**Alternative report to the Committee against Torture**

(submission for the 63rd session of the Committee to the consideration of the 5th periodic report of the Republic of Belarus)

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**Introduction**

This report contains information relating to articles 2, 10, 13, 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The following topics will be covered here:

* lack of adequate investigation of crimes motivated by homo- and transphobia;
* degrading treatment with regard to transgender people during detention;
* discriminatory and degrading treatment by the police towards LGBT people;
* degrading treatment with regard to transgender people during receiving medical care.

Currently, there is no comprehensive anti-discrimination legislation in the Republic of Belarus, which, among other things, prohibits discrimination based on sexual orientation and gender identity.

LGBT people in Belarus often face hate crimes. Unfortunately, the State party does not collect statistics on this issue and does not have special training programs designed to investigate such crimes. Often victims face derogatory and insulting treatment in the police, and criminals even get sympathy from the officials.

Law enforcement agencies themselves often create an atmosphere of harassment and intimidation towards both LGBT activists and community members in general. Cases of treatment people as potential criminals only on the basis of their sexual orientation were recorded.

In Belarus, there is the possibility of legal gender recognition for transgender people, as well as hormonal and surgical treatment. However, prejudice against them is still very strong which makes them particularly vulnerable to ill-treatment, including by officials.

**Lack of adequate investigation of crimes motivated by homo- and transphobia**

CAT, in its general comment No. 2, noted that “the protection of certain minority or marginalized individuals or populations especially at risk of torture is a part of the obligation to prevent torture or ill-treatment. States parties must ensure that, insofar as the obligations arising under the Convention are concerned, their laws are in practice applied to all persons, regardless of race, colour, ethnicity, age, religious belief or affiliation, political or other opinion, national or social origin, gender, sexual orientation, transgender identity, mental or other disability, health status, economic or indigenous status, reason for which the person is detained, including persons accused of political offences or terrorist acts, asylum-seekers, refugees or others under international protection, or any other status or adverse distinction. States parties should, therefore, ensure the protection of members of groups especially at risk of being tortured, by fully prosecuting and punishing all acts of violence and abuse”.

LGBT people in Belarus often face hate crimes. Unfortunately, the State party does not collect statistics on this issue and does not have special training programs designed to investigate such crimes.

Criminal Code of the Republic of Belarus indicates among other aggravating circumstances "perpetration of a crime motivated by racial, national, religious enmity or discord, political or ideological hostility, as well as on grounds of enmity or discord against any social group". The practice of applying this provision to hate crimes based on SOGI is limited to one case known to us.

**Case 1.** *The incident took place in Minsk in November 2015 - the victim and offender had been talking online and agreed to meet. The latter had originally intended to beat the victim and that’s why suggested to have a date (so called “dummy date”). During the meeting perpetrator began punching the other man while shouting homophobic insults and filmed the assault with his phone. The attack lasted approximately ten minutes and the victim’s wallet was also stolen. Offender was arrested shortly after the attack and was later charged with robbery and hooliganism to two years of limited freedom (without a prison term) and fined him. Hatred towards a particular social group was also taken into account (alongside intoxication) as an aggravating circumstance – this was the first time a national court had taken homophobia into consideration.*

We welcome this approach, but we state that it has not yet become the beginning of a sustainable practice of persecution of LGBT-phobic violence.

Even if the victims turn to the police, they may face discouraging from persecuting the aggressors.

***Case 2.*** *October 2016, Minsk - a dummy date with a gay guy. Five students of the local gymnasium insulted him, beat him in the face, cut his hear, filming the bullying on the mobile phone. The victim appealed to law enforcement agencies, a criminal case was opened. He faced severe moral pressure from the accused and their parents as well as investigator. All of them tried to force him to refuse to continue prosecution. Victim and his mother were harassed by constant calls and visits, until the guy agreed to write a petition for reconciliation. The case was stopped.*

A significant threat to the equality of LGBT people is the inadequate investigation of hate crimes. The police often do not take seriously the statements about such crimes, the victims receive unreasonable refusals to initiate criminal cases. A typical formulation of the refusal is the "absence of corpus delicti", even in cases when the victim was attacked and beaten.

***Case 3.*** *In June 2012 in Minsk there was an accident when a group of homophobic youth invited a gay to a meeting (as in the abovementioned cases). He became the subject of humiliation and insults, these people filmed everything and posted it on the Internet with personal data of the victim. Police refused to open criminal case "for lack of corpus delicti". Later three of them were prosecuted but as the result of private accusation.*

***Case 4.*** *In May 2016 in Minsk spontaneous attack on a couple of gay men happened. The victims appealed to the police. Police refused to start the criminal case "for lack of corpus delicti".*

***Case 5.*** *On November 18, 2017 in Homel gay guy faced violence on the basis of homophobia. This was another case of a dummy date. The victim was beaten and his nose was broken. In the police station, officers grinned during his story, then began to ask the victim about his sexual orientation and whether parents know about it. After a negative answer, one of police officers said that he can tell the parents of the victim about this. This policeman wrote in the protocol that the victim himself started the fight. Criminal case was not started "because of the absence of corpus delicti".*

Often victims face derogatory and insulting treatment in the police, and criminals even get sympathy from the officials.

