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# Belarus

## **Decriminalization of homelessness and extreme poverty**

SUBMISSION TO UN SPECIAL RAPPORTEUR ON THE RIGHT TO ADEQUATE HOUSING AND

UN SPECIAL RAPPORTEUR ON EXTREME POVERTY AND HUMAN RIGHTS



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# Introduction

This report is prepared by the Belarusian Helsinki Committee in the framework of the call issued by Special Rapporteur on the right to adequate housing, Balakrishnan Rajagopal, and Special Rapporteur on extreme poverty and human rights, Olivier de Schutter.

Founded in 1995, the Belarusian Helsinki Committee (BHC) is one of the oldest human rights defenders organization in Belarus. The list of its founders includes the nation’s most prominent leaders such as Vasil' Bykau, Sviatlana Alexievich (Nobel prize in literature 2015).

BHC sees as its main objective creating of civic context, in which citizens, businesses and the government would realize that a comfortable and convenient living environment in the country may only be established through active participation and collaboration of all actors. In this way, BHC promotes human rights as paramount element of economic and human development.

BHC works mainly on six major human rights topics, such as: business and human rights (the topic has never been widely discussed in Belarus, and BHC, in fact, is pioneering business and human rights), discrimination (BHC carries out research and promotes the introduction of special anti-discrimination legislation), human rights based approach (BHC promotes incorporation of human rights instruments in project development at various levels), international human rights mechanisms (BHC promotes the use of the mechanisms by non-human rights organizations and develops electronic resources for assisting these organizations), national human rights mechanisms (BHC examines the legislation and addresses its gaps in order to provide as many protective measures as possible), death penalty (BHC carries out research and opens new aspects of death penalty such as overall brutalization of societies in which death penalty is practiced, for those interested).

BHC has a huge experience in expertise in the topic of equality and non-discrimination. The organization has prepared hundreds of proposals to state bodies on improving legislation and practice in the field of human rights. Dozens of reports and communications to the UN Special Procedures, treaty bodies were sent in order to strengthen the rule of law and good governance.  For many years, BHC reinforces the ability of CSOs to effectively work further on reporting to UN mechanisms and on advocacy in dialogue with the government. Among other things, BHC also helps NGOs to use UN mechanisms through training, support and creating special web resources for NGOs.

In the absence of an effective state policy in the area of homelessness, homeless people become victims of violations of many fundamental human rights, including the right to life, freedom from discrimination, freedom from inhuman or degrading treatment, etc.

Belarusian Helsinki Committee in collaboration with Human Constanta (Belarus) and Libereco - Partnership for Human Rights (Switzerland) made a research and prepared the report “Homeless People and the right to housing in Belarus”. The joint initiative was aimed at studying and drawing attention to the problems faced by homeless people in Belarus, with the aim of improving their situation and calling for respect for their rights. The report contains the analysis of state policies surrounding homelessness in Belarus and describes the limitations preventing the homeless from fulfilling their right to shelter and housing. It criticizes the insufficient attention given to the problem of homelessness and recommends that the government adopt an all-encompassing program for preventing, reducing, and mitigating homelessness.[[1]](#footnote-1)

Nevertheless, despite the fact that the report has been prepared in 2019, the situation with homelessness in Belarus has not changed today, and the problems of human rights violations remain relevant.

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# I. Laws AND regulations

At the moment, in Belarus there is only an article enshrined in the Code of Administrative offences that prohibits drinking alcoholic, low-alcohol beverages or beer in a public place or appearing in a public place or at work in a state of intoxication.

*Article 19.3. Drinking alcoholic, low-alcohol beverages or beer, consumption of narcotic drugs, psychotropic substances or their analogues in a public place or appearance in a public place or at work in a state of intoxication*

*Drinking alcoholic, low-alcohol beverages or beer on the street, stadium, square, park, public transport or in other public places, except for places intended for the consumption of alcoholic, low–alcohol beverages or beer, or appearing in a public place in a state of alcoholic intoxication that offends human dignity and public morality - entail the imposition of a fine of up to eight basic units.*

*<...>*

Thus, it is important to emphasize that administrative responsibility comes not only if law enforcement officers fix the fact of drinking alcoholic beverages in public places, but also if a person appears there in a state of alcoholic intoxication.

However, in 2020, a petition “On the adoption of the Law “On Combating Begging" appeared on the “Convenient City” platform, where citizens create petitions and collect signatures for appeals to state bodies and organizations. The authors of the petition write that "the legislation of the Republic of Belarus provides for criminal punishment for those who involve children and adolescents in begging (Article 173 of the Criminal Code of the Republic of Belarus), use slave labor of beggars (Article 181-1 of the Criminal Code of the Republic of Belarus) or openly trade in them (Article 181 of the Criminal Code of the Republic of Belarus). Otherwise, the organizers of begging, as well as beggars who fraudulently collect money, are not responsible before the law." Amendments to the legislation, according to the authors, are necessary in order to criminalize the actions of organizing and using begging when there are no signs of human trafficking. The authors consider it necessary to introduce criminal liability for these actions with the use of prison terms and confiscation of income obtained by begging and personal property to the state's income, as well as administrative responsibility for independent (unorganized) begging, which involves the use of deliberately false pretexts and reasons, with confiscation of income obtained by begging, a fine or arrest.

