

THE OBSERVATORY

For the Protection of Human Rights Defenders

L'Observatoire

pour la protection
des Défenseurs des Droits de l'Homme

El Observatorio

para la Protección
de los Defensores de los Derechos Humanos

Report

International Judicial Observation Mission

Belarus: The "liquidation" of the independent civil society

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Introduction

A - Terms of reference and aims of the mission

FIDH and OMCT, in the framework of their joint programme, the Observatory for the protection of Human Rights defenders, dispatched an international judicial observation mission to Belarus to observe the trial of the human rights association, "Viasna" (*Spring*). The mission, which was composed of Alexandra Goujon, doctor in political science, and Marianne Lagrue, lawyer and member of the Paris bar, was in Minsk from 19 to 26 October 2003.

The mission was able to attend the hearings of the trial brought against Viasna by the Ministry of Justice on 22, 23 and 24 October 2003. However, the members of the mission were not able to be present on the last day of the trial, which was postponed to 28 October 2003.

The mission also had the charge of collecting information on the situation regarding the freedom of association in Belarus. It was also an opportunity to assess the evolution of the situation since the Observatory's last mission in Belarus in 2001¹.

B - Persons encountered during the mission

Non-Governmental Organizations

- Viasna ("Spring 96"): Ales Bialiatski, president, Valentine Stefanovitch, vice-president, Vladimir Labkovich, jurist, and Tatiana Reviaka, press attaché.
- Legal Assistance to the Population: Oleg Voltchek, president, and Raïssa Mikhaïlovskaja, executive director.
- Media legal assistance centre (Belarus Association of Journalists): Mikhail Pastukhov, director, professor of law, and former judge of the Constitutional Court.
- The Centre for Human Rights: Vera Stremkovskaja, president and lawyer.
- Charter 97: Andrei Sannikov, international coordinator.

Other persons encountered

- Iouras Karmanov, Associated Press correspondent.
- Maria Sadvovskaïa, journalist with *Belaruski Rynok*.
- Anatoli Lebedko, president of the Civic Union Party.
- Ludmila Gryaznova, member of the political council of the Civic Union Party, president of the Human Rights Alliance, an organization created in December 2003.
- Vintsouk Viatchorka, president of the Belarus Popular Front.
- Vladimir Rouda, executive director of the NGO Analysis and Information Centre, political analyst.
- Victor Chernov, executive director of the Open Society Foundation and political analyst.

Diplomatic Corps

- Mr. Stéphane Chmelevski, French Ambassador to Belarus.
- Mr. Vahram Abadjian, deputy director of the OSCE Minsk office.
- Office of the United Nations High Commissioner for Refugees: Mr. Ilija Todorovic, representative, and Ivan Saleyeu, protection officer.

Acknowledgements

We wish to thank the Viasna organization for their help in preparing the mission, and Elena Davydenko, who acted as interpreter.

1. See the report of the international investigation mission: *Belarus: the caricature of an autocratic regime. The civil society caught in a stranglehold.*

Part I. The context

Belarus declared its independence on 25 August 1991. Until 1994, the political life of the country, which was dominated by the former nomenklatura, was fairly peaceful. Stanislas Chouchkevitch, deputy and head of the Faculty of Nuclear Physics, took on the responsibilities of Head of State, as president of the Supreme Soviet (Parliament). In order to avoid opening the country to unbridled capitalism, his political team postponed the economic, social and political reforms, thus allowing for the maintenance of some degree of internal stability. In March 1994, a Constitution was adopted, creating the position of president. Alexander Lukashenko, a deputy and sovkhos director, was elected. In 1996, when Parliament refused to extend the duration of his term of office and to set up a second chamber, Mr Lukashenko decided to organize a referendum in order to push through his reforms. The referendum was held on 24 November 1996 and the result was in favor of the President, although it was hotly challenged both inside and outside the country. But it enabled the President to amend the Constitution and to give himself virtually full powers.

The opposition political parties, but also the human rights organizations (Helsinki Committee, Charter 97, Viasna 96...), the youth movements, the associations defending journalists and the trade unions were deprived of the premises from which they could express themselves officially. These movements continued their action in the streets, by organizing regular demonstrations. When invited to speak in European or international assemblies, their representatives never fail to denounce the human rights violations in their country. In that respect, the situation took a turn for the worse in 1996, when, for the first time, an event commemorating the Chernobyl disaster led to massive arrests. In addition to telephone threats, people being beaten up in courtyards, house-searches, leaders of opposition parties, trade unions or associations are frequently imprisoned, for periods ranging from a few days to several weeks. At the beginning of 1999, the repression took on a new dimension, as several politicians disappeared².

President Alexander Lukashenko was re-elected in September 2001, with over 75% in the first ballot. In their report, the OSCE and the ODIHR considered that the election did not meet the democratic requirements specified in the final document of the Copenhagen OSCE meeting in 1990³. Several violations were noticed by the local and international observers. The extent of

the anticipated voting (14-19%), the practice of mobile ballot boxes and the lack of transparency in the adding up of results also impaired the validity of the electoral process. In a more general sense, the international organizations criticized the conditions under which the elections were held: the monopoly of the State in all areas, the lack of freedom of expression, with a State monopoly over the main media, the muzzling of the opposition. While it could have stabilized the political situation in Belarus, Lukashenko's re-election resulted in the opposite.

The stranglehold became even tighter in the economic and association field, with a repression against heads of companies and the disbanding of associations. The trade unions are being brought under control and the same process is at work in the field of education and in the administration. This is evidenced by the steps taken by the Belarus President for establishing and developing a State ideology. These measures are clearly designed to control all forms of protest against his policies, which might legitimate a change of government.

A. The political situation since September 2001

The "traditional" forms of repression (arrests, threats, intimidation) against opponents - politicians, journalists, members of human rights organizations - are still common in Belarus. The various demonstrations organized in the spring of 2003 led to arrests, with sentences ranging from fines to several weeks' imprisonment for the organizers.

Company heads have also become a favorite target for the repression enforced by the authorities. In May 2003, the former managing director of the industrial complex *Belgospischeprom*, Viktor Kazeko, and his son, sales manager of the *Minsk Krystal factory*, were sentenced respectively to 12 and 10 years of hard labor, with confiscation of their property; they were accused of embezzlement, illicit activities and tax fraud. These sentences add to the long list of arrests of managers of State enterprises that began at the end of 2001. According to the Charter 97 association, which talks of "*the extermination of the economic and industrial elite in Belarus*", about 8 500 prison inmates are entrepreneurs. Even if some of the sentences may be justified in law, they also play a political role in

"2003 : répression systématique des défenseurs des droits de l'Homme au Zimbabwe"

strengthening the monopoly of the State in all sectors of economic activity.

