Analysis of Amendments
Initiated to be Introduced into the Legislation of the Republic of Belarus

Analytical Note by Belarusian Human Rights Defenders

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The Assembly of Pro-Democratic NGOs

Republican Human Rights Public Association "Belarusian Helsinki Committee"

Human Rights Center "Viasna"

Legal Transformation Center

The present research focuses on analysis of amendments initiated to be introduced into a range of laws of the Republic of Belarus in autumn of 2011.

1) The House of Representatives of the National Assembly of the Republic of Belarus adopted in two readings during one sitting of October 3, 2011, a **Draft Law of the Republic of Belarus "On Amending Certain Laws of the Republic of Belarus"** bringing alterations and amendments into a range of legal acts, such as:

- The Law of the Republic of Belarus "On Public Associations";
- The Law of the Republic of Belarus "On Political Parties";
- The Criminal Code of the Republic of Belarus;
- The Code of Criminal Procedure of the Republic of Belarus;
- The Electoral Code of the Republic of Belarus;
- The Code of the Republic of Belarus on Administrative Offences.

2) The House of Representatives of the National Assembly of the Republic of Belarus adopted a **Draft Law of the Republic of Belarus "On Amending the Law of the Republic of Belarus 'On Mass Events in the Republic of Belarus'"** in two readings during one sitting of the same day of October 3, 2011.

Consideration of the two draft laws is included into the agenda of the Seventh session of the Council of the Republic of the National Assembly of the Republic of Belarus of the Fourth convocation (the next sitting of the Parliament's Upper House is scheduled for October 21, 2011).

3) A **Draft Law of the Republic of Belarus "On Amending the Law of the Republic of Belarus 'On State Security Bodies in the Republic of Belarus'"** was introduced to the House of Representatives on September 30, 2011. A **Draft Law of the Republic of Belarus "On Amending Certain Laws of the Republic of Belarus Regulating the Issues of Trade in Firearms and Provision of Safeguard Services"** was submitted to the House of Representatives on September 27, 2011. Neither draft has been considered by the Parliament yet.

1. AMENDMENTS INTO THE LEGISLATION ON MASS EVENTS

1.1. Amendments and alterations into the Law of the Republic of Belarus "On Mass Events in the Republic of Belarus" have been introduced by the Draft Law of the Republic of Belarus "On Mass Events in the Republic of Belarus" (adopted in two readings by the House of Representatives of the Republic of Belarus on October 3, 2011). The present draft law was submitted to the Parliament by the Council of Ministers of the Republic of Belarus and appears to be politically conditioned by the protest actions that took place in Belarus earlier this year. Alteration norms involve both the procedure of organizing mass events and the process of participating in them.

Thus, Article 2 of the Law broadens the definition of picketing as a mass event. Joint mass presence of citizens at a previously agreed public location (including outdoors locations) at scheduled time so that to conduct an earlier defined act, such presence being organized for open expression of the citizens' public or political interests or protest (including that organized via the Internet or through other informational networks) equals picketing.

Initial wording of the Draft law was planned to be formulated as "so that to conduct an earlier defined action or inaction" instead of just "act". Public pressure forced the term "Inaction" be withdrawn from the text of the Draft law. However, due to the fact the Belarusian administrative and tort law interprets the term "Act" exactly as both "Action or inaction" (Code of the Republic of Belarus on Administrative Offences, Art. 2.1), the essence of the norm in the present Draft law provides the same grounds for bearing responsibility for inaction, being no different from the norm that caused public indignation initially introduced by the Draft law.

Therefore, any fact of joint presence of citizens at a previously agreed location forms components of a delinquency (corpus delicti) connected to violation of the procedure for the conduction of, and participation in, mass events. It is notable that possible indicators of the picketing additionally include organizing a meeting of citizens via the Internet or by means of other informational networks.

Article 4 introduces restrictions for persons already held liable for violation of the procedure for organizing and conducting mass events: such persons cannot act as organizers of mass events within a period of one year after the administrative charge was imposed on them. In this situation we can talk about creation of the practice of rights deprivation.

Article 5 of the Law additionally regulates conduction of mass events with the use of vehicles. Norms of the Article, in fact, prohibit this type of mass actions as such, because they require that the route, model and plate number of each vehicle together with the name and residence address of the driver should be enlisted in the application for conduction of the mass even with the use of vehicles.

The application for conduction of all types of mass events must obligingly include indication of "financial sources" for the event. Article 9 of the Law introduces an additional index of facilities for conduction of mass events where territorial limitations apply (in particular, it is not allowed to conduct mass events at a venue situated closer than 200 meters to the location of mass media editorial boards). Simultaneous conduction of several mass events at one venue or within the same route is prohibited. It is not allowed to distribute information about the date, place and time of a mass event via the Internet global computer network or through other informational networks before the permission for conduction of the mass event is obtained. Such permissions may be issued by a corresponding state body five days prior to the supposed date of conduction of the mass event.