However, at the moment the mentioned regulation has not been adopted.

The Criminal Executive Code of Belarus contains an article establishing liability for non-payment of the fine.

*Article 30. Consequences of non-payment of the fine*

1. *If a convicted person fails to pay a fine and it is impossible to enforce it due to the lack of necessary funds and property of the convicted person, the bailiff submits to the court an idea to replace the fine with community service in accordance with part 3 of Article 50 of the Criminal Code of the Republic of Belarus. If the fine is replaced by public works, they are carried out in accordance with the procedure provided for by this Code.*
2. *If a convicted person fails to pay a fine within the prescribed period without valid reasons and evades its payment, if there is a real possibility of executing this punishment, the bailiff officially warns the convicted person about replacing the fine with a more severe punishment, which is noted in the executive documents.*

Thus, it follows from the article that a more severe punishment occurs only if the fine is not paid when there is a real opportunity for a person to pay the fine. However, in the absence of the necessary funds or property, the fine is replaced by community service.

Therefore, the legislation of the Republic of Belarus does not contain prohibitions on eating, sleeping, or performing personal hygienic activities in public places. The only exception is begging, which is unacceptable in cases where children or adolescents are involved in it, slave labor of beggars is used or beggars are trafficked. The laws does not imply tougher penalties for those who are unable to pay the fine as well

# Ii. STATE POLICY ON HOMELESSNESS

# 1. Practices of restricting access to public places for homeless people

The lack of adequate housing is the reason why homeless people have to look for places to sleep, rest and protect themselves from the weather preventing them from staying outdoors for a long time. To a significant extent, this practice is also used during day time by those living in temporary shelters, as they are only allowed to stay there at night. In turn, extended stays in public places can attract additional attention from law enforcement officers. Often, such attention results in denial of access to public places for homeless people.

The most severe documented form of denying access to public places and forcibly removing homeless people from urban areas is the practice of informal detention that results in homeless people taken outside of the city limits and left there.

The practice of “cleaning” the streets of homeless people on the eve of important international events held in Belarus became systematic. Some of the measures that were taken included arresting homeless people and subsequently holding them in administrative detention, most likely with the aim of sending some of them to compulsory “rehabilitation centers” and removing them from city limits. Comments whether any of these laws and regulations may violate international human rights law.

# 2. Measures and services available at municipal, regional or national level to support homeless people

State mechanisms of assistance to the homeless are primarily limited to the activities of temporary shelters and periodic assistance activities. No special state programs or plans to take measures to prevent and reduce homelessness have been adopted. Issues of providing (or not providing) any assistance to the homeless are within the competence of the local executive bodies, which does not guarantee equal access to and regularity of assistance provided.

The result of the lack of a policy on homelessness is that reliable statistics on the scale of the problem are not available, which contributes to the neglect of the problem by the state social policy.

The existing methods of collecting statistical data on the number of people exposed to homelessness are inadequate and do not reflect the extent of the problem correctly. First, the definition of homelessness used in the population census is based on a narrow view of homelessness as “lack of permanent residence” and excludes from this category people living in non-residential premises, as well as a wider range of people without adequate housing. Second, much of the information collected during the registration of the homeless at their place of stay is mistakenly not considered a source of statistical information, is not published and is probably not taken into account when taking measures affecting the homeless.

The notion that the scale of the problem of homelessness in Belarus is insignificant is supported by negative stereotypes about homeless people, whose image is based on the choice of life on the street. The consequence of such a perception is a wide recognition of the lack of necessity to take measures aimed at the realization of the right to housing by homeless people. The most typical way of stigmatizing homeless people is the use of the term which refers only to negative characteristics, but not reflecting social and economic deprivation that follows the loss of housing. In addition to the use of such language in the media, similar perceptions of homelessness are reflected in regulatory acts directly affecting homeless people.

The problem of homelessness is widespread among people who have served their prison sentences. Homelessness prevention measures adequately addressing the severity of the problem for this category of people have not been developed and implemented.

A further effect of the lack of a comprehensive public policy on homelessness is the persecution of selected initiatives that provide assistance to the homeless, but are not seen as a possible mechanism to reduce the problems faced by homeless people. Such practices not only violate the rights of the activists from the initiatives, but also the international legal obligation of the state to respect the enjoyment of economic and social rights by everyone, which requires that they not be impeded when being realized.

The requirement to pay for services, such as registration at their place of stay and re-issuing of documents, does not take into account the serious financial difficulties faced by homeless people. Payment for such services is in fact an obstacle to the exercise of certain rights, the exercise of which is impossible without identity documents and registration documents.

