ДАДАТАК 1

Умовы ажыццяўлення праваабарончага маніторынгу ў беларускіх судах

Паведамленне назіральніка з горада Віцебска

22.03.2004 г. в 9:00 я хотел присутствовать на судебных заседаниях по административным правонарушениям, которые ведет судья Кисмерошкина В. И, сославшись при этом на статью 229 Кодекса об административных правонарушениях. В ответ судья Кисмерошкина В. И. категорически отказала мне в этом, мотивируя свое решение тем, что в кабинете слишком мало места, чтобы еще присутствовала публика на судебных заседаниях. Но я стал упорно отстаивать свои права, и тогда судья вызвала милиционера, чтобы он удалил меня из кабинета. Подобная ситуация случилась и с другим наблюдателем в данном суде.

23.03.2004 г. вместе с другим наблюдателем я решил обратиться к председателю Первомайского суда Бессмертному А. В., чтобы он восстановил наши законные права и мы бы смогли присутствовать на судебных слушаниях. Но это ни к чему не привело. Председатель уже был готов высказать свое категорическое «нет», тем самым поддержав действия судьи Кисмерошкиной В. И.

Посоветовавшись с координатором программы в городе Витебске Михаилом Павловым, мы приняли решение перенести наблюдение в Октябрьский суд г. Витебска.

24.03.2004 г. мы посетили кабинет судьи Октябрьского суда Михасевой В. А., однако это ни к чему не привело — ничего нового я не услышал. Свой отказ судья мотивировала еще и тем, что слушаются личные дела граждан и, скорее всего, они будут против того, чтобы на судебных заседаниях присутствовала публика. Но в конце была сделана поправка: «Если председатель разрешит, то вы можете присутствовать на слушаниях». Обратившись к председателю Октябрьского суда, мы услышали: «Судья сама принимает решение, кто будет присутствовать на судебных заседаниях, и я в свою очередь не против того, чтобы вы там присутствовали». О данном разговоре судья Михасева В. А. была проинформирована, и мне удалось поприсутствовать на судебных заседаниях. К сожалению, только на двух, потому что судья Михасева В. А. сочла это достаточным и сообщила, что не видит причин для нашего дальнейшего присутствия в кабинете.

25.03.2004 г. я пришел на слушание дел об административных правонарушениях в суд Октябрьского района г. Витебска, где в моем законном праве мне было снова отказано по тем же причинам.

26.03.2004 г. ситуация повторилась — мне снова было отказано в присутствии на слушаниях дел об административных правонарушениях.

30.03.2004 г. в связи со сложившейся ситуацией были написаны жалобы на имя прокурора г. Витебска на действия председателя Первомайского суда Бессмертного А. В., а также на имя председателя Октябрьского суда Дроздова А. В. на действия судьи Михасевой В. А.

В последующие дни 31.03.2004 г., 1.04.2004 г., 2.04.2004 г. в присутствии на судебных слушаниях по административным делам в суде Октябрьского района г. Витебска мне было категорически отказано: судья Михасева В. А. каждый раз говорила, что приняла решение и не собирается его менять.

Паведамленне назіральніка з горада Віцебска

Нам было отказано в проведении мониторинга административных процессов без указания каких-либо причин и предложено обратиться к председателю Бессмертному В. А.

23 марта 2004 г. мы вместе пошли к председателю суда Первомайского района к 8:00. Председатель суда Первомайского района Бессмертный В. А. поддержал в нарушении закона работника суда, пояснив нежелание судьи выполнять законные предписания конструктивными особенностями здания суда (невозможностью проводить судебные заседания по административным делам в залах для судебных разбирательств, отсутствием места для публики в кабинете судьи Кисмерошкиной В. И.), стеснительностью судьи как профессионала (имеется в виду, что мы будем мешать и отвлекать судью, довлеть над нею) и невозможностью исполнять трудовые обязанности судьей в присутствии публики (без комментариев). Я считаю, что данные доводы являются надуманными и не соответствующими действительности, т. к. я была в кабинете у судьи Кисмерошкиной В. И. и убедилась, что там достаточно места и для участников процесса, и для публики.

Для обсуждения сложившейся ситуации мы провели собрание с координатором по городу Витебску Павловым М. В. и решили взять под наблюдение суд Октябрьского района г. Витебска.

23 марта 2004 г. после обеда мы пришли в суд Октябрьского района г. Витебска на рассмотрение дел об административных правонарушениях у судьи Михасевой В. А., предварительно обсудив этот вопрос с председателем данного суда Дроздовым А. В.

Судья по административным делам Михасева В. А. разрешила присутствовать только на двух судебных заседаниях. Она отказалась удовлетворить наше законное желание, сказав, что присутствия на двух судебных заседаниях будет достаточно для нас, и мотивируя это тем, что рассматриваются личные дела граждан, что помещение судебного заседания (кабинет судьи) по административным делам слишком мало для нашего присутствия, а также невозможностью исполнять свои трудовые обязанности в присутствии публики (имелось в виду, что мы будем мешать, отвлекать и довлеть над ней). Мы счита-

ем, что эти доводы являются надуманными и не соответствующими действительности.

24 марта 2004 г. мною и координатором Павловым М. В. были составлены и отправлены почтой жалобы:

- на суд Первомайского района г. Витебска — прокурору Первомайского района г. Витебска и в Управление юстиции Витебского облисполкома г. Витебска;
- на судью по административным делам суда Октябрьского района г. Витебска Михасеву В. А. — председателю суда Октябрьского района г. Витебска.

25 марта 2004 г. я пришла в суд Первомайского района г. Витебска на судебные заседания по административным делам — в присутствии на судебных заседаниях было отказано судьей по административным делам Кисмерошкиной В. И.

26 марта 2004 г. в присутствии на судебных заседаниях по административным делам в суде Первомайского района г. Витебска также было отказано.

30 марта 2004 г. со мной связался по домашнему телефону прокурор Первомайского района г. Витебска, который провел беседу по сложившейся ситуации и пообещал решить этот вопрос в ближайшее время, а также ответить на мою жалобу письменно.

31 марта 2004 г. с утра в суде Первомайского района г. Витебска не было расписания судебных заседаний по административным делам. Судья Кисмерошкина В. И. отсутствовала, кабинет был закрыт.

1 апреля 2004 г. судья по административным делам Кисмерошкина В. И. попросила меня не мешать нормальной работе суда, в присутствии на судебных заседаниях категорически отказала.

Вытрымка са скаргі, накіраванай віцебскімі назіральнікамі

Председателю суда Октябрьского района г. Витебска
Дроздову А. В.

23.03.2004 г. нами была осуществлена попытка присутствия на рассмотрении дел об административных правонарушениях в суде Октябрьского района г. Витебска у судьи Михасевой В. А. в соответствии со статьей 229 Кодекса Республики Беларусь об административных правонарушениях.

Дела об административных правонарушениях рассматриваются открыто, и наше желание присутствовать на рассмотрении некоторых дел об административных правонарушениях в качестве публики законно.

