations that he had not committed an administrative offense, finding them unreliable. Violations of the requirements of the administrative code, entailing the unconditional cancellation of the decision or calling into question the reliability of the evidence confirming G.'s guilt, were not allowed. The decision of the district court of January 10, 2020 in respect of G. was left unchanged, and his complaint was dismissed.¹¹² In the result, G was fined 800 rubles (approximately 300 euro). Despite the fact, that the decision of the city court can be found unlawful, it is quite soft verdict against a person, who exercised his right for freedom of expression. For comparison, after the presidential elections on August 9, 2021, people were fined for wearing national colors, hanging white-red-white flags on balconies and even for beeping in places where public events are held.¹¹³ All these facts indicate on the necessity for a serious reorganization of the legal system of the Republic of Belarus.

Separately the problem regarding national symbols should be touched in this section. Historically, the national symbols of the Republic of Belarus are white-red-white flag and coat of arms called “Pahonia”, which were approved on 25th of March 1917 in Minsk at the First Belarusian Congress and became official symbols of Belarusian People’s Republic.

¹¹² The Decision of the Minsk City Court, date 21.02.2020.

¹¹³ On the 1st of March 2021, a new Code of Administrative Offenses of the Republic of Belarus came into force. In particular, beeping during public events is now equated with the creation of an emergency situation on the road and punished by a fine with the deprivation of driving license for a period of up to 1 year. See Art. 18.13 of the administrative code of the Republic of Belarus.

Moreover, flag and coat of arms were an official symbol of the Republic of Belarus in 1991-1995. On the 19th of September 1991 the Supreme Council of the Republic of Belarus adopted the law on the state flag of the Republic of Belarus, which approved the white-red-white flag.¹¹⁴ Later, in 1996 national symbols were removed and replaced with the existing flag and coat of arms. In 2007 by the resolution of the Council of Ministers of the Republic of Belarus the white-red-white flag and were included in the list of historical and cultural values protected by law.¹¹⁵

The history of Belarusian national symbols was provided above not accidentally. Nowadays Belarusian authorities pursue a repressive policy towards citizens, who use or demonstrate national symbols in everyday life, giving fines, arrests and instituting criminal proceedings. For this reason, the law on the state symbols of the Republic of Belarus should be changed in accordance with the edition that existed until 1996, as well as the law enforcement policy. However, the decision should be made on the level of the republican referendum, but not on the level of legislative or executive decision.

In this regard, it is necessary to reconsider the various types of liability applied to law enforcement officials, namely disciplinary and criminal. Article 34 of the law on internal affairs bodies declares that policemen bear responsibility established by the legislative acts of the Republic of Belarus for abuse of power or official powers, failure to perform or improper performance of their official duties, commission of other crimes or administrative offenses.¹¹⁶ However, there are few examples of criminal or disciplinary prosecution of a police officer and most often the victims of such acts themselves become accused of resistance to the representative of an authority.¹¹⁷ The system of responsibility for the actions of the representatives of authority should include a comprehensive due diligence of the actions of the police officer, with the adoption of a subsequent decision on the compliance or non-compliance of actions with both the law and internal instructions with the ensuing legal consequences.

¹¹⁴ See the Law of the Republic of Belarus on the State Flag of the Republic of Belarus, entry into force 19.09.1990, Art 1. Additionally, see the Decision of the Supreme Council of the Republic of Belarus on approval of the coat of arms of the Republic of Belarus, entry into force 10.12.1991, Art 1.

¹¹⁵ Resolution of the Council of Ministers of the Republic of Belarus № 578 On the status of historical and cultural values, entry into force 14.05.2007, (in Belarusian), para 1-2.

¹¹⁶ Law on internal affairs bodies of the Republic of Belarus, adopted 29.06.2007, entry into force 17.07.2007, Art 34.

¹¹⁷ In November 2020 the traffic police car hit two residents of Minsk and in the result pedestrians were brought to administrative responsibility for crossing the road in the wrong place, 10.03.2021, available at: <https://auto.onliner.by/2021/03/10/mashina-gai-sbila-dvux-minchan> (in Russian).

The last but not least step for improving the compliance with freedom of expression in Belarus is improving the cooperation between Belarus and international organizations and their bodies. As mentioned above, Republic of Belarus submits national periodic reports for consideration by the UN treaty bodies with some delays.

However, on the 15th session of the Human Rights Council Belarusian delegation highlighted the active cooperation of Belarus with international organizations and pointed out that Belarus is taking steps to implement the recommendations made by special procedures mandate holders on the right to freedom of opinion and expression in particular.¹¹⁸ At the same time, the Hungarian delegation noted with concern the existing anomalies with regard to the use of torture, the rights to freedom of peaceful assembly, expression, participation in political life and the electoral process. Despite the statements made by the Belarusian delegation more than ten years ago, the human rights situation has noticeably deteriorated. In general, cooperation of the Belarusian authorities with the international institutions and organizations leaves much to be desired in recent years.

