

FREE LEGAL OFFICE

for the protection of rights of foreign citizens and stateless persons

REPORT FOR 2019

Human Constanta is a Belarusian human rights organization.

We were founded in 2016, in Minsk. We work in three main areas:

- protection of the rights of foreign citizens and stateless persons;
- promotion of anti-discrimination and informal education in the sphere of human rights;
- digital freedoms and rights.

In 2017, Human Constanta opened a free legal office for the protection of foreign citizens and stateless persons in Belarus. We consult foreigners who find themselves in complicated situations related to the Belarusian law for free. This report is an overview of the situation and a description of the legislative and enforcement problems that we encountered in 2019.

MAIN CONCLUSIONS



For three years, the free legal office has been advising foreign citizens and stateless persons on issues related to the arrival and further stay in Belarus.

In 2019, 420 people from 60 countries of the world applied to the office in Minsk. Most of the applicants are citizens of Russia and Ukraine. Almost half of those who applied in 2019 at the time of the appeal were in Belarus, and the second half was outside it. Most applications relate to a Permanent Residence Permit (PRP) and a temporary residence permit (TRP).

In the reporting year, we identified flaws in the work of migration services, that worsened legal status of foreigners: poor-quality work of electronic

registration of foreigners that temporarily stay in Belarus; there is no way to apply for a TRP for foreigners arriving in Belarus under a visa-free regime. Also, several appeals confirmed that migration officials continue to refuse to issue invitations for issuing guest visas for citizens from the list of countries that are not migrant-safe. Such a list of countries is still not available to the general public.

The Belarusian legislation provides for several procedures for the expulsion of foreigners: deportation, expulsion and extradition. In the reporting year, the established practice of infringing on the rights of foreigners subjected to the expulsion procedure was confirmed. The procedure of expulsion, unlike deportation, is not a part of the administrative process. Therefore, expelled foreigners are not endowed with the relevant procedural rights. In addition, the established appeal procedure does not guarantee non-refoulement until the time the complaint is filed. Cases of leaving such complaints without consideration were also identified. The procedure for extradition of foreigners should be more regulated by the Belarusian legislation in order to provide more guarantees in terms of human rights and requires more serious reasons and evidence for its implementation. In 2019, there were positive examples of not expelling from Belarus those

who were in danger in their countries of nationality, for example, Mehrdad Dzhamshidiyan, Farhod Odinaev.

In the reporting year, when working with the grounds for expulsion specified in the law, we drew the attention of the Belarusian competent authorities to the fact that they should not overuse the application of such a procedure without substantial and specific reasons, when there is no real threat to public safety. This is especially important to consider when expelling foreigners who have a strong connection with Belarus and are not able to reside in their countries of citizenship.

In 2019, the problem of the long-term detention of foreigners in temporary detention facilities, which are not provided for this, still remains. They do not provide the opportunity for communication with relatives, the conditions of detention are unfavorable for life and health, the detainees are not provided with proper medical care. The detention is not subject to periodic review and judicial review, which sometimes leads to prolonged imprisonment of people who are not even charged with anything.

For foreigners detained as part of the administrative process, there is no provision for a state defense counsel. At the same time, a foreigner is

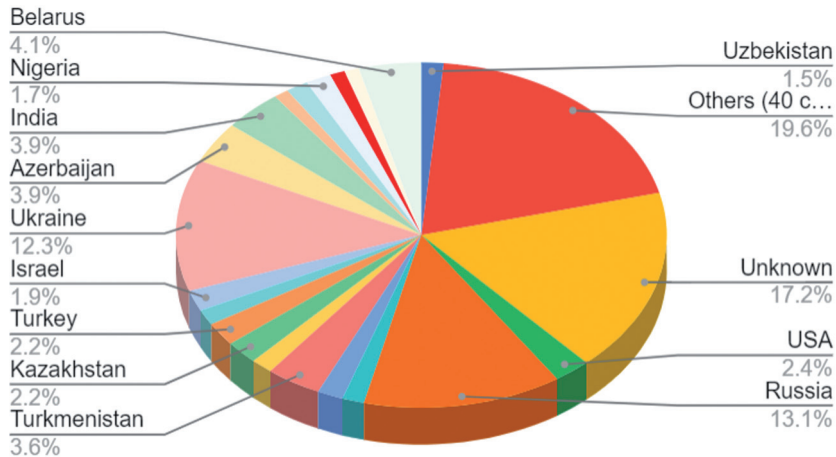
deprived of the opportunity to independently hire a lawyer while in custody. We drew the attention of the Belarusian National Bar Association and authorized bodies to this problem and suggested starting work on amending the current legislation in terms of establishing guarantees of access to legal assistance.