Судья по административным делам, Михасева В. А., отказалась удовлетворить наше законное желание, мотивируя это тем, что рассматриваются личные

дела граждан, и что помещение, в котором проходят судебные заседания по административным делам, слишком мало для нашего присутствия, а также невозможностью исполнять свои трудовые обязанности в присутствии публики.

Таким образом, мы встретили сопротивление со стороны судьи по административным делам Октябрьского района Михасевой В. А., столкнулись с явным нежеланием проводить открыто судебные разбирательства по административным делам, как того требует статья 229 Кодекса Республики Беларусь об административных правонарушениях, что дает нам право предположить о скрываемых особенностях проведения этих судебных заседаний.

Просим обеспечить выполнение статьи 229 Кодекса Республики Беларусь об административных правонарушениях судьей по административным делам Михасевой В. А.

Просьба известить нас о принятом решении в письменной форме.

Вытрымка са скаргі, накіраванай віцебскімі назіральнікамі

Прокурору Первомайского района г. Витебска

23.03.2004 г. мною была осуществлена попытка присутствия на рассмотрении дел об административных правонарушениях в суде Первомайского района г. Витебска у судьи Кисмерошкиной В. А. в соответствии со статьей 229 Кодекса Республики Беларусь об административных правонарушениях.

Дела об административных правонарушениях рассматриваются открыто, и мое желание присутствовать на рассмотрении некоторых дел об административных правонарушениях в качестве публики законно.

Судья по административным делам Кисмерошкина В. А. отказалась удовлетворить мое законное желание без указания каких-либо причин.

Председатель Первомайского суда г. Витебска Бессмертный В. А. поддержал работника суда в нарушении закона, пояснив нежелание судьи выполнять законные предписания конструктивными особенностями здания суда, стеснительностью судьи как профессионала и невозможностью исполнять судьей трудовые обязанности в присутствии публики.

Таким образом, я встретила мощное сопротивление со стороны суда Первомайского района, как со стороны судьи, так и со стороны председателя, и считаю это незаконным.

Данное нежелание проводить открыто судебные разбирательства по административным делам, как того требует статья 229 Кодекса Республики Беларусь об административных правонарушениях, дает право предположить о скрываемых особенностях проведения этих судебных заседаний.

Прошу обеспечить выполнение статьи 229 Кодекса Республики Беларусь об административных правонарушениях в суде Первомайского района.

Витебские судьи стесняются наблюдателей

[31.03.2004 г., 9:23]

Витебских правозащитников не допускают в городские суды и не позволяют наблюдать за рассмотрением дел об административных правонарушениях. Председатели судов объясняют проведение «закрытых» процессов тем, что судьи стесняются.

С 22 марта в судах Беларуси правозащитники проводят общенациональное наблюдение за рассмотрением дел об административных правонарушениях. Особое внимание уделяется административным процессам из-за того, что именно во время рассмотрения дел этой категории суды допускают множество нарушений процедурного характера, сообщает www. belngo. info.

В нарушение ст. 299 Кодекса об административных правонарушениях (согласно этой статье, судебные рассмотрения административных дел должны быть открытыми, на них должны допускаться все желающие) судьи Первомайского и Октябрьского судов города Витебска запретили правозащитникам присутствовать на процессах. Председатель Первомайского суда г-н Бессмертный объяснил это тем, что «судьи стесняются наблюдателей».

По мнению координатора национальной программы мониторинга административных процессов по Витебску Михаила Павлова, дело не в стеснительности судей, а в обычном стремлении скрыть особенности рассмотрения таких дел, судьи же скрывают свою плохую и непрофессиональную работу. Причем председатель суда помогает им в этом.

Витебские правозащитники направили обращение в прокуратуру с описанием выявленных в ходе мониторинга нарушений закона.

В рамках программы мониторинга правозащитники уже отследили по всей стране более 300 административных процессов. По итогам программы они намерены подготовить предложения по улучшению работы судов в данной сфере.

БДГ

Паведамленні назіральнікаў з горада Брэста

30.03. …Сёння адзін з супрацоўнікаў суда падышоў да нас і запытаў: «Што вы тут робіце? Хто вас сюды прыслаў? Зараз на 15 сутак за непавагу да суда! Прэч адсюль!» Я сыходзіць не збіраўся, сказаў, што маю права тут прысутнічаць. Неўзабаве ён адчапіўся.

31.03. Цікава было, калі суддзя Міранюк прысудзіў аднаму чалавеку штраф у 10 мінімалак проста на калідоры суда.

…Суддзя Іна Клышпач выгнала мяне са свайго кабінета. Гэта адбылося нягледзячы на тое, што я казаў пра адкрытасць судоў. Прыйшлося ісці да старшыні суда, і той дазволіў мне назіраць за адміністратыўнымі справамі.

…Нашых дзяўчат неаднойчы выдалялі з судовых пасяджэнняў. Проста суддзі казалі: «Усё, паслухалі, зараз вам няма чаго слухаць». Не ведаю, чаму на адных справах суддзі дазвалялі прысутнічаць, а на іншых — не…

…Сёння суддзя Ілюшына разглядала справу па артыкуле 156 КаАП РБ у дачыненні да двух мастакоў, якія ў краме «Смак» пасварыліся з прадаўцом. Працэс адбываўся ў судовай залі, вёў яго старшыня суда. Усё было афіцыйна і дакладна, не было ніякай фамільярнасці і грэблівасці з яго боку. Нават было растлумачана права заявіць адвод суддзі.

…Супрацоўнікі суда ставіліся да нас з пыхай і пагардай. Асабліва негатыўнае стаўленне дэманстравалі сакратары суда.

Паведамленні назіральнікаў з горада Мінска

…Тут працуе сапраўдны «канвеер» — аднаго яшчэ не паспелі вывесці з пакойчыка суддзі, а іншы ўжо дае тлумачэнні суду. Такое ўражанне, што верхаводзіць не суддзя, а нейкі міліцыянер — ён дае загад, каго зараз заводзіць у пакой да суддзі, выклікае сведкаў-міліцыянераў.

…У ходзе разгляду спраў тых, хто быў затрыманы падчас святкавання «Дня Волі», у пакойчык суддзі набілася каля 10 чалавек — астатнім проста не хапіла месца, і яны засталіся на калідоры. Але суддзя Вайцяховіч нават дазволіла карэспандэнту тэлебачання здымаць увесь працэс на відэа.

…Прывезлі адразу ўсіх чатырох чалавек, да таго ж прыйшлі яшчэ пяцёра з позвамі на 10 гадзін раніцы. Але пакуль суддзя кудысьці хадзіў, прайшло амаль дзве гадзіны. Пасля гэтага справы сталі разглядаць вельмі хутка (па пяць хвілін на кожную). Аднак у 12:00 суддзя сказаў, што яму трэба рыхтавацца да крымінальнай справы, і ўсе разышліся.