After the presidential elections in 2020, Belarus rejected any requests and appeals from the international community regarding the holding new democratic elections, release of all political prisoners, demands to end violence against civilians and etc. Instead, Belarusian authorities regarded such requests as interference in the internal affairs of the state.

Concluding this section, it should be mentioned that today's situation with freedom of expression in the Republic of Belarus still remains unsatisfactory. The system of legislature as well as law enforcement practice should be revised, and the necessary amendments also should be made. This includes amendments in the constitution regarding the role of international legal instruments into the national legal system, namely, international treaties should be incorporated and placed at one of the highest levels in the system of legal acts, specifically between the decisions of the Referendum and laws of the state in order to ensure the high standards of democracy and respect for human rights, while ensuring the compliance of all laws of the

¹¹⁸ Human Rights Council, report of the Working Group on the Universal Periodic Review: Belarus (2010), A/HRC/WG.6/8/L.15, May 2010.

Republic of Belarus with generally accepted principles and guarantees for respecting human rights. Furthermore, serious changes a number of laws must also be seriously amended (mass media law, law on mass events, law on internal affairs bodies), which contribute to expanding the rights of citizens to freedom of expression and assembly. Moreover, it is important to change the law enforcement practice. The existing system, which implies the vesting of extensive powers of law enforcement agencies revealed all its negative sides. Namely, policemen, representatives of the investigation committee and prosecutor's office are often convicted of exceeding their official powers, which is confirmed by numerous testimonies of witnesses, audio and video recordings. Appeals for protection to the court do not give positive results and sometimes citizens from victims are turned into accused of committing a crime or administrative offence. Thus, in this section certain proposals for changing the system of legislature and law enforcement practice were suggested, however, these changes are impossible to implement until the regime of the current president will not change.

CONCLUSION

Human rights and freedoms, their essence and social significance traditionally arise increased interest of scientists. One of the most common freedoms, over which controversy and conflicts take place, is freedom of expression. Freedom of expression occupies a special place among the fundamental rights and freedoms of citizens, being one of the most important constitutional right as well. Without freedom of expression, a normal life of society is impossible, because it underlies other essential rights and freedoms, such as freedom of assembly, freedom of thought, as well as the right to vote and be elected. Currently, the problems of enjoying the right to freedom of expression and defining the boundaries of legislative regulation, are of particular importance in connection with the necessity to build a legally clear and consistent system of human rights and freedoms, their effective guarantee, which should serve to implement the principles of a democratic state and civil society.

The purpose of master's thesis was to determine current situation with freedom of expression in Belarus in the scope of international law as well as propose possible changes in domestic legislation and law enforcement practice.

In order to understand current situation better, the first chapter of thesis was divided into three sections and each chapter plays its own role. Namely, first section of the first chapter gives a definition of freedom of expression in the context of international law and the important role of freedom of expression among other rights and freedoms in the system of human rights. This section contains a short overview of the most basic international instruments, which guarantee and regulate freedom of expression. For instance, UDHR is mentioned as a fundamental document, which made a contribution into the development of such legal institution as freedom of expression. Its further development freedom of expression got in ICCPR as well as some regional human rights instruments, such as ECHR for instance. ICCPR can be considered as one of the most important human rights instruments due to its broader interpretation of freedom of expression and its universal nature. Furthermore, emphasis is placed on some of the restrictions that states are empowered to impose for freedom of expression in exceptional cases, which can be considered as necessary for respect of the rights and freedoms of others as well for the protection of state security, public order, health or morality of individuals. Therefore, the author comes to the conclusion that freedom of expression cannot be considered as an absolute freedom and imposes certain limitations.

Section two of the first chapter analyzes the interpretation of freedom of expression in the scope of the practice of Constitutional Court of the Republic of Belarus and in practice of courts of general jurisdiction. Unfortunately, the competence of the Constitutional Court of the Republic of Belarus is rather limited and does not provide the examination of laws adopted by the parliament, as well as decisions of the executive authorities for the compliance with international legal instruments. In contrary, Constitutional Court is authorized only to consider the constitutionality of the adopted laws and consequently, its practice is rather limited. In its turn, courts of general jurisdiction deal with a variety of civil, administrative and criminal cases, including the facts of dissemination of information recognized as extremist, violation of the rules for organizing and holding mass events and etc. In the second section the author provides several examples of the decisions of general courts and analyzes such decisions in terms of legality and validity. In the result, author comes to the conclusion that however the provisions of the Constitution concerning freedom of expression are democratic and created in accordance with the principles of international law, the legislation of the Republic of Belarus still contains several legal acts, which one way or another impose unreasonable restrictions for exercising freedom of expression by individuals.

The last, third section of the first chapter aims to determine the place of international law in the legal system of the Republic of Belarus. Analysis of the basic law, which directly determines the legal force of all regulatory acts of the state, the law on normative legal acts, shows that there is no direct reference to the place of international law in the system of domestic law. At the same time, international law is mentioned in the Constitution of the Republic of Belarus, which imposes on the Constitutional Court the obligation to monitor the compliance of national legislation with international law. Republic of Belarus fulfills its obligations to provide reports to international treaty monitoring bodies regarding the situation concerning human rights.