To improve the situation with respect and compliance for the human rights of foreign citizens, in 2019 Human Constanta proposed legislative amendments to the Law on the Legal Status of Foreign Citizens and Stateless Persons and to a number of other normative acts, but most of our proposals were not supported with the exception of the proposal for a legislative guarantee for free medical care detained by foreign citizens.

GENERAL INFORMATION

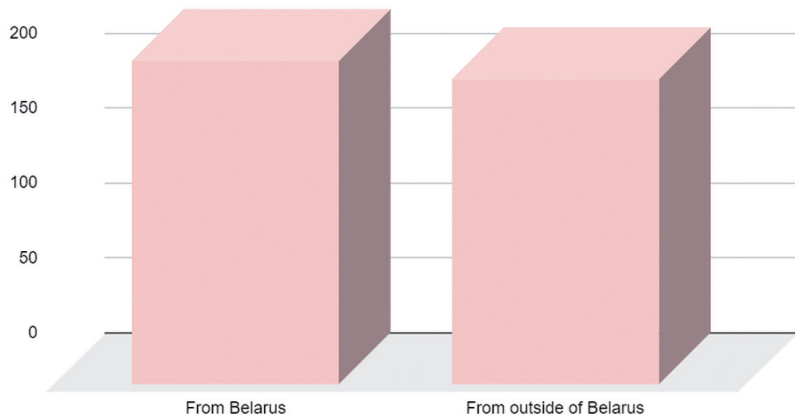


In 2019, our free legal office for foreign citizens and stateless persons consulted 420 people from 60 countries by phone, email, and also in our office in Minsk. We gave advice on a wide range of issues related to their arrival and stay/residence in Belarus.

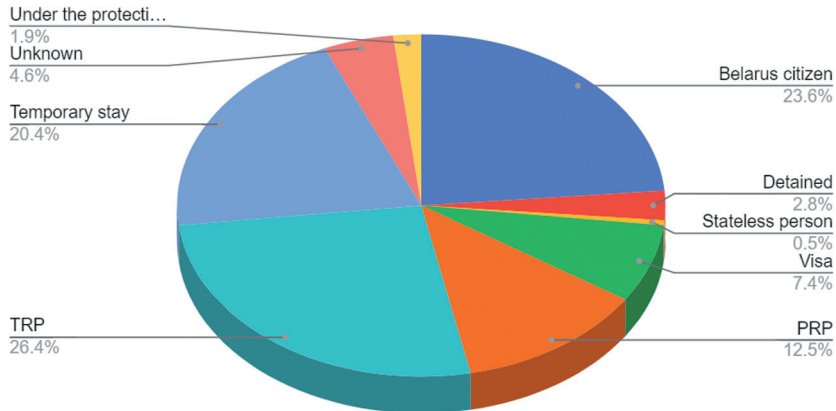


More than 25 % of the foreigners are citizens of Russia and Ukraine. Despite the absence of a language barrier and the similarity of the legislative framework, the applicants have many problems associated with the administrative procedures in Belarus and more complex problems during their stay in Belarus.

