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ALTERNATIVE INFORMATION

On Belarus's Adherence to the Convention on the Rights of the Child

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Introduction

Protection of the rights and legal interests of children is proclaimed as one of the top priorities of the state policy of the Republic of Belarus (RB), which has ratified the Convention on the Rights of the Child (October 1, 1990) (henceforth—the Convention), the Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography (January 23, 2002) and the Optional Protocol on the Involvement of Children in Armed Conflict (December 12, 2005). Law of the Republic of Belarus “On the Rights of the Child” was adopted in 1993.

Belarus’s official national report contains an analysis of the realization of all the rights defined in the Convention and summarizes qualitative and quantitative progress made over the time of the country’s existence, particularly in terms of legislation. However, this document does not do enough to address and analyze the special aspects of implementing existing laws in practice. On top of this, government agencies and some pro-government NGOs that are authorized to contribute to this report tend to embellish the overall picture and whitewash violations or shortcomings.

This report is based on materials directly collected by Our House International Centre for Civil Initiatives, obtained upon request from government agencies, and covered in the media. The authors used official statistics posted on the official websites of the Ministry of Internal Affairs and Belstat, as well as regulatory sources.

1 Mechanism for Implementing the Convention

1.1. The law and its implementation (Article 4)

The main statute that regulates the rights of minors in Belarus is Law of the Republic of Belarus “On the Rights of the Child.” This law is a framework law in nature and consists of the following sections: general provisions; the child and society; the child and the family; the child in adverse or extreme situations; international cooperation; and liability for violating the law. It enshrines the Convention’s main provisions, but does not include some rights enshrined in the Convention like the right to preserve identity (Article 8), the right to physical and psychological recovery and social integration (Article 39), and the rights of a child belonging to an ethnic, religious, or linguistic minority or who is indigenous (Article 30).

Article 38 of the law “On the Rights of the Child” stipulates that international norms have priority over national law. Thus, the Convention’s norms essentially have direct effect, even though some norms of the Convention are actually not present in Belarusian law. The exclusion of generally recognized norms of international law from Belarus’s legal system causes difficulties for courts when there are gaps in national laws and reduces the effectiveness of the process of reforming the legal system.

At present, Belarus lacks a detailed understanding of the unity of the constitutional and legal status of minors and the component parts and guarantees of this status. Belarusian laws make wide use of the term “minor,” but there is no clear definition of this term for each branch of law. The corresponding provisions as also absent from the Constitution.

A search of the Constitution for articles directly dedicated to minors shows that this category of persons is mentioned only once—in Article 32, which deals with protection of the family, motherhood, fatherhood, and childhood. The remaining articles use the more general terms of “each person” and “citizen of the Republic of Belarus.” The constitutional status of the child must be separated out from articles in the Constitution that concern civil rights and freedoms.

The fundamental rights of minors proclaimed in the Convention are professed in Belarusian laws, but it is token way in which the rights of the child are treated that is the main shortcoming of these laws. Belarus lacks a single statute that regulates the rights of minors in all their vital activities. Norms touching on the rights of children and guarantees for their exercise are “scattered” throughout different regulatory documents, which creates certain difficulties for their practical application.

The Concept Note on Juvenile Justice, which was developed by Belarusian specialists with support from UNICEF, has yet to be implemented.

1.2 National action plans to improve the situation of children

Belarus regularly adopts national action plans to improve the situation of children.¹ However, these documents do not generally contain a list of criteria that could measure their realization.

For example, the current action plan does not provide a roadmap for realizing the right of children to live and be raised in a family environment (*support of the family and prevention of social orphanhood*). This has resulted in a setback in this area. For example, paragraph 68 of the national plan envisages the implementation of measures to prevent and reduce cases of deprivation of parental rights and to support parents and guardians in order to improve their chances for performing their parental obligations. The expectation is that there will be fewer cases of

¹ The first presidential program “Children of Belarus” (1998); the National Action Plan to Improve the Situation of Children and Protect Their Rights for 2004–2010; the National Action Plan to Improve the Situation of Children and Protect Their Rights for 2012–2016; and the current the National Action Plan to Improve the Situation of Children and Protect Their Rights for 2017–2021.

deprivation of parental rights, but there is no list of specific measures, so there has actually been an increase in these cases (2,880 in 2017 versus 2,785 in 2016).

Paragraph 68 and other paragraphs do not stipulate measures to reduce cases where children are taken from their parents without loss of parental rights. Instead, this process follows the same procedure as deprivation of parental rights.

Paragraph 72 envisages the implementation of measures to improve the activities of children's services to protect the rights and legal interests of minors and to create regional and municipal socio-pedagogical centers. However, it does not stipulate establishing this agency's liability for violating the rights and best interests of the child. It also fails to establish criteria for evaluating if there are grounds for assigning a child the status of "in need of state protection." As a result, children are taken from their parents for no compelling reason.

The fact that children's services cannot be held legally liable for infringing on the rights and best interests of a child results in "secondary orphanhood" caused by officials. The creation of oblast and municipal socio-pedagogical centers will not eliminate this problem.

The coordination and monitoring of the national plan's implementation is assigned to the Ministry of Education. Information about progress implementing the national plan is not forwarded to the Council of Ministers or published. Financing for national plan measures comes from funds earmarked in the federal and local budgets to support the corresponding branches, as well as from other sources that are not banned by laws of the Republic of Belarus. The amount and percentage of the national budget that must be spent on children through state and private institutions and organizations is not defined.

There is also no way to ensure proper coordination of the actions the corresponding ministries and agencies take to protect children's rights. Belarus does not actually have a specialized body that would give top priority to analyzing the problems of childhood and submitting proposals to improve state policy to protect the rights of various groups of children.

1.3 The collection and publication of information about the situation of children, monitoring compliance with the rights of the child recognized by the Convention

Belarus does not publish information about the situation of children or conduct comprehensive monitoring of observance of the rights of the child. Instead, non-governmental and state institutions conduct fragmentary monitoring of certain rights. Belarus does have a National Committee on the Rights of the Child, but this is part of the state apparatus and not an autonomous body. The majority of committee members are workers at higher state bodies and only one committee member has a direct connection to work with children. This committee does not coordinate processes for realizing and monitoring the rights of the child at the national or local levels.

Belarus still does not have the independent professional institution of child rights' ombudsman, even though a plan for its introduction was developed in 2013.

1.4 Dissemination of information about the Convention (Article 42)

Belarus does not have a state system to make the principles and provisions of the Convention widely known to children of school age and above in an accessible format. There is also no effective system for training parents and specialists working with children. In fact, these specialists frequently have no familiarity with the Convention's norms.

2 Implementation of the Convention's General Principles

2.1 Non-discrimination (Article 2)

The principle of non-discrimination is legally enshrined in Article 6 of the law “On the Rights of the Child, but it is not being properly implemented in relation to: children from low-income families, children in rural areas, children in child welfare institutions, children with disabilities, children with special needs, and children infected with HIV/AIDS, particularly in terms of the provision of medical care, social benefits, and education.

Discrimination against minors with limited mental and physical abilities is manifested in insufficient measures to include and integrate children with disabilities, including by providing a barrier-free environment in schools.

Nutritional standards for orphaned children and children who have been deprived of parental care and placed in children's shelters are lower than for the same categories of children in group or children's homes. Also, nutritional standards and quality at educational institutions and differ for certain categories of children who receive targeted social support.

Medical treatment required for orphaned children and children who have been deprived of parental care and placed in group homes is paid for with funds from the state. If a child from this category is placed in a foster family, however, the state will not cover the medicines, medical products, or social rehabilitation resources required for the child. Funds paid to the foster parent for a child's support do not cover treatment, which is essentially discriminatory in terms of the child's right to receive the required medical care like other children living in other situations.

When a child from the above category is placed with an adoptive family or a family-type children's home, the cost of the child's treatment should be reimbursed. However, local deputies' councils are listed as the entity that must reimburse expenses for treating a child in one of these situations, even though they do not have the authority to dispose of local budgetary funds under the law “On Local Government and Self-Government” No. 108-3 (version of January 4, 2016). This makes it impossible to reimburse expenses for the treatment of these children in practice.

Privileges are legally enshrined for some categories of children that discriminate against other children. On top of this, the need to create statistical equality in this case is absent. For example, under Law No. 263-3 “On Internal Affairs Bodies” (version of December 24, 2015), children of workers at internal affairs bodies are guaranteed spots in preschools because they can circumvent waitlists.

Thus, a corresponding law needs to be adopted to establish a general mechanism to effectively combat manifestations of discrimination and, in particular, discrimination against minors.

2.2 The best interests of the child (Article 3)

The law “On the Rights of the Child” does not fully reflect the principle of the best interests of the child, which is encapsulated in Article 3 of the Convention. This principle underlies state policy only in the spheres of protecting childhood and regulating family relations. However, the child is viewed not as a rights holder (a person possessing rights and having inherent interests), but as the object of social protection from the state.

When adopting decisions that affect the rights and interests of children, government bodies rely mainly on the opinions of children's services, which rarely take sufficient account for the child's interests.

For example, the best interests of the child are not observed when orphaned children and children deprived of parental care are placed in substitute families (foster or adoptive families or family-type children's homes) for a certain period, usually one year. Because this period is set by children's services without account for the length of time the child actually needs to be in a family setting or for other objective circumstances, it is arbitrary. This listing of a specific period in the child placement agreement without account for the child's interests or need for a family setting means that the parties do not need to renegotiate these agreements without justification, and at the end of the period, the child is placed in a group home or a new foster family for the next period.