The main objective of the first chapter of master's thesis was to determine the place of freedom of expression in the national legislation of the Republic of Belarus, as well as to determine the place of international law in the system of national law of the Republic of Belarus. An attempt was made to review the constitutional practice (which is rather limited) as well as the practice of the courts of general jurisdiction in cases concerning freedom of expression. This provided the reader the understanding of freedom of speech by Belarusian legislator, as well as the interpretation of legal norms by Belarusian courts. The first chapter can be considered as

introductory, however, indicates on the lack of consolidation of sources of international law in the national legal system.

The second research question lies in the context of the necessity of amendments in the legislation of the Republic of Belarus and law enforcement practice. The second chapter of master's thesis is quite important for the understanding of the level of compliance with the recommendations and conclusions of international human rights organs.

Human Rights Committee occupies an important place in the process of monitoring the implementation of the International Covenant on Civil and Political Rights among the Member States of the Covenant. Republic of Belarus, fulfilling its obligations, taken under the ICCPR, regularly reports to the Human Rights Committee about the situation with the human rights in the state. The report submitted within the Fifth periodic report cycle does not indicate on any facts of the violation of freedom of expression and furthermore, the questions raised by the Human Rights Committee remained unanswered. Numerous facts of violation of freedom of expression, including the detention of human rights activist for their opinion before Ice Hockey Championship as well as during the events took place after presidential elections in 2010 remained unnoticed and were not reflected in Report. The Committee's conclusions point out that Belarus failed to comply with its obligations to provide full reports regarding the state of affairs with human rights.

Position of the Committee Against Torture was included in the thesis not occasionally due to the fact that all the recommendations of this international body regarding the prohibition of torture and other cruel, inhuman or degrading treatment or punishments, inextricably linked to the exercise of freedom of expression by Belarusian citizens. In other words, the violence used by police against citizens has a direct connection with the exercising them freedom of expression. The committee against torture will play an important role in the investigation of human rights violations in Belarus on the eve of the presidential elections 2020 and after them in future.

Thus, the main objective of the second chapter of master's thesis was to define the level of compliance by Belarusian authorities with the recommendations of international bodies, responsible for the observance of the situation with human rights. Based on the information provided, it can be concluded that although Belarus follows the formal requirements to provide reports about the compliance with the provisions of international human rights instruments, the

level of transparency and veracity of these reports is in doubt. The reports are drawn up in a rather vague form and do not reflect an objective picture of what is happening in the state.

The first two chapters of the master's thesis, along with the answer to one of the research questions, are aimed at creating a complete and objective picture of reality and indicate on the imperfection of fulfillment of obligations assumed on the basis of ratification of international conventions.

The last chapter of master's thesis can be considered as the most important among previous and directly contains the changes that the author proposes to introduce into legislation and law enforcement practice. These changes were developed based on the analysis of provisions of national law relating to freedom of expression, the level of compliance with the recommendations of human rights monitoring bodies as well as the knowledge of national legislation.

Detailed overview of the jurisprudence of the United Nations Human Rights Committee indicates that the number of complaints submitted to the HRC by Belarusian citizens is growing every year. The vast majority of such complaints are in one way or another related to freedom of expression and freedom of assembly. Communications considered in the work indicate on the numerous violations of human rights by the authorities, while the authors' appeals to the courts did not bring the desired result. Moreover, Belarusian authorities did not take appropriate measures to restore the violated rights of the authors of complaints. In this regard, the effectiveness of this method for restoration of violated rights today raises a lot of questions.

Direct measures to be taken by Belarus relate to both the provisions of the legislation and their correct application. Legislative changes include the introduction of amendments to the Constitution of the Republic of Belarus, concerning the place of international law in the legislative system, to the law on normative acts, which directly determines the system of legislation of the state. Significant changes should also affect law on mass events and law on the mass media, which provisions strongly restrict citizens in exercising their rights to freedom of assembly and making it impossible for an independent media to carry out their activities on the territory of Belarus. Criminal and disciplinary liability of law enforcement bodies is also a subject for reconsidering.

Today the power of the police, investigation committee, prosecution is limitless and all the facts of abusing official powers are not investigated. Judicial protection of citizens' rights is ineffective, and the rule of law principle is no longer valid. Amendments made to administrative and criminal legislation, which came into force in March 2021, only exacerbated the situation related to human rights violations. In such conditions, it is rather difficult to speak about the observance of human rights by the Belarusian authorities in general and the right to freedom of expression in particular.

ABBREVIATIONS

ACHR	The American Convention on Human Rights
AfCHPR	African Charter on Human and Peoples' Rights
BSSR	Byelorussian Soviet Socialist Republic
CAT	Convention against Torture and Other Inhuman or Degrading Treatment
CERD	Convention on the Elimination of All Forms of Racial Discrimination
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
HRC	UN Human Rights Committee
ICCPR	The International Covenant on Civil and Political Rights
NSTRC	National State TV and Radio Company of the Republic of Belarus
UN	United Nations
USSR	Union of Soviet Socialist Republics

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