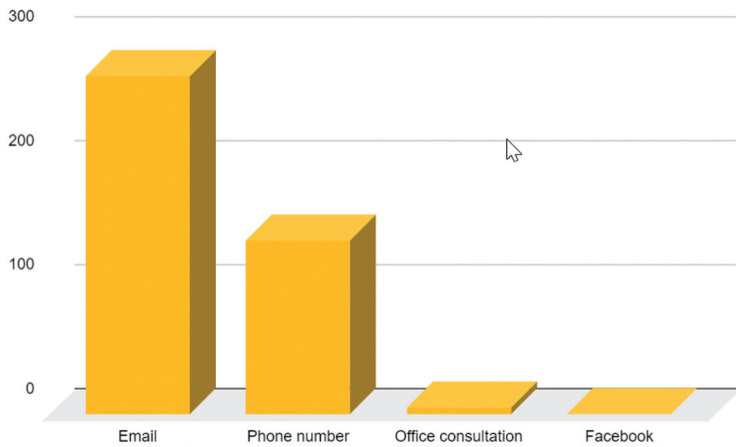
In 2019, the number of applicants from Belarus almost equaled the number of requests from abroad (51,4 % to 48,6 %, respectively). We can say that the information is not enough both for those who are already in Belarus, and for those who are just going to come to our country. Belarusian citizens often come with questions about the arrival of their foreign friends and acquaintances.



Those who contacted us from Belarus usually have a permit for temporary or permanent residence. A number of applicants who come to Belarus as part of a visa-free regime has increased.



We receive most of the requests via e-mail. They also contact us by phone, including Whatsapp, telegram, signal, through a special form on the website, through our social networks. Additionally, we provide consultations for foreigners who contact us in our office in Minsk.



TOPICS OF APPLICATIONS

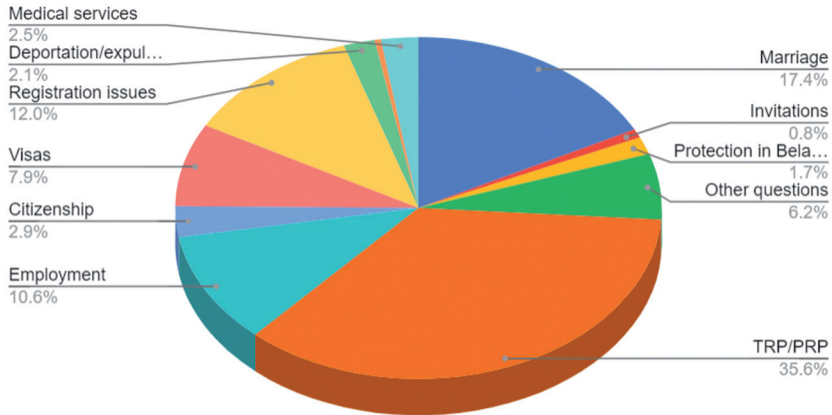


We have provided consultation for foreigners on various topics:

- Visa-related issues: obtaining visas to the Republic of Belarus (entry and exit), visa extension, visa-free regime.
- Issuance of invitations for foreign citizens to Belarus.
- Citizenship-related issues: acquisition/restoration/cancellation.
- Marriage to a foreign spouse in Belarus.
- Employment-related issues, including obtaining of a permit for employment of foreign citizens; opening a business.
- The procedure for receiving pensions.
- Medical services: health insurance for foreign citizens, receiving of emergency and planned medical care.
- Appeal against decisions on deportation, expulsion, extradition, reduction of the period of stay, or inclusion in the List of individuals

whose entry into the Republic of Belarus has been banned or deemed undesirable.

- Obtaining protection in Belarus: refugee status, additional protection.
- Residence registration and prolongation, change of address.
- Processing and prolongation of TRP and PRP: grounds, procedure, reasons of cancellation, refusal to apply, etc.
- Other issues: inheritance, right-hand drive car usage, customs clearance, education, parental leave, etc.



GENERAL ADMINISTRATIVE PROCEDURES



Even before arriving in Belarus, foreigners who need Belarusian entry visa may encounter some difficulties. In order to receive a guest visa to Belarus by a foreigner, a special invitation must be issued by the Belarusian authorities. In practice, there is a problem of refusals by CMO employees to issue invitations for citizens of the states included in the list of disadvantaged countries in terms of migration. The existence of such a list is not established by law, the criteria for assigning certain countries to the list are not clear, and it is not a public one. Thus, situations of misuse on the part of employees of migration services may arise.