…На ўваходзе міліцыянер настойліва пытаўся ў мяне, да якога суддзі я іду. Калі я сказаў, што іду да адміністратыўнага суддзі, ён спытаў, ці ёсць у мяне позва. Калі я сказаў, што проста хачу прысутнічаць на судовым пасяджэнні з-за цікаўнасці, ён стаў пагражаць мне, што пасадзіць мяне за непавагу да суда.

…Суддзя сказаў, што дазволіць мне прысутнічаць на адміністратыўных справах толькі тады, калі будзе дазвол старшыні Першамайскага суда. Я схадзіў да старшыні, і пытанне было вырашанае.

…Суддзя сядзіць далёка ад будынка суда, у гарадскім аддзеле міліцыі. Відаць, яму там вельмі сумна, таму да нашага прыходу ён паставіўся спрыяльна. Аднак праз нейкі час ён пачаў скардзіцца, што пра яго шмат пішуць кепскага ў газетах, стаў цікавіцца, ці не належым мы да нейкай грамадскай арганізацыі. Потым сказаў, што не тлумачыць правапарушальнікам права адводу таму, што ў іх няма законных падстаў заявіць яму адвод.

…Падчас маніторынгу нам было вельмі цікава назіраць за разглядам адміністратыўных спраў. Суддзі ставіліся да нас спрыяльна (мы сказалі, што

з'яўляемся студэнтамі-правазнаўцамі) і нават запрашалі паназіраць за разглядам крымінальных спраў.

…У судзе зараз ідзе рамонт, таму на калідорах вельмі брудна, шмат пакояў не працуюць, а сакратары перабіраюць справы проста на калідоры.

Завершается национальный мониторинг административных судебных процессов, организованный правозащитным центром «Весна»

Минск, 31 марта. 2 апреля в Беларуси завершится национальная программа мониторинга административных судебных процессов, проводимая незарегистрированным правозащитным центром «Весна». В ходе нее правозащитники в различных городах Беларуси выявляют нарушения законодательного и процессуального характера, допускаемые при рассмотрении дел об административной ответственности.

Как сообщил БелаПАН координатор данной программы Юрась Чаусов, мониторинг проводится уже на протяжении двух недель в Минске, Витебске, Бресте, Полоцке и Новополоцке. В присутствии 30 наблюдателей, работающих в 15 судах, уже рассмотрено более 400 дел. Таким образом, правозащитники собирают данные о нарушениях, которые затем будут проанализированы и обработаны. Ведь, по словам Ю. Чаусова, цель программы заключается не в простой фиксации судебных недочетов, а в изменении сложившейся ситуации, упразднении системных ошибок. Зачастую судьи к рассмотрению административных проступков, таких как мелкое хулиганство, управление автомобилем в нетрезвом виде или нарушение правил торговли, относятся поверхностно. Потому что кроме судьи и нарушителя, как правило, никто в таких процессах не участвует. Однако в Беларуси ежегодно отмечается около пяти миллионов административных правонарушений, более двухсот тысяч дел о которых проходят через суды. В связи с этим правозащитники хотят провести анализ нарушений в судах действующего законодательства и на его основе разработать свои предложения, которые затем будут отправлены в Министерство юстиции и судебные инстанции. Участники мониторинга надеются, что их замечания будут учтены при внесении изменений в Гражданский и Процессуальный кодексы Республики Беларусь.

Юрась Чаусов отметил, что практически во всех судах к проведению мониторинга отнеслись благосклонно. Исключением стали лишь суды Первомайского и Октябрьского районов города Витебска, где правозащитникам в наблюдении было отказано.

Андрей АЛЕКСАНДРОВИЧ,
БелаПАН

RESUME IN THE ENGLISH LANGUAGE

THE MONITORING OF REALIZATION OF THE RIGHT FOR FAIR COURT EXAMINATION DURING CONSIDERATION OF CASES ON ADMINISTRATIVE OFFENCES IN BELARUS

The results of the research conducted in twelve courts of Miensk, Bierascie, Viciebsk, Navapolacak and Polacak within the period from March 22 till April 2, 2004.

INTRODUCTION

One of the major institutions of democratic society and constitutional state is fair court. The right for fair and impartial court belongs to fundamental human rights and is stipulated in the Universal Declaration of Human Rights. According to the International pact on human rights every person under charge has the right for fair and public investigation of his case by competent and impartial court formed on the basis of law.

Unfortunately, consideration the cases on administrative offences by Belarusan courts is not researched sufficiently. The official statistics give little information about the real situation in this sphere. At the same time, every year hundreds of Belarusan citizens are brought to court for administrative offences. Every year about 300,000 court proceedings on administrative cases take place during which the decisions on administrative arrests and fines are passed. However, the observation of human rights during these trials, particularly, the right for fair trial, are paid little attention to.

Providing monitoring to this problem human rights organizations must draw public attention to the problem and demand improvement of the situation with the securing of the right for fair trial. One of the steps in this direction is the monitoring program that sets an aim to observe the realization of the right for fair trial. This program was carried out by activists of human right center "Viasna" in the period from March 22 till April 2, 2004. The given brochure presents the results of the program.

We hope that the results of the observing of 533 administrative proceedings in 12 courts of 5 cities and worked out proposals will give material that will be used by Belarusan courts in order to improve their work during investigation of administrative cases.

We also hope that the information received during monitoring will be applied during preparation of changes into the Processing code on administrative offences regarding additional guarantees of human rights

implementation. Some of the proposals on securing these provisions are placed in the given brochure in the chapter "Recommendations on improvement of the present situation".

Monitoring program coordinator
Yury Chavusau

SETTING OF THE PROBLEM

Civic association "Human rights center "Viasna" possesses profound experience of observing administrative trials in the courts of Belarus. In annual chronicle-reviews of human rights violations in Belarus that are regularly published by HRC "Viasna" it was noted that basic human rights are systematically violated during court trials. That happens not only because of violations of processual legislation norms by courts but also because of the existing drawbacks in the legislation that sometimes doesn't contain enough guarantees for implementation of impartial court hearing.

Members of HRC "Viasna" every year take part or observe hundreds of court proceedings on administrative cases and record all violations of the legislation: the right of the charged for defense, violations of case investigation temporal limits, illegal clandestine processes, simultaneous consideration of the cases regarding several law-offenders during one hearing, violations of the rules of evidence evaluation, improper attention to the evidences from the defending side, violation of innocence presumption etc. As a result, very often the court trials of administrative cases are far from being objective and impartial.

Very often barristers do not participate in such cases and that provides ground for various infringements. Besides, the level of prosecutor's control over administrative case consideration remains low, prosecutors rarely take part in court trials on this category of cases. Now wrong practice took deep roots in Belarus when administrative processes are held according to simplified procedure not stipulated by the legislation. As a result, the courts of lower level do not keep to the rules and norms of processual legislation and break basic rights of the defendants, violating the right for impartial court proceeding written down in the International pact on civil and political rights and in the Constitution of the Republic of Belarus.