***Case 6.*** *On May 2012 in Bobruisk a man became a victim of a planned assault by homophobic group of people and was beaten. He was invited to a meeting by one of those people with the help of a dating website. In police he faced insults and threats when he said that the reason of the assault was a hate crime because he was a gay. He was refused in opening a criminal case. None of the policemen was prosecuted for insults in spite of his numerous complaints.*

For this reason, the victims do not want to tell anyone about what happened, and the aggressors remain unpunished. This entails both the latency of such crimes, and the growth of their number due to a sense of impunity and permissiveness.

Even when a criminal case is initiated and sent to court, the motive of homo- or transphobic hatred is not investigated and is not taken into account as an aggravating circumstance.

***Case 7.*** *On May 2015, an attack on one of the visitors occurred near the gay club. The victim, Mikhail Pishchevsky, fell into a coma and was in hospital for a year and a half. In October 2016 he died as a result of injuries sustained. The criminal was convicted at first for "causing serious bodily harm through negligence". After the death of Pishchevsky, the court reviewed the case and sentenced him for "causing death by negligence" to three years of imprisonment. Despite the obvious signs of committing a crime motivated by homophobia, neither the investigator nor the court examined this motive and did not consider it an aggravating circumstance.*

***Case 8.*** *On June 2016 in Grodno robbery and severe beating of a gay man happened at his house. The criminal case was initiated, perpetrators were sentenced to 5 years of restriction of liberty. Given the circumstances and severity of the attack, it can be said that this is a fairly mild punishment, the prosecutor asked for 5 years of real imprisonment. The motive of hatred was not seen as an aggravating circumstance.*

**Degrading treatment with regard to transgender people during detention**

***Case 9.*** *A transgender man, detained during protests against the Decree on "social parasitism" in March 2017, said in an anonymous interview: "I was told at the time of the arrest that my passport (with female data) is not mine. Jokes of discriminatory nature began after police officers looked at the photo on the visa. In the Center for Isolation of Offenders, after the trial, they did not know where to settle me - in a male or female cell. They called me "strange thing." Then they said - let's check that between the legs and determine. They asked me what was between my legs. I did not answer. As a result, they decided to settle my according with my documents despite I asked to send me to the male cell. A personal inspection was conducted by a woman, although I asked the man to do this. When me and my cellmates were taken out to walk, the guard on duty pushed me back and did not let me into the courtyard. At all morning inspections female employees said that it was not in their competence to check me. In Zhodino everyone was stripped naked after arrival. I said that I'm a transgender and I will not undress. Then I was allowed not to take off my pants. The shower was taken only once, on the 10th day, just because one of the girls agreed to go with me. Employees refused me to go to the shower alone."*

**Discriminatory and degrading treatment by the police towards LGBT people**

***Case 10.*** *In January-February 2013 there were not less than 10 police raids to LGBT parties. Police wrote down passport data of all the participants, sometimes they recorded everything on video. At least 47 people were detained. At least one person became a subject of violence. We know at least about five cases when visitors of these parties were later summoned to local police departments. One of these persons was summoned three times during a year and a half. The last time he came to police district in June 2014 he became a subject of moral pressure, police was trying to make him to confess in rape, they took his biological samples without him being a suspect or charged with a crime.*

***Case 11.*** *A homosexual man reported in an anonymous interview: "In June 2015, on one of the web-sites, an acquaintance offered me sex for a reward. I agreed and came to the apartment. It turned out that they were police officers. They behaved rather rudely, expressed an obvious disgust. They took out the contents of my bag and carefully studied, one of them took my phone and began to view contacts, messages. At the same time, I was asked if I knew some gay people from authorities, the executive committee, etc. I said that I do not communicate with anyone. Then they warned me that I would need to come to the police station tomorrow and tell something, maybe I'll remember someone. It sounded like a threat: if I do not come, they will do outing for me at work (it was veiled, but understandable).*

*Soon a sexual assault was committed by unknown man in a children's camp near our city. And police started calling all the gays for interrogation (you can guess how they found out some of them although sometimes it was rather strange). Personally I was called to go to the police department, but I refused. Then the police officer himself arrived to me. He took a sample of my saliva, showed an identikit. And there were a lot of such cases."*