Since the beginning of 2003, a new wave of repression has been brought to bear on those independent newspapers that had survived the various forms of tax pressure exercised on them since 1996. On 28 May 2003, the minister of Information suspended for a period of three months one of the main Belarus independent daily newspapers, *Belorusskaïa Delovaïa Gazeta* (BDG), and its monthly supplement for "violation of the law on media". BDG had received several warnings, following an article about an affair between Miss Russia and President Lukashenko, and about the current trial of a businessman, Mikhaïl Leonov, accused by the President of embezzlement of public funds. In 2003, a dozen newspapers were suspended or prevented from coming out, under a variety of pretexts.

On 24 April 2003, the minister of Information suspended for three months the independent regional newspaper *Pravinstsialka*, for changing its legal address and publishing articles on political subjects without coordinating with the ministry of Information and the local authorities. The articles of the criminal code on libel⁴ were invoked for sentencing Mikolaï Markevitch and Pavel Mazheïko, respectively chief editor and journalist of the regional newspaper *Pagonia*; they were sentenced to hard labor for insulting the President. As for Viktor Ivachkevitch, chief editor of the *Rabotchy* newspaper, he was released in December 2003, after spending a year in a work camp for writing and publishing an article on corruption, aimed at President Lukashenko.

President Lukashenko's inordinate ambition and his excessive lust for power result in the Head of State being omnipresent in all sectors of activity, through official meetings, informal visits, or extremely long speeches, which are presumably designed to maintain State employees in a state of subordination towards him. In his speeches, the President constantly asserts his own point of view, and his aims regarding the internal situation and external relations, thus indicating that his fellow citizens should do well to follow the same line. In his annual speech to Parliament (16 April 2003), Lukashenko said in particular that a permanent representative of the President to Parliament should be appointed, in order to "make the relations between Parliament and the President more efficient"⁵. When a deputy asked him a question on the discrepancy between the President's decisions and their implementation, at times deemed inadequate by the government, Lukashenko went as far as to call on the deputies to inform on the culprits,

denouncing those responsible for inadequate application of his decisions. In this connection, he mentioned that a commission had been set up to verify the manner in which the presidential administration followed instructions, indicating that he had ordered the "immediate dismissal of anyone who obstructed the application of presidential decisions". Such remarks are a direct threat to those who are the least in favor of the presidential policy. The fate of former members of Lukashenko's staff (disappearances, imprisonment, exile, intimidation) shows that the threat is far from being purely theoretical.

In the spring of 2003, Lukashenko launched an ideological offensive, with several speeches on the need to have a State ideology. In March 2003, at a seminar attended by officials of central and local State bodies, on the theme "Improvement of ideological work", Lukashenko stated that "Ideology, for a State, is the same thing as an immunity system for a living organism"⁶. He added that "if we want Belarus to be a strong, influential State, we must give prime consideration, above all else, to the ideological foundations of the Belarus society". In a report that he dictated over several hours, the President dwelt on the ways and means of such "ideological work" (the rehabilitation of the ideological presuppositions in administrative structures, and publication of new textbooks for schools and universities), while presenting himself as the mere inspirer of a system of ideas that are anchored in the people. According to the President, the State ideology cannot be a mere copy of one of the three existing ideologies ("Marxism, liberalism and conservatism"), but must reflect the Belarus habits and customs. The State ideology of Belarus should take from communism some of its properties ("collectivism, patriotism and social justice") and from conservatism the perpetuation of certain typically Belarus traits ("goodwill, conciliation, tolerance, common-sense"), but position itself against liberalism, defined as "an aggressive ideology", a symbol of "social inequality among men, of profit and individualism".

Regarding relations with European and international organizations, there has been no marked improvement since the questionable referendum held in November 1996. In 2002, and for the second time since the independence of the country, the Belarus authorities were forbidden access to the territory of the member States of the European Union. On 19 November 2002, the Council of Foreign Ministers of the European Union (EU) decided to prohibit the access to its territory to President Lukashenko and seven senior officials, because of multiple human rights violations⁷. This decision followed the gradual eviction of the OSCE counsel and

observation group in Minsk, when the authorities refused to renew the visa of the last foreign national on the staff. The prohibition provoked an immediate reaction from the Belarus authorities, who said they were prepared to open negotiations with the OSCE on the terms of reference of the Minsk mission.

After three weeks of negotiations, the Belarus authorities and the OSCE representatives reached an agreement on the opening of a new OSCE office in Minsk as of 1st January 2003. The mandate of the OSCE mission has however been reduced, and consists in: helping the government improve the working of the institutions, consolidate the rule of law, develop relations with the civil society, and foster the development of economic and environmental activities. The mandate is for one year only, and has been renewed until 31 December 2004. This outcome is in line with the strategy adopted by the Belarus leaders vis-à-vis European and international institutions, which is closer to blackmail than to negotiations. Their aim is not so much to abide by the principles advocated by those institutions, but to get them to respect the political choices of the country. The Belarus authorities therefore obtained the definitive closure of the former OSCE structure in Minsk, which enabled the official daily newspaper of the Presidential administration, *Sovetskaja Belorussi*, to say that by accepting the closure, the OSCE recognized the validity of the complaints leveled against it by the Belarus government.

In April 2003, the Council of the European Union decided to lift the ban on entering the territory of the Member States that had applied to the highest political Belarus authorities, after having confirmation that the new Minsk OSCE mission was working⁸. However, it also adopted at the same meeting a declaration referring to "The deterioration of democracy and rule of law in Belarus, and the non-compliance with the country's international commitments". Following allegations of violations of the freedom of association in Belarus made by three international trade union organizations (the Confederation of Free Trade Unions, the European Confederation of Trade Unions and the World Labor Confederation), the European Commission decided on 7 January 2004 to carry out an enquiry into violations of the international standards laid down by the International Labor Organization⁹ on labor legislation. If the enquiry confirms the accusations, the European Union could revoke, by a decision of the Council, the possibility for Belarus to benefit from its system of generalized preferential tariffs (GPT), which would deprive Belarus of several hundred millions of euros per year.

Belarus is not a member of the Council of Europe (C.E.). After the referendum in 1996, the status of special guest that the

Belarus Parliament had been given in September 1992 was suspended in January 1997, because the country's Constitution was not considered legal. On 17 December 1998, the Bureau of the Parliamentary Assembly decided to continue the suspension and to freeze the procedure on Belarus' request for membership of the Council of Europe, submitted in March 1993. On 31 January 2004, the Bureau rejected the request of the Belarus Parliament for its status as special guest to be restored. The bureau considered that the reasons for the withdrawal were still valid¹⁰. According to the Parliamentary Assembly, the regime of Belarus does not meet the standards of the Council of Europe as regards pluralistic democracy and the protection of human rights and individual freedoms. However, it was decided to continue cooperation between the C.E. and Belarus in several fields i.e. cooperation between parliaments and local authorities, on constitutional matters, for the development of civil society as well as assistance in the legislative field. The Council of Europe is very concerned by the fact that the death penalty is still in force in Belarus. Furthermore, on 27 January 2004, a report on the disappearance of politicians in Belarus, drafted by Christos Pourgourides, was unanimously adopted by the Committee on legal affairs and human rights of the Parliamentary Assembly of the Council of Europe¹¹. This report specifically mentions the involvement of state authorities in these cases.