Amendments introduced into the Law substantially broaden powers of the law enforcement agencies (the interior), whose officers are now authorized to fence out the venue of the mass event, to conduct photographing, audio- and video-recording of the mass event's participants, to establish access control, to demand citizens to leave the venue of the mass event in case they violate public order and requirements set forward by the Law under consideration, to stop access of citizens to the venue of the mass event. Officers of the law enforcement agencies get the right to conduct a pat-down search of citizens and their belongings, including that with the use of technical and special means. A citizen that refuses a pat-down search or a search of his/her carried belongings will not be allowed to access the venue of the mass event. Basically, the actions that officers of the interior conducted during the mass events earlier, before the present amendments were introduced, become legitimatized.

The Law of the Republic of Belarus "On Mass Events in the Republic of Belarus" was explicitly restrictive even without the amendments mentioned above. It tolerated uniquely a permissive procedure for conducting mass events and did not allow free exercising of the right to peaceful assembly. Amendments introduced into the Law restrict the rights of citizens even more and justify further repressions against organizers and participants of actions, including events conducted with the use of vehicles and organized through the Internet.

1.2. Draft Law of the Republic of Belarus "On Amending Certain Laws of the Republic of Belarus" provides for alteration of administrative liabilities for violating legislation on mass events. Article 23.34 of the Code of the Republic of Belarus on Administrative Offences has been retitled to "Violation of the Procedure for Organizing or Conducting Mass Events" and redrafted. Previous differentiation of the corpus delicti for this administrative offence upon three paragraphs of the article was done on the basis of indication whether an offence was committed by its organizer (Paragraph 2) or had a repetitive character (Paragraph 3). The present Draft, however, not only distinguishes between the parties committing the offence upon two paragraphs of the Article, but also notes that administrative liabilities occur in cases where no essence of a criminal offence is found, as set forward by the new Article 369.3 of the Criminal Code: "Violation of the Procedure for Organizing and Conducting Mass Events."

An important supplement to the objective aspect of this offence is that public appeals to organize or conduct a meeting, a street procession, demonstration, picketing with violations of a procedure for their organization or conduction are now included into actus reus of the offence. If combined with the prohibition to announce the date, place and time of a mass event, or to produce and distribute leaflets, posters and other materials before the permission for conducting the mass event had been granted (as stipulated earlier by the Law of the Republic of Belarus "On Mass Events in the Republic of Belarus"), the present norm will impose considerable difficulties on the process of notifying citizens about conduction of mass events as such.

The raise of the administrative fee in case a party held repetitively liable for an administrative offence within one year after the previous violation remains unchanged (Paragraph 3); liability for taking part in an action for a reward (Paragraph 4), as well as for giving out such rewards (Paragraph 5) has been introduced. A noteworthy innovation is that administrative liability in form of a fee amounting from 250 to 500 base units has been introduced for legal entities upon Paragraph 5 of Article 23.34.

Thus, legislation on administrative offences has been amended and altered due to introduction of amendments into the Criminal Code of the Republic of Belarus. Liabilities for repetitive offence and some other types of violating procedures for organizing or conducting mass events (including appeals to participate in such events) have been toughened.

1.3. Draft Law of the Republic of Belarus "On Amending Certain Laws of the Republic of Belarus" presupposes amending the Criminal Code with introduction of criminal liability for violating acts of legislation on mass events. There has been a suggestion to supplement the Criminal Code of the Republic of Belarus with a new Article 369.3: "Violation of the Procedure for Organizing or Conducting Mass Events."

Disposition of the present Article has been formulated as follows: "Public appeals towards conduction of a meeting, street procession, demonstration or picketing with violation of the established procedure of

their organization or conduction; inducement of persons by means of violence, threat, fraud or reward into participation in such mass events; any other type of organizing or conducting mass events that caused infliction of severe injury or death by negligence to one or several persons, or inflicted gross damage outside the circumstances forming the body of a crime set forward by Article 293 and Article 342 of the present Code."

Such wording of the disposition for Article 369.3 of the Criminal Code actually allows application of the so-called "strict liability" when a person is held liable for a criminal offence without his/her guilt being ascertained. Criminal legislation of the Republic of Belarus prohibits imposing criminal liability upon the principles of strict liability when the only issue taken into consideration is the level of peril of a person's deed and its deleterious effects, whereas the psychical attitude of a person towards the deed he/she committed is left unassessed (or if persons are held liable for a criminal offence in cases when their deeds have no causal relations with the damage inflicted, but the penalty of a person may be reasonable upon certain reasons, including political reasons). Guilt, being a subjective aspect of any crime, should reflect awareness, will and emotional experience of a person who committed the offence, his /her attitude towards its consequences (or the desire for such consequences to occur). In this particular case, suggested criminal liability may occur without consideration of presence or absence of intentions or negligence, i.e. without consideration of the guilt of a person in any of its forms.