Children's services is not liable for failing to observe the terms of an agreement on the conditions for raising and supporting a child, which results in corrupt practices by this agency and infringement of the best interests of the child. The confidentiality of adoption, which is enshrined in the Code on Marriage and the Family, contravenes the best interests of the child. It also prevents adopted children who have reached the age of 14 from exercising their rights by demanding to annul their adoptions.

Currently, children's homes are set up at correctional facilities where women with children are serving their sentences. These homes create the conditions required for the accommodation and development of children, and Belarusian law does contain a norm that allows convicted mothers to live together with their children. However, even though this possibility is enshrined in the Correctional Code, the Instruction on Medical Care for People Held in Correctional Facilities of the Ministry of Internal Affairs of Belarus, which was approved by Resolution of the Ministry of Internal Affairs and the Ministry of Health No. 202/39 of August 27, 2003 does not provide for joint residence of a mother and her child. Thus, convicted mothers only have the opportunity to feed their children and spend at least one hour with them. Visits can take place from morning until bedtime following a schedule that accounts for the facility's daily regime. Making children under the age of three live separately from their mothers goes against the best interests of the child. Amendments should be made to Instruction No. 202/39 regulating joint residence for mothers and children in correctional facilities.

2.3 Right to life, survival, and development (Article 6)

Belarus has a low rate of infant mortality. This indicator stood at 3 per mille in 2015² and 3.2 per mille in 2017³ and has fallen steadily over 10 years.

In particular, there has been a drop in mortality caused by external factors. This rate has been stable for the category of children under the age of one. In 2015, 20 children under the age of one died in accidents or from injuries. There was a total of 149 tragic child deaths in 2015.⁴

A state suicide prevention strategy must be developed that is based on the implementation of social measures aimed at lowering the unemployment rate, actively encouraging and promoting a healthy lifestyle,

² "Infant Mortality Rate in Belarus One of Lowest in the World," May 27, 2016, <http://news.21.by/other-news/2016/05/27/1196809.html>. Accessed July 20, 2016. [in Russian]

³ "Child mortality Dropped by 12% in Belarus in 2017 – Ministry of Health," <https://www.sb.by/articles/detskaya-smertnost-sokratilas-v-belarusi-za-2017-god-na-12-minzdrav.html> Accessed February 10, 2019. [in Russian]

⁴ "Almost 150 Children Died in Belarus from Accidents in 2015," <http://www.camarade.biz/node/20690> Accessed July 20, 2016. [in Russian]

reinforcing the moral foundations of society, strengthening social protection of the population, and taking advantage of other countries' experiences preventing suicide.

The quality of work to provide practical assistance to children in difficult life situations has been unsatisfactory. In 2015, 18 minors committed suicide, a figure that rose to 29 in 2016.⁵ There is no information about any stabilization or drop in the suicide rate for minors for 2017.⁶ Adolescents have virtually no access to psychiatric health services.

2.4 Consideration of the child's view (Article 12)

Consideration of the child's view goes beyond the scope of parental rights and concerns all matters that affect children. Children in Belarus are often deprived of the right to freedom of expression and independent access to courts and judicial proceedings in the event of medical interference. A systemic approach to consideration of the child's view is missing from all levels of social life and in courts. Additionally, the child's view is not always ascertained when decisions are made, and there is no established procedure to determining and considering the child's view.

The Marriage and Family Code contains a provision concerning the need to consider the view of a child who has reached the age of 10 when resolving questions connected with deprivation of parental rights, restoration of parental rights, and a child's transfer to foster care.

For example, Article 74 of the Marriage and Family Code stipulates that "The views of a child who has reached the age of 10 must be considered, except in cases where this goes against the child's interests. At the request of a court, a child's views must be ascertained by the children's services office for the child's place of residence."

However, the approach to considering a child's view is token in nature, since there is no definition of:

- a) the criteria used to determine what is "against a child's interests," or
- b) the procedure children's services uses to ascertain a minor's view.

In fact, the child's view is often never established at all.

For example, the claim of M. versus A. was granted by a decision of the Frunze District Court in Minsk on the basis of the respondent's recognition of the claim. This decision established the place of residence of two children (aged seven and 12) as the place of residence of their mother, who lived outside of Minsk with her children. However, the court did not instruct the children's services office for the children's place of residence to examine their living conditions, ascertain the view of the 12-year-old about which parent he wanted to reside with, or write an opinion on the case.

There have also been cases when minors were questioned in the presence of the plaintiff and the respondent or when other participants in the proceedings took part in a discussion and posed questions to the children. The minutes of court sessions do not always note if interested parties were removed from the courtroom when a child was questioned. Even so, court decisions cannot be reversed if a child's view is not ascertained.⁷

Draft amendments to the Marriage and Family Code stipulate that "the consent of a child who has reached the age of 10 is required to restore parental rights in relation to that child." However, the view of the child is generally not sought in these cases.⁸

⁵ Statistics <https://kyky.org/news/statistika-v-belaursi-124-sluchaya-detskogo-suitsida-za-5-let>

⁶ "Over the First Five Months of 2018, the Number of Suicides Among Minors in Gomel Reached the 2017 Level," <https://gomel.today/rus/news/gomel-9928/> Accessed February 10, 2019. [in Russian]

⁷ Kruglova, V. "Some Special Aspects to the Consideration of Cases Concerning a Child's Place of Residence and the Participation of the Non-Custodial Parent in a Child's Upbringing," *Sudovy Vestnik*, 2014, no. 1, p. 64. [in Russian]

⁸ "Expert Opinion on Amendments to the Marriage and Family Code," <https://news.tut.by/society/615978.html> Accessed February 10, 2019. [in Russian]

3 Civil Rights and Freedoms

3.1 Right to protection of personal identity (Article 7)

Registration of birth is handled by the vital records bureau for the child's place of birth or for the place of residence of one or both parents. It is the parent's obligation to register a child's birth with the vital records bureau within a certain period. A child receives citizenship at the time of birth (the leading criteria when granting citizenship is "blood right").

The law "On Citizenship of the Republic of Belarus" (version of December 24, 2015) allows for cases where a child born in Belarus does not acquire Belarusian citizenship, even if that child will otherwise become a stateless person. This happens if neither of the child's parents has Belarusian citizenship and if the parents (sole parent) do not permanently reside in Belarus. In addition, Belarusian law does not enshrine the rule under which ships sailing under the Belarusian flag or aircraft registered in Belarus are equated with Belarusian territory when it comes to resolving the matter of a child's citizenship.

3.2 Right to access information (Article 17)

The right of a child to access, receive, store, and disseminate information is guaranteed by the Convention and the law "On the Rights of the Child." However, the level of access children have to information is significantly limited.

For example, adopted children may obtain information about their adoptions only upon attaining the age of majority or full legal capacity. Children born through the use of assisted reproductive technology do not have the right to learn about their "genetic" origin or their "genetic parents." Thus, the matter of providing information about biological relatives (parents, brothers, sisters, and so forth) to orphaned children and children deprived of parental care is not sufficiently regulated.

Guardians (conservators, adoptive parents, foster parents) have the obligation to provide for communication between adoptive children and their parents and other close relatives. They do not have the obligation to provide children with access to information about the existence of parents or other close relatives. Directors of children's group homes do not have this obligation either.

Information about substantive and procedural rights also does not reach orphaned children and children deprived of parental care. This relates in particular to the right to be in need of improved housing conditions and to be placed on the waiting list for improved housing in a timely manner.

In addition, access is limited to objective information about sexual relationships, mental health, and drug use, as well as information about civic activism, which the government shields children from. Children also have few opportunities to acquire knowledge and skill (= access to information) to protect themselves and others from HIV and other sexually transmitted diseases.

Finally, there have been cases where government bodies refused to provide minors (their guardians) with information about their parents. When this happens, children are deprived of the ability to exercise their right to receive information about their parents and communicate regularly with their parents when they live separately from their parents.

In Orsha District, children deprived of parental care and living separately from their parents have repeatedly been denied information about them. The S. brothers (aged 14 and 15), who were raised in a foster family, were denied access to personal information about their mother and her

location. D., a 17-year-old foster child in another foster family was denied information about her parent's location and the date on which the most recent information about them was received. (From Our House records)

3.3 Protection from degrading treatment and punishment (articles 19, 37a)

Even though the government maintains a policy against violence against children, children in Belarus continue to be subjected to violence within and outside of the family, including in children's collectives and even at organizations that are supposed to ensure that children's rights are protected. Corporal punishment is not banned under the law at home or in alternative care settings, childcare facilities, schools, or penitentiaries.

Belarus still employs the practice of child labor, specifically in the sphere of agriculture. According to the UN World Report on Violence Against Children (2007), dangerous child labor is a form of violence.

Effective mechanisms to expose and respond to incidents of violence have yet to be developed. There is no clear system of liability for several types of violence against children (particularly in terms of psychological violence and physical violence that does not leave any visible trace).

Meanwhile, these are the types of violence that are most widespread in Belarus and are ingrained in the daily existence of the family and in educational institutions.

The very system for assessing the skills and behavior of children in educational institutions is repressive (punitive) in nature, and children are often humiliated when subjected to so-called disciplinary actions. The practice of the "influence of the collective" on a child in trouble is still widespread and does not meet accepted psychological standards of discipline.