In April 2003, the United Nations Human Rights Commission adopted a resolution on the situation of human rights in Belarus. It expresses concern as to the involvement of high officials of the state in the disappearance and/or execution of three opponents and one journalist, in arbitrary arrests and detentions, in the consistent persecution of non-governmental organizations, of political parties of the opposition and of persons taking part in oppositional activities as well as in restrictions of the work of some religious organizations¹². The United Nations resolution calls upon the authorities to carry out a thorough enquiry on the disappearance of politicians; to make sure that the police and the army act in accordance with international standards; to guarantee the independence of the judiciary; to put an end to the impunity of those responsible for murder and to release all political prisoners.

B. Legal regulations governing associations: new rules

Since Lukashenko took power, the legal regulations governing associations have become more stringent, making it more and more difficult for them to register and to gain legal existence. It makes it easier to disband them if they are not loyal to the regime. Legislation governing the associations

changes constantly, particularly by presidential decree, the legal keystone of the regime.

The registering system

Presidential decree no. 2¹³, adopted in 1999, thoroughly modifies the system for registering associations, which up till then was a mere formality. All the organizations for the defense of human rights, all the trade unions, including those that were already legally registered, had to go through this new system. The provisions are extremely restrictive and, failing compliance, activities would be deemed illegal and the associations would be disbanded. This decree sets up a republican commission for the registering and re-registering of public organizations. Its members are the Prime Minister, the officials of the Presidential administration and of the Security Council. It considers the substance, the aims and working methods of associations and rejects acceptance in case of "non-conformity with the law".

Thus, on 24 December 2003, the Supreme Court of Belarus confirmed the decision of the Ministry of Justice refusing to register the Assembly of Democratic NGOs, the largest network of associations in the country. It had submitted its request in 2002 and was rejected in October 2003 by the Ministry of Justice. The Assembly of NGOs appealed this decision to the Supreme Court. According to Natalia Kebikava, representative of the Ministry at the hearings which took place on 24 December, the rejection is based on a recommendation of the Republican Registry Commission. It was alleged that the Assembly had failed to give its legal address to the Commission. Mrs Kebikava also stressed the fact that several founding organizations of the Assembly had been disbanded since the request to register had been filed. Furthermore, in September 2003, presidential decree no. 11¹⁴ was adopted. It modifies decree no. 2 and requires that the system of registration apply not only to associations but also to "unions of associations".

The Assembly of NGOs was set up in 1996 to strengthen cooperation between NGOs, particularly in the field of information, to organize a system of mutual assistance and exchange of services, to enhance the influence of civil society in Belarus, to create a system for the protection of NGO rights and to recruit new members.

Specifying a legal address is one of the dangerous aspects of the system. The state manages a major part of the real estate. Private owners are subject to pressure from the authorities to stop them from renting to these organizations.

In actual fact, the authorities control access to housing, and an address is a precondition to registering or re-registering organizations, and therefore to their legal existence. There is no right of appeal. This is one of the main reasons alleged by the Ministry of Justice in procedures to disband associations.

The authorities also check on the symbols that the associations use. On that basis, they may refuse to allow the creation of an organization or may disband existing ones (see chapter C for the judicial aspects of decisions concerning associations). Since the year 2000, several presidential decrees have been issued on these questions. The last ukase of this sort dates back to August 2002¹⁵ and requires that "flags, emblems, insignia and marks of identification of political parties, professional unions, other associations and their assemblies only be allowed if the Heraldic Council of the President of the Republic has ruled in their favor and they have been registered with the Heraldic Registry of the State" (art. 3.4). If an association does not abide by these provisions, it may receive a warning or be disbanded. We must remember that in Belarus, those who oppose the regime use the national symbols that were adopted at the time of independence in 1991. These were rejected by referendum in 1995, thereby reinstating the symbols of the time when Belarus was a part of the Soviet Union.

Restrictions applying to the role of associations in representation in court.

Because of the suppression of a certain number of opponents and serious violations of human rights in Belarus, several associations were founded to give legal assistance to citizens. This is the case of the association "Legal assistance to the people", chaired by Oleg Voltchek, that was disbanded in September 2003. In April 2003, a new presidential decree was adopted (decree no. 13)¹⁶. It limits the right of associations to provide legal assistance. According to this decree, "the representatives of non-governmental associations may represent persons at civil trials in general courts, only if authorized by law to represent members of such associations and other persons before the courts and defend their rights and interests". This amends article 72 of the civil code¹⁷ which entitled an association to represent a defendant in court if its bylaws so provided. An association may now only do so if provided by law. Since the law does not so provide, associations may not represent defendants in court. This new provision has been used several times by the Ministry of Justice to issue a warning and to disband associations (see C for the legal results). Decree no. 13 and the amendments to the civil code are contrary to article 62 of the Constitution of

Belarus, which provides for the rights of citizens to receive judicial assistance in defending their rights in court.

The press services of the President, in commenting on decree no. 13, have justified this decision because "representing the interests of citizens in court requires professional training". In his speech to Parliament in April 2003, president Lukashenko stated that the fact that NGOs could represent the interests of citizens would undermine the lawyers' profession. Decree no. 12 dated 13 May 1997¹⁸ concerns the activities of lawyers and notaries public. It has been amended several times and states that lawyers must be members of one of the regional colleges under the control of the Ministry of Justice which are competent to give or withhold the right to practice the profession through the delivery of temporary licenses (5 to 10 years)¹⁹. Because of the change brought about in 2003, associations cannot represent a defendant; only lawyers whose license and activities are under State control may do so. Thus the assistance and legal representation by associations, which was essential because of the many charges against militants of political parties or associations and because of the growing speed of procedures aiming at disbanding associations, has become impossible.

On 29 January 2004, Judge Aksana Budouskaïa of the local court of Minsk decided to disband the Independent Society for Legal Research (ISLR) that had appealed against the fact that it had been automatically disbanded following the two warnings it had received²⁰. ISLR was accused of having represented associations that were on trial. Its chairperson, Elena Tonkatcheva, made it clear, however, that the association was not representing a defendant but rather "the civil society". This is provided for by article 78 of the civil procedure code²¹.