For example, a citizen of Belarus came to us who wants to issue an invitation for her friend from Algeria. The CMO directly told her that it is better not to apply for an invitation, as there is a high probability of refusal. The reasons for the refusal were not announced by CMO.

After arriving in Belarus, foreigners mostly encounter difficulties in obtaining temporary registration and applying for a permit for permanent or temporary residence.

The electronic registration of foreigners who stay in Belarus temporary was intended to simplify this administrative procedure. However, foreigners have repeatedly contacted us with requests to clarify the online registration procedure or to complain about errors in the operation of a single electronic services portal. For example, we received a letter from an Israeli citizen who was trying to issue his temporary registration in electronic form. He faced the fact that the system was not able to find his data on crossing the border, the Russian-language and English-language versions of the electronic form were different; when using the Russian-language version, Israel was not in the list of citizenship states.

We also found that in practice a foreigner who has arrived in Belarus on a visa-free regime cannot apply for TRP. Several foreigners who came under a visa-free regime and got married in the Belarusian departments of the registry office came for assistance. The law contains no prohibition of such a procedure. However, in the future, employees of the citizenship and migration departments require them to have an entry visa to accept documents for a TRP or PRP on the basis of marriage.

Other problems arise during the preparation of documents and the various administrative procedures (for example, with certificates from other

states). Two citizens of Uzbekistan came who did not receive a certificate of marital status in the Belarusian registry office, as they did not have an apostille. At the same time, Belarus and Uzbekistan have an agreement on mutual legal assistance, which allows them to accept official documents without additional legalization.

EXPULSION AND DEPORTATION



Article 67 of the Law of the Republic of Belarus “On the legal status of foreign citizens and stateless persons in the Republic of Belarus” regulates the expulsion of foreign citizens. The article provides that *“when making a decision on forcible expulsion, the internal affairs body or the state security body, with the authorization of the prosecutor, shall take measures to detain a foreign citizen for the period necessary for the expulsion. A foreign citizen, who is detained for the purpose of implementing the decision on expulsion by force shall be placed in a temporary detention facility, and in case of absence of such detention facilities, the foreign citizen should be placed in a temporary detention center for the period necessary for the expulsion.”* The Resolution of the

Council of Ministers of the Republic of Belarus No. 146 dd. February 3, 2006 “On Approving the Regulations on the Procedure for Deportation of Foreign Citizens and Stateless Persons from the Republic of Belarus and Recognizing Certain Decrees of the Council of Ministers of the Republic of Belarus on the Deportation of Such Persons as Having Lost Force” repeats the aforementioned Law provisions. At the same time, the expulsion order is no longer enforceable if was not executed within one year. Thus, according to the rule of law, a foreigner can be detained for up to one year if he cannot be deported earlier.

Unlike the deportation procedure, the procedure of expulsion by force is not an administrative process. Foreign citizens who are being subjected to the forcible expulsion do not have procedural rights provided for by the PECAO, namely, the right to defense, to have a translator and the translation of an administrative decision, equality of the parties, open administrative process.

The procedure for appealing against a judgement on deportation of a foreigner provided for in the legislation does not give foreigners a guaranteed opportunity to exercise their right to appeal. The judgement on deportation is suspended only after a complaint is filed, which can be

submitted within 1 month from the date of the adjudicating. However, in practice, there are situations when a foreigner may already be expelled from Belarus within this month. Thus, a complaint against the adjudicating on deportation becomes no longer appropriate

From July 1, 2020, a new version of the law on foreigners comes into force, in which the deadline for filing a complaint against a judgement on deportation is reduced to 5 working days. At the same time, the responsible state body is obliged to consider such a complaint within 10 working days. We assume that during the period of filing a complaint and its consideration, foreigners will not be expelled from the country, as was done previously.