In such circumstances punishment for the administrative offences may count 15 days of administrative arrest or huge fines that sometimes reach several thousands of dollars. The situation is even worse as the court decisions come into force just right after their announcement leaving no possibility for cassation or appellation re-considerations.

One more factor to pay attention to while evaluating the provision of processual requirements during administrative cases consideration is poor

material and technical working conditions in the courts. Poor equipping of the courts and insufficient attention of court administration to the issues of proper work on administrative materials deprive the citizens of the right to defend their rights.

The result of influence of all mentioned factors is systematic and regular violation by Belarusan courts the norms of processual legislation and rights of Belarusan citizens for open and impartial court trial during court proceedings.

ANALYSIS OF THE LEGISLATION

Administrative responsibility is one of the most common legal liabilities in Belarus. It is difficult to find a person who has not been a subject to administrative responsibility. Everyone paid a fine for violation of the road rules or violation of the rules of using public transportation. However, not always administrative cases are resolved as easy and harmless. There are such tough measures as detention, custody, administrative arrest, huge fines. That is why administrative researchers say that a good administrative legislation is more important to the community than a good Constitution.

Crisis of the Old Legislation

According to the official data spread by the Ministry of Internal Affairs, up to five million of administrative offences are registered in Belarus annually. This data has a steady tendency to increase. Meaning that every second resident of the country violates the administrative law during a year. Among the most spread administrative offences are driving under alcohol, drinking alcoholic beverages in public places or appearing drunk in public places, breaking rules of trade and service, trading at the inappropriate places, petty hooliganism and petty larceny. Annualy more than ten thousand people are subject to administrative responsibility (fines, arrests for up to 15 days) for each of these offences.

The reason for such an obvious increase in the amount of violations does not lie in the flourishing of the population's antilegal moods. The thing is that our administrative legislation has been grown old morally and does not correspond to the current political and legal realities. The Code of Administrative Offences, the basic legal act in this sphere, was adopted still in 1984 and reflects the old reality. Enough to say that when judges announce their verdicts in compliance with the current Code of Administrative Offences, according to Article 1 of the named Code, they do that with the aim of "defence of the USSR civil structure, socialistic reality, enforcing of the socialistic law and educating the civilians in the spirit of proper and steady execution of the USSR constitution and in the spirit of respecting the rules of socialitic life". Obviously, that in such a case any process

becomes fake, it is enough for any of the offenders to think over on what basis and with what aim they are brought to the responsibility.

This problem aroused long ago, but its resolution was restricted by half-measures. It is a common knowledge that about 200 amendments were made to the current Code of Administrative Offences during the times of fundamental reforms in our community. These changes brought it closer to the present and made it more correspondent to the human rights. Changes and amendments are made to the Code at each parliamentary session, each article of the Code ends with a footnote on the made changes. As the result, the Code became a miraculous centaurus, consisting of socialistic legislation norms and added by the elements appropriate to the Belarusan modern legal system. The Supreme Court's and Constitutional Court's attempts to resolve the old Code's issue on the level of its usage by courts did not bring any change in the situation.

Thus, the current Code of Administrative Offences is the most archaic of the existing codes. All other spheres of public life are regulated by the new codes adopted in correspondence to the judicial and legal reform. The new Criminal, Criminal and Processual, Civil, Civil and Processual, Economic and Processual, Housing, Matrimonial and Family, Customs and other codes have been brought into compliance with the reality by the corresponding branches of law. Even though a lot of progressive norms have not got into these codes, for example, the jury was introduced in the new Criminal and Processual Code, but the President refused to sign this article and it has not been enforced and later on was excluded from the Code. On the whole, the active work on legislation done by the parliament and the National center on law activities was fruitful and should be regarded as positive.

Now it is the Administrative branch's turn to be reformed.

Instead of the Old Code of Administrative Offences
There Will Be Two Administrative Codes

From 1995 intensive work has been carried out on the two new codes meant to substitute the Code of 1984. The new law is expected to come into legal force in 2004. It will be a separate Processual and Executive Code of Administrative Offences and a Code of Administrative Offences, where the descriptions of all violations will be defined and single norms will be used for all offences. The latter will define the order of administrative cases' examination, administrative process participants' rights, execution of resolutions on administrative punishments. Thus, the lawmakers are going to divide the corporeal and processual parts of this legislation brach, as it is now in the criminal branch, at the same time bringing it closer to the modern life.

The new Code went through the whole procedure of the legislation process and was passed by the House of Representatives in December 2002 and by the Council of the Republic in March 2003. It was also signed by the President,

however, it has not come into force yet. The last article of the Code says that the new Code is to be brought into force by a special law. So at the moment the law machinery and courts are being re-trained, their workers study the new Code and get prepared to its introduction. The law on the introduction is expected to be passed only after the Parliament approves the final variant and the President signs the Processual and Executive Code of Administrative Offences, as both of the codes are interrelated and their separate introduction would make no sense.

We will try to analyze the final variant of the lawmakers' work. In comparison to the old Code the new one does not include processual norms and does not regulate the procedure of bringing to administrative responsibility. It also defines which actions are offences, describes the corpus delicti, sets the types of administrative punishments and also defines the range and type of an administrative punishment for the violation of each single article by the subject approved guilty for the offence.

While the Code has not been put into force yet, it is already being changed. For example, Article 12 "Administrative offences in entrepreneurship" got 9 new articles, 3 more articles have been changed and even some of the new 9 articles have got additional changes. So in a couple of months after the Parliament passed the new Code, almost half of this notional article was rewritten. It is not connected with the necessity to improve the Code after some substantial transformations in the law. This lack of stability and strive for innovations is connected with the primary drawbacks of our legal system. New President's acts, orders and decrees, connected with the change of the reasons and the type of administrative responsibility, as well as new punitive measures are constantly appearing. In our legal system a decree has a higher legal power than a code, so that it has to be changed and added. Thus, the newly passed Code has lost its correspondence to the President's acts and requires further changes. Obviously, such an instability in the legislation does not contribute to the enforcement of law in our state. It is an evidence of our unpredictable legislation, it is never possible to predict whether in some months an act legal now would become illegal. Doing a harmless thing, a person is never sure whether he/she violates the law, as it was, for example, with using foreign currency cash for loans or payments made between persons.

At the same time the Processual and Executive Code of Administrative Offences is expected to be passed at the Spring Parliamentary session and will define the procedure of bringing to administrative responsibility, administrative process participants' rights and obligations, bodies responsible for examining cases on administrative offences and will regulate the execution of administrative punitive actions. It should be mentioned that the third edition of the Processual and Executive Code of Administrative Offences has been altered a lot in comparison to the draft variant suggested to the President, who is traditionally to submit drafts of new codes to the Parliament.

What Are the Expected Outcomes of the Improved Administrative Legislation?

