

Death Penalty in Belarus: Murder on (Un)lawful grounds

Joint FIDH – HRC “Viasna” report 2016

EXECUTIVE SUMMARY

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Europe should become a death penalty free zone!

2016 has seen the execution of at least four convicts in Belarus, the only country on the European continent still practicing the death penalty. For the duration of negotiations around EU restrictive measures against Belarusian officials and businesses such executions had been on hold. However, upon the lifting of sanctions in February 2016, executions resumed, reaching their highest number since 2008 by the end of the year.

Belarus' regular execution of people on the basis of unfair trials and in an atmosphere of a total secrecy, is largely under-reported and unknown internationally. The legal system and practices surrounding Belarus' death penalty are now being denounced in this comprehensive 84 page report “Death Penalty in Belarus: Murder on (Un)Lawful Grounds”, prepared jointly by FIDH and its Belarusian member organisation, HRC “Viasna”.

A FIDH-HRC “Viasna” investigation mission, conducted prior to the publication of the report, interviewed the family members of convicts on death row and relatives of executed death convicts, as well as journalists, experts, human rights defenders, former convicts and lawyers of defendants in cases punishable by death. The report details numerous examples of grave human rights violations at each step of the judicial and execution process, including during arrest, investigation, trial, review of trial by higher instance courts, procedures for Presidential pardon, pre-trial and execution detention and in the execution itself.

The rights of relatives are seriously infringed, primarily by the secrecy shrouding such executions, which are characterised by a failure to inform family members of execution dates, to release the bodies of executed prisoners to their families or even to reveal their place of burial. The UN has repeatedly emphasised that such practices are contrary to international human rights norms.

The secrecy surrounding the application of death penalty

Information concerning the death penalty is withheld from the general public, especially journalists, in violation of Belarus' international obligations. Official information on death penalty cases is scarce and incomplete, whilst information on detention conditions for death convicts and execution procedures is not publicly available.

The exact number of persons convicted to death and executed in Belarus is unknown. The only global figure for death convicts announced by Belarus' Ministry of Justice covers the period 1994 to 2014, and amounts to 245 people. However, human rights defenders estimate that since Belarus gained its independence in 1991, over 300 people have been sentenced to death and about 400 have been executed. The discrepancy between the number of death sentences and executions may be explained by the fact that after declaring independence, Belarus continued to execute death convicts who had been sentenced prior to 1991, including those sentenced to death in other parts of the Soviet Union before its collapse.

Violations at all stages of judicial proceedings

Interviews and documents collected during the FIDH-HRC "Viasna" mission uncovered cases in which detention reports are drafted several hours after arrest in violation of the Article 110 of the Code of Criminal Procedure (CCP) of Belarus.

Furthermore, in all cases analysed by the mission, legal counsel was not provided following arrest, as required under Article 45 of the CCP. This FIDH-HRC "Viasna" report finds that torture and ill-treatment are being widely used to force suspects to self-incriminate in the absence of a lawyer during first 12 hours of arrest before the initiation of criminal proceedings. Throughout investigation and trial, self-incrimination is used by the prosecution as the main evidence of guilt, whilst the right to an effective legal defence is systematically violated.

One special matter of concern is that suspects are held by the very institution tasked with the investigation of crime, and therefore under pressure to deliver "results": indeed, the entire system of pretrial detention centres in Belarus is under control of the Ministry of Internal Affairs.

Death sentences may be appealed to the Supreme Court. However, it rarely commutes death sentences and can even hand down harsher verdicts, as was the case for Siarhei Khmialeuski in 2015. Death sentences issued by the Supreme Court as a first instance court are not at all subject to appeal, in violation of international norms. They can be reviewed only in form and not in essence by the Chairman of the Supreme Court, his deputy, the Prosecutor General, or his deputy. Such supervisory review does not suspend the enforcement of a death sentence – as outlined in one of the cases exposed in the report, a convict was executed in 2012 whilst a supervisory review was in process of preparation by his lawyer. Once the appeal of a death sentence is rejected by the Supreme Court, a death convict has an illusionary chance of pardon by the President, who is advised by the Presidential Pardon Commission. The format of the Commission's decision making is unknown and its decisions are not public.