Talking about the deportation procedure, it is the part of the administrative process and is regulated, among other things, by the provisions of the Procedural-Executive Code of Administrative Offences of the Republic of Belarus. In our practice, there was a successful case when a lawyer was able to challenge judgement on forcible deportation due to a violation of the decision-making procedure. So, in June 2019, the case of Mehrdad Jamshidian, an Iranian citizen, was finally successfully completed and the Belarusian authorities decided not to deport him to

Iran. Moreover, the Citizenship and Migration Department staff agreed that Mehrdad was at risk of torture and the death penalty in Iran and could not be deported there. In this case, there were two important factors that led to a successful result: firstly, the formal side — the Belarusian court noticed a violation of procedural points when making a judgement on deportation and cancelled it; secondly, the Belarusian authorities took into account the provisions of national and international law on the impossibility of expelling people to countries that are not safe for them, and left Mehrdad in Belarus for humanitarian reasons.

There was a case when a complaint and a request for protection were simply ignored. So, in May, 2019, Ismail Nalgiev, a citizen of the Russian Federation, was detained at the Minsk airport. At first, he spent 3 hours at the airport, after which he was escorted to the building of the administration of Oktyabrsky district of Minsk. On the same day, a judgement on forcible deportation of Nalgiev from Belarus was made. He was informed of the expulsion order only two days after the decision was made by the state authorities and was forcibly deported to Russia on the same day. Nalgiev's lawyer had managed to file a complaint on his behalf against the expulsion order, which was registered. However,

the expulsion was not suspended in violation of the legislation of the Republic of Belarus. In the case of Nalgiev in Russia, he was threatened with arbitrary arrest and torture, which is already an independent ground for non-expulsion.¹

We have seen a number of cases where foreigners are expelled from Belarus to countries of citizenship where they are not in danger, but they do not have any strong connection with these countries. In December, 2018 and January, 2019, two foreigners permanently residing in Belarus committed suicide due to the threat of expulsion from Belarus.² Such decisions were made by Belarusian authorities on the basis of minor administrative offences committed by the foreigners. The facts that

¹ 10 human rights organizations issued a joint statement condemning the detention and forced expulsion of Ismail Nalgiev. <https://humanconstanta.by/zayavlenie-pravozashhitnyx-organizacij-po-povodu-zaderzhaniya-i-prinuditelnoj-vysylke-ismaila-nalgieva/>

² Human Constanta made a public statement in connection with the suicides of foreign citizens. <https://humanconstanta.by/suicid-inostrannix-grazhdan/>

expulsion is a last resort when there is a real threat to public security, as well as the fact that the foreigners had a strong connection with Belarus and were not able to reside in the countries of citizenship were not taken into consideration. Thus, we have identified the problem of the absence of detailed grounds for expulsion and deportation in Belarusian legislation, as well as mitigating circumstances which can be considered when making such decisions, such as the period of residence on the territory of Belarus, the presence of a family the members of which are Belarusian citizens, protection of children's rights, etc.

In our practice, there are also cases of extradition of foreigners from Belarus at the request of foreign states. This procedure is regulated by the Criminal Procedural Code of the Republic of Belarus and provides for the right to protection and other procedural rights for a foreigner. In this case, the judgement on extradition is made by the Prosecutor's office in compliance with the mandatory procedure and the possibility of appeal against such a decision through the Belarusian courts by a foreigner. In September 2019, we became aware of the detention of an activist from Tajikistan, Farkhod Odinaev, who had been traveling through Belarus to participate in the OSCE human dimension meeting

in Warsaw.³ Odinaev was detained in Belarus because he was on an interstate wanted list at the request of Tajikistan, and Tajikistan confirmed its request for Odinaev's extradition. The Prosecutor General's office of Belarus considered Tajikistan's request to extradite Odinaev and refused to grant it, as during an extradition check of documents provided by Tajikistan, it was found that the charge was not specific and did not contain all the features of a criminal act.