The common property of both codes of administrative offences is that the legislation becomes more up-to-date and corresponds to the modern life. A lot of old Soviet rudiments have disappeared from the updated legislation. At the same time the administrative branch becomes more like criminal legislation, both these branches are being formed by one principle.

It is very interesting that by the new Code juridical persons can also be regarded as subjects of administrative offence. It changes the system of bringing to administrative responsibility. Now a commercial firm, a state office and a public association can become offenders. Such a change might be logical, as a lot of offences are made by juridical persons (organizations). Now they become subjects for penalties. Before that responsibility was laid either on officials or on nobody at all. However, there are a lot of problems in assessing the juridical person's guilt and separating officials' guilt from that of the organization.

While analyzing the new Code, some important points should be mentioned in connection with assessing types and ranges of the administrative punitive measures.

The maximum rate of the administrative penalty should be viewed as a positive factor. While according to the old Code a person could be a subject for a fine of 300 basic units and the officials for 500 units, now the maximum penalty is about 50 basic units. There used to be situations when the penalty for an administrative offence exceeded the penalty for a criminal misdemeanor. While an official position is not the basis for an increase in the maximum range of penalty, the maximum penalty for private entrepreneurs can reach 200 basic units and for juridical persons up to 500 units.

There have been some changes made to the order of imposing administrative punitive measures such as an administrative detention. Still the maximum term of arrest for one offence cannot exceed 15 days. But in comparison to the old Code each single article does not limit the sphere of applying arrests. When earlier a lot of articles on detentions ran "from 3 to 10 days" or "up to 5 days", now the articles say just "arrest" and the court itself decides on the period of the custody, but not more than 15 days.

Limiting the whole arrest to 25 days when there are several offences conducted cannot be regarded positive. Administrative arrests for different offences will be summed up within the limits of 25 days. There was a rule in the old Code that even for several offences a person cannot be arrested for more than 15 days. So the actual maximum length of the administrative arrest will make up 25 days.

The old in their essence administrative punitive measures have been preserved-warning, appropriation, deprivation of a special right (for example, the right for driving), pecuniary penalty in the amount equal to the cost of the object

of the misdemeanor (for example, of the stolen thing in a petty larceny). But there are new types of punishments also, deprivation of the right to certain activity and deportation. Deportation is meant for foreign residents and persons without residence, including such offences as violation of the order of providing and using free foreign aid.

As far as the changes in the constituents of some offences and the changes in the sanctions for their conduct are concerned, there is a lot of new included, the analysis of these changes requires a substantial study. For example, there some new articles connected with the usage of coding systems for protecting the information like PGP(Art. 22.7–22.8 of the Code), administrative responsibility is introduced for smoking in prohibited places(Art. 17.9 of the Code), etc.

It is interesting that responsibility for disobedience to the police orders has been suspended — the civilians will be responsible for disobedience to legal orders of all officials on duty (Art. 23.4 of the Code).

The Code still includes the norms referring to by-laws. For example, to find out whether a person has violated Art. 23.43 of the Code "Violations of the legislation on burials", it is necessary to know this law. So a lot of articles are dependent on other laws, decrees and by-laws. Only such a Soviet rudiment as responsibility for residing without a residential permit stays the same.

It should be pointed out that an improved Processual and Executive Code of Administrative Offences will be a positive factor for executing people's rights. It obviously executes administrative process participants' rights in a more sufficient way. But it is also obvious that a lot will depend on the position of the law machinery and courts, on how they will execute new rules.

We can only hope that the MPs will realize their whole responsibility while passing the third edition of the Processual and Executive Code of Administrative Offences in Spring. This statutory and legal act is connected with an issue very important for citizens. It is meant not only to fill in the gap in the legislation, due to the current Code's out-of-dateness, but also the new Code will create conditions for execution of citizens' rights for a fair administrative trial and set barriers for violation of people's rights. In the light of the coming elections to the House of Representatives such a step should get an appropriate evalution from voter, as administrative responsibility concerns literally everyone.

At the same time the remedial movement activists should be very attentive while watching the processes of changing the administrative legislation. Every effort should be made for the new law and its implementation to correspond to the spirit of human rights and the Belarusan population's interests.

Judicial practice

At the present moment 144 district (town) courts consider the cases on administrative offences all over the country. On December 1, 2003 174 judges on administrative cases were employed in these courts. In 2003 the courts of

Belarus considered 328258 administrative cases, 39387 more in comparison to the year 2002. Thus, the number of administrative cases has grown by 13,6% that is rather considerable increase compared to the tendencies in the last years.

282023 persons were sentenced to various administrative punishments. Consequently, 85.9% of all people brought to responsibility were criminated. In comparison to 2002 the percentage of discharged persons on administrative cases has grown by approximately 1% from total number of all people against whom administrative proceedings were instituted.

In 2003 180737 offenders were sentenced to fines, 8384 people — to corrective (civil) labour, 74761 people were arrested. Confiscation of property was used as primary or additional punishment measure for 26832 people (9.5%), the number grew by 36.3% compared to the last year.

From the mentioned facts we see low level of attention to administrative cases from the side of barristers. At the same time the result of barristers' work at those cases where they were present is positive. The number of people verdicted "not guilty" in the cases with participation of barristers is considerably higher than in the cases where the barristers did not defend the people under charge. According to the report of the Republican Bar for 2002 the total percentage of episodes when the charge was lifted in administrative cases equaled 53%. It is known that in 2003 barristers took part in 284 trials within the frames of free juridical assistance program.

Unfortunately, the official juridical statistics while analyzing the practice of taking to court for administrative offences do not pay enough attention to the realization of citizens' rights, focusing mostly on formal and quantitative figures.

AIMS OF THE MONITORING AND METHODOLOGY OF RESEARCH

The general ***aim*** of the given monitoring program is to analyze the practice of realization of the right for impartial court proceeding during investigation of administrative cases and to formulate proposals in order to bring processual legislation and judicial practice in compliance with the standards of human rights. The results of this research will help to improve the situation with execution of citizens' rights for fair court proceeding during consideration of cases on administrative offences.

The presence of monitoring results when occasions of human rights violations during consideration of cases on administrative offences are recorded allows to address the court organs with proposals to make changes into the judicial practice. These changes should be directed to accomplishment of the right of the accused for impartial consideration of the case within the frames of objective and thorough process, within the limits of court procedure defined by the law. Legal proceedings must run with full realization of citizens' rights for

defense, for presenting the evidences in their favour, with exact informing of the citizens about their rights in administrative process. There is also necessity to improve the access of citizens to the court, to increase working culture of judges and to create favourable material and technical conditions for securing justice.

Apart from that Belarusan Parliament now is considering the draft project of the new Processual and executive code of administrative offences that will regulate all occasions of bringing the citizens to administrative responsibility, including regulating the procedure of juridical consideration of administrative materials. This factor became an additional impact for realization of this research as new opportunity arose to influence the changes of conditions of administrative cases consideration through proposals to the contents of new administrative and processual legislation.