In one case, student S. was subjected to public humiliation and psychological pressure for violating school discipline at a schoolwide council to prevent delinquency (he was not paying attention in class and did not respond to the teacher's questions and comments right away). However, no one took his official diagnosis (attention deficit hyperactivity disorder) and its accompanying behaviors into account. (From Our House records)

The absence of an individual approach to children and their personalities or special needs means that these children are frequently segregated from others in general educational institutions or find their access to educational services (through homeschooling or in special schools or classes at the recommendation of a medical commission) limited. Society has been very slow to show tolerance for the individual characteristics of children with disabilities.

Children who noticeably differ from the majority of children because of their behavior, appearance, or abilities are seen as defective, damaged, and even helpless, and are frequently subjected to violence by their peers and by adults. Children with intellectual disabilities are subjected to various types of physical and sexual violence more frequently than others.

Belarus has almost completed a legal framework for combatting domestic violence, but state bodies actively oppose its introduction. For example, the country now has the website www.ostanovinasilie.org, which brings together useful information for citizens in situations of domestic violence and for specialists in this area. Visitors can learn about the problem of domestic violence and ways to counter it, as well as organizations that can help. It also contains a list of shelters and crisis rooms and centers that accommodate victims of domestic violence. Printed brochures containing information about the problems of violence, ways to counteract it, and options for victims of violence to receive emergency help are distributed in public places.

Efforts to prevent violence against children have not been very effective, however. Violence within the family is often tolerated. For example, according to the Program for Raising Children at Social Risk and Protecting Their Legal Rights and Interests, which was approved by Ministry of Education Order No. 336 of May 24, 2011, one of the criteria for crisis in a family is “the systematic use of anti-pedagogical disciplinary measures against a child.” What this really means is that, in principle, single acts of violence against a child are permissible. This is the origin of the very widespread use of violent, degrading means of disciplining a child, including in foster families (paradoxically, the more a child becomes assimilated into a family, that is, taken for one of its own, the higher the risk of violence against this child).

The Belarusian media publishes numerous reports about instances of harsh violence against children, including infants, by their relatives (beatings leading to death, murder).

Indirect proof of the prevalence of violence in families and in the daily lives of children is the level of juvenile crime, including instances of physical violence against peers and the older generation. The not insignificant number of suicides and suicide attempts among children also points to the inadequacy of actions to prevent and eliminate violence against children.

Of particular concern is the code of silence and cover-ups surrounding acts of violence committed by staff or officials at children’s institutions. This problem is most pressing at group homes and closed educational and correctional facilities for children. The practice of forced psychiatric treatment for educational purposes has also been observed in these institutions. Thus, state agencies are not able to ensure the safety of children removed from their families, and these children are subjected to physical and sexual violence.

In 2017, Our House worked on a case where the face of a young girl taken from her family because of “the mother’s amorality” was disfigured so badly that she needed an operation. Unfortunately, the operation did not help and this girl’s face will always be covered in scars.

Our House also has evidence concerning another child, who was the victim of sexual violence by other children in a children’s home and then later raped an eight-year-old girl with other boys.

Finally, a 10-year-old girl was subjected to sexual violence for two months by older children at a children’s shelter.⁹

This situation is further exacerbated by the lack of accessible, independent help for victims of violence. In this respect, the main load is carried by police and law enforcement bodies and psychiatric institutions, which are themselves often sources of violence. In fact, both children and their parents have repeatedly witnessed instances of degrading treatment at these organizations. Children deprived of parental care are particularly vulnerable in these cases.

Monitoring of the impact of the media and the internet on children’s minds has not been organized well enough, even though measures have been taken to this end. The lack of any real liability for committing violations related to control over the dissemination of information contributes to the low effectiveness of these measures (for example, showing violent scenes on television at times of the day when children are watching).

The procedure of summoning and questioning children in administrative proceedings also remains imperfect. Under the Procedural Enforcement Code of the Republic of Belarus on Administrative Violations, summons are only issued through a legal representative in respect of minors under the age of 16. When minors are questioned, their parents or other legal representatives *may be present if necessary*. The need for this is determined by the person running the proceedings. The views of children themselves are generally not considered. Beyond this, the

⁹ <https://news.tut.by/society/626088.html> Accessed February 10, 2019. [in Russian]

situation of being questioned in an administrative proceeding is traumatic for many children, and the absence of a legal representative (parent, guardian, conservator) only exacerbates the trauma. Still, however, the Constitution stipulates that each person may at any time use the help not just of an attorney, but also of any representative. This means that the need for a legal representative's presence during administrative proceedings must be decided by children themselves and not by the person running the proceedings. But when children are questioned, their right to use the services of a legal representative is routinely not explained to them in language they can understand.

To add to this, crisis hotlines do not function as well as they should. First of all, the telephone numbers are different and generally hard to remember; there is not one simple, short number that can be dialed from any phone. Second of all, there are not enough competent specialists who can react properly to information they receive from children. On top of this, specialists who work for the social and psychological services of academic institutions are not performing their functions of protecting and preventing violence against children because they are dependent on these institutions.

Recently, a great deal of attention has been devoted to the problems of sexual violence and human trafficking, including child trafficking, but many of the measures that have been taken are mere tokenism on the part of the government or are implemented by NGOs. A state policy to prevent and avert these types of violence has yet to be developed.

3.4 Right to respect of privacy (Article 16)

Belarusian laws do not devote special attention to respect for a child's privacy. They also do not contain terms relating to privacy, criteria to classify information as sensitive or vulnerable, or measures to adequately protect this information.

The legal basis for protection of privacy in Belarus is not formed by a stable and unified system of norms. Instead, the statutes and regulations enshrining the corresponding legal norms contain both theoretical and practical inaccuracies.

For example, the laws "On Information, Information Technology, and Data Security" (version of January 4, 2014) and "On the Population Register" (version of January 4, 2015) [40] contain contradictory interpretations of the term "personal data." Overall, regulation of personal data protection is a fragmented collection of norms and rules that in many cases do not meet international standards or provide proper protection for the quality of data or the rights of the data subjects.

These defects in the system for safeguarding the right to protection of privacy and personal data extend to children. Belarus has no government programs that include measures to improve observance of this right. There are no restrictions on access to grade books, which contain information about parents, including their places of work and addresses. This means that the confidentiality of a child's data is under constant threat.

Privileged medical information is also under threat of unauthorized access. The possibility of the illegal dissemination of the privileged medical information of orphaned children, children deprived of parental care, foster children, and children in family-type children's homes is enshrined at the legislative level. For example the Regulation on Foster Families, which was approved by Resolution of the Council of Ministers No. 1678 of October 29, 1999 (version of April 25, 2016) stipulates that teachers may check children's medical cards without informing the

child or the child's legal representative of this. Thus, the possibility that protected personal information may be shared is established in a regulation.

Authorized specialists visit substitute families to monitor the living conditions of the adopted child or ward without giving prior notification or obtaining consent for this visit from either the child or the child's legal representatives. These specialists also behave in a similar way with regular families. Reports recording the results of the check are written in the absence of the people being checked, who are subsequently not given these reports (copies) for review. Moreover, none of these reports on the child's living conditions or other aspects of the child's personal life receive special protection when they are stored, and any staff member at the institution can review them or any other documents concerning the child. There have even been cases where staff members have used and disseminated information from these reports, other personal information about the family, and photographs and videos of the children outside of their institution without the consent of the child or the child's legal representatives and with no good reason.

For example, in 2014 and 2015 school boards in Minsk collected information about and photographs of family-type children's homes for a report to their umbrella organization and to share work experience and then used this information to create presentations that were later repeatedly shared outside of these boards, including with the media (fragments). The consent of the children and families to use and publish their personal information and photographs in these presentations was never obtained. Children's right to privacy is also disregarded during so-called raids to check "families at risk," when members of the public and the media sit on the committee with officials.

The specific aspects of raising children in the collective of a group home also poses a threat to privacy. The most common violations of the right to privacy in children's homes are:

- no opportunity to be alone, children always feel that the caregiver is watching them and that they are always in the company of other children;

- limitations on personal items. Books, toys, and, in some cases, clothes are not counted as personal items. In some orphanages, toys are only available in the playroom and cannot be taken outside of it. The children know that their caregivers or members of the sanitary-epidemiological inspection service may check the contents of their nightstands at any time. Children at the group home in Orsha have complained about checks of personal items and individual nightstands without their consent or knowledge. The existing system for providing children with the items they need does not envisage the opportunity for children to select items or acquire them for personal use;

- many orphanages have a strict daily schedule and children cannot decide how they want to spend their free time;

- caregivers at orphanages do not generally knock when entering a child's room or ask their permission to enter;

- most orphanages do not have stalls in bathrooms, so it is impossible to seclude oneself even for hygienic purposes. For example, the bathrooms at a shelter in Orsha lack individual stalls, and the main door to the bathroom does not close. The shelter's administration has explained that this is necessary to keep an eye on the children;

- one of the most important components of the right to privacy is ignored in children's homes: the ability to maintain connections with relatives and communicate with them. Sometimes there are no rooms for meetings with relatives and communication is limited to phone calls. Children at the shelter in Orsha District have complained of this. It can be assumed that this situation is typical of other institutions for children who have been left without parental care for various reasons.

In spite of the government's policy to close all group homes and offer family environments for orphaned children and children deprived of parental rights throughout the country, group homes are still ubiquitous in Belarus.

A similar situation has been observed in special closed educational institutions.