On August 28, 2019, Nikita Chirtsov, a citizen of the Russian Federation, was detained in Minsk. When he was arrested, he was informed that he was on the interstate wanted list in connection with his participation in a protest in Moscow on July, 27. He was suspected of using violence against a government official (article 318 of the criminal code of the Russian Federation) and participating in "mass riots" (article 212 of the criminal code of the Russian Federation). Only by the fact of being on the wanted list, Citizenship and Migration Department of the

³ Eleven international and Belarusian organizations have taken a joint critical position on the possible extradition of Farkhod Odinaev to Tajikistan. <https://humanconstantaby/belarus-aktivistu-iz-tadzhikistanagrozit-nezakonnaya-ekstradiciya/>

Pervomaisky district of Minsk issued a decision on expulsion instead of the extradition procedure, which in fact became a hidden extradition. On August 30, 2019, Nikita was already put on a plane to Moscow, without being given the opportunity to appeal the expulsion or apply for international protection. In Russia, Nikita Chirtsov was detained 2 days later, and on December 6, 2019, he was sentenced to a year in prison in the frameworks of the “Moscow case”, which caused much criticism from the human rights community.⁴

Thus, despite the fact that only the decision of the Belarusian state authorities is sufficient to carry out deportation or expulsion, certain conditions must be met by both Belarus and the requesting state during the extradition procedure. In the case of Odinaev, Tajikistan did not meet all the conditions necessary for extradition, and Belarus lawfully refused to extradite Odinaev and complied with his rights guaranteed by national and international law. After that, a decision was made to voluntarily expel Odinaev. He was released from detention and voluntarily left Belarus, which is a positive practice.

⁴ The human rights center “Memorial” recognized Nikita Chirtsov as a political prisoner. <https://59.ru/text/incidents/66255499/>

FOREIGN CITIZENS IN CLOSED INSTITUTIONS



During this year, we have periodically learned about foreigners and stateless persons detained in Belarus. We made requests to the embassies of the countries of detainees' citizenship, Belarusian penal enforcement agencies and representatives of international organizations to get information about the status of the detainees.

Detained or already convicted foreigners face a number of problems: they are held for several months in temporary detention facilities (TDF), where they are waiting for identification, deportation or expulsion. Thus, it was only in June, 2019 when the story of Mehrdad Jamshidian, an Iranian citizen, who was repeatedly detained by the Belarusian authorities since 2013 in order to be deported to Iran, where he was threatened with torture and the death penalty, came to an end. On June 14, 2018, Mehrdad was once again placed in TDF due to the lack of a valid Iranian passport, where he stayed for almost 11 months. It is important to note that information about Mehrdad is contained in many databases, and he has repeatedly confirmed his identity during various administrative procedures in Belarus. However, in Belarus, the term of detention in conditions of non-freedom

for foreigners detained for identification, expulsion and deportation is not limited by law. Keeping in isolation is not subject to periodic review and judicial control, which often leads to long-term deprivation of liberty of people who are not even accused of anything. In addition, temporary detention facilities are not designed for long-term detention. They lack the ability to communicate with relatives and conditions of detention are unfavourable for life and health. During the last detention, Mehrdad suffered a heart attack, after which he did not receive proper medical care in the TDF. The low level of medical care or its complete absence for detained foreign citizens and stateless persons, as well as conditions of detention that are incompatible with the principle of humane treatment, is a systemic problem.

There are some cases when detained foreigners find themselves in a situation of complete information isolation and information about their detention is not available to their relatives. For example, we were contacted with information about five detained Cuban citizens who had been wanted by their relatives for several months. The state authorities of Belarus did not respond to the requests of the Cuban Embassy in Belarus in a timely manner, which significantly increased the time spent in detention of foreigners.

ACCESS TO LEGAL AID



An important problem, that foreign citizens may face, is access to legal aid. In the framework of criminal process, detainees have a guaranteed right for a lawyer and, if necessary, a lawyer will be provided by the state. However, the state does not provide foreigners with a defender in the administrative process, for example, in the case of deportation. Article 2.8 of the Procedural-Executive Code of Administrative Offences stipulates that *“a physical entity against whom the administrative procedure is held has the right to protection. This right may be exercised by the person or by the lawyer.”* When foreigners are detained and placed in custody in Belarus, they may be subjected to a forced deportation or expulsion order.