Infringement on the financial activities of NGOs

In November 2003, president Lukashenko signed a decree on the use of foreign humanitarian aid²². The decree provides measures to control foreign aid and states that such aid may not be used "to organize meetings, demonstrations or picket lines, to draft and circulate propaganda documents and to hold seminars or engage in other types of political activities". If an NGO breaks this rule, it may be disbanded. This decree actually follows up on another (no. 8) adopted in March 2001, that organized a system of authorization that depends directly on the president for all foreign financial support of the activities of NGOs that defend human, trade unions, independent media and political parties²³. The decree states that any form of aid must be registered with the Department

of humanitarian aid, which is controlled by the president. It also provides that free foreign aid may not be used to prepare and carry out events of a political or social nature. At present, in Belarus, most associations and independent media as well as opposition parties operate thanks to the assistance of foreign foundations or bodies. The different changes concerning regulations on foreign aid are a real threat to the activity and indeed to the very existence of NGOs. Several associations have been warned or have been closed down for illegal use of foreign donations.

Disbandment procedures

Up to the year 2001, an association could be disbanded for three reasons that are stated in the law on associations²⁴:

1. If the association's activities are such that "they advocate a change in the constitution by violent means, they endanger the integrity and security of the State, they engage in propaganda for war, violence, racial, national and religious hatred, or if they threaten the physical and psychological well-being of citizens" (art. 3);
2. If they are given a written warning twice in the same year (art. 29);
3. If, when they register, the founders of the association violate the law on associations (art. 29).

Since the amendment of the law on associations in June 2003 (no. 213-3)²⁵, an association may be disbanded by decision of a court if "it once violates the legislation on demonstrations".

This decision follows a series of measures adopted since 1997 that limit drastically the freedom of NGOs to meet and assemble peacefully²⁶. To organize a demonstration of any kind, authorization must be requested of the authorities at least 15 days beforehand. The local authorities are entitled to change the time and place of the event and they often reject the request arbitrarily. A number of penal offenses can be based on these measures. For instance, demonstrators may be charged for having taken part in an unauthorized demonstration, for having impeded the work of the police, for having used unauthorized symbols or voiced slogans against the president.

In August 2003 the amendments to the law on mass demonstrations curtailed the associations' right to meet and assemble²⁷. The new draft of article 6 states that, in deciding whether to authorize or prohibit a demonstration, the authorities must take into account "the date, place, duration,

number of participants, climate conditions, payment of expenses incurred for law and order, for emergency medical services, for the cleaning of premises after the demonstration and other circumstances relating to law and order and security". These amendments confirm the provisions of decree no. 11 dated May 2001²⁸ which states that the organizers (associations, political parties, trade unions) must ensure law and order in the case of demonstrations of more than 1000 people, or be disbanded.

The institution of State Associations

While curtailing the freedom of associations, the Belarus authorities have launched a process to promote associations that are loyal to the regime, such as the Republican Union of Youth, which is advertised on television and is active in a program to implant the system's ideology in the minds of young people. In July 2003, president Lukashenko signed an ukase (no. 335) on State republican associations, creating a new status for "those associations whose aim is to achieve important objectives as defined by the state". Therefore, the leaders will probably use the possibility of disbanding associations that oppose the regime and replace them with submissive associations that then benefit from administrative or financial assistance from the state. As human rights defenders who are being suppressed have pointed out, these new associations may also use the information collected during inspection of the premises of disbanded associations.

C. Judicial attack against associations

Since spring 2003, the authorities have launched a policy of dissolution against NGOs. In a speech in January 2004, the Belarus minister of Justice confirmed that 51 associations had been liquidated in 2003 for violating the law. The minister indicated that the control over associations, political parties and trade unions had been strengthened: after the premises of associations were inspected, over 800 warnings were issued, i.e. six times as many as in 2002. This policy of dissolution against associations in Belarus has been criticized by many European and international organizations²⁹.

On **9 June 2003**, the NGO "Union of the Social Christian Youth" in Minsk was dissolved by a decision of the Supreme Court on the basis of article 57 of the civil code³⁰. Four complaints were brought against the NGO: its registered official address was in a home, its stamp was not in accordance with the law, it violated the law during the re-registration in 1999, and it had contradictory programme and statutes.

On **17 June 2003**, the regional court of Grodno pronounced the dissolution of the association "Civic Initiatives", as requested by the regional justice department³¹. According to the court, the inspections of the association revealed that it had repeatedly violated both its statutes and the law. The activities of "Civic Initiatives", created in 1996, were oriented towards the development of NGOs and the respect of human rights, the publishing and assistance to independent media, the resolution of social problems, including those related to the Chernobyl accident in 1986.

On **9 July 2003**, the centre of resources "Varuta" (city of Baranovitchi) was dissolved after receiving two warnings of the ministry of Justice, for using the abbreviation of its name on its internal documents and using the word "organization" instead of "association" on its headed paper. "Varuta" provided its assistance in the publication of bulletins, newspapers and magazines. It developed programmes of formation and education.

On **31 July 2003**, the regional court of Vitebsk ordered the dissolution of the Centre of initiatives for the youth "Kontur", on the grounds that the address of its headquarters, which had changed since August 2000, no longer corresponded to the one on the association's registration form. The court also motivated its decision by the fact that "Kontur" used foreign financial aid without appropriate authorization. Created in 1998, "Kontur" was a centre gathering several associations of the city of Vitebsk. Its main activities dealt with the formation of the youth and publishing.

On **21 August 2003**, the regional court of Grodno pronounced the dissolution of the regional association "Ratucha" because of its unauthorized editorial activity. Created in 1996, "Ratucha" was the centre of a network of over 130 NGOs. Its main objective was to help public activities in the region of Grodno and to provide several services (information, consultations, partnerships) to other associations. "Ratucha" was also a centre of support for the local press. The appeal lodged by the association with the Supreme Court was rejected on 24 November 2003.

On **5 September 2003**, the NGO "Legal assistance to the population" was dissolved by the municipal court (and confirmed by the Supreme Court on 13 October 2003), on the grounds that, according to the criminal code, the law on associations and presidential decree no.13, the activity of legal assistance requires a license. It must be noted that the NGO had been previously deprived of its license by the ministry of Justice. The NGO provided legal assistance to

families of disappeared political opponents. Its chairperson, Oleg Voltchek, is the representative of Iouri Zakharenka, former minister of the Interior who disappeared in May 1999.

On **9 October 2003**, the Supreme Court pronounced the dissolution of the association "Women's reply" for violating the rules on the use of the legal registration address.

On the same day, the court also dissolved the Belarus Fund "Cassiopeia", on the request of the ministry of Justice. It had received warnings related to a wrong legal address (registered in a private home) and to the use of an incorrect headed paper.

On **16 October 2003**, the Supreme Court dissolved the Fund of the Luskevitch Brothers for violating the law on registration (incorrect address and stamp). Created in 1993, the NGO had educative, scientific, cultural and social activities.

On **11 November 2003**, judge Valentina Kulik of the Supreme Court requested the dissolution of the "Association of Young Entrepreneurs", which provided legal counsel and organized formations for young entrepreneurs, on the grounds of irregularities in the association's re-registration in 1999³².

On **27 November 2003**, the Supreme Court pronounced the dissolution of the NGO "The Hand of Support", on the grounds of article 57 of the civil code. This NGO aimed at helping prisoners and former prisoners and also provided humanitarian assistance in the prisons.