A person shall be held liable for stating an appeal to participate in unsanctioned mass events in cases when conduction of such events caused death by negligence, infliction of severe injury to one or several persons, or infliction of gross damage.

Firstly, criminal liability in this case should be imposed only if, when summoning for participation in an unsanctioned mass event, a person realized or could have foreseen that such harmful consequences would occur – i.e. when guilt of a person (intended or negligent) may be found. Within the framework of the present situation, a person, calling up for participation in an unsanctioned mass event (not in mass disorders or group actions that roughly violate public order), may have no anticipations whatsoever regarding the possible deleterious consequences as it has been described by the present Article. In this case the person's deed bears no component elements of a crime, even those of a crime committed out of negligence.

Secondly, liability of a person is directly correlated with the deeds of third parties that may commit acts of crime despite the will of a person who summoned for participation in an unsanctioned mass event.

Thirdly, such a construction of the Article provides authorities with a possibility for false and deliberately misleading holding a person liable for criminal responsibility for summoning for a mass event. This can be done, e.g., by "coming up" with a fake gross damage by submitting financial claims under civil procedure in connection with the actual damage caused, or through provocative actions of third parties deliberately organized by authorities. Gross damage as stated by the present Article is damage reaching over 500 base units (about EUR 1000), which is not such a significant sum. Belarusian practice of the recent years has seen cases when participants and organizers of the mass events were opposed with financial lawsuits on supposedly caused material harm connected with conduction of such events (the case of the oppositional politicians who were organizers of the "European March" in 2007, the case of a spontaneous protest meeting on a "Bruzgi" border customs point in 2011).

The sanctions of the present Articles provide for the penalty in form of an arrest for the term of up to 6 months or a custodial restraint for the same term. Thus, pre-trial restrictions that may be used against the accused or the suspected during the investigation of such cases will include custodial restraint.

It is our strong belief that application of the present Article may lead to imposing criminal liabilities on non-guilty citizens exercising their right to peaceful assembly, it may also lead to politically motivated criminal prosecution of citizens.

Drafts of the suggested amendments of the legislation on mass events contradict the OSCE Guidelines on Freedom of Peaceful Assembly that envisage, among other issues, presumption in favor of assembly,

responsibility of the state to protect peaceful assembly, proportionality of restrictions related to the freedom of assembly and due administrative control.

2. AMENDMENTS INTO THE LEGISLATION ON POLITICAL PARTIES, PUBLIC ASSOCIATIONS AND GRATUITOUS FOREIGN AID

2.1. Draft Law of the Republic of Belarus "On Amending Certain Laws of the Republic of Belarus" presupposes introduction of amendments into the Law of the Republic of Belarus "On Public Associations." In particular, it has been suggested to complement Article 7 of the Law with Paragraph 3 of the following content: "Activity of public association, [and their] unions promoting provision of benefits and preferences by foreign states to the citizens of the Republic of Belarus due to political, religious outlooks or national identity, thus breaching the law, shall be prohibited." It seems obvious that this norm is introduced into the legislation as a measure of implementation of the position of the Constitutional Court of the Republic of Belarus expressed by a decision "On the Opinion of the Constitutional Court of the Republic of Belarus in Relation to the Law of the Republic of Poland "On Karta Polaka [The Polish Card]" as of April 7, 2011.

However, execution of this opinion of the Constitutional Court by transferring it into a legislative norm appears to have taken an utterly unsuccessful form. In particular, inclusion of the characteristics of "political, religious outlooks" (instead of identification with certain public associations or parties) in legal terms cast doubt on activities of religious organizations connected to foreign religious centers and belonging to corresponding confessions (Islam, Christianity, Judaism). This provision, despite its vagueness, may clearly be interpreted as the grounds for restricting Belarusian public associations in their work with foreign organizations upon the issues of providing financial or other types of support to citizens that express certain political or religious beliefs (in particular, the "Kalinouski Program" for students that have been expelled from their universities upon political reasons; or assistance provided to pilgrims in organizing visits to the sites of religious faiths, etc.)

2.2. Draft Law of the Republic of Belarus "On Amending Certain Laws of the Republic of Belarus" introduces significant change in the regulations on providing gratuitous foreign aid. The Draft law defines the regimen of using gratuitous foreign aid, it also provides for establishment of additional restrictions of acquisition of financing by political parties. Together with that, liabilities for infringing the regimen of acquisition of gratuitous foreign aid have been severely toughened.

