

1. There is no Ombudsman for Children's Rights in Belarus.

The National Commission on Children's Rights is not an autonomous body, but is a part of the state machinery. It does not play a role of coordination and monitoring children's rights on the national and local level.

2. The right of the child not to be separated from the parents and guardians is constantly violated; frequently it is done for political reasons in retaliation to politically and socially active mothers (parents).

In Belarus children can be separated from their parents by state officials in cases envisioned by the paragraph 1 of the Presidential Decree no 18 from November 24, 2006, modified version from February 23, 2012 (On Additional Measures of State Protection of Children in socially disadvantaged families). Such cases mainly cover the families where parents (or a single parent) lead an "immoral life" with adverse impact on the child; families where parents are substance abusers, or all the other cases where the parents are not properly fulfilling their parental responsibilities and this endangers the children. The law however does not provide any definition of "**all the other cases of not properly fulfilling parental responsibilities**". This leads to abuse and violation of the child's right of not to be separated from the parents. One of the many reasons given to justify a child's removal from the family is "*frequent requests for social assistance*" (that is a situation when a parent is addressing the local council with complaints and requests way too often). This reason is openly stated in paragraph 6 of the *Program for Educating Children and Protecting their Rights and Legal Interests ...* approved by the Ministry of Education on May 5, 2011.

As a result any request for state assistance can be perceived as a justification for the administrative removal of a child from the family. Some other reasons for the removal of the child listed in the *Program* are "being out of employment or frequent change of workplace" for one of the parents; "unpaid utilities bills". The enforcement of these legal norms substantially increases the risk that we are going to have many more children deprived of parental care.

The vagueness and broadness of the definition also creates space for power abuse and harassment of politically active mothers for their social, political or journalistic work with the goal of silencing them or preventing them from seeking justice.

3. Public guardianship services and other state bodies are frequently unwilling to provide the mothers (the parents) with the copies of the documents that are directly related to the decision of removing the child from the family. This, in turn, impedes the appeal process.

The public guardianship services do not want to give the mothers (the parents) any copies of the documents (*even during a court process and for the court inquiry*) which served as a basis of a decision to remove the child from the family thus creating additional barriers for accessing justice and appealing the decision.

Apart from that, we have come across several cases when the public guardianship services would fabricate the results of the inspection of child's housing facilities and use these falsified evidence as a justification for removal of the child. Even though the forgery was later discovered in court, none of the employees of the public guardianship service was held accountable.

4. The rights to family life of persons with disabilities are violated

(In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents. UN Convention on the rights of persons with disabilities, article 23)

The Republic of Belarus discriminates and denies parental rights to people whose illness is included into the list of diseases disqualifying a person from fulfilling parental rights (approved by the Ruling no 36 of the Ministry of Health, March 30, 2010), as well as persons with disabilities whose rehabilitation plan has an open prohibition on being employed. The aforementioned list of disease includes diabetes, cancer, and high blood pressure among others.

The state does not provide proper assistance to persons with disabilities in raising children. One's illness or disability becomes an obstacle for enjoying parental rights and is a justification for considering a child "deprived of parental care".

In such cases the public guardianship services remove the child automatically without considering whether the persons with disabilities or certain illnesses are able to raise their children.

5. Children and young persons with disabilities have their right to accessible education violated.

The legal framework for the educational system of Belarus is provided by the Code of the Republic of Belarus on Education (from January 13, 2011, no 243-3). According to the Code the state must ensure the accessibility of all levels of primary education and vocational training to all, including people with special developmental needs based on their health status and cognitive abilities; the state must create special educational conditions for these people and provide them with correctional pedagogical assistance.

However this is undermined by several discriminatory legal norms:

1) There exists a separate set of norms that regulates the organization and the operation of the specialized boarding schools for children with disabilities. Needless to say that such schools represent a form of segregation and are discriminatory;

2) Whether or not the children with disabilities will be able to get educated is contingent upon the results of medical screening. There still exists a practice whereby such children are labeled “uneducable” and are deprived of the right to education;

3) Children with I and II category of disability who receive the same score at the university entrance exams as other applicants in order to use their rights of priority have to provide a medical certificate proving that a medical and social commission of experts found no contraindication to their studying at a specific department or school.

6. Children of unknown/unidentified parents cannot enjoy their constitutional right to social welfare, namely the right to receive survivor’s benefit

Article 47 of the Constitution of the Republic of Belarus safeguards the right of all citizens to survivor’s pension. The Pension Law, however, does not envision a mechanism for securing survivor’s pension to children of unknown parents (i.e. to “door-bell babies”). In other words, if a child’s mother has abandoned the child and left him/her in a trash can, and the state failed to identify the parents, the child is not entitled to any welfare benefits apart from a place in an orphanage until the age of 18.