On **29 January 2004**, judge Aksana Budouskaïa of the Minsk municipal court ordered the dissolution of the Independent Society for Legal Research (ISLR), which had received two warnings from the ministry of Justice and was therefore liable to automatic dissolution. The ISLR was accused of participating to the trials of several associations as a representative for civil society³³. Created in 1996, it aimed at informing about the principles of international law and acted for their respect in the Belarus legislation, for an improvement of the role of law and for an increased legal culture of the Belarus citizens. The ISLR also provided information and legal assistance to Belarus NGOs and carried out activities of analysis and research on the right of association in the country. It also participated to over 40 trials as "representative of the civil society".

The authorities' policy towards associations is evidence of a willingness to eradicate the circle of independent associations, while maintaining under their control several great structures of mobilization, such as the Belarus Youth Union and the

Federation of Trade Unions. Obviously, this offensive, in line with the political and social measures taken to increase the authoritarianism in the country, aims at restraining the places of protest against the regime, particularly with parliamentary elections to be held in October 2004.

However, the NGOs, including those liquidated, have decided to continue their activity and to carry out joint actions. On 23 and 24 January 2004, the first united forum of human rights associations was held in Minsk's suburbs³⁴. Initiated by eight organizations, most of which were liquidated, this forum - of which the FIDH was a partner - was organized nearly clandestinely, because of the pressure exercised by the authorities against them. This forum gathered over a hundred militants from Belarus and neighboring countries, along with diplomats, and aimed at appearing as a reply to the increasing repression. The participants emphasized their concerns about the fate of individuals spreading an opinion different from the authorities' or critical against them and who are regularly targeted by repression. The forum called for democratization and respect for the citizens' rights and freedoms, the improvement of constitutional guarantees and electoral mechanisms, the search of truth and justice concerning the disappearances of politicians and the respect of freedoms of expression and association. In its final resolution, the forum concludes that: "We are confident that the practical implementation of the requests presented in this resolution will give a new birth to civil society and make it possible to establish a system of power founded on the respect of the citizens' rights, to overcome the isolation of the country and to build a democratic State".

D. A human rights defender still in jail

Mr Bandazhevski, an internationally renowned scientist specialized in medical research related to nuclear radioactivity and former director of the State Medicine Institute of Gomel, had showed in its research work the harmful effects of the Chernobyl catastrophe on the population of Belarus, thereby contradicting the authorities' official versions. He had also criticized the embezzlement of budgets within the ministry of Health, when those should have been used for research.

On 18 June 2001, Mr Bandazhevski was sentenced to eight years of detention under strict conditions. He was accused of asking bribes to parents of the Institute's students. As his physical and psychological health deteriorated, the Observatory has submitted his case to the United Nations Working Group on arbitrary detention.

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Besides, on 7 July 2003, the United Nations Committee for Human Rights declared Mr Bandazhevski's complaint admissible, by virtue of the optional Protocol to the International Covenant on civil and political rights. The Committee asked Belarus, as a signatory to the Protocol, to communicate written explanations and the detail of measures taken in this case.

The authorities refused to grant the Observatory's request - regularly repeated since 3 December 2002 - to authorize an international investigation mission on Mr Yuri Bandazhevski's conditions of detention.

2. 1999 was marked by the disappearance of a number of politicians known for their opposition to the government. Legal proceedings were also initiated against many opposition members, mainly members of the 13th supreme Soviet, which had been dissolved, or former members of the presidential administration; they were accused of ordinary crimes. On 7 May 1999, the former minister of the Interior, Yuri Zakharenko, disappeared. In September 1999, Viktor Gonchar, former vice-prime minister, first vice-president of the dissolved 13th supreme Soviet, and president of the opposition electoral commission in 1999, and a businessman, Anatoly Kraszovsky, were kidnapped in the middle of the streets. Lastly, in June 2000, Dmitry Zavadsky, a cameraman working for a public Russian television network (ORT), also disappeared. To date, none of these disappearances has been elucidated.
3. *Final report on Presidential Election in Belarus (9 September 2001)*, Warsaw, OSCE, ODIHR, 4 October 2001, pp.3-4.
4. Articles 188 and 189, Criminal code of the Republic of Belarus no.275-3 adopted on 9 July 1999 and amended on 8 May and 24 June 2002, 4 January, 14 and 22 July 2003.
5. *Sovetskaïa Belaroussia*, 17 April 2003.
6. *Respublika*, 29 March 2003.
7. Conclusions of the 2464th session of the Council of the European Union, 19 November 2002 (14184/02 Press 351), p. 16.
8. Conclusions of the 2501st session of the Council of the European Union, 14 April 2003 (8220/03 Press 105), p. 16.
9. Press release of the European Commission, 7 January 2004 (IP/04/19).
10. Press release of the Council of Europe, 2 February 2004.
11. Press release of the Council of Europe, 27 January 2004, 043f(2004).
12. Resolution of the 59th session of the United Nations Human Rights Commission on the situation of human rights in Belarus adopted on 17 April 2003 (E/CN.4/RES/2003/14).
13. Presidential decree no. 2, 26 January 1999, entitled "About certain measures for regulation of the activity of political parties, trade unions and other public associations".
14. Presidential decree no. 1, 11 September 2003, entitled "About the introduction of amendments to the presidential decrees of 26 January 1999 (no. 2) and of 16 March 1999 (no. 11)".
15. Presidential ukase no. 441, 7 August 2002, entitled "About the formation of the Heraldic Council of the president of the Republic of Belarus and some measures to improve the State system of creation and registration of decorations, medals and official heraldic symbols".
16. Presidential decree no. 13, 15 April 2003, entitled "About a few questions on civil judicial procedures".
17. Law no. 246-?, 5 November 2003, entitled "About the introduction of amendments to the Code of civil procedure of the Republic of Belarus".
18. Presidential decree no. 12 adopted on 3 May 1997 (amended on 27 May 1998, 3 June 1999, 2 February 2000, 30 August and 9 September 2002 and 16 February 2004) and entitled "About certain measures to improve the activities of lawyers and notaries in the Republic of Belarus". Cf. *Belarus: the caricature of an autocratic regime. The civil society caught in a stranglehold*. Mission of international investigation, the Observatory for the protection of human rights defenders, FIDH, OMCT, September 2001, p. 16.
19. Articles 1.1, 1.2 and 1.4 of aforementioned decree. Cf. *Belarus: the caricature of an autocratic regime. The civil society caught in a stranglehold*. Mission of international investigation, the Observatory for the protection of human rights defenders, FIDH, OMCT, September 2001, pp. 29-30.
20. Cf. Paragraph on the procedures of dissolution and Part I, Chapter C.
21. Article 78 indicates that: "The representatives of civil society present the opinion of associations and workers' group on a case".
22. Presidential decree no. 24, 28 November 2003, entitled "About the reception and the use of free foreign aid".
23. Cf. *Belarus: the caricature of an autocratic regime. The civil society caught in a stranglehold*. Mission of international investigation, the Observatory for the protection of human rights defenders, FIDH, OMCT, September 2001, p. 16.
24. Law about associations adopted on 4 October 1994 and amended on 31 January 1995, 29 November 1999, 22 June 2001 and 26 June 2003.
25. Law no. 213-3, 26 June 2003, entitled "About the introduction of amendments to several laws concerning the activity of political parties and associations".
26. Cf. *Belarus: the caricature of an autocratic regime. The civil society caught in a stranglehold*. Mission of international investigation, the Observatory for the protection of human rights defenders, FIDH, OMCT, September 2001, p. 23.
27. Law no. 114-3, adopted on 30 December 1997, amended on 11 June 1998, 7 August and 29 November 2003 and entitled "About mass demonstrations".
28. Presidential decree, no. 11, 5 May 2001, entitled "About certain measures to improve order in gatherings, meetings, parades, demonstrations, pickets and other public gatherings".
29. Declaration on Belarus of the European Union at the OSCE permanent Council, 17 July 2003 (no. 461); Press release of the chief of the OSCE Minsk mission, 29 October 2003.
30. Article 57 of the civil code deals with the liquidation of judicial entities.
31. *Viasna* press release, 18 June 2003.
32. Human Rights Review in November 2003, *Viasna* (5 December 2003).
33. Cf. Paragraph on Part I, Chapter B.
34. Press release, FIDH, 29 January 2003.

