

The Death Penalty in Belarus

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This article is a detailed version of a chapter in the author's LL.B. (Honours) dissertation. In it, **Graziella Schembri** discusses the breaches of several human rights as a result of Belarus's imposition of the capital punishment.

TAGS: Constitutional law; Criminal law; Human Rights; Death Penalty

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‘Belarus is currently the only country in Europe where the death penalty is regularly and widely enforced.’¹

Many oppressive traditions of the Soviet Union have been perpetuated in modern Belarus. Following the fall of the Soviet Union, regardless of its independence, Belarus continued to implement – with minor revisions – the Soviet Criminal Code, which reserves the death sentence for various heinous crimes. The notorious referendum of 1996, organised by President Aliaksandr Lukashenka, brought to light the country’s attitude towards certain matters of considerable public importance, including the death penalty. Concerningly, a substantial majority voted in favour of retention.² Belarusian officials determinedly oppose abolition and justify its retention by stating that the decision of the people must be respected and that society is not ready for such a drastic change. An indication of the use of the death penalty, black on white, is expressed under Article 24 of the Constitution of the Republic of Belarus³ which, ironically, guarantees everyone the right to life. However, the same article further states that, until it is abolished, the death penalty may be used as an extraordinary measure of punishment for severe crimes, as determined by a court judgment.

Practising and advocating for the death penalty is simply the tip of the iceberg – Belarus’s imposition of the death penalty is aggravated by the country’s defective and weak criminal justice system.⁴ Through briefly discussing the justice system and the courts’ procedure, countless breaches of international regulations and standards surface. The most pertinent include violation of the right to a fair hearing and the right against torture or cruel, inhuman, or degrading treatment or punishment, and all their respective constituting elements.

¹ Wolfgang Behrendt, ‘Situation in Belarus’ (Political Affairs Committee, 2000) <<https://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=8817&lang=EN>> accessed 4 August 2023.

² ‘Death Penalty in Belarus: Murder on (Un)Lawful Grounds’ (FIDH-HRC Viasna, 2016) <<https://www.fidh.org/IMG/pdf/belarus683angbassdef.pdf>> accessed 6 August 2023: ‘80.44% of Belarusians [...] voted against the abolition of the death penalty, and only 17.93% [...] voted in favour thereof.’

³ Constitution of the Republic of Belarus <<https://constitutionnet.org/sites/default/files/Belarus%20Constitution.pdf>> accessed 4 August 2023.

⁴ ‘Capital Punishment in Belarus, Analytics, Petition Against the Death Penalty in Belarus’ *Say No to the Death Penalty in Belarus* <<https://dp.spring96.org/en/sign>> accessed 4 August 2023.

1. Multiple violations of the right to a fair trial under Article 14 of the ICCPR

1.1 Violation of Articles 14§3(b) and (d): The right to legal assistance

The Criminal Law Enforcement Code of the Republic of Belarus holds that prisoners condemned to death have the right to meet with attorneys and other persons authorised to give legal help, with no restriction on the number or duration of consultations. Article 17 of the Code of Penal Procedure of the Republic of Belarus further states that the person accused has a right of defence which may be performed either personally or by means of a defender. Theoretically, it appears that legal representation is paramount in situations involving death penalty eligible offences; nonetheless, they are systematically abused and ignored by Belarusian law enforcement authorities.

In *Svetlana Zhuk v Belarus*,⁵ it was reported that the accused was permitted to see a lawyer for five minutes and was largely denied legal help throughout the early stages of the investigation, to the extent that most investigative acts were carried out without the presence of legal counsel despite the demands for one. Similarly, in *Lyubov Kovaleva v Belarus*,⁶ it was discovered that Mr Kovalev communicated with his lawyer only once throughout the entire pretrial inquiry. In addition, the lawyer was denied access to him on numerous occasions and in the rare cases when access was granted, their meetings were only allowed for a few minutes. Furthermore, the lawyer had restricted access to the case file; hindering his ability to prepare a solid defence.

It comes as no surprise that those provisions under Belarus's national criminal law which guarantee access to a lawyer from the moment of arrest also get disregarded. Andrei Paluda stated that his client, death row inmate, Siarhei Khmialeuski, had a right to contact legal counsel only during his initial interrogation. This meant that he was refused access to a lawyer for eight hours after his detention, which resulted in police personnel pressuring him into a confession.⁷

Concerns have also been raised regarding the poor quality of legal help and lack of requisite professional expertise among *ex officio* lawyers, whereby their expertise and skills are not up to par with the complexity

⁵ Views of the ICCPR Human Rights Committee on *Svetlana Zhuk v Belarus* (Communication No. 1910/2009) (14 October–1 November 2013).

⁶ Views of the ICCPR Human Rights Committee on *Lyubov Kovaleva and Tatyana Kozyar v Belarus* (Communication No. 2120/2011) (27 November 2012).

⁷ *ibid* (n 2).

of offences punishable by capital punishment.

1.2 Violation of Article 14§1 of the ICCPR: The right to a competent, independent, and impartial tribunal established by law

In Belarus, judicial independence is severely limited. Institutional flaws, coupled with politically motivated involvement with courts and judiciary, compromise judicial independence and impede Belarus's implementation of the right to a fair trial.⁸

Former Special Rapporteur Adrian Severin, during his term, received reliable allegations from concerned judges and attorneys attesting to the pressures exerted by the executive branch of government resulting in a weakened and tainted judicial independence.⁹ In response to this, the international community has repeatedly encouraged Belarus to move towards and meet the international minimum standards whereby lawyers and members of the judiciary are free to conduct their professional tasks without political or other external pressures.

Severin expressed a deep worry regarding what is known as ‘telephone justice,’ whereby judges allegedly get telephone instructions on what the desired outcome of a particular case is – always one which is to the benefit of the Government – and refusal to abide generally results in the dismissal of the judge.¹⁰ Such practices, apart from violating the concept of independence and impartiality, also gravely affect the fundamental notion of separation of powers without which the rule of law cannot be observed.

One cannot discuss the lack of proper separation of powers without noting that several judges are, reportedly, directly appointed by the Head of State.¹¹

1.3 Violation of Article 14§2 ICCPR: The presumption of innocence

The right to be presumed innocent until proven guilty is often curtailed in Belarusian courts, primarily through the media often publishing accusatory articles containing unequivocal acknowledgement of guilt ahead of the court’s verdict.¹²

⁸ UNHRC Report of the Special Rapporteur on the situation of human rights in Belarus, Anaïs Marin (2021) UN Doc A/HRC/47/49.

⁹ UNHRC Report of the Special Rapporteur on the situation of human rights in Belarus, Adrian Severin (2005) UN Doc E/CN.4/2005/35.

¹⁰ *ibid.*

¹¹ *ibid.*

¹² *ibid* (n 2).

The extent to which court rulings are influenced by both the executive branch and the media is illustrated in the case of *Aliaksandr Hrunou* whereby Belarus's Supreme Court annulled the Regional Court's death sentence and ordered a retrial. During the retrial, the President disclosed his personal opinions and resorted to the media to put pressure on the court, remarking that if a person has killed, that same person has no right to exist on earth, and that retribution and execution are necessary.¹³

Likewise, in *Andrei Burdyko v Belarus*,¹⁴ the accused, throughout the proceedings, was chained and held in a metal cage, giving the impression of a jailed and already guilty person, in violation of the presumption of innocence. Furthermore, images of him behind metal bars in the courtroom were widely circulated in the media.

1.4 Violation of 14§5 ICCPR: The right to have one's conviction and sentence reviewed by a higher tribunal according to law