The presence of monitoring results with recorded scale of citizens' rights violations and information on deviations from the determined administrative offences consideration procedure allows to demand introducing into this bill the norms that would prevent violations of citizens' rights during administrative proceedings and might guarantee the realization of the right for fair and impartial trial.

The aim of the monitoring didn't include the evaluation of the essence of the decisions taken by the courts at the trials — the attention was focused on processual moment only.

Operative research ***objectives***:

- To observe the investigation of cases on administrative offences in 5 courts of Miensk City (courts of Centralny, Piersamajski, Leninski, Zavodzki and Saviecki districts), 3 courts of Viciebsk (courts of Kastrycnicki and Cyhunacny districts and Viciebsk rajon court), 2 courts in Bierascie (courts of Maskouski and Leninski districts) and in 2 courts of Polacak district (Navapolacak town court and Polacak town and district court).
- to write down during the processes all found violations in the monitoring sheets according to the noted questions
- to note material and technical conditions for work of the given court in general observation sheet.
- to analyze the filled-in questionnaires and to get consolidated figures on each of the questions mentioned in the monitoring sheets according to the existing hierarchy of juridical norms.
- on the basis of received data to draw conclusions regarding realization of human rights and sticking to processual norms during consideration of administrative cases in courts.

- to work out proposals on improvement of judicial practice in the matter of administrative case investigation.
- to work out proposals on consolidation in the new Processual and executive code of administrative offences the guarantees of realization of human rights.

Thus, the primary ***function*** of our research was receiving of documentary information about the situation with processual rights and human rights realization during consideration of cases on administrative offences and definition of the necessary changes to the legislation that might minimize the violation of human rights in this sphere.

Alongside this function the research pursued several additional functions — prevention of human rights violations during concrete administrative proceedings through accentuating public attention to this category of trials, increase of public attention to the problem of human rights realization during administrative trials through publications in the media, improvement of the skills of program participants in the field of human rights monitoring as an important aspect of human rights activity.

The monitoring over the work of courts of base level on consideration of cases on administrative offences was carried out from March 22 till April 2 (10 working days). The observers received the task to attend as many administrative cases in these courts as possible. On each of the administrative processes a separate monitoring sheet was filled in. The observers also filled in general sheet of observation over material and technical condition of the given court.

The work of observers was coordinated on site by leaders of local branches of HRC "Viasna".

GENERAL CONCLUSIONS

(based on the information received during the monitoring)

During the monitoring program (the period from 22.03.2004 till 02.04.2004) observation over 533 court trials on consideration of cases on administrative offences in courts of base level was carried out. Taking for the basis official statistics for 2003, we can state that 4% of all cases considered by all courts in the country for this period were covered by the observation. The observers managed to attend half of the administrative trials considered in the selected courts that allows to say about sufficient representativeness of the research.

During the research certain drawbacks in administrative-processual legislation and in the practice of administrative case consideration were found out that create conditions for citizens' rights violations.

Recorded drawbacks in the practice of administrative offences consideration:

1. During consideration of administrative cases the judges do not read out at all or not completely the report on administrative offence. That is a commonly used practice (*Tables #33–35*). According to the requirements of the Code of administrative offences any consideration of the administrative case should start with that procedure — reading the report on administrative offence. Thus, the lawbreakers are not informed about the essence of the charge and judges do not explain the reasons why the person is brought to responsibility.

2. The rights of the lawbreaker as participant of the process are not read out (*tables #25–28, 65*). The widely-spread formulating of judges are "You definitely know your rights" or "You possess all processual rights as process participant" do not tell anything to the process participants. Thus, the citizens of the country once taken to administrative responsibility are deprived of knowing their rights because of negligence of judges during court proceedings on administrative cases. Especially seldom judges tell the process participants about their right to reject the judge or other process participants (*table #28*).

   Even in those cases when the rights are enumerated, judges very seldom ask if the people understand their rights (*Table #27*). That is an additional obstacle for the process participants to apply their rights in practice.

   Correspondingly, the people are very passive in the courts, they do not use their rights as they do not know them. They do not claim intercessions, do not present evidences and explanations in their defense, do not resort to assistance of barristers or representatives, do not claim expertise, do not get to know the case materials (*Tables #38–47, 68*). Consequently, because of negligent attitude of the judges on administrative cases, the country citizens are deprived of those rights that are guaranteed according to the processual legislation.

3. Consideration of the cases out of the main court building favours violations. Especially when reserve buildings are inappropriate for the process (f. i. militia offices) (*Tables #5, A46*). Such practice undermines the confidence of the society in the judiciary system. Maladjustment of the premises limits the public character of the trials. When during the case consideration in the judge's cabinet there is room for one or two people only, the legal proceedings lose open character and become clandestine in essence (*Tables #6, 14*).

4. There are some cases registered when the fine exceeds the maximum rate established by the corresponding article of the Code (*table #63*). That happens when the size of the administrative punishment is prescribed by the decree or other legislative act but not the Code of administrative offences. Such practice cannot be tolerated, as it is not correlated with the spirit of law.

5. Very often in the rooms where the administrative cases are investigated (rooms of judges and other rooms inappropriate for the trials) there are no state symbols (*Table #A37*). In such circumstances the legal proceedings lose their public character what is absolutely inadmissible.

6. Access of the citizens into the court building is sometimes limited without any reasons (*Table #A2*). Especially difficult to get into the building for people with limited moving abilities — there are no special equipment in overwhelming number of courts. (*Tables #A3 and A9*).

7. Material and technical conditions of the courts create additional obstacles in access to the court: during the research the absence of cloak-rooms, toilets, refreshment bars, parking and public telephones was found out. (*Tables #A4–A12*). Bad conditions for work of courts and their disparity with the requirements for the official state buildings are also frequent. (*Tables #A13, A40–A42, A47*).

8. Sometimes the informational boards lack necessary information about the time and the place of the case consideration, about processual rights of citizens, addresses of juridical consultation offices, samples of applications and complaints etc. (*Tables #7, A14–A32*). That underlines improper execution of the measures on improvement of public discipline and security undertaken by the Ministry of Justice in 2004. All this leads to late beginning of administrative trials or their running not in the defined beforehand time (*Tables #8–10*).

9. Very often the access of the audience into the room where the process is on is limited without any explainable reasons. (*Tables #14, A33*).

10. At the beginning of the hearing the judges do not announce the officials considering the case what is a serious violation of the procedure stated in the law (*Table #11*).

11. A lot of cases are considered without writing record of the trial. In some cases the legislation allows that but the practice shows that very often the record of the trial is not written when it is obligatory according to the law (*Table #13*). Some cases were found out when the record sheet was written not by the secretary but by another person which contradicts to the law.

Some cases were noted down when the secretary or the judge functioned as interpreters which is a serious violation of the procedure of administrative case consideration (*Table #24*). Insufficient equipping of secretaries of court proceedings (*Tables #A34, A36*) and absence of necessary equipment was also observed (*Table #A38*).