The Draft law suggests that a norm prohibiting republican and local public associations, their units from depositing monetary funds, precious metals and other valuables in banks and non-banking credit and financial institutions on the territory of foreign states should be introduced into the Law of the Republic of Belarus "On Public Associations." The restraint is analogous to that in place relating to political parties and their unions, but does not cover international public associations and their organizational structures, foundations or institutions. Nonetheless, restrictions on opening accounts abroad do apply to all Belarusian legal entities: when no permission is granted by the National Bank, this action forms a body of a criminal offence.

It is reasonable, therefore, to state that the present Draft law introduces a discriminative norm in relation to public associations as compared to other types of legal entities in Belarus.

2.3. As to the issue of financing political activities, Draft Law of the Republic of Belarus "On Amending Certain Laws of the Republic of Belarus" sets forward restrictions for political parties on receiving donations from legal entities – residents of the Republic of Belarus – that belong to organizations with foreign investment, as well as from organizations that received gratuitous foreign aid from foreign states, foreign organizations, international organizations, foreign citizens, stateless persons and anonymous donors within the period of one year prior to the day of donation, if gratuitous foreign aid obtained by these organizations had not been returned to the initially providing foreign states, foreign organizations, international organizations, foreign citizens, stateless persons, or if, in cases when it was impossible to return the aid, the aid was not transferred (passed over) to the benefit of the state prior to the

day of submission of a donation to a political party (Law of the Republic of Belarus "On Public Associations", Article 24, Paragraph 5).

It is also planned to specify that monetary assets and other property received by political parties, unions and their legal entities from prohibited sources shall be passed on to the benefit of the state or, in case of a refusal to pass them on by free will, shall be recovered to the benefit of the state through legal proceedings.

Together with the restriction of foreign financing for political parties, a suggestion has been made to limit the possibilities of receiving monetary assets to the electoral funds that are now stipulated for by Belarusian legislation. The Draft Law of the Republic of Belarus "On Amending Certain Laws of the Republic of Belarus" provides for introduction of the following amendments into the Electoral Code of the Republic of Belarus: organizations that received gratuitous foreign aid from foreign states, foreign organizations, international organizations, foreign citizens, stateless persons and anonymous donors within the period of one year prior to the day of a donation shall be prohibited from making donations into electoral funds of candidates if gratuitous foreign aid obtained by these organizations had not been returned to the initially providing foreign states, foreign organizations, international organizations, foreign citizens, stateless persons, or if, in cases when it was impossible to return the aid, the aid was not transferred (passed over) to the benefit of the state prior to the day of submission of a donation to the electoral fund. An analogous prohibition is planned to be introduced in relation to organizations that had been registered according to the established procedure for a period less than a year prior to submission of a donation to the electoral fund.

2.4. Draft Law of the Republic of Belarus "On Amending Certain Laws of the Republic of Belarus" substantially toughens responsibilities for violating procedures of receiving gratuitous foreign aid, thus suggesting that not only the existing administrative liabilities should become more rigorous (and it would become possible to liquidate public associations and political parties for such violations), but also criminal liabilities should be imposed.

The previous version of Article 23.23 of the Code of the Republic of Belarus on Administrative Offences: "Violation of the Procedures for Using Gratuitous Foreign Aid" changes the objective aspect of the offence. If the current draft (in force) of Paragraph 2 of Article 23.23 stipulated that liabilities should be imposed for improper use of gratuitous foreign aid or use of such aid for the aims prohibited by law, the new composition includes all forms of using gratuitous foreign aid with infringement of the law. Considering that Belarusian accounting legislation, economic legislation, tax legislation, as well as legislation on documents management can be characterized by numerous gaps and equivocal norms, the present alteration would mean a factual possibility to hold any recipient of gratuitous foreign aid liable for an administrative offence, should a formal violation be detected by a controlling body.

Article 23.24 of the Code of the Republic of Belarus on Administrative Offences that presently bears a title "Provision of Gratuitous Foreign Aid by a Foreign Citizen or a Stateless Person for the Aims Prohibited by the Law" has been suggested to be retitled as "Violation of Legislation on Gratuitous Foreign Aid." At the same time, the special subject and the objective aspect of the offence remain unchanged in Paragraph 1 of the present Article: "Provision of gratuitous foreign aid by a foreign citizen or a stateless person for conduction of activities prohibited by Belarusian legislation shall entail deportation and confiscation of the aid."

However, Paragraph 2 has been introduced into the Article so that to complement the objective aspect of the act: receiving, as well as storing and transferring gratuitous foreign aid so that to conduct extremists actions or other unlawful acts, or to finance political parties, unions (associations) of political parties or preparation and conduction of elections, referenda, recall of a deputy, member of the Council of the Republic of the National Assembly of the Republic of Belarus, organization or conduction of meetings, street processions, demonstrations, picketing, strikes, production or distribution of agitation materials, conduction of seminars or any other type of political and mass agitation work with the population, if such acts bear no essence of a crime, shall lead to liabilities in form of a fee amounting from 50 to 200 base

units with confiscation of such aid, and if applied to a legal entity – a fee amounting up to 100 per cent of total cost of gratuitous foreign aid with confiscation of such aid.