Part II. The trial against the NGO "Viasna"

A. The Human Rights Centre "Viasna"

The Human Rights Centre, which original name "Viasna 96" changed into "Viasna", was created in April 1996 at the occasion of a demonstration against Lukashenko's regime, in order to assist the victims of the violations perpetrated during the many demonstrations of that period and to inform the public opinion of these acts of violence. The Centre was officially registered on 23 March 1998.

The members of the association are writers, journalists, jurists, professors and students. The Centre is present in all regions of Belarus.

Viasna's main activities are:

- the assistance to the victims of the political repression;
- the sending and distribution of material and food to prisoners of opinion;
- free legal assistance to the victims of human rights violations;
- the spreading of information, at domestic and international levels, on the legal situation in Belarus, on the situation of associations and on human rights violations;
- actions in favor of the abolition of death penalty and improvement of detention conditions in Belarus prisons.

Since the end of the 1990s, "Viasna" has been one of the most active and important human rights organizations. As the regime became tougher, it was regularly threatened. It repeatedly received warnings from the ministry of Justice and its premises were repeatedly searched by the ministry's services. Finally, it was dissolved on 28 October 2003 by the Supreme Court.

B. The charges

On 2 September 2003, the ministry of Justice submitted a dissolution proceeding with the Supreme Court. The Supreme Court is competent to hear, in first instance, disputes against a national association. The Court then decides with a single judge.

The ministry of Justice accused the association of:

- . Registering with documents bearing false signatures

(violation of article 13 of the Law about associations, point 3 of presidential decree of 26 January 1999 and point 2 of decision no.108 of the ministry of Justice of 15 May 1995);

. Presenting an insufficient number of members (8 instead of 10) at the level of the regional structure of Mogilev (violation of the decision of the Republican Commission for the registration and re-registration of associations of 24 March 1999);

. Violating its own statutes by failing to raise subscriptions and create a local structure in Minsk (i.e. by not creating a section in the town of Minsk, since Minsk is both a municipality and a region in the Belarus administrative distribution) (violation of points 3.1, 4.5 and 5.1 of Viasna's statutes, article 4 of the Law about associations and article 48 of the civil code);

. Violating the electoral regulation by sending non-member observers (decision of the Central Electoral Commission of 8 September 2001);

. Asking to defend legally non-member persons (violation of article 72 of the Code of civil procedure, article 22 of the Law about associations and point 2.1 of Viasna's statutes).

C. The parties to the trial

The President, Mrs. Koulik, opens the trial. She is assisted by a court clerk.

A representative for the general Prosecutor also holds a sitting.

The parties in presence:

- the ministry of Justice represented by Mrs. Fichkina, in charge of the associations;
- three members of "Viasna", namely the chairperson Ales Bialatski and two jurists, Valyantsin Stefanovich and Vladzimir Labkovich.

Are also attending the trial two civil society representatives assisting Viasna (a representative of the Helsinki Committee and a representative of the Independent Society for Legal Research).

D. The development of the trial

The Observatory's mission attended three of the four days of trial.

The trial, which was to start in the Supreme Court on Tuesday 21 October 2003 and end on Friday 24 October, was postponed to Wednesday 22 October and ended on Monday 27 October.

About ten minutes before the trial began, the defense members came out of the Supreme Court building to explain that the hearing was postponed because of a bomb alert in the courtroom.

A safety perimeter was established around the Supreme Court building, which forced journalists and the members of "Viasna" to move away.

Local observers commented that the bomb alert was likely to be a pretext for the authorities to destabilize the defense and demobilize the militants of "Viasna". Many of them - several dozens - had come from various regions to support "Viasna". They had gathered since 9 o'clock in the morning in front of the Supreme Court. Such alerts are often used to prevent the meetings of opposition political or social organizations in public or private buildings.

General remarks on the development of the trial

The hearing finally started on 22 October at 10.30. The observers of the Observatory's mission introduced themselves to Mrs Koulik, judge of the Supreme Court presiding the hearing, and explained her the terms of their mandate. Mrs Koulik replied that the audience was public and made no other comment.

The access to the courtroom was subjected to prior registration on a list and to an identity check. The room was large enough to welcome the audience which consisted, on the first day, of some thirty people, among which representatives of the diplomatic corps.

On the request of the defense, the trial was held in Belarusian.

The observers, who attended the three days of hearing the parties and witnesses, noted that the hearing of the Court, with a single judge, developed in conformity with international standards.

Mrs Koulik presided the debates flawlessly: she gave the floor to each party in turn and did not hesitate to admonish Mrs Fichkina, in charge of associations and representing the ministry of Justice, when she did not answer her questions or when she interrogated an elderly lady, a witness summoned by Viasna, with too much insistence.

The hearings

The hearing of Wednesday 22 October 2003

The hearing lasted from 10.30 to 12.40 and from 14.30 to 17.00.

The president started by apologizing for the events of the previous day, that is the postponing of the hearing due to the bomb alert.

The president authorized the journalists and the members of the audience to film and take pictures in the courtroom before the debates began, but prohibited it for all the rest of the trial.

After each party and civil representative stated its identity, the bill of indictment was read.

The plaintiff - the ministry of Justice - then presented its arguments in very technical legal terms and was therefore asked by the president to speak more concretely and to present facts.