12. The participation of barristers (*Table #31*) and representatives of the offenders (*Table #32*) in administrative processes is a very rare occasion. Moreover, the consideration of cases under direct observation of prosecutor is even more rare (*table #37*). Because of this most of trials are held only with presense of the judge and the offender (even secretary not always present at the trial — *Table #12*). Such situation creates favourable conditions for various violations of legal procedure and rights of the process participants.

13. While considering cases on administrative offences, witnesses are seldom invited to the trials (*Table #29*) and the examination of the witnesses is often carried out with violations of the requirements of the processual legislation (*Tables #30, A39*).

14. The application of administrative punishments in various regions of the country differs, there is no common standard and understanding of the law (*table #64*). For instance, using corrective labour as a measure of administrative penalty varies in different voblascs considerably. Such practice is intolerable as the difference in using administrative penalties is not based on the law and caused by secondary reasons. In these circumstances common and universal application of the law concerning administrative punishment all over the territory of Belarus is not realized.

15. Announcement of the court verdict is often carried out with violations of the requirements of the processual legislation: the judges do not ask if the offender understands the verdict and the procedure of its execution, do not explain the procedure of verdict execution or appelation, do not explain the order of receiving of the decision copy, do not explain the order of familiarizing with the record of the court hearing and making remarks in it (*Tables #50–53*).

16. There were some cases when the administrative proceeding was held on several offenders at the same time and one decision concerning several citizens was passed. In official documents all cases were recorded as separate but in practice in 8 trials the judges (mostly from Navapolacak town court) broke processual norms and investigated several administrative cases simultaneously. Similar “mass” trials contradict to the existing law and are inadmissible despite the fact that in the draft version of the PECoAO such practice is absolutely legal.

17. Considering the cases for which administrative responsibility is stipulated by President's decrees, sometimes judges didn't refer to corresponding articles in the CAO. That is wrong as the offenders didn't know what norm they broke and on what reason they were taken to responsibility.

18. Very often during the trials the judges show their non-professionalism by expressing familiarity towards the charged or even humiliate the offenders (*Table #54*). That is a violation of the Honour Code of Judges that has an effect on the whole legal proceeding.

RECOMMENDATIONS ON IMPROVEMENT OF THE EXISTING SITUATION
(basing on the monitoring results)

Recommendations for state organs regarding the practice of administrative offences consideration.

1. *For judges* — while considering the case on administrative offences it is necessary to keep strictly to all norms of the processual legislation. It is necessary to treat all administrative cases with full responsibility as it is stated in the legislation and Honour code of judges.
2. *For judges* — to keep to the rule about obligatory and complete explanation to all participants of the court hearing of their processual rights in accordance with the legislation. The judges have to clear out if the offender understands his/her rights as process participant, if not — it is compulsory to explain the rights once more. It is necessary to explain to process participants the right of rejection in regard to other process participants.
3. *For judges* — to bear in mind that familiarizing with the case materials is an important guarantee of citizens' rights implementation. The practice when the judges show negligence to this processual right and says that "the citizens had an opportunity to familiarize with the record on administrative offence when that was composed" can not be accepted.
4. *For secretaries and chancelleries of district courts* — to watch that the summoning of the offender to the trial was carried out in accordance with the stated in the law procedure. In particular, the summons should be handed to the offender and the latter should put his signature confirming that he received the summons.
5. *For judges* — considering the administrative case it is necessary to keep to the rule about obligatory announcing of the record sheet on administrative offence.

6. *For judges* — to provide an opportunity for administrative offenders to look for a barrister. When the case is postponed because of looking for barrister, the offender should not be in the position of administrative detention.

7. *For judges* — considering the administrative case the judges should keep to the established order of witnesses' questioning and order of witnesses' stay in the court building.

8. *For judges* —Group trials (simultaneous consideration of the case concerning several offenders during one court trial) is a violation of the processual norm according to the existing Code of administrative offences.

9. *For judges* — the existing practice of sending record sheet for re-consideration when the record sheet on administrative offence is imperfect contradicts to the spirit of law. In cases when there are no sufficient reasons to call the person to administrative responsibility the court must plead the person innocent. The organ that wrote the primary record sheet on administrative offence has an opportunity to write a new record sheet about the same fact.

10. *For judges* — it is recommended to use corrective labour as administrative punishment instead of arrests and fines that are widely spread now.

11. *For judges* — while considering administrative cases the judges should stay official and correct, keep to all principles of legal proceedings and, first of all, follow the principle of innocence presumption in regard to the person taken to administrative responsibility.

12. *For judges* — in order to secure the right for defense of the people taken to responsibility, it is recommended to provide opportunity for participation of representatives of the offender in the trial.

13. *For Republican Bar and courts* — to create conditions that contribute to participation of barristers in investigation of the administrative cases.

14. *For Prosecutor's office* — to increase attention and supervision over consideration of administrative cases in the courts, to react on the violation of the processual norms from the side of the courts when taking citizens to administrative responsibility in the order of supervision.

15. *For Prosecutor's office* — to encourage workers of the prosecutor's office to direct supervision over the course of administrative processes.

16. *For chairpersons of district courts* — in order to increase juridical competence of the participants of administrative trials it is reasonable to place the information about their rights on the informational boards near the rooms of judges on administrative cases and executive issues. Besides,

all information necessary for the citizens to secure their rights should be placed in the court building: information about working hours of the court and reception hours of concrete judges, time and place of all trials, coordinates of justice organs and juridical consultations, telephone numbers of the court and help lines as well as other information.

17. *For chairpersons of district courts and judges* — administrative cases should be considered only in appropriate rooms — court halls and properly equipped rooms in court buildings. Consideration of cases out of court building and other improperly equipped places favours violations of citizens' rights.

18. *For Supreme Court, voblasc courts and prosecutors' offices* — to strengthen supervision over consideration of administrative cases by judges of district courts.

19. *For Supreme Court* — with the purpose of proper realization of citizens' rights it is recommended to generalize the practice of applying by country courts the Code of administrative offences adopted in 1984 and work out recommendations for proper transition to applying new administrative legislation — Code of administrative offences dated by 2002 anf Processual code of administrative offences.

Recommendations for the National Asssembly of the Republic of Belarus on including into the Processual and executive code of administrative offences the guarantees of realization of citizens' right for impartial and fair court consideration and on correcting certain norms of the Code of administrative offences.

1. Not knowing the rights is a big problem for Belarusan citizens. That is also typical for the people that are taken to administrative responsibility. That's why, it makes sense during writing the record sheet on administrative offence to give the people that are taken to administrative responsibility the carbon copy of this sheet. It is important to enumerate the rights of the offender in this copy.

   Consequently, it is necessary to introduce into part 2 of article 10.2 of the draft version of PECoAO a provision of the following content: "In the record sheet on administrative offence the following information is noted: … enumeration of the rights and obligations of the person concerning whom the record sheet is written". The first sentence of part 5 of this article should be written in the following edition: "The copy of the record sheet is given to the natural person or representative of the legal person concerning

which the trial is on. The recipient of the copy puts his signature confirming receiving of the document".