Since the public is not informed about the President's decisions on granting pardons, conflicting information exists as to the number of death convicts pardoned by the President. It has been stated on several occasions by state officials, however, that over the 20 years of his rule, President Lukashenka has only ever pardoned one death convict. The public is not aware of this individual's identity, nor of the reasons he was granted pardon. The decision on granting pardon is kept secret from the death convict up until the execution, when the refusal is read out to him.

No death sentences are known to have been commuted as a result of mental disorder, as provided for in Belarus' legislation. The mental state of death convicts, according to available information, has never been examined or assessed.

Violations of fair trial procedures and facts documented in the FIDH-HRC "Viasna" report were confirmed in several decisions of the UN Human Rights Committee (HRC) regarding death penalty cases in Belarus. The HRC has requested in ten different cases that the Belarusian authorities not carry out sentences pending their examination by the UN. In all cases, Belarus has disregarded this request, in violation of its international obligations. In six of these cases, the HRC has subsequently found numerous basic rights violations, including of the right to life, post mortem.

"Throughout his entire trial my son maintained that his confessions had been obtained during the first interrogations, under torture and psychological pressure. The speed with which they sentenced and executed my son, and the fact that the Prosecutor General and the Minister of Justice were dismissed before the court's judgment show that the case was purely political",
stated Lyubov Kovaleva, mother of Vladislav Kovalev executed in 2012.

«In 2011, I had spent four months in detention in a prison on Valadarski street in Minsk where death convicts are held one floor below, and close to where the executions take place. Contrary to other prisoners, death convicts are not allowed for walk, their communication with the outside world is often impossible. Detention conditions in death row amount to torture», stated Ales Bialiatiski, Chairman of HRC "Viasna".

Lack of independence of the judicial system

As reported by the mission, lawyers and judges in Belarus generally lack independence – a state of affairs reflective of the judicial system as a whole. Lawyers in Belarus are under the tight control of the Ministry of Justice, which is in charge of organising qualification exams, initiating disciplinary proceedings against lawyers and suspending their activities in cases of misconduct. It carries out state registration of bar associations and law firms and is empowered to control the management of bar associations.

Belarusian legislation violates the principle of judicial independence and the non-removability of judges. Indeed, the executive plays a key role in the appointment of judges and has the authority to initiate disciplinary proceedings against them, including their removal from office.

President Lukashenka has repeatedly pronounced himself in favour of capital punishment, and once intervened directly in the work of a supervisory body that sought to suggest the softening of the death sentence.

Wrongful convictions

In light of the above context, the independence of court rulings in Belarus is called into question and the probability of wrongful conviction is very high. Irreversible wrongful convictions have already resulted in the deaths of innocent people, as in the case of Mikhasevich, studied in further detail in the report.

The current authorities deny that innocent people are being executed. However, several cases, including that of Ivan Famin, executed in the late 1990s, and the case of Kavaliou and Kanavalau, which left multiple questions unanswered, give rise to a high level of mistrust of the Belarusian judicial system. The case of Mikhail Hladki, who avoided the death penalty in 2003 but spent seven years in prison for a murder he did not commit, is another blatant example of the country's dysfunctional justice system.

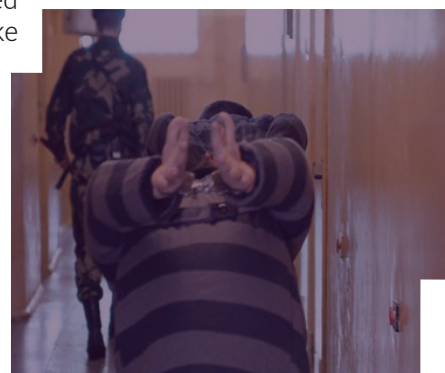
Mistreatment of death convicts

While on death row, convicts face a number of violations of their rights. During their one monthly visit with a family member (a right accorded under Article 174 of the Criminal Law Enforcement Code), they are forbidden from referring to detention conditions.

Testimonies collected during the FIDH-HRC "Viasna" mission show a staggering difference in treatment of convicts before and after death sentencing. Prison staff are said to treat these convicts as if they are no longer "among the living" and they are subjected to humiliating treatment during the entire period of detention until execution. Correspondence from prisoners at Pretrial Detention Centre No. 1 in Minsk, where death convicts are kept, is systematically withheld. These convicts are frequently denied lawyer's visits. Family members reported several instances of not being able to receive a power of attorney from their convicted relative to be able to submit an individual complaint to the UN Human Rights Committee. Moreover, when execution dates are kept secret, the inability to receive letters from convicted relatives constitutes a supplementary psychological pressure on families who have no other way of knowing if their family members are still alive.