Mrs Fichkina, in charge of associations and representing the ministry of Justice, then appeared uncomfortable and little informed of the content of the case. She gave the impression of having to support arguments imposed by her hierarchy and which she did not master.

When asked more precise questions on Viasna's registration, Mrs Fichkina replied she could not tell if the rules were respected since she did not take care of the registration herself.

When the president asked if a warning letter was sent, she again answered that she did not know and started to look through her documents. She left the question unanswered and continued with the other charges.

The whole first morning hearing left an impression of great mess from the ministry, though it initiated the trial and requested the liquidation. On various occasions, the president pointed out the contradictions or weaknesses of the arguments.

The president asked Viasna's representatives if they had questions for the representative of the ministry of Justice.

To the question: "What is the article which establishes a minimum of 10 people to create an association?", the representative of the ministry of Justice replied: "it's the minister's opinion".

The two civil representatives assisting Viasna were next in asking questions.

When the hearing resumed at 14.30, Viasna's chairperson, Ales Bialiatski, read its memorandum in reply to the bill of indictment.

The ministry's representative asked no question.

The hearing of Thursday 23 October 2003

The hearing lasted from 10.15 to 12.30 and was devoted to hearing the twelve witnesses that came from Minsk and several regions, summoned by Viasna.

The witnesses had to answer to several questions about the period of their commitment, the documents they had to sign during that period and the payment or not of subscriptions.

The mission noted that the witnesses had no real preparation to their hearing, in particular concerning the questions on the dates or periods of the first constitutive assembly of the association.

The president showed no particular hostility towards them. On the contrary, she showed even kindness.

When the ministry of Justice representative was too insistent with an elderly lady who came to testify, the judge expressly asked her to stop and invited the witness to sit back in the courtroom.

The hearing of Friday 24 October 2003

The hearing started with the audition of the last three witnesses summoned by Viasna.

The president then examined the new exhibits presented by both parties, before rejecting them as useless for the trial since they brought no further piece of evidence.

The hearing of Monday 28 October 2003

Because the trial began with a delay, the Observatory's mission was unable to attend this hearing, but it had confirmation that in this hearing, the parties pronounced their respective closing speeches.

E. The means of the Defense

To the first two complaints accusing the association of registering with documents bearing false signatures and presenting an insufficient number of members (8 instead of 10) at the level of the regional structure of Mogilev, the association "Viasna" replied:

- it was created in conformity with the decision of the association's constitutive assembly of 20 July 1998;

- it was registered by the ministry of Justice of the Republic of Belarus on 15 August 1999 (certificate of registration no. 00111);

- the documents were sent to the ministry of Justice for registration;

- the association's sections are duly registered in the country's four regions (the section of the region of Minsk - bearing in mind that Minsk is both a municipality and a region in the Belarus administrative distribution - was liquidated in spring 2003) and 3 municipal sections;

- because of the publication of the decree of the President of the Republic "About certain measures for regulation of the activity of political parties, trade unions and other public associations" of 26 January 1999, the registration of new associations was stopped for an undetermined period;

- by the time of the association's registration (15 August 1999), the creation and registration of associations was governed by the law of the Republic of Belarus "About associations" of 4 October 1994 and the requirement of 10 founding members representing most of the territorial units appeared in article 8 of this law only on 29 November 1999, i.e. after the registration of the association "Viasna".

To the third complaint accusing the association of violating its own statutes by failing to raise subscriptions and create a local structure in Minsk, the association "Viasna" replied:

- according to article 3.1 of the Statutes, the association "Viasna" includes regional sections. These are created according to the State principle of territorial delimitation under the condition that a minimum 10 members of the association reside in one or another territorial administrative item covered by the section;

- according to article 3.4.3, the decision-making concerning the

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creation of the association's sections and the attribution of the statute of moral entity to these sections are part of the competences of the association's assembly;

- the association's assembly did not take the decision to create a local section in Minsk (to be distinguished from the regional section);

- the legislation imposes no obligation to create sections in all regions, this initiative only belongs to the association's assembly;

- the association's assembly took the decision determining the amount and procedure of collecting the subscriptions, in conformity with article 3.4.3 of the Statutes and the execution of this decision was attributed to the presidents of the association's regional sections;

- the latter repeatedly reported the difficulty of implementing this decision, in particular because of the very difficult financial situations of the members of the regional sections and had therefore suspended the collection of subscriptions;

- in the 2002 inspection, the ministry of Justice was kept informed of this situation, did not consider then that it was a fault and issued no warning;

- the assembly of 30 April 2003 determined the amount and order of collecting the subscriptions starting from January 2004 (Minutes no. 003 addressed to the ministry of Justice).

To the fourth complaint accusing the association of violating the electoral regulation by sending non-member observers, "Viasna" replied:

- if the association received a warning from the ministry of Justice on the grounds it did not respect the procedure by filling the minutes to delegate the observers to the 2001 presidential elections, this warning has no legal basis;

- by virtue of article 29.2 of the law "About associations" of the Republic of Belarus, two successive warnings are required to result in the automatic dissolution by right of an association;

- since 8 September 2001, i.e. the date of the warning, the association received no other warning;

- the last inspection in 2003 revealed no facts contrary to the procedure of delegation of observers;

- this 2001 warning indicated by the Plaintiff can be no basis for the liquidation of the association "Viasna" since it did not receive a second warning in the same year.

To the fifth complaint accusing the association of asking to defend legally non-member persons, the association "Viasna" replied:

- in conformity with the association's Statutes, one of the main objectives of the association is the protection of the rights and the representation of the legal interests of its members with the State organizations and bodies, both economic and civil;

- article 249 of the criminal code of the Republic of Belarus of 29 December 1960 (no longer in force since 1st January 2001), applicable in this case since the facts were prior to 1st January 2001, but also the code of civil procedure and the civil code, provide for the participation of civil society representatives, but also associations and workers' groups, to civil trials;

- according to article 2.3 of the Statutes, the consultation and the legal assistance to non-member persons constituted one of the association's objects;

- by virtue of article 8 of the Constitution of the Republic of Belarus, the Republic recognizes the primacy of the principles guaranteed in the international instruments protecting human rights (in particular the principle of the freedom to create associations with no precision and restriction on its object) and must ensure that its legislation be in conformity with these norms and principles;

- in conformity with article 1 of the United Nations Declaration on the human rights defenders, the State must encourage and protect human rights and fundamental freedoms (adopted by resolution 53/144 of the United Nations General Assembly on 9 December 1998);

- according to article 9 point 3C of this Declaration, each person has the right to offer legal assistance with respect to the protection of human rights and fundamental freedoms.

F. The verdict³⁵ : a political decision

Despite the exemplary development of the trial -except for the postponement of the hearing under the pretext of the bomb alert-, everything hints at a political decision that was already taken.

In the context of the repeated decisions of dissolution³⁶, the verdict of dissolution was hardly surprising and seems to

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indicate this was a political trial like all the others before Viasna's.