The portal DAOMU.BY,¹⁰ which contains the personal information (including photographs) of children in need of placement in a family, is currently online in Belarus. The portal does not always obtain the consent of children when their photographs and names of children are posted, even if they have reached the age of 10. This publication of information is in direct violation of national laws (in terms of the confidentiality of adoption) and infringes on the child's privacy.

3.5 Freedom of association and assembly (Article 15)

Article 26 of the law "On the Rights of the Child" addresses freedom of assembly. This article indicates that the state must create the required conditions for young people to participate freely and effectively in political, social, economic, and cultural development. Children have the right to join children's and youth associations if these associations do not have the goal of forcibly changing the constitutional order or promoting war or social, national, religious, or racial enmity. Belarusian laws provide for state support for children's and youth associations. These provisions are detailed in Article 11 of the law "On Social Associations" (version of November 4, 2013), which establishes that citizens who have reached the age of 16 may be members of social associations. In cases stipulated by the bylaws of the association, members may be younger if they have the written consent of their legal representatives. Thus, children under the age of 16 essentially do not have the right to freedom of association and assembly.

Article 10 of the law "On the Rights of the Child" stipulates the right to determine one's religious beliefs. It indicates that each child has the right to determine their religious beliefs and practice any religion or no religion. The state cannot interfere in the upbringing of a child that is based on certain religious views of the parents (guardians, conservators) or religious education or traditions in which the child participates outside of an institution, except in cases where incitement to religious acts poses a direct threat to the child's life or health or violates the child's rights and legal interests. For children under the age of 15, religious ceremonies may only be performed with the consent of parents (guardians, conservators). However, this age is clearly artificially high, and there should not be a minimum age for meeting religious needs without the consent of parents (guardians, conservators).

Article 5 of the law "On Freedom of Religion and Religious Organizations" (version of December 22, 2011) clarifies that the state may not interfere in the upbringing of a child that is based on the religious views of the parents or the people substituting as parents, except in cases where incitement to religious acts poses a direct threat to a child's life or health or violates a child's legal rights. In practice, however, this article is ignored and the child's rights are not observed.

Practice has shown that when children try to choose their religion on their own or participate in social organizations or initiatives, the government takes punitive measures to restrict children's access to freedom of association and assembly.

¹⁰ <http://dzitya.by/> Accessed July 23, 2016. [in Russian]

4 The Family Environment and Alternative Care

4.1 The right not to be separated from one's parents (Article 9)

Under Part 4 of Article 32 of the Constitution, “Children may only be separated from their families against the will of their parents or other people substituting for their parents on the grounds of a court decision if the parents or people substituting for them do not fulfill their obligations.” The second chapter of the law “On the Rights of the Child” is also dedicated to this right.

Belarus has an interagency system for identifying at-risk children in need of government protection. However, the mechanism for identifying these children is ineffective and trauma-inducing.

In many cases, there are not sufficient grounds for registering families as at risk and subsequently removing children from these families. Sometimes the only grounds for doing this are an official's personal animosity towards the family or an administrative reason, like owing money for utilities or to the state.

At the same time, there are numerous instances where children are in an at-risk situation that really does present a threat to their life and health, but no measures are taken.

For example, in Gomel parents intentionally left their three-month-old daughter alone in their apartment and never returned. The infant died from starvation. Her body lay in her crib for almost eight months and became mummified. Having rid herself of her daughter, the mother gave birth to another child, who was left at a building entrance in the freezing cold of January. This woman had another three children who were being raised and supported by their grandmother. Staff members at their school were notified that the grandmother was supporting these children on her small pension, but they did not take any measures to protect the rights and legal interests of those children. They also failed to take measures after reports from neighbors signaling troubles in the family.¹¹

In another case, citizens in Minsk went to the police and children's services about a 10-year-old boy who was locked up and did not attend school, but the authorities failed to take any measures. It was only after neighbors turned to the press that the appropriate checks were organized. It turned out that this 10-year-old child was living with his mother and grandmother in a filthy apartment and had never attended school, been homeschooled, or received proper medical treatment.¹²

In Belarus, children can be removed from their families in the cases stipulated in Paragraph 1 of Presidential Decree No. 18 “On Additional Measures for the State Protection of Children in in Troubled Homes” of November 24, 2006 (version of February 23, 2012), which states that families are at risk if it is established that the parents (single parent) live an amoral way of life that adversely impacts children, if they are chronic alcohol or drug users, or if they fail to perform their obligations to raise and support their children in some other way.” However, the law does not specify what is meant by “fail to perform their obligations to raise and support their children in some other way.” This ambiguity results in abuse in relation to the right of children to not be

¹¹ “Investigation Completed in Criminal Case Concerning the Murder of an Infant Whose Mummified Body was Found in a Gomel Apartment,” http://ont.by/news/our_news/zaversheno-rassledovanie-ygolovnogo-dela-ob-ybijstve-grydnogo-rebyonka-mymi Accessed July 5, 2016. [in Russian]

¹² “10-Year-Old Minsk Boy Never Attended School,” <http://www.kp.by/daily/26179/3068742/> Accessed July 28, 2016. [in Russian]

separated from their parents, while the child is deprived of the right to live in a family, at times without sufficient grounds.

The following examples from Our House records confirm this.¹³

On June 24, 2017, the Juvenile Affairs Committee of the Zelvensky District Executive Committee arrived at the home of Alena and Dmitry Kostikov from the village of Derechin *at 5 am* without prior notification to remove their four children: nine-year-old Andrey, seven-year-old Danila, four-year-old Ivan, and two-year-old Elizaveta.

On February 5, 2018, Olga Sushko's two children Anton and Nikita were removed after the family was visited by Svetlana Stakhovskaya, an assistant to the prosecutor in the district, for a check. In a state of stress, the mother accepted the visit with hostility. According to her, the worker from the prosecutor's office gave her a blank form to sign. After this, a committee started to visit the family on a daily basis for checks, looking for dust under the beds, inspecting the refrigerator, and examining closets and linens. They photographed everything and showed pictures with personal information at a meeting of the district executive committee. One week later, the children were put under the care of the state for a period of two months. Later, a description of a family in trouble appeared on the "blank form."

Alesya Fominykh, a 34-year-old woman from Loev, gave birth to her first child Maxim on May 10, 2018. Because of her difficult pregnancy, she was put on bed rest. Doctors found that her son had a heart defect after he was born, and the baby spent over two months with his mother in the hospital. The reasons given for the child's removal were that his father abused alcohol, that "unsanitary conditions" were found in the home, that there was a neglected garden near the house, that there was a minimal amount of children's clothes and dishes, and that the parent's behavior "deprived the child of even the bare minimum of social benefits required for full-fledged development." In addition, the family "lacks any income" and "has no water supply."

On January 10, 2017, in the village of Tevli, Kobryn District the Juvenile Affairs Committee of the Kobryn District Executive Committee took four children from their mother Nelli Ditkovskaya on the basis of the oral testimony of local police officer Sergey Zholakh because it was decided the children were in need of state protection. The official version was that the family did not have enough square meters in their room and that their plot was in disarray. The police officer reported to the committee that he found evidence of alcohol abuse by Nelli's common-law husband Vladimir and that he found some "dirt" in the home. However, neighbors did not confirm that Vladimir had appeared intoxicated and the police officer could not present one report that Vladimir had been arrested in a state of intoxication or any evidence documenting cases of hooliganism under the influence of alcohol. Neighbors also denied that the family abused alcohol. There were no write-ups about Nelli or Vladimir at their places of work, where Nelli worked as a milkmaid and her common-law husband worked as a crop grower and livestock breeder.

On August 21, 2018, a court in Narovlya District deprived Tatyana Storozhenko of Narovlya of her parental rights for alcohol abuse on the basis of a resolution issued by the Narovlya District Juvenile Affairs Committee. Her seven-year-old daughter Dasha ended up in a shelter. Officials relied mainly on the anonymous testimony of dubious witnesses. In this way, three instances of her use of alcohol were recorded in 2017 and one was recorded in 2018. She receives a salary of 150 rubles and works as an orderly in Narovlya Hospital. Her superiors had no complaints about her work. Storozhenko says that the supervisory bodies are on a full-blown hunt for her: they come to her apartment and stand guard at the shelter. The fate of her daughter Dasha is currently unknown.

¹³ <https://nash-dom.info/lib/browse/za-cto-zabiravut-detej>

The authorities attempted to take Valentina Buslaeva's children from her for an outstanding utilities payment left over from the house's previous residents.

On September 6, 2017, the large Mokas family from Dzerzhinsk was assigned at-risk status for being 350 rubles behind on their electricity payments. Because of this debt, the family cannot take advantage of a 50 percent discount for large families and must pay 100 percent of the cost of their utilities each time. This creates a dead-end situation that is impossible to get out of.

On October 4, 2017, a juvenile affairs committee adopted a decision to remove four-year-old Katya and 16-year-old Roman from their 42-year-old mother Elena Mikulich of Gomel for arrears in the amount of 2,000 rubles on her utility payments. Half of this amount was accrued interest.

On January 10, 2018, the authorities threatened to shut off the electricity of Veronika Glebovich of the village of Negoreloe for failure to pay arrears on her utility payments and then take her four children to a shelter. If the children are taken, she will have to pay 200 rubles a month to support each child in the shelter.

The system for identifying children left without parental care can be represented in the form of a funnel: of the largest category (at-risk children, over 20,000 children per year), approximately 15 percent fall under the category of "in need of government protection," and only one-third of these do not manage to be returned to their biological families. Their cases are forwarded to a court, and this is only six percent of the initial number of children found to be at risk.