***Case 12.*** *Оn May 13, 2017 in Minsk police raid on a closed gay party took place in the club "Cotton Hall". There were also Drug Control officers and the Inspectorate for Minors' Affairs. Law enforcers recorded the passport data of those present and also demanded information about the place of work or study. Some were asked questions about their sexual orientation. Those who refused to provide personal information, as well as the organizers of the party, were detained and taken to the police department. About 10 people were detained. Some of them were drafted protocols for disobedience and petty hooliganism. From the document it followed that the raid was carried out as part of a preventive measure with the aim of suppressing illicit drug trafficking, as well as committing sexual offenses against minors.*

***Case 13.*** *An attempt to register LGBT organization (HR center “Lambda”) took place in December 2012. In January 2013 the founders got a refuse motivated by the fact that in the organization’s statute there are no indications that the organization’s activity will promote comprehensive development and social formation of young people. The Supreme Court found the refuse legal. Later 69 out of 72 founders faced persecution of different degrees of intensity by law-enforcement bodies. In January-March 2013 they were invited to so-called “preventive talks” to the Department of drug control and human counter trafficking of different regions. As the reason to summon these people police mentioned the necessity to get testimonies about alleged sexual crimes. But the conversations were mainly about the attempt to register HR LGBT organization and the reasons of participation in it. Police threatened to initiate criminal cases against activists for acting on behalf of an unregistered organization. Besides, activists were asked personal questions, asked about sexual orientation and relations with their partners.*

***Case 14.*** *On August 16 2013 deputy head of “GayBelarus” Maxim Dmitriev was summoned for questioning as a witness to the Department of drug control and human counter trafficking of the MIA’s criminal police. Mr. Dmitriev was warned about criminal responsibility for acting on behalf of an unregistered organization. Police officer talked about making pornography and child molestation connecting the growth of the amount of such crimes with public mentioning of LGBT. A few years later, after the disappearance of a 10-year-old boy in Belovezhskaya Pushcha in September 2018, Mr. Dmitriev was again called to the local police department. The police clarified where he was at the time of the disappearance, and who can confirm this. Mr. Dmitriev does not see any other reasons for this call except the incident described above because he had never had any connections with the missing person or his family.*

***Case 15.*** *On January 20 of 2014 two LGBT activists Anastasia Dol and Katsiaryna Borsuk were summoned for the for the so-called “preventive talk” to the Department of drug control and human counter trafficking of the MIA’s criminal police. Policemen reminded about criminal responsibility for acting on behalf of an unregistered organization, asked about the initiative’s plans, threatened with negative consequences in cases of holding mass events. Their interest in activities of LGBT initiative they explained by the fact, that according to their opinion, a lot of homosexuals are involved in making and distributing porn. Police officer talked about making pornography and child molestation connecting the growth of the amount of such crimes with public mentioning of LGBT.*

***Case 16.*** *On December 15, 2017 in Minsk, a presentation of the paper version of the magazine "MAKEOUT" which cover the life of LGBT people in Belarus took place. During the presentation, police officers came. They told about received complaints that young people would be seduced here here videos with perversions would be shown. "*

*Police officers were interested in what would happen here, on what grounds people are present in the room. "What if you're here to engage in propaganda of homosexuality!?"*

*Officers began to ask whether there were any documents for printing the magazine, whether there was a contract with the printing house and they demanded a license for publishing. During the event they filmed slides of the presentation and participants of the event, and then took a copy of the magazine with the words: "for expertise."*

**Degrading treatment with regard to transgender people during receiving medical care**

***Case 17.*** *In September 2015, transgender man turned to the ambulance service because of severe abdominal pain. A medical team came to him, but the ambulance driver refused to take him to the hospital and insulted him. The patient remained without medical assistance.*

***Case 18.*** *In January 2016 transgender man was treated in the Minsk Regional Hospital. After carrying out the diagnostic procedures his doctor informed about the need for the operation. However, the head of the department in a rough form advised him to undergo psychiatric treatment ("go and heal your head") and "then maybe we will heal you". The operation was never carried out.*

***Case 19.*** *In September 2017, a transgender man turned to a gynecologist at a polyclinic in the Minsk region maternity hospital. She conducted an examination and found the presence of a disease requiring further surgical treatment in a clinic. To resolve the issue of hospitalization, the doctor called the gynecological ward of the hospital and asked if it was possible to accept the woman who is "not very adequate". The conversation took place directly in the patient's presence. As a result, the hospitalization was denied, the patient was offered to register for the operation in a few months.*

**Suggested recommendations to the state party:**

* include in the training and retraining programs for police officers, investigators, judges, prosecutors information on the proper investigation of hate crimes, including hatred towards LGBT people and the importance of non-discriminatory treatment of vulnerable groups;
* to develop recommendations for law enforcement agencies on the respectful treatment of LGBT people held in places of lack of freedom and elimination of degrading treatment regarding them;
* stop the practice of unreasonable interference in the exercise of the rights to peaceful assembly, association, liberty and personal security regarding LGBT people as well as all the others;
* take all the necessary measures so that LGBT people can use medical aid without any discrimination and degrading treatment.