7. Lack of alternative punishments for juvenile criminals under the age of 16.

The Criminal Code of the Republic of Belarus has a list of punishments that can be used in case of underage criminals. Since the list is short, it means that there is little to choose from and this, to an extent, violates the principle of differentiation and individualization of punishment.

An underage person can be fined only if he/she has an independent income or owns property. Fines are rarely applied in the Belarusian justice system. Few of the 14-16 year old teenagers are employed, and as a result underage persons with no income or property can be punished only in two ways – by way of restriction of freedom and arrest /deprivation of freedom. Arrest and deprivation of freedom mean isolation of an underage convict from society.

As a result, Belarus ranks second in Europe after Albania according to the number of underage convicts (<https://news.tut.by/society/502530.html>).

8. A widespread practice of slave (unpaid) child labour which is a source of danger for the health of an underage person and an obstacle to receiving proper education

It is common for Belarusian state bodies to engage underage children (below the age of 14) and minors in agricultural works during an academic year. This work is something schoolchildren have to do **instead** of going to school and having lessons. This practice is regulated by the so-called prescriptive and instructive letters.

For no apparent reason, this type of labour relations is not regulated by the Labour Code of the Republic of Belarus.

As a result the age limits for getting involved into labor relations are not respected, health and safety regulations are violated, and none of the benefits safeguarded by the Labour Code are there.

On top of everything else, this type of labour should be considered **slave labour**, as it is mandatory and unpaid.

Why do not the state or state sponsored organizations deal with the issue?

1. As a rule, the rights of women and children are violated by the state employees (police officers, educational officials, employees of the city councils), which restricts access to justice and makes it difficult to appeal institutional decisions through courts and prosecution services. The state bodies are extremely unlikely to conflict with one another because of the children's rights violations (*unfortunately even the UNICEF is inactive here because of the risk to lose their state accreditation*). When a mother is separated from her child due to her conflict with police or local administration any organization which tries to protect her, will also have a conflict with police and local administration officials. If this is a state sponsored organization, it will automatically lose state support. *Our House* has never had state support in any form, thus we have nothing to lose.
2. In addition, going to court requires substantial financial investments, and parents frequently lack money (*for example, Our House has already payed the lawyers who represented Irina Kravets in court an amount equalling the price of a good car*). Attempts to return the children through court take at least a year, but frequently more. Deprived of the independent NGO's support the mothers will not be able to protect their rights and will not be able to return the children, even if their position is justified.
3. Currently there are no independent NGOs dealing with children's rights in Belarus. There are structural reasons for this: children's rights were traditionally addressed by the state sponsored organizations. But as we have pointed out above, the state sponsored organizations will not protect socially and politically active children for the fear of being labeled "oppositional" (*this is a popular expression used to indicate that a certain person or an organization are being prosecuted by the state*).

That is why to eliminate the systemic issue outlined above *Our House* needs comprehensive (informational, political and financial) support.

Practical Recommendations for Law-Makers (what *Our House* wants to change):

1. Eliminate the practice of administrative separation of children from their parents as it violates the Constitution of the Republic of Belarus.

Clearly define what is meant by *all the other cases of not properly fulfilling parental responsibilities*.

Envision penalties for state officials for **unjustified** separation of the child from the family (biological or adoptive).

Stop harassment of socially and politically active women and their children.

2. Introduce a legal norm that mandates state bodies to provide the parents with copies of all the documents related to decision to separate the child from the family on their request with a goal of securing parents' rights to justice.

3. Introduce relevant changes preventing separation of children from parents with disabilities or certain illnesses into the article 116 of the Code of the Republic of Belarus, the law «On social protection of young orphans, children deprived of parental care and persons from those groups» and relevant bylaws.

4. Recognize that every child is able to learn and has a right to attend local school (introduce relevant changes into the law and bylaws). Mandate all the educational establishments to take relevant steps in order to ensure accessibility of education to children with disabilities/ children with special developmental needs. Remove restrictions on acquiring professions (established by the Ministry of Health) and provide labor conditions responding to individual needs.

5. Children of unknown parents must have an opportunity to enjoy rights to survivor's benefits. Relevant modification should be introduced into the Pension Law of the Republic of Belarus, namely into the article 35.

6. Introduce probation as a punishment for underage perpetrators of crime into the Criminal Code of the Republic of Belarus. Introduce voluntary and confidential reconciliation of a perpetrator and a victim (mediation) into the criminal legislation with the goal of improving the mechanism of exemption of underage perpetrators from criminal liability.

7. Ban child slave labour, in other words eliminate the practice of involving minors into any kind of agricultural or other works especially during an academic year. All types of child labour, including non-penitentiary community works should be regulated by the Labour Code of the Republic of Belarus.