According to information that appears in the media from time to time, the registration of a number of families as at risk is not seen as fair by the families themselves or by society. There are a number of cases when checks of children in a family were known to be politically motivated (they were conducted by schoolteachers at the recommendation of judicial or other bodies).¹⁴ The results of these abusive practices are catastrophic for families, but no one official has been duly punished for abusing the rights of a child.

For the past 25 years, 46-year-old Elena Kukol of Ivya has been raising her disabled son, who has a serious form of infantile cerebral palsy, in very difficult circumstances. Her husband left the family, and Elena was forced to leave her job. She and her son live on a disabled person's pension. In the summer of 2017, social welfare bodies started threatening to remove her incapacitated son because repairs had not been done in the house. Local officials demanded that Elena improve her housing conditions and change the floor and wiring into her home at her own expense, or she would be fined, her son would be taken away, and she would be deprived of her parental rights. Despair brought Elena to the difficult decision of selling her kidney to save her son from being taken by children's services. On September 8, 2017, she put her kidney up for sale on social media.¹⁵

On February 5, 2019, 32-year-old Olga from the village of Buda in Oktyabr District of Gomel Oblast hanged herself because she could not withstand officials' threat to remove her children to a children's home under Decree No. 18. Three boys aged three, seven, and eight were left behind as orphaned children.¹⁶

The decree "On Additional Measures for the State Protection of Children in Troubled Homes" stipulates that state bodies, other organizations, and citizens with information about

¹⁴ Babitsky, D. and V. Gvozdikova. "The Situation of At-Risk Orphaned Children and Families in Belarus. Analytical Report." Minsk, 2017. [in Russian]

¹⁵ Our House website: <https://nash-dom.info/lib/browse/za-chto-zabirayut-detej>

¹⁶ <https://belsat.eu/ru/programs/samoubijstvo-na-gomelshhine-moloduyu-mat-s-osobennostyami-razvitiya-sotsopeka-zastavlyala-rabotat/> Accessed February 10, 2019. [in Russian]

children in an at-risk situation must immediately notify a juvenile affairs committee, children's services, or other government agencies authorized by law to protect the rights and legal interests of children about the location of these children. However, liability for failing to report (failing to perform obligations) has not been established, nor have other mechanisms been created that would prompt government agencies, organizations, and citizens to report cases of improper performance of parental obligations or harsh treatment of a child, or if a family is in dire need of assistance.

A family from Vitebsk was quite literally dying of hunger but was afraid to seek assistance from government bodies because they worried that their children would be taken away. As it later turned out, there was good reason for this family to be scared. Even in the critical situation of potential death from hunger, officials did nothing to help the family. Instead, they took punitive actions to force the family to be quiet.¹⁷

On February 8, 2019, a six-month-old infant was thrown from the 11th floor. A brothel had been organized in the apartment and the proper measures were not taken to shut it down, even though an infant was living there. On the night of the event, the neighbors heard screams and heartrending cries from the baby. Even though they knew a brothel was operating in the apartment, they did not call the appropriate emergency services. The child perished.¹⁸

There is no provision in Belarusian law for the removal of children when one of the parents has not been deprived of parental rights and when the parents and children live together for the child to be placed with the other parent.

This measure of liability under family law is not feasible even when parents live separately since the norms of Article 85 of the Marriage and Family Code that define the conditions for the judicial and administrative removal of a child without deprivation of parental care consistently use only the plural "parents."

Under Part 1 of Article 85 of the Marriage and Family Code, children who have been removed from their families are transferred to the care of children's services. In these circumstances, removal of a child without deprivation of parental rights effectively amounts to a unique form of collective liability under family law.

Children's services makes its conclusion about the situation in a family on the basis of one sole document—a report on housing and living conditions. This report is compiled without the knowledge of family members and a copy is not issued to them. Further measures are only marginally aimed at preserving or restoring the family and are instead punitive towards the parents.

If a child is separated from its parents (parent) under administrative proceedings, there can be serious problems returning the child to the family in spite of programs for working with families.

For example, Svetlana L. (Gomel District) cannot get her child, who was removed following administrative proceedings, back because her house lacked a gas supply and she was not able to pass IQ tests.¹⁹

There is also a practice of depriving parents of their rights when their location is unknown. For example, a parent who is on the wanted list may be deprived of parental rights in the Orsha District and City Court. Thus, without establishing their guilt, respondents (parents) are prosecuted for the harshest form of liability under family law—deprivation of parental rights.

¹⁷ <https://nash-dom.info/lib/browse/za-cto-zabirayut-detej> Accessed February 10, 2019. [in Russian]

¹⁸ <https://news.tut.by/society/625672.html> Accessed February 10, 2019. [in Russian]

¹⁹ "Psychiatric Committee Again Refuses Granddaughter of a Hero of the Soviet Union to Collect her Daughter from a Children's Home," <http://sputnik.by/live/20160212/1020124808.html> Accessed: July 30, 2016.

4.2. The right of children deprived of the possibility of being raised in their biological family to a family environment

In recent years, Belarus has adopted a number of documents to realize the rights of children deprived of the possibility of being raised in their biological family or a family environment.²⁰

As long ago as 2018, the government developed plans to reorganize and close children's groups homes, and plans were even approved for individual oblasts. The idea was that by 2015 each oblast would have no more than two to three group homes and residential schools for orphaned children. Lukashenka announced a comprehensive reduction in the number of orphanages in Belarus in his 2010 presidential campaign.²¹ According to official statistics, however, in 2017 79 group homes for children aged infant to 18 (infant homes, children's homes, residential schools) were operating in Belarus, and this does not even include social shelters, where children are placed temporarily for a period of up to six months when they are taken from their families. As of 2017, of the 20,442 orphaned children or children left without parental care, 15,672 lived in substitute families (foster families, adoptive families, family-type children's homes) and 4,770 children lived in children's group homes.

Now Belarus is taking a number of measures to develop family environments for orphaned children and children deprived of parental care. These forms are: adoption, guardianship (conservatorship), foster family, and family-type children's home. In all these forms, the receiving parents become the child's legal representatives.

In order to encourage adoption at home, Belarus has introduced new types of state support for adoptive parents. Monthly cash payments are only allocated to adoptive parents who have adopted orphaned children or children left without parental care who permanently reside in Belarus. Adoptive parents also have the right to a brief, unpaid leave of up to 90 calendar days within six months from the date on which the decision on adoption enters into force. This leave is granted for the place of work of one of the adoptive parents (adoptive parent) so that the adopted children can adapt to their new families and day-to-day issues can be resolved. An additional one-time cash payment in the form of monthly cash payments that are doubled for the first month is also made if the adoptive parents take a leave of at least 30 calendar days.

Other forms of family settings like foster families and family-type children's homes have also been developed. However, the absence of a clear legal foundation for regulating relationships in respect of the creation of foster families and family-type children's homes and the mixture of different branches of law within the framework of a single legal relationship are just two more factors that slow the development of these forms of family environment. Existing regulations governing the creation of family-type children's homes and foster families²² contravene laws and presidential orders. Even though the country has a recognized hierarchy of statutes and regulations, the norms of regulations and not laws are implemented at the local level. Beyond that, these conflicts of law enable local officials to act arbitrarily in relation to children. In practice, local

²⁰ "Children and Youth of the Republic of Belarus, 2018, Official Statistics," http://www.belstat.gov.by/ofitsialnaya-statistika/publications/izdania/index_10763/ Accessed February 10, 2019. [in Russian]

²¹ "Lukashenka's Campaign Program: Become Wealthier and More Free," http://naviny.by/rubrics/elections/2010/11/27/ic_articles_623_171426/ Accessed August 1, 2016. [in Russian]

²² "Children's Homes, Children's Villages," http://dzitya.by/page/detskie_doma Accessed August 1, 2016. [in Russian]; "Regulations on Family-Type Children's Homes Approved by RB Council of Ministers Resolution No. 289 of February 28, 2006 (version of April 25, 2016)," Minsk: National Center for Legal Information of the Republic of Belarus, 2019.

authorities are more focused on institutionalizing orphaned children and children deprived of parental care than on other forms of placement.

The law lacks any criteria for finding the activities of a guardian (conservator) improper. The existing wording is extremely vague, which makes it possible to use deprivation of a guardian's duties as a repressive method for pressuring people involved in social activism.

For example, Natalya Yanushkevich worked as a parent-caregiver in a family-type children's home. After a conflict with authorities, her contract was not extended and the children were given to another family. She was able to become the guardian of one of the children, but was later also deprived of this right.²³

The children in E. Kashina's family, who had been with her for over 10 years, were placed in an orphanage for no compelling reason.²⁴

Prior to 2012, a form of family care known as patron care existed in Belarus. This is not currently a family-based form of care, but a means of participating in the upbringing of orphaned children and children left without parental care.²⁵ However, in light of the abundance of group homes throughout the country, there is a need for patron care specifically as a form of placement in a family.

The use of a territorial principle when creating foster families (family-type children's homes) and transferring children to them creates a barrier to exercising the right of orphaned children and children deprived of parental care who have special needs to a family environment.

When drafts of statutes and regulations about orphaned children and children deprived of parental rights are developed, lawmakers do not communicate with society or hold public discussions about these norms, which results in the adoption of "dead" norms.