This was a political procedure - where the plaintiff was none other than the ministry of Justice - which is not without reminding some of the trials from the Soviet era.

In the decision, four of the five complaints were discarded, because of the lack of evidence on the so-called false signatures, the lack of legal grounds for the breach to the registration procedure and to the rules of assistance to private people in civil trials.

On the five poor motives invoked by the ministry of Justice, the only complaint that was sustained was that of the breach to the electoral regulation, which was used to pronounce the association's dissolution and request a State tax of 82 500 Belarus rubles (35 euros).

In its verdict, the Supreme Court indicates that *"for instance, the association sent to Mahiliow and Brest region unfilled excerpts from the minutes of the Board sittings of 18 June, 1 and 22 July and 5 August 2001 which then were filled for the citizens who weren't nominated observers by the Board decisions and weren't members of the public association"*. The Court concludes that *"in the run of the presidential electoral campaign in 2001, "Viasna" violated the established order of nomination of observers to sittings of electoral commissions and polling stations"*. But the question asked by one of Viasna's civil representatives during the hearing as to *"On what basis can an offence be determined as simple or serious?"* was left unanswered.

It is no coincidence if the only complain sustained precisely concerns the electoral regulation: the ministry of Justice accused Viasna of violating the electoral regulation by sending non-member observers (decision of the Central Electoral Commission on 8 September 2001). The upcoming electoral period (parliamentary elections must be held in October 2004) encourages the Belarus authorities to evict all the associations that could be critical observers of these elections. On 16 February 2004, Viktor Golovanov, minister of Justice, said that *"the parliamentary elections required particular attention"* and that *"the associations, the political parties and the trade unions had to strictly obey the rules"*.

It must be reminded that the facts evoked by the Court happened two years before the complaint filed by the ministry of Justice. Viasna's dissolution is therefore part of the dissolution process against associations that did not pledge allegiance to the existing authorities. It is a circumstantial decision.

On 28 October 2003, when the decision was read, the association's chairperson, Alès Bieliatski, the defenders, Vladimir Labkovitch and Valiantsin Stefanovitch, and five members who came to support Viasna refused to leave the courtroom. The police forces then arrested them and placed them in custody. On 29 October, they were released but were sentenced to fines ranging from 40 to 80 \$ for "refusal to obey" (article 166 of the administrative code).

Viasna filed a request to challenge the Supreme Court's decision. This request was rejected on 24 December 2003 by the Court's vice-president, Mr Vichkevitch, for lack of legal ground, thereby confirming the liquidation decision taken by judge Kulik. No new trial can therefore be considered.

Viasna continues its work despite the prohibition made to NGOs dissolved from exercising their activities. Viasna's leaders and militants therefore risk being sanctioned in criminal law and sentenced to prison. The consequences of the trial are not over.

35. The whole text of the Supreme Court's verdict on the liquidation of "Viasna" is available on the internet website of "Viasna"(Decision of Supreme Court to Liquidate "Viasna". Case #03-13): <http://www.spring96.org> (News, Archive, 3 November 2003).

36. Cf. Part I Chapter C.

Recommendations

Recommendations to the Belarus government concerning the rights and freedoms of action for human rights organizations and defenders

1. The Observatory urges the government of the Republic of Belarus to respect in all circumstances the principles and provisions recognized in the international instruments protecting human rights ratified by this country and guaranteeing in particular the freedoms of association, assembling, demonstration, expression and opinion, especially the International Covenant on civil and political rights and Convention no. 87 of the ILO;
2. The Observatory urges the government of the Republic of Belarus to conform in all circumstances with articles 1 and 12 of the Declaration on human rights defenders adopted by the United Nations General Assembly in December 1998; article 1 provides that everybody has the right, individually and in association with others, to promote the protection and realization of human rights and fundamental freedoms at the national and international levels, whereas article 12 relates to the obligation for the State to protect the defenders;
3. The Observatory urges the government of the Republic of Belarus to abolish the presidential decrees that respect neither the Constitution of the Republic or the relevant international instruments; and to put in conformity the whole Belarus legislation with the international and regional standards protecting human rights, in order to guarantee in particular the freedoms of association, assembling, demonstration and expression;
4. The Observatory urges the government of the Republic of Belarus to put an end to all forms of harassment and reprisal against defenders and NGOs, including in the legal field;
5. The Observatory urges the authorities to ensure that the NGOs that were arbitrarily sanctioned and dissolved by the Belarus justice be authorized to resume their activities and be officially recognized;
6. The Observatory urges the government to ensure that Yuri Bandazhevsky, who was arbitrarily condemned, be immediately released;
7. The Observatory urges the government of the Republic of Belarus to invite the Special Representative of the United Nations Secretary General on human rights defenders to visit Belarus as soon as possible.

Recommendation to the United Nations Human Rights Commission

1. The Observatory urges the Human Rights Commission to adopt a resolution on Belarus, like the one adopted last year which firmly condemned human rights violations in Belarus, in particular the grave breaches to the freedom of association.

THE OBSERVATORY

For the Protection of Human Rights Defenders

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pour la protection
des Défenseurs des Droits de l'Homme

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Printing by the FIDH
Dépot légal Avril 2004 - n° 388/2
Commission paritaire N° 0904P11341
Fichier informatique conforme à la loi du 6 janvier 1978
(Déclaration N° 330 675)

Activities of the Observatory

The Observatory is an action programme, based on the conviction that strengthened co-operation and solidarity among defenders and their organisations, will contribute to break the isolation of the victims of violations. It is also based on the necessity to establish a systematic response from NGOs and the international community to the repression against defenders.

With this aim, the priorities of the Observatory are:

- a) a system of systematic alert on violations of rights and freedoms of human rights defenders, particularly when they require an urgent intervention;
- b) the observation of judicial proceedings, and whenever necessary, direct legal assistance;
- c) personalised and direct assistance, including material support, with the aim of ensuring the security of the defenders victims of serious violations;
- d) the preparation, publication and diffusion at a world-wide level of reports on violations of human rights and of individuals, or their organisations, that work for human rights around the world;
- e) sustained lobby with different regional and international intergovernmental institutions, particularly the United Nations, the Organisation of American States, the Organisation of African Unity, the Council of Europe and the European Union.

The activities of the Observatory are based on the consultation and the co-operation with national, regional, and international non governmental organisations.

With efficiency as its primary objective, the Observatory has adopted flexible criteria for the examination and admissibility of cases that are communicated to it. It also targets action based interpretations of the definition of "Human Rights Defenders" applied by OMCT and FIDH.

The competence of the Observatory embraces the cases which correspond to the following "operational definition": "Each person victim or risking to be the victim of reprisals, harassment or violations, due to its compromise exercised individually or in association with others, in conformity with international instruments of protection of human rights, in favour of the promotion and realisation of rights recognised by the Universal Declaration of Human Rights and guaranteed by several international instruments".

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