Hence, the innovation not only makes liabilities for those legal entities that deal with gratuitous foreign aid more severe. In fact, the lawmaker decided to include administrative responsibility for all types of offences that may occur when operating with gratuitous foreign aid, as described by Article 23.23 and Article 23.24. Definition of "Other unlawful acts" when combined with the broader interpretation of deliberately vague notion of "Mass agitation work with the population" provides space for rating any activity related to receiving gratuitous foreign aid as violation of the law.

Deepest concern in this connection is caused by the suggestion to supply the Criminal Code of the Republic of Belarus with Article 369.2: "Receiving Gratuitous Foreign Aid in Infringement of the Legislation of the Republic of Belarus" that prejudices Paragraph 2 of Article 23.24 of the Code of the Republic of Belarus on Administrative Offences. If a person, having been held liable upon Paragraph 2 of Article 23.24 of the Code of the Republic of Belarus on Administrative Offences, commits an analogous violation within the term of one year after the administrative violation has been imposed, this will lead to criminal penalty according to Article 369.2 of the Criminal Code: "Receiving Gratuitous Foreign Aid in Infringement of the Legislation of the Republic of Belarus."

Objective aspect of the suggested Article 369.2 of the Criminal Code: "Receiving Gratuitous Foreign Aid in Infringement of the Legislation of the Republic of Belarus" duplicates that of the offence provided for in Paragraph 2 of Article 23.34 of the Code of the Republic of Belarus on Administrative Offences. The present norm, if introduced into the Criminal Code, will regulate that receiving, storing and transferring gratuitous foreign aid for the aims of conducting extremists activities or other acts prohibited by the laws of the Republic of Belarus, or for the means of financing political parties, unions (associations) of political parties, preparation or conduction of elections, referenda, recall of a deputy, member of the Council of the Republic of the National Assembly of the Republic of Belarus, organization or conduction of meetings, street processions, demonstrations, picketing, strikes, production or distribution of agitation materials, conduction of seminars or any other type of political and mass agitation work with the population, if undertaken within a period of one year after administrative liabilities were imposed for the same violation, shall lead to liabilities in form of a fee or an arrest for the term of up to 3 months, or a custodial restraint for the term of up to 2 years.

The same claims as those set for Paragraph 2 of Article 23.34 of the Code of the Republic of Belarus on Administrative Offences may be put forward to the present Article. The term "Other actions prohibited by law" if applied with a lateral interpretation of the deliberately vague definition "Mass agitation work with the population", in cases of a non-discarded administrative liability provide space for rating any activity related to receiving and using gratuitous foreign aid as a criminal offence. On the other hand, legal interpretation of the wording "Receiving…for conducting extremists actions or other acts prohibited by the law" allows to estimate the present essence of a crime as that of a crime with direct intentions: direct intentions for undertaking extremists actions or other acts are required. Unfortunately, involvement of "Mass agitation works" into the aims of activities provide grounds for considering barely any type of awareness raising activities as the actions stipulated for by the present Article. Within this context, a special concern is caused by the fact that prerequisites for both administrative and criminal liabilities are meant in the processes of receiving, storing and transferring gratuitous foreign aid for conduction of any seminars, despite their aim and subject matters.

Notions used by the articles of the Code of the Republic of Belarus on Administrative Offences and of the Criminal Code of the Republic of Belarus mentioned above were initially introduced by the Presidential Decree #24 "On Receiving and Using Gratuitous Foreign Aid" as of November 28, 2003. Gratuitous foreign aid should be, therefore, considered as monetary assets, including those in foreign currencies, goods (property) that are gratuitously provided for use, possession, disposition of organizations and natural persons of the Republic of Belarus by foreign states, international organizations, foreign organizations and citizens, stateless persons and anonymous donors. Interest-free loans, membership fees paid off by foreign founders (members) of Belarusian non-profit organizations, as well as means

transferred by the mentioned parties to organizations and natural persons of the Republic of Belarus through approved financial estimates shall also be considered gratuitous foreign aid.

It is important to notice that toughening of administrative liabilities and introduction of criminal liability will touch upon not just the persons receiving aid as members of political parties or public associations, but will cover all natural persons not affiliated with political or other types of organizations.