2. The judges practice only simple enumeration of the offender's rights not asking if the offenders understand their rights. Very often the people do not understand the rights that were read out. The judges must explain the rights in detail and more exactly. It is recommended to underline in the PECoAO that after reading out the rights the judge must ask "Do You understand Your rights?" in case when the offender doesn't understand some of the mentioned rights, the judge must additionally explain the contents and meaning of these rights and mechanism of their realization.

   Thus, the following provision should be stipulated in article 10.6 of the PECoO: "An official person of the organ that is running administrative process is obliged to explain to the participants of the administrative process their rights, check if the participants of the administrative process understand their rights and secure the possibility to realize these rights".

3. Sometimes during consideration of administrative cases inattentive and negligent attitude of the judges to this category of cases is observed. That is unacceptable as legal proceeding is profaned, the authority of justice decreases and the rights of citizens are violated. To avoid this it is necessary to extend the participation of prosecutors in investigation of administrative cases. Office of public prosecutor is the organ that provides general supervision over the situation with lawfulness in the country. It should also watch over the realization of citizens' rights during consideration of administrative cases in the courts. That's why it is necessary to include into the PECoAO the provision about consideration of administrative offences for which administrative arrest as a penalty measure is presupposed, is carried out with participation of prosecutor or in presence of prosecutor (article 2.15 of draft version of PECoAO part 2).

4. In accordance with the general rule the time of administrative detention cannot exceed 3 hours. But the existing CoAO adopted in 1984 presupposes in some cases longer administrative detention until the case is considered by the court, not limiting the detention time by any formal frames. The occasions when the people are kept in detention (before trial) more than three hours are unacceptable. The existing in the draft PECoAO provision about possibility to detain for up to 48 hours people that are suspected in administrative offences for which administrative arrest or deportation are prescribed is also unacceptable. In this case, if a person is detained for two days and later proved innocent, after passing in the court the justifying verdict this person will have the right to demand compensation of the time of non-grounded detention.

That's why in part 2 of article 8.3. it is necessary to include the provision of the following content: "The following persons can be detained for the time over three hours but not more than 48 hours and not more than to the moment of passing the case materials to the court: 1) natural person that committed an administrative offence for which administrative arrest or deportation are presupposed…"

Besides, taking into consideration that the person may be detained on Friday evening and may wait for the trial till Monday morning, the norm about 48-hours term demands to introduce the position of judges on duty that will consider the cases on days off. In the existing draft version of PECoAO this issue is not illustrated.

5. Detained person has the right to look for barrister for personal defense. The text of part 2 article 4.5 of the draft project should be supplemented with the following words: "a person detained within administrative legislation is provided with the opportunity to look for barrister for personal defense". In order not to admit the cases when administrative detention continues during consideration of the case, the article 4.5 should be added with the sentence "administrative detention can not continue after passing case materials on administrative offence to the court".

6. It is necessary to accentuate the opportunity of participation in the administrative process of the representative of the offender as defender of the offender. The text of part 2 article 4.5 of PECoAO should be stated as "In the process on administrative offence barristers and (or) representatives may take part as defenders. On demand of the offender any citizen of Belarus may be admitted to the process as a defender".

7. With the purpose to improve the practice of administrative case consideration it is necessary to establish obligatory writing of record sheets on administrative cases. The record sheet must be kept by the secretary (article 11.8 of the draft PECoAO).

   Apart from that, in order to secure appropriate attendance of the people that are taken to the administrative responsibility to court or another organ considering administrative case, the summoning of the person is carried out through the notification that is handed to the person personally. The recipient puts his signature upon receiving the notification. Thus, according to the article 10.9 of PECoAO draft the norms about summoning people over telephone or other means of communications should be excluded.

8. The norm in part 6 of article 19.7 of the draft PECoAO states that upon decision of the head of a specialized institution that is executing

administrative arrest, the arrested may use pay-phones. In our opinion, this provision can be interpreted in two ways — on the one hand not all of the mentioned institutions are equipped with a phone and, on the other hand, heads of these institutions receive ungrounded right to limit citizens' freedoms. So, this norm of article 19.7 of PECoAO should be stated as "administratively arrested people are allowed to use the telephone in the order defined by the head of a specialized institution executing administrative arrest".

Correspondingly, coming from the fact that administratively arrested are not deprived of the right to use telephone communication, this right should be granted to the persons detained in administrative order. Thus, part 2 of article 8.4 should be supplemented with the sentence "Natural person, detained for committing administrative offence is allowed to use telephone".

9. The record on administrative offence should be kept in full accordance with the requirements of the law and contain all data stated in the PECoAO. Correspondingly, the judicial records, composed with violations, must not be the reason to call the person to administrative responsibility. The article 10.2 of the draft version of PECaAO should be supplemented with the sentence "Records composed with violations of the requirements of the law or composed by an unauthorized person or records that do not contain necessary information stated in the law can not be the reason to call to administrative responsibility. When considering such records, the organ considering the records takes the decision about terminating the case on administrative offence". Article 11.3 that presupposes returning of such records to the organ that composed them should be excluded from the draft version of the PECaAO.

10. The right for appeal is an important guarantee of citizens' rights realization and a means to correct the mistakes that sometimes happen during administrative cases consideration. Consequently, part 3 of article 12.12 of PECoAO should be formulated as follows: "Legal expenses are not collected from the appeals that are submitted to courts on decisions about administrative offences". Simultaneously, taking into account large number of the occasions when administrative cases are considered by the court, it is necessary to introduce the opportunity to submit cassation appeals to the court decisions on administrative cases.

Viciebsk judges are ashamed of observers

[08.04.2004]:

Viciebsk human rights defenders are not allowed to city courts and are not allowed to observe the consideration of cases regarding administrative violations of rights. It is a tough violation of the Article 299 of the Code on Administrative Violations which presupposes that the consideration of administrative cases should be open. The heads of courts explain the conduction of "closed" proceedings by the fact that judges are simply ashamed of observers.

Since April, 22 in courts of Belarus human rights defenders have been holding a national observation for the consideration of cases regarding administrative human rights violations. Special attention is given to administrative cases for the reason, that namely during case consideration of this kind judges make many violations regarding the procedure.

The coordinator of the national program of the monitoring of administrative cases in Viciebsk Michai Pauiau says: "The thing is not in the shame of judges. It is common striving to hide peculiarities of consideration of these cases: judges simply hide their unprofessional work, and the head of the court helps them".

Viciebsk human rights defenders sent the appeal to the procurator's office describing all the violations of law revealed in the course of the monitoring.

All in all in frames of the monitoring program human rights defenders have observed more than 300 administrative legal proceedings. Now they want to prepare their suggestions regarding the improvement of the work of courts in this field.

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