²³ <https://sputnik.by/society/20181004/1037958061/Priemnaya-mama-kotoruyu-lishili-opeki-menya-nakazali-za-moyu-negovorshivost.html> Accessed February 10, 2019. [in Russian]

²⁴ <https://belaruspartisan.by/m/life/352846/> Accessed February 10, 2019. [in Russian]

²⁵ "Regulations on Patron Care, Approved by RB Council of Ministers Resolution No. 596 of June 28, 2012," Minsk: Etalon-Belarus, National Center for Legal Information of the Republic of Belarus, 2019.

5 Key Elements of Healthcare and Social Welfare

5.1 Health and healthcare services (Article 24)

A child's right to health is often viewed narrowly (as is the right to sufficient food, for example). But this right includes access to healthcare information, observance of confidentiality, and informed consent. Belarusian children have limited access to mental health and sexual and reproductive health services, just as their right to be heard during any medical intervention is also limited.

Belarus's healthcare system is still state-run—the private sector accounts for only seven percent of medical services.²⁶ Four percent of the state budget goes to medicine, which is an extremely low indicator.

The quality of free medical care is low, particularly in the obstetrics system. Here is how one young mother from Babruysk described her stay in a state maternity hospital:

“These are conditions that degrade your human, your female dignity, that break your will, you use your last strength to resist and stand up for yourself...I put up with it, I hated myself and them, and I dreamed that it would all end faster. Then they shaved me and gave me an enema, again in front of an open door, which someone kept entering. When I asked them to close the door, they started yelling that I didn't have to be such a sissy because I knew where I was, not at home, but at the maternity hospital. They said I should forget about being modest and that doors were never closed there. I felt awful. I started crying... My husband was not allowed in with me. They don't let anyone beyond registration. Partners are not allowed in delivery rooms in Babruysk. Here a woman remains alone as she gives birth.”²⁷

Because the social services systems at inpatient facilities do not use an individual approach or take a child's specific needs into account, there are times when children with special needs do not receive the special food they require or enough food at all, which means they are left to starve and face the risk of losing their health and even lives.²⁸

An inoperative mechanism for providing medication is envisaged for orphaned children and children deprived of parental care.

Four point five percent of children in Belarus do not get enough to eat, 27.4 percent suffer from anemia, 17.4 percent have a vitamin A deficiency, and 80.9 percent have an iodine deficiency.²⁹ At the same time, one in four children are overweight, a number that has doubled over the past decade.³⁰ At present, children in most general educational institutions are in a state of constant emotional stress, do not get enough sleep, do not get enough physical activity or time outdoors, and experience disturbances in their daily schedule and quality of food. This all has an adverse impact on the functioning of their nervous, cardiovascular, endocrine, immune and other systems in their growing organisms and contributes to the formation of both functional disorders and chronic pathologies.

²⁶ The main documents regulating healthcare are: the Constitution (Article 45); Law of the Republic of Belarus No. 2435-XII “On Healthcare” (version of June 16, 2014); Law of the Republic of Belarus No. 322-Z “On State Social Minimum Standards” (version of December 24, 2015).

²⁷ “Birth in the Babruysk Manner, or why I will Never Give Birth Again in Belarus,” <http://gomel.today/rus/article/society-189/probuksovyvaet> Accessed: August 2, 2016. [in Russian]

²⁸ Media report on the situation at a Minsk group home: “At 27, Artem had the Weight of a Three-Year-Old. Why Can't Fifty Orphaned children at a Minsk Group Home Gain Weight?” <http://imenamag.by/ne-mogut-nabrat-ves/> Accessed December 30, 2016. [in Russian]

²⁹ “4.5% of Children in Belarus do not get Enough to Eat and 81% Have an Iodine Deficiency,” <http://news.tut.by/society/356796.html> /Accessed August 2, 2016. [in Russian]

³⁰ “Number of Overweight Children in Belarus is Growing,” : <http://www.sb.by/v-belarusi/news/v-belarusi-rastet-chislo-detey-s-ozhireniem.html> /Accessed August 2, 2016. [in Russian]

Even when children do get outside for exercise in the summer, there are times when sanitary norms are violated. For example, in Vitebsk Oblast, the facilities of city schools are used as summer camps. However, these schools are generally located near residential areas and highways, which is not in line with the sanitary norms required for recreational organizations.³¹

There are also problems with diagnosing and treating HIV-infected children. As of January 1, 2019, health officials in Belarus has identified:

26,979 cases of HIV-infection and 20,953 people living with HIV, with a prevalence rate of 220.7 per 100,000 people.

The total number of cases of HIV infection in the 15 – 49 age group (adults and adolescents) was 24,806 (91.9 percent of the overall number of HIV infections).

Over the 12 months of 2018, 2,020 cases (85.8 percent) were registered in the 15 – 49 age group, while 2,141 cases (86.8 percent) were registered over the same period of 2017. Cases of HIV infection for individual age groups were distributed as follows: 0 – 14 – 0.3 %, 15 – 19 – 0,6 %, 20 – 29 – 17,1%, 30 – 39 – 42,1%, 40 – 49 – 26,1%, 50 – 59 – 9,9%, 60 and over – 4%.

From 1987 to January 1, 2019, HIV infected mothers gave birth to 3,971 children. A diagnosis of “HIV infection” was given to 307 children born to HIV-infected mothers. Throughout the entire country, 333 cases of HIV infection were registered in the 0 – 14 age group. For this same age group, seven cases of HIV infection were registered over the 12 months of 2018, while 14 were registered for the same period in 2017. At the end of 2018, the vertical transmission rate was 1.3 percent (a total of 239 children were born to these mothers and HIV was transmitted to three of them).

Of the total number of people infected with HIV in the country, 39.7 percent (10,711 people) are women and 60.3 percent (16,268 people) are men. Over the 12 months of 2018, these figures stood at 37.2 percent (875 women) and 62.8 percent (1,478 men) as compared to 37.6 percent (928 women) and 62.4 percent (1,540 men) in 2017.³²

There are real factors for the increase in the number of HIV-infected people, including children. HIV is being actively spread among women of reproductive age, which means that the number of children infected by their mothers is also growing. On top of this, not enough work is being done with the groups that are most vulnerable to HIV infection. Of these groups, approximately 75,000 are intravenous drug users, approximately 30,000 are women working in the sex business, and approximately 60,000 are men who have sex with men. However, preventive measures that encourage regular testing and compliance with the rules for safe behavior reach only 55.4 percent of intravenous drug users, 11.8 percent of women in the sex business, and 11.2 percent of men who have sex with men.³³ Children have limited access to objective information about sexual relationships, mental health, drug use, and how to protect themselves and others from HIV during the early stages of their sexual lives.

5.2 Social security, services, and institutions that provide care for children (Article 26, Clause 3 of Article 18)

Belarusian law specifies that a family can receive state support to raise and support a child until the child reaches the age of 18. By implementing the law “On State Benefits for Families Raising

³¹ “The Disgraceful Reality of ‘Recreation’ for Orphaned Children in Belarus: Barracks, Lights, and Excrement,” <https://nash-dom.info/39313> Accessed August 2, 2016. [in Russian]

³² “Epidemiological Situation with HIV Infection in Belarus as of January 1, 2019,” <http://mrcge.by/index.php/news/562-epidsituatsiya-po-vich-infektsii-v-respublike-belarus-na-1-yanvarya-2019-goda> Accessed February 10, 2019. [in Russian]

³³ “HIV Infection and Prevention,” data of the Ministry of Internal Affairs, <http://mvd.gov.by/by/print.aspx?guid=297323> Accessed August 2, 2016. [in Russian]

Children” (version of December 30, 2015), the state carries out a targeted policy to provide material support for families.

Even though it appears from the outside that social support comes in many forms for different categories of children and their families, there are still a number of problems with social support for children:

- since a child’s right to social security is not enshrined in the law “On the Rights of the Child,” not all children have this right, even though it is guaranteed by the Constitution and the Convention. For example, children whose parents are unknown do not have the right to social support if they lose their breadwinner, while children whose parents have died or been declared dead do have this right.

- there are restrictions on the free or discounted supply (using social insurance funds) of both expensive medications and necessary medical equipment and consumable materials, of which there are not enough to meet the needs of sick children. For example, children with type 1 diabetes are only allocated one test strip a day at no cost, while at least five are necessary. This is an expensive consumer material. The situation is similar for children who require orthotics and medical products or footwear: they are allocated two pairs of shoes a year, while a child generally needs at least four pairs of different orthopedic shoes a year due to physiological changes in size and seasonal changes.

- insufficient support for siblings in families raising children with disabilities (benefits are paid for children over the age of three, but a number of conditions must be met to receive these benefits, and the packet of documents on the disabled child must be updated every year);

- adults are provided with a free trip on public transportation if they are with their disabled child, but many times parents (legal representatives) must use public transportation without their child, but in that child’s interests.

- the practice of placing disabled children in substitute families when necessary is not well-developed, nor is the system of incentives and support for these families.

5.3 Right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral, and social development (Article 27)

As in other countries, the Republic of Belarus has established a minimum cost of living. This indicator is calculated based on the most minimal needs of the population for food products, non-food products, transportation, and so forth. Belarus has also set a minimum consumer budget that represents expenses for acquiring a set of consumer goods and services that meets a person’s basic physiological and socio-cultural needs.

The funds allocated for supporting orphaned children and children deprived of parental care barely exceed the minimum cost of living (by one US dollar) for the corresponding age group; the amount comes to 254 Belarusian rubles and 56 kopecks.³⁴ The total funds allocated by the state for supporting orphaned children and children deprived of parental care do not provide children with the standard of living adequate for the child’s physical, mental, spiritual, moral, and social development.