Deportation is provided for by the Code of Administrative Offences. Article 4.5 of the Procedural-Executive Code of Administrative Offences provides that the lawyer’s authority is confirmed by a lawyer’s certificate and a power of attorney issued in simple writing form, or a warrant. At the same time, in accordance with paragraph 4 of the Decree of the Ministry of Justice of the Republic of Belarus dated 03.02.2012 No. 37 *“On approval*

of Instructions on the procedure for issuing, recording and storing orders”, the grounds for issuing a warrant to a lawyer are a contract for legal assistance signed between a lawyer or a law office and a client. Therefore, a foreigner who is detained in the course of an administrative process must call a lawyer to the place of detention in order to sign a contract for legal assistance or to issue a power of attorney. Only then the lawyer can defend the detainee. At the same time, a lawyer will not be allowed to enter a place of administrative detention without a warrant.

In practice, we have encountered situations where foreign detainees who do not speak Russian or Belarusian, and who do not have contacts in Belarus, cannot exercise their right to defence due to the complexity of the procedure for accessing lawyers. In fact, they are denied access to legal aid.

In connection with this problem, we have addressed the Belarusian Republican Bar Association with a proposal to consider the issue of access to legal aid for foreigners who are detained for committing an administrative offense or are in the process of being forcibly deported from Belarus; as well as to propose to the authorized bodies to amend the current legislation in terms of establishing guarantees of access to legal aid for such foreigners.

WORK ON THE IMPROVEMENT OF THE CURRENT LEGISLATION



In addition to applying to the Bar Association, we also sent our proposals to improve the current legislation to the Parliament of the Republic of Belarus. Our proposals are based on specific situations that we have encountered in our work and that have helped to identify systematic problems and imperfections in the current legislation. In particular, we offered:

- to exclude from the Law “On the legal status of foreigners” and other legal acts the concept of “a state with a migration problem”;
- to establish a judicial procedure for the expulsion of foreigners, as well as to exclude the possibility of expelling a foreigner before the expiration of the period for appealing a decision on expulsion established by law;
- add, as a ground for suspending the procedure of deportation of a foreigner, the filing of a complaint against a decision on deportation by a foreigner;

- to establish maximal terms for implementation of the decision on expulsion/readmission of foreign citizens placed to closed-type institutions, such as temporary detention facilities, including maximal terms for detention of foreign citizens for an identity check;
- to establish mechanisms allowing detainees access to legal defense, an interpreter and contact with family or consular service of their state of citizenship upon the wish of a detainee rather than the wish of administration of the detention facility;
- to oblige state bodies to take decisions on expulsion/deportation as the sanction of last resort, when there is a real threat to the public security. Moreover, state bodies have to take into consideration mitigating circumstances: a period of residence in the Republic of Belarus, family, cultural, social, and economic ties, having close relatives, including minor children, who are citizens of the Republic of Belarus;
- to establish alternative measures of influence on foreign citizens and stateless persons who live in Belarus for a long time and have strong family, cultural, social or economic ties that are not related to expulsion/deportation from the Republic of Belarus;

- to establish the procedure of expulsion of stateless persons from the country in cases when such a person does not have ties to another country as well as when there is no state willing to accept this person on its territory;
- the possibility of providing free medical care to detained foreigners.

Our proposals were not supported, except for the free medical care issue. Based on practical grounds, the aforementioned issues remain relevant.

OUR MISSION



Promotion of public interests and joint actions in response to modern human rights challenges in Belarus.

WHAT DO WE DO?



- Help others to protect their rights.
- Compare Belarusian laws and practices with the best foreign examples and human rights standards.
- Spread this knowledge through educational activities.

Legal Advice for Foreign Citizens

We provide free legal advice to foreign citizens and stateless persons in cases of violation of their human rights in Belarus.

Please, contact us if you or your friend:

- is illegally expelled/deported/extradited from Belarus;
- was not informed about the right to a legal defence during an arrest; if after the arrest, you or your friend was not provided with a lawyer or if a lawyer is not allowed in;
- is not provided with a certificate, permit, or another document that you have requested from government agencies;
- is illegally arrested and detained, not provided with an interpreter, is being held in poor conditions, and not provided with medical care;
- is illegally deprived of citizenship;
- in any way face infringement from the state authorities because of your citizenship or nationality.

On this page you will find detailed instructions on some of the topics:

<https://humanconstantaby.tag/yuridicheskaya-konsultaciya/>

FREE LEGAL OFFICE

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