Almost simultaneously, other legal acts altered the norms establishing the volume of gratuitous foreign aid that does not need to be registered with the Department on Humanitarian Activity established under the Presidential Administration of the Republic of Belarus (the body is entitled to register gratuitous foreign aid; using gratuitous foreign aid without such registration is illegal). On October 11, 2011, the Decision #10 of the Presidential Administration of the Republic of Belarus "On Amending the Regulations for Registering, Accounting, Receiving and Using Gratuitous Foreign Aid" dated September 26, 2011, enters into force. This norm provides for an increase of the size of gratuitous foreign aid (from 100 base units to 500 base units) received by a natural person through banking and postal transfers liable to be enlisted with the Department on Humanitarian Activity under the Presidential Administration of the Republic of Belarus but without a need to be granted a certificate for registration of such aid. Thus, if a natural person of the Republic of Belarus receives a sum of up to 17 500 000 Belarusian roubles (equivalent to EUR 1500) per month in form of banking and postal transfers, there is no need to turn to the Department on Humanitarian Activity so that to register the money. At the same time, considering the proportionality of the norm introduced as an amendment to the provisions of the Criminal Code and provisions of the Decree #24, it is possible to assume that usage of the money that does not need to be registered with the Department for the sake of actions enlisted in the disposition of the criminal article, may still be interpreted as a criminal offence and lead to liabilities suggested by Article 369.2 of the Criminal Code.

3. AMENDMENTS INTO LEGISLATION ON SPECIAL SERVICES

3.1. Widening of the powers of state security bodies. The Draft Law of the Republic of Belarus "On Amending the Law of the Republic of Belarus 'On State Security Bodies in the Republic of Belarus'" is quite interesting to be analyzed from the perspective of the scope of rights set available for state security bodies and the practice of exercising use of physical force, special means, firearms, warlike equipment and special vehicles by the officers of such services.

As directed by the current wording of the Law in action (Article 14), state security bodies shall be granted right to freely access the dwellings or other legal possessions of natural persons, premises and (or) other facilities of state bodies and other organizations (excluding premises or other facilities of diplomatic and consular missions of foreign states, of international organizations granted diplomatic immunity according to the international treaties of the Republic of Belarus and premises where employees of such missions, organization and their families reside) at any time of the day, including accessing the dwellings and premises with causing damage to the locking devices and other objects, and inspecting the premises while chasing persons suspected guilty of a crime, or when there are enough grounds to assume that the crime is being committed or has been committed there that requires interrogation and preliminary investigation by the state security bodies as assigned by legal acts of the Republic of Belarus, or that the person in hiding from state bodies in charge of a criminal investigation is inside the premises, or while implementing urgent investigative actions to be further reported to the prosecutor within 24 hours.

The new wording of the present Article makes it optional to report to the prosecutor within 24 hours after breaching the inviolability of residence. This, obviously, may have a negative impact on the level of security of the right to inviolability of residence. General scope of the rights under consideration corresponds to the rights of officers of the law enforcement agencies (of the interior) as set forward by the Law of the Republic of Belarus "On Law Enforcement Agencies (The Interior) of the Republic of Belarus."

3.2. Among the newly introduced rights assigned to state security bodies, it is important to note the right to conduct foreign intelligence actions in the sphere of encrypted and other types of specialized communication from the territory of the Republic of Belarus by means of radio-electronic tools and methods, as well as the right to conduct a pat-down search of natural persons and their carried belonging on the entrance (by foot or by vehicle) to the guarded facilities of state security bodies and at the exit from them, to conduct examination of documents, vehicles and items inside them, including search with special equipment. With no restrictions suggested for this norm, it is possible to assume that lawyers that visit the KGB pre-trial detention facility may be subject to the procedures mentioned above (pat-down search, examination of documents and belongings). It is obvious that the right to independence of the lawyer will be violated and no attorney-client privilege will be ensured.

3.3. Substantial alterations have taken place in regulations on exercising use of firearms and special means by officers of state security bodies. The essence of Article 16 of the Law: "Exercising Use of Firearms, Special Equipment and Physical Force" has been altered. The Law has been supplemented by Article 16.1: "Exercising Use of Physical Force", by Article 16.2: "Exercising Use of Special Means", by Article 16.3: "Exercising Use of Firearms" and Article 16.4: "Exercising Use of Warlike Equipment and Special Vehicles."

The scope of powers as defined for the officers of state security bodies today is almost identical to that defined for the officers of law enforcement agencies (of the interior), for officers of organizations and departments on emergency situations of the Republic of Belarus, on financial investigations, on military officers. However, the Law under consideration, just as any other law regulating activities of the organizations and bodies mentioned above, provides for open enumeration of cases when employees or officers of such organizations and bodies may exercise use of special means, firearms and equipment, justifying such use by "other cases defined by the President of the Republic of Belarus."

(The Law of the Republic of Belarus "On Bodies and Subdivisions on Emergency Situations of the Republic of Belarus" #45-3 as of July 16, 2009)

(The Law of the Republic of Belarus "On Bodies of Financial Investigations under the Committee for State Control of the Republic of Belarus" #414-3 as of July 16, 2008)

(The Law of the Republic of Belarus "On the Internal Troops of the Ministry of Interior of the Republic of Belarus" # 2341-XII as of June, 3, 1993)

(The Law of the Republic of Belarus "On Bodies of the Interior of the Republic of Belarus" #263-3 as of July 17, 2007)

It is important to note that conditions for exercising physical force, special means, warlike and special equipment, firearms as provided by the Law of the Republic of Belarus "On State Safeguarding" #16-3 as of May 08, 2009, are mentioned in a classified list.