³⁴ “On State Support for Orphaned children and Children Left Without Parental Care, and for People Among Orphaned Children and Children Left Without Parental Care and for Children in Socio-Pedagogical Centers, Special Educational Institutions, Special Therapeutic Institutions, and Juvenile Reception Centers,” Resolution of the Council of Ministers of the Republic of Belarus No. 840 of July 6, 2006 (versions of April 25, 2016). As of February 1, 2019, the minimum cost of living for children up to the age of three was 139 rubles 79 kopecks; for children aged three to six - 191 rubles 9 kopecks; and for children aged six to 18 – 233 rubles 56 kopecks. See: <http://samsebeyurist.by/spravochnaya-informatsiya/stavki-i-velichiny/bjudzhet-prozhitochnogo-minimuma> Accessed February 4, 2019. [in Russian]

The law does not contain criteria for changing (indexing) these benefits, so in some cases the benefits allocated for support children in this category end up being lower than the minimum cost of living, that is, lower than the level required for survival.

To make matters worse, there are real problems associated with the mechanism for collecting child support from parents who avoid making this payment. A viable mechanism for collecting child support from parents (a parent) has not been developed.

The development of children also depends on factors like having enough time for play and having access to the internet and a clean environment. Unfortunately, in Belarus a child's right to a clean environment has been significantly limited by the state because of the Chernobyl disaster, the Ostrovets Nuclear Power Plant, and the construction of a number of environmentally dirty plants in many cities (for example, Brest). In rural areas, the right of children to access the internet is extremely limited.

6 Education, Leisure, and Cultural Activity (article 28, 29, 31)

6.1 Education (Article 28)

Belarusian law guarantees children the right to a free education, including in their native language, choice of academic institution, and a profession that matches their predilections and abilities.

However, the education system does not provide equal access for the two official languages (Russian and Belarusian). Every year, the number of Belarusian language schools is reduced, while the chance to obtain a higher education in the Belarusian language has essentially been eliminated. Numerous appeals to open a Belarusian-language university have gone unanswered, even though thousands of schoolchildren graduate with an education in Belarusian.

Even though there are a variety of forms of education for children with special needs, these children still have difficulties accessing education, and the quality of educational services provided leaves much to be desired. Over half of special needs children still receive their education at specialized residential academic institutions.

One of the greatest barriers to developing an inclusive educational system in Belarus is the fact that many schools do not have the conditions to instruct children with special needs, especially in a barrier-free environment (including access to transportation). Parents have noted that schools lack special needs specialists, particularly assistants who would work individually with disabled children and help them progress in school.

The system of one-on-one instruction has barely been developed. Home study on the basis of a medical committee's opinion is generally organized in name only and is sometimes even fictitious. Classroom technologies (distance learning) have also not been developed.

A serious violation of the right to self-determination is limitation of the right of disabled children to choose their own profession and their inability to receive a professional education outside of specialized institutions (groups) for people with special needs.

For example, the adolescent D. (diagnosis of ICP) attended a general education school under an individual education plan. He has literary talents and has spoken of his desire to become a librarian. However, a medical commission assigned him a narrow range of professions based on the presence of special groups for people with limitations due to musculoskeletal problems. These included computer operator, manufacturer of art objects, and shoemaker. The reason for refusing to allow him to study to be a librarian was not that there were medical contraindications, but that

there were no specialized groups for training in this profession. Previously, between the ages of four and eight, D. was placed in a specialized children's home with a diagnosis of "pronounced intellectual and speech impairments," and his diagnosis of ICP (congenital, previously established) was denied. This was because a spot opened at a specific children's home for children with intellectual impairments. Later, when a spot freed up at a different group home, D.'s diagnosis was changed and he was transferred. At this time, his education program was also changed. D.'s diagnosis and education program were later changed several times because of the need to move him to other group homes until he was finally placed in a substitute family in 2011.

The Education Code (version of January 4, 2014) introduced the institution of disciplinary accountability for students. Among other things, it lists the possibility of expulsion starting from the age of 16. Knowing how frequently Belarusian colleges and universities expel students solely for their political beliefs, it can be assumed that over time the Education Code will become the main tool for pressuring adolescents and their parents who do not agree with the existing order in the country.

The Education Code does not envisage the possibility that a juvenile in prison can obtain a general high school education. Children in juvenile correctional facilities have extremely limited access to high school, technical, specialized, higher, or supplementary education.

In an example from Our House, E. Ostrovko was in 11th grade when he was imprisoned. Because of his imprisonment, he was not able to take his final exams. According to responses from the Ministry of Education to complaints filed by Ostrovko and his legal representative, the law does not provide for instruction in correctional facilities. The responses also noted that the Ministry has developed a bill to make amendments and additions to the law in regard to this matter. However, Belarus's legislative process is complicated and extended, and these amendments will not be adopted anytime soon. In the end, no measures to realize Ostrovko's right to education were taken.³⁵

6.2 Leisure, cultural activity (articles 29, 31)

Belarusian laws reflect the provisions of Article 29 of the Convention, which states that one direction of a child's education development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own.

However, even though it looks like children are provided with numerous opportunities for leisure (annual increases in visits to cultural sites and sporting events, recreational activities), there is an obvious problem with quality. For example, the Belarusian language and culture are not given priority, and mainly Russian is used at the cultural sites (theater, movies, concerts, exhibitions).

On top of this, not all types of leisure activities are equally accessible for all groups of children because of a poorly-developed barrier-free environment and because of their high cost. Discrimination against a child's social situation also affects accessibility to cultural sites and leisure activities (orphaned children can only visit cultural and sporting events if there are seats available).

Under Article 24 of the law "On the Rights of the Child," each child has the right to choose a profession, occupation, or job in line with their calling, abilities, education, and professional

³⁵ "Expert Opinion in the Violation of 17-Year-Old Emil Ostrovko's Rights During Criminal Proceedings." <https://nash-dom.info/lib/browse/narusheniya-prav-nesovershennoletnego> Accessed February 10, 2019. [in Russian]

training, and with account for the needs of society. Children have the right to independent work activity when they reach the age of 16.

But adolescents cannot start to learn a profession if they do not have a basic education.

An adolescent's right to freely chose a profession is limited by their state of health, number of credits on their diploma, gender, and social status.

Gender restrictions on a number of professions are still widespread ("male" and "female" professions, a restrictive and discriminatory list of professions banned for women).³⁶

Children with special needs have not been provided with sufficient access to their choice of professional training (with account for medical recommendations). A factor that, along with medical recommendations, limits freedom to choose a profession is the absence of conditions for training.

At the state level, open exploitation of the work of children is not permitted and work and rest norms for juveniles have been established by law. Children can begin working at the age of 14, as long as special conditions are observed. In practice, however, the exploitation of children is seen in forced labor disguised as volunteer work (being on duty in the school cafeteria instead of attending class) and socially useful work (arduous agricultural work, subbotniks). There have even been cases where children died performing this kind of work. In one of these cases, a 13-year-old girl perished under the wheels of a truck in a field where she was harvesting potatoes.³⁷

Finally, adolescents have objective difficulties exercising their right to work, including a job shortage and lack of interest from employers. There have even been cases where children, including ones who have not reached the permitted age, were employed illegally.³⁸

³⁶ Resolution of the Ministry of Labor and Social Protection of the Republic of Belarus No. 35 "On a List of Harmful, Arduous, and Dangerous Jobs Banned for Women."

³⁷ "Colleagues of the Driver who Crushed 13-Year-Old Vika: 'A Good Guy! He's Torn up About it,'" <http://www.kp.by/daily/26588/3604348> Accessed December 4, 2016. [in Russian]

³⁸ "Three 17-Year-Olds Went to Work and had Trouble Returning Home," <https://vkurier.by/64578> Accessed May 5, 2016. [in Russian]

7. The System of Justice for Minors, Juvenile Justice (articles 37, 40)

The number of crimes committed by minors or with their participation is dropping. According to data from the Ministry of Internal Affairs, in 2018 1,544 minors were identified as having committed a crime, which was down 10 percent over 2017.³⁹ But the overall level of child and adolescent crime in Belarus cannot be called low, and it is premature to speak of a steady trend towards a drop in the number of crimes committed by minors.

In Belarus, criminal liability for minors has the same basis as it does for adults. However, certain provisions of the General Part of the Criminal Code (No. 275-3, version of April 20, 2016) and Section V define the special aspects of the criminal prosecution of minors. Concentrating all the provisions relating to minors in one section of the General Part is of fundamental importance because it speaks to the relationship of society and the state to the problem of crimes committed by these people.

The Criminal Code contains a list of punishments that can be used against minors. The short list of punishments for minors envisaged by lawmakers reduces the opportunity for selecting punishment and to a certain degree violates the principles of differentiation and the individualization of punishment. For example, a fine may be assigned only if the minor has independent earnings or property. This punishment is rarely used in practice because the percentage of 14- to 16-year-olds who work is insignificant. Thus, the following types of punishment remain for minors who do not have independent earnings or property: arrest, restriction of liberty, deprivation of liberty. Arrest and deprivation of liberty mean that minor convicts are isolated from society.