Temporary shelters are the main instrument of the state policy addressing the problem of homelessness, but access to overnight accommodation in them is aggravated by a number of restrictive factors. The need for registration in the city where the shelters are located not only restricts their accessibility, but also deprives people living in cities with no shelters of access to existing shelters. Restrictions on the maximum duration of stay in the shelters carries the risk of arbitrary refusal of accommodation for people who were unable to find housing during their stay in the shelter. The requirement that people living in shelters should not consume alcohol makes the availability of accommodation dependent on whether or not a homeless person has an alcohol dependency.

The policy aimed at providing housing to those in need of social protection does not take into account the homeless, i.e. the group whose main characteristic is the lack of adequate housing. Statutory regulation of the procedures for obtaining social and commercial housing proceeds from the prioritization of groups on the basis of the need for adequate housing, but such prioritization does not take into account their financial situation, the actual level of need or structural factors of vulnerability in access to housing.

Grounds for eviction without the provision of other types of housing from dormitories and rental apartments in public housing often arise in situations related to the difficult financial situation of the evictees and where the loss of housing carries a high risk of homelessness.

In parallel with the legal requirement for evictions to be carried out only in pursuance of a court decision, the lack of access to qualified legal aid and the admissibility of evictions ordered in absentia significantly limit the right of the evictees to access justice and a fair trial.

# III. Comments on the VIOLATIONS OF human rights

First of all, homelessness itself is a violation of the right to adequate housing. This rights and the corresponding obligation of states to take measures to guarantee the enjoyment of this right by everyone is enshrined in a number of rules of international human rights law[[2]](#footnote-2), central to which is the norm in paragraph 1 of Article 11 of the International Covenant on Economic, Social and Cultural Rights ratified by Belarus in 1973. The International Covenant sets out the minimum core obligation of each of the States Parties to it to ensure all rights, at least at a minimum level. Thus, in the absence of basic shelter and housing for a large group of people, the State is obliged to make every effort and use all available resources to meet the minimum obligations for the realization of the right to housing[[3]](#footnote-3).

Secondly, homelessness is a violation of a large number of other human rights: the right to life, the right to non-discrimination, the right to health, the right to work, to social security, physical integrity and privacy, and the right to water and sanitation.

The actions of the authorities to restrict the access of homeless people to public places and their forcible transfer outside the city limits is also a violation of the right to freedom from cruel, inhuman and degrading treatment.

Moreover, effective and impartial investigations of cases of forced displacement of persons outside the city are not conducted in Belarus, and the perpetrators are not brought to justice.

# IV. Recommendations[[4]](#footnote-4)

* Adopt a public program for the prevention, reduction and mitigation of homelessness based on a human rights-based approach to housing strategies, and in pursuance of the Sustainable Development Goals (“Key principles of a rights-based housing strategy”[[5]](#footnote-5)).
* Review existing methods and practices for the collection of homelessness statistics with a view to adopting an approach based on an adequate definition of homelessness and taking into account all relevant data collected.
* Take measures to combat discrimination, stigmatization and negative stereotyping of homeless people.
* Stop persecution of initiatives that provide assistance to the homeless, and conduct effective and impartial investigations into those involved in such persecutions. Encourage the practice of supporting organizations and initiatives that provide assistance to homeless people.
* Take measures to prevent the unfounded restriction of access of homeless people to public places.
* Prevent the repetition of mass arrests, administrative arrests and removal of homeless people from the city in connection with international events.
* Carry out effective and impartial investigations into those involved in the practice of removing homeless people out of the cities.
* Revise the rules of registration at the place of stay and restoration of lost documents in order to remove the existing financial barriers for the homeless.
* Develop an effective mechanism for the realization of the right to social housing by the homeless.
* Revise the rules for granting and maintaining access to temporary shelters with a view to removing restrictions that impede or limit such access. Take measures to ensure the right to shelter for all homeless people, regardless of whether they have an alcohol dependency or not.
* Take measures to prevent evictions that result in homelessness of the evicted.
* Take measures to remove the normative and economic barriers impeding the right to access to justice and fair trial for those evicted from housing.
1. “Homeless People and the right to housing in Belarus”: Report prepared by Belarusian Helsinki Committee in collaboration with Human Constanta (Belarus) and Libereco - Partnership for Human Rights (Switzerland), 2019:

<https://belhelcom.org/sites/default/files/report_homeless_belarus_-_english_-_web_version_sized.pdf> [↑](#footnote-ref-1)
2. Universal Declaration of Human Rights (1948), art. 25(1); Convention on the Rights of the Child (1989), art. 27(3); Convention on the Elimination of All Forms of Discrimination against Women (1979), art. 14(2)(h); International Convention on the Elimination of All Forms of Racial Discrimination (1965), art. 5(е) [↑](#footnote-ref-2)
3. Committee on Economic, Social and Cultural Rights, General comment No. 3: The nature of States parties obligations (Art. 2, par. 1), https:// tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/1\_Global/INT\_CESCR\_GEC\_4758\_E.doc, para. 10 [↑](#footnote-ref-3)
4. Despite the fact that these recommendations relate more to Belarus, we suggest the Special Rapporteurs to take into account these recommendations for States in their documents [↑](#footnote-ref-4)
5. Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to nondiscrimination in this context, A/HRC/37/53, p. [↑](#footnote-ref-5)