The cumulative outcome of these conditions is that individuals sentenced to death are kept in almost total isolation. They are forbidden to take walks. They are forced to spend all day in a 3 to 6 meter cell shared by two death convicts. When transferred outside the cell, including for visits and to go to court, they are forced to adopt a humiliating pose - head bent down towards the knees and handcuffed arms lifted behind the back. Defendants in death penalty cases are brought before the judge in the same pose by a convoy accompanied with dogs. In the courtroom they are kept in metal cages.

Until fairly recently, death convicts whose appeal was still pending a Supreme Court decision were forced to wear a robe with the inscription EMP, for "Exceptional measure of punishment," despite the fact that legally the verdicts had not yet entered into effect. These examples



Death row inmates are forced to walk with their heads to their knees and hands in handcuffs high above their backs. In the photo: prisoners being brought out in Jodinsk Prison No. 8. Source HRC "Viasna".

"I received a notification from the post office to pick up a parcel from Minsk. It was the robe and boots of my son. When I got home, I just didn't know what to do," said Tamara Selyun, mother of Pavel Selyun, who was executed in 2014.

of convict mistreatment cannot be justified by reference to the need for security measures. The FIDH-HRC "Viasna" report concludes that detention conditions of death convicts in Belarus amount to psychological and physical torture, which has reportedly led to a number of suicide attempts.

Legal framework for abolition

Twenty years after the 1996 referendum in which 80.44% of Belarusians were reported by official sources to have voted against the abolition of the death penalty, human rights defenders and independent journalists claim that public opinion on the issue has changed. Notwithstanding the fact that the referendum was not recognised by the international community as lawful due to a number of voting irregularities, today independent opinion polls suggest that nearly half of Belarusians support the immediate or gradual abolition of the death penalty in Belarus. Public outcry at the case of Kavaliou and Kanavalau in 2011 had a perceptible effect on attitudes to the death penalty.

In 2004, the Constitutional Court of Belarus established that it is not mandatory to call a referendum to abolish the death penalty. Based on its analysis of the Article 24(3) of the Constitution stipulating that the death penalty can be applied for particularly grave crimes "until it is abolished", the Constitutional Court found that "the matter of abolishing this type of penalty or, as a first step, declaring a moratorium on its use, may be decided by the Head of State and the Parliament".

However, the authorities have done little to abolish the death penalty or to prepare for a transition. Meanwhile, little is being done to eradicate the core causes of high rates of particularly grave crimes, namely domestic violence, alcohol and drug use, and poverty.

The Working Group on the study of the death penalty set up within the Parliament of Belarus in 2010 has not been tasked with work on the abolition of the death penalty but instead was charged with "participation in various talk shows, seminars and round tables". As a result, it has not filed a single activity report before the end of the Parliamentary term in 2016. The question of a sequel to the activities of the Working Group and its new Chairman remains open in the wake of the September 2016 Parliamentary election.

Death penalty: a stake in a political game

Depending on the domestic situation and relations with international organisations, especially the Council of Europe and the EU, the Belarusian authorities use different discourses concerning the abolition of the death penalty. These contradictory and external diplomacy-motivated manoeuvres are analysed in the report, as are Belarus' international obligations, which are persistently and unequivocally violated.

In a context of intensifying dialogue between the Belarusian authorities and the international community, the report provides a number of recommendations to both the Belarusian authorities and international bodies, such as the EU, UN and OSCE.

In particular, FIDH and HRC "Viasna" urge the EU to assess the human rights situation in Belarus in light of concrete and sustainable developments. FIDH and HRC "Viasna" believe that the EU should state more explicitly that measures towards the abolition of the death penalty are among the main "tangible steps" expected to further develop relations between the EU and Belarus. Moreover, the EU should highlight that its February 2016 review of restrictive measures is reversible, depending on the concrete steps (or lack thereof) taken by Belarus on the issue of the death penalty.



Prison uniform of Aleksandr Grunov, who was executed in 2014. The uniform was sent to Grunov's family after his execution. Source: HRC "Viasna".

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