The criminalization of a child's consciousness is enabled by the fact that minors accused of a crime are kept in a pretrial detention facility with adults during the pretrial investigation. There they collect criminal experience, and later, when they are in a children's correctional facility, they try to spread these principles. The number of children in closed institutions is very high, even though a drop has been seen recently.⁴⁰

Part 2 of Article 59 of the Correctional Code extends to people sentenced to arrest the same detention conditions established by law for people convicted of deprivation of liberty who are serving their sentences in minimum security prisons. In addition, convicted minors serving this sentence are not provided with instruction.

A pressing need is to expand the system of punishments and other measures of criminal accountability for minors that do not involve actual deprivation of liberty. For example, probation should be enshrined in Belarusian law as a measure of punishment for children who have committed a crime, along with mediation, which is a voluntary and confidential form for the suspect (accused) to reconcile with the victim. It should be noted that Resolution No. 860 of the Council of Ministers of December 24, 2016 approved the Interagency Plan to Implement the Recommendations Adopted by the Republic of Belarus Following the Second Cycle of the Universal Periodic Review by the UN Human Rights Council and recommendations made to the country by human rights treaty bodies for 2016 – 2019. Regarding mediation in the criminal process, the plan notes only that until 2018 Belarus will study the matter of introducing pretrial

³⁹ Statistical data of the Ministry of Internal Affairs: <http://mvd.gov.by/main.aspx?guid=319943> Accessed February 10, 2019. [in Russian]

⁴⁰ “‘It’s Only Worse in Albania.’ Belarus is One of the Leaders in Europe for Number of Children in Prison,” <http://news.tut.by/society/502530.html/> Accessed August 2, 2016. [in Russian]

reconciliation (mediation) into criminal proceedings. Thus, despite the need for this procedure in the criminal process, the question of its introduction into criminal proceedings has yet to arise.

There are a number of problems involved with the investigation and consideration of criminal cases against minors:

- there is no separate specialization for judges hearing criminal cases against minors. These cases are currently heard by a panel composed of one professional judge and two people's assessors. There is no separate specialization for judges hearing criminal cases against minors that trains them not just in matters of the law, but also in matters of pedagogy, psychology, and sociology. People's assessors involved in these cases do not have any special professional competency.

- the confidentiality of trials in the cases of minors is not absolute and does not extend to the reading of the sentence. The question of holding a court session is left to the discretion of the court and is generally used to conceal abuse and violations of the rights of the child by state bodies.

- there have been cases where minors were involved in operational activities without the knowledge of their legal representatives, even when it was possible that an adult could be involved instead. For example, the rights of other minors were violated during a criminal trial against the minor G. Korotkevich (Mogilev). Specifically, a minor who was being investigated under the pseudonym "Belov" was involved as a sham buyer. However, it was not really necessary to involve specifically a minor in this operation. The parents of "Belov" were not informed of his participation in the operation.

- there are no provisions made for the mandatory participation in trials of members of juvenile affairs commissions and inspection panels or of representatives of the educational institutions or work collectives where the minor studied or worked. Meanwhile, the presence of these people at the court hearing would help both achieve a clearer understanding of the facts at issue and provide insight into the shortcomings of the educational or correctional work of the corresponding bodies and institutions.

- in the course of proceedings in cases against minors, there are no provisions for mandatory cooperation between criminal prosecution bodies and social services, which provides a barrier to the use of pedagogical, psychological, and sociological knowledge to examine the minor's personality when criminal measures are applied to the minor. In practice, establishing the circumstances related to a minor's personality is limited to inquiries about whether this person is registered with a juvenile affairs inspection panel, descriptions from the minor's place of study or work, and interviews with neighbors. In the end, the judge hearing the case does not have the required amount of information about the accused's personality, which means that the court's inquiry is one-sided and incomplete.

The system for preventing offenses and crimes by minors functions at a low level. The network of state bodies working to prevent child neglect and homelessness has many levels and is quite complicated. The functions and tasks of individual branches are often duplicated. Norms regulating the rights of minors and guarantees of their observance and norms regulating the system for preventing juvenile delinquency, neglect, and homelessness are contained in various codes and other legal acts.

A partially updated model of the Soviet preventive and punishment model is operating in Belarus today. This means that a focus on punishment, preventive control, and individual preventive work predominates over early social prevention measures, social adaptation and resocialization, and restorative juvenile justice.

Conclusions and Recommendations

After it ratified the Convention on the Rights of the Child, Belarus took numerous steps to bring its laws into line with this convention and took important measures to ensure the rights of children. In particular, it significantly strengthened the social protection system for orphaned children and children deprived of parental care and it enshrined priority for family forms of upbringing supported by state financing. It has also made distinct steps at the legislative level to transform the system of group homes, develop preventive services for families in difficult situations, and improve cooperation between agencies working with families and children.

The majority of the Convention's articles are appropriately reflected in national laws, but their application is token in nature and does not correspond to the country's actual obligations under the Convention. Therefore, not all of the provisions of the Convention are being realized in the Republic of Belarus, even though government bodies and NGOs have made great efforts to this end.

The following recommendations are proposed to resolve pressing problems in the sphere of children's rights in Belarus:

Regarding mechanisms to implement the Convention (articles 4, 42):

- Separate the constitutional status of the child out from general articles concerning civil rights and freedoms in the Constitution and bring these provisions together in a single statute.
- Separate out a new structural element of national law, namely, juvenile law.
- Introduce the position of agency of child rights ombudsman, which is traditionally a legally approved independent body created to advocate for the rights and legal interests of children.
- Develop and implement in national laws the concept of the "best interests of the child" in the theory and practice of social work.
- Provide for an annual study of the state of observance of the rights of the child in Belarus and the preparation and dissemination of a report on the results of this study. Provide society with access to these studies using all possible technical means.

Regarding Article 7:

- In relation to persons born on the territory of Belarus and not having citizenship in another country, cancel the conditions for gaining Belarusian citizenship listed in articles 13 – 16 of the law "On Citizenship in the Republic of Belarus," or define the terms for acquiring Belarusian citizenship that correspond to the Convention's provisions on reducing statelessness.
- Stipulate that the birth of a person on board a Belarusian vessel on open waters or in the air outside of the borders of the Republic of Belarus is a birth on the territory of the Republic of Belarus.

Regarding Article 9:

- To avert the unfounded removal of children from their families, develop an effective mechanism for helping families in a crisis situation (providing public housing, material support, job search support, educational support, and so forth), particularly in relation to single mothers as the most vulnerable category of citizens.
- Abolish the administrative procedure of removing a child from its family as contravening the Constitution.
- End arbitrary decisions when adopting a decision to remove children from their families, clarify the term “parents’ improper performance of their obligation to raise and support children.”
- Enshrine in the law and regulate at the regulatory level the cohabitation of mothers and their children at facilities within the correctional system.
- At the legislative level, enshrine the conclusion of child support agreements as a mandatory condition for divorce if there is no demand for alimony in court.
- Stipulate in laws the institution of joint custody of children after divorce.

Regarding Article 20:

- Improve laws for the family placement of orphaned children and children left without parental care by eliminating the territorial principle in respect of these relationships as a barrier to family placement, particularly for orphaned children and children deprived of parental care who have special needs.
- Legally enshrine patron care as a form of family care for a child deprived of parental care and conclude a fee-based contract on conditions for caring for a child with patron caregivers. Legally regulate guest (adaptation) families as a form of participation in care.
- Take meaningful actions to develop family forms of placement for orphaned children and children deprived of parental care and fulfill scheduled plans to close as many orphanages as possible throughout the country.
- Improve the system for financing social services for families with children in difficult circumstances, including by developing an open and equal market for social services (improve the system for contracting out social services).
- Stipulate that officials have liability for violating the procedures or timeframes for providing information about a minor in need of transfer to a family (for adoption, under guardianship (conservatorship), or to an adoptive family) or to an institution for orphaned children or children left without parental care, as well as for providing knowingly false information about such minor.
- Legally establish the possibility of exercising the constitutional right to social benefits (pension) if a breadwinner is lost for children whose parents are unknown.
- Improve the procedure for payment of allowances for caring for a child with a disability (cancel the mandatory condition of not being employed), as well as the procedure for indexing benefits paid to orphaned children and children deprived of parental care.

Regarding Article 28:

Create conditions for the inclusive instruction of special needs children, including by introducing the position of personal assistant (tutor). Develop programs for the robust instruction of special needs children in inclusive classes and general education schools. Tighten supervision of the accessibility and quality of these programs.

Regarding articles 37 and 40

- Improve the administration of justice in relation to children:
 - create specialized panels to consider the cases of minors;
 - specify a list of “living and care conditions” that must be established in each criminal case relating to crimes committed by a minor;
 - stiffen the punishment and liability of investigative bodies for mass violations of the rights of children in pretrial stages, the unjustified use of the harshest measure of pretrial restriction (imprisonment), torture, physical and psychological violence, and for obtaining evidence of a minor’s guilt illegally and in violation of Belarusian law.
 - introduce liability of investigative and other bodies for failing to provide medical, psychological, and other care, including when minors commit suicide in detention facilities.
- Enshrine in the Criminal Code and in practice probation as a measure of punishment for people who commit a crime under the age of 18 and mediation as a voluntary and confidential form of reconciliation between victim and suspect (accused).

Regarding Article 42:

Develop mechanisms for accessing information about children’s rights and protection of their rights with account for age, state of health, intellects, place of residence, and status.

Regarding articles 19 and 37a:

Develop effective measures to prevent all forms of violence against minors, including family violence, the use of non-pedagogical measures of discipline, and torture by police officers.



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