A classified index of prerequisites for lawful application of firearms has also been specified in the Regulations of the State Customs Committee of the Republic of Belarus "On Procedure of Acquisition, Transportation, Storing, Registering and Using Firearms and Ammunition within the System of State Customs Controls of the Republic of Belarus" as of February 2, 1993. The list of lawful prerequisites was also provided for in the "Provisions on Procedure of Exercising Firearms, Warlike and Special Vehicles while Safeguarding State Border of the Republic of Belarus" adopted by the Presidential Decree #125 "On Certain Issues of Safeguarding State Border of the Republic of Belarus" as of March 09, 2009.

3.4. Draft Law of the Republic of Belarus "On Amending the Law of the Republic of Belarus 'On State Security Bodies in the Republic of Belarus'" stipulates that the officer of state security bodies bears no liability for the damage caused by exercising physical force, special means, warlike equipment and special vehicles, application (use) of firearms in cases described in the present Law and other acts of legislation, should the boundaries of the required defense be observed or measures needed for suppression of a crime or other types of offence, as well as for detention of the persons having committed such crimes, for suppressing disobedience to the lawful demand of the state security officer be applied in cases where

non-violent measures do not provide for fulfillment of the working responsibilities; the officer bears no liability for the damage cause by the same actions if he had been acting in fulfillment of a compulsory lawful order or instruction apart from cases of committing a deliberate crime upon a deliberately unlawful order or instruction; the officer bears no liability for the damage caused by the same actions if he had been acting under the circumstances of justified professional risks or utter need.

At the same time, the new Draft Law suggest new wording of Article 19 of the Law of the Republic of Belarus "On State Security Bodies" defining that "Officers of state security bodies shall have a right to a justified professional risk. Damage caused by the officers within the circumstances of acting at justified professional risk shall not be considered a violation of a law. Professional risk shall be considered justified if the act committed by the officer of state security bodies was objectively connected to the circumstances in place and the aim set forward could not be achieved by means unconnected to professional risk, and that the officer of state security bodies that allowed for professional risk to occur took all the measures to avoid causing damage". In this particular case, the legislator in defining grounds for professional risk substitutes the notion of "Lawful aim" with the notion of "The aim set forward" which gives a drastic change in the essence of professional risk as a notion. The new legislative construction supposes that the background for withdrawing liabilities from state security officers for causing damage by their actions is formed not by the law, but by the current reasonability and the order.

Hence, the Draft law creates preconditions for violation of the rights of citizens to inviolability of residence and other legal possessions of citizens, as well as to freedom, inviolability and dignity of a person.

3.5. According to the Draft Law of the Republic of Belarus "On Amending Certain Laws of the Republic of Belarus Regulating the Issues of Trade in Firearms and Provision of Safeguard Services", numerous alterations are expected to be introduced into the present Law, some being connected to broadening the powers assigned to special services, other imposing additional restrictions on the use of firearms by employees of other organizations.

4. AMENDMENTS TO THE CRIMINAL CODE

4.1. Apart from introduction of new articles as mentioned in Sections 1.3. and 2.4. of the present Analytical Note, the Draft Law of the Republic of Belarus "On Amending Certain Laws of the Republic of Belarus" presupposes introducing alterations to a range of other articles of the Criminal Code.

4.2. Thus, the Draft Law of the Republic of Belarus "On Amending Certain Laws of the Republic of Belarus" provides for a change in the essence of a crime upon Article 356 of the Criminal Code: "Treason against the State". Present disposition of Article 356 of the Criminal Code: "Treason against the State" reads as follows – "Divulging of a state secret to a foreign state, foreign organization or their representative, or espionage, or adhering to the enemy in wartime or during the time of an armed conflict, or assistance to a foreign state in conducting hostile actions against the Republic of Belarus by committing crimes against the state upon directions of bodies or representatives of a foreign state that have deliberately been undertaken by a citizen of the Republic of Belarus to the prejudice of external security of the Republic of Belarus, its sovereignty, territorial integrity, national security and defensive powers." Such formulation of the Article's disposition leaves no space for a lateral interpretation and literally does not require to be commented on.

New wording of the disposition of the present Article: "Divulging of state secrets of the Republic of Belarus, as well as of information that composes state secrets of other states submitted to the Republic of Belarus with due consideration of the laws of the Republic of Belarus, to a foreign state, foreign organization or their representative, or espionage, or covert intelligence work, or adhering to the enemy in wartime or during the time of an armed conflict, or provision of other types of assistance to a foreign state, foreign organization or their representative in conducting actions against the national security of the Republic of Belarus that have deliberately been undertaken by a citizen of the Republic of Belarus."

"Covert intelligence work" and "provision of other types of assistance to a foreign state, foreign organization or their representative in conducting actions against the national security of the Republic of Belarus" become the new forms of treason against the state. Using in the criminal legislation such wording as "provision of other types of assistance to a foreign state, foreign organization or their representative" creates space for arbitrary lateral interpretation of the present norm, thus allowing to consider actions inflicting no harm to the national security as the treason against the state.

Besides, the Concept of National Security of the Republic of Belarus adopted on November 9, 2010, by the Edict #575 of the President gives very broad definitions to the notions of "national security" and "national interests". National security means conditions and state of protection of the national interests of the Republic of Belarus from internal and external threats. National interests are an aggregation of the needs of the state upon implementation of well-balanced interests of a person, society and state that provide for realization of constitutional rights and freedoms, for high quality of a living of citizens, for independence, territorial integrity, sovereignty and sustainable development of the Republic of Belarus.

4.3. The notion of "covert intelligence work" (obviously analogous to the definition of espionage) is provided for by a newly introduced Article 358.1 of the Criminal Code: "Covert Intelligence Work". The Article introduces liabilities for "Recruiting a citizen of the Republic of Belarus or any other activities undertaken by a foreign citizen or a stateless person with the aims of conducting work to the prejudice of the national security of the Republic of Belarus." Thus, recruitment of a Belarusian citizen becomes criminalized, so do any other activities undertaken by a Belarusian citizen to conduct work to the prejudice of the national security of the Republic of Belarus. This type of "treason against the state" is quite indefinite, may be arbitrary interpreted and serve a tool for an unjustified criminal prosecution. The same characteristics should be given to "other types of assistance to a foreign state, foreign organization or their representative in conducting actions against the national security of the Republic of Belarus" as to the form of treason against the state. It should also be noted that these definitions provide for application of the strict liability. Lack of legislative definition of the notion "recruiting" may create preconditions for arbitrary application of the present essence of a crime on various types of cooperation and communication between Belarusian and foreign citizens.

4.4. Amendments of the Criminal Code also criminalize the issue of "Establishing cooperation in confidence between a citizen of the Republic of Belarus and special services, security bodies or intelligence services of a foreign state, where no sign of treason against the state is found" (Article 356.1 of the Criminal Code). Grounds for criminal liabilities upon this Article may be arbitrary broadened due to the indefinite character of the term "special services of a foreign state" and because of the vagueness of the term "establishing cooperation in confidence." Hence, amendments introduced into the Criminal Code of the Republic of Belarus may serve as a tool in holding criminally liable those persons who cooperate in various forms with international organizations and maintain contacts with foreign citizens and institutions.

4.5. Article 358 of the Criminal Code: "Espionage" has also been altered. The term "State secret" that the present Article operated with has been changed to "State secrets of the Republic of Belarus, as well as […] state secrets of other states submitted to the Republic of Belarus with due consideration of the laws of the Republic of Belarus." State secret [тайна] is information that, if revealed or lost, may cause grave consequences for the national security of the Republic of Belarus. State secrets [секреты] or information that composes state secrets is data duly classified as state secrets under protection of the state in accordance with the present Law and other acts of legislation of the Republic of Belarus. State secrets are assigned with classification levels of "Primary Concern", "Top Secret", and official secrets are labeled as "Classified." Thus, a substantial broadening of the levels of information subject to espionage has taken place.

4.6. Article 293 of the Criminal Code: "Mass Disorders" has been amended. The range of signs of mass disorders has been interlinked by the conjunction "or", this creating alternativity of such signs. So, in fact, the legislator formalizes the practice that was in place in relation to participants and organizers of the protest actions against falsification of elections on December 19, 2010. Position of the defense in

those criminal cases was based on the point that the essence of the crime upon the present Article may be found only when all the signs are included – violence against persons, pogroms, arsons, destruction of property and armed resistance to the authorities. Wording "organization of mass disorders that are accompanied by violence against persons, pogroms, arsons, destruction of property or armed resistance to the authorities" disavows such a position.

Therefore, Draft Laws of the Republic of Belarus "On Amending the Law of the Republic of Belarus 'On Mass Events in the Republic of Belarus'", "On Amending Certain Laws of the Republic of Belarus", "On Amending the Law of the Republic of Belarus 'On State Security Bodies of the Republic of Belarus'" contravene the Constitution of the Republic of Belarus (Articles 25, 33, 35, 36), the Universal Declaration of Human Rights and international obligations of the Republic of Belarus – in particular, the International Covenant on Civil and Political Rights and the OSCE Guidelines on Freedom of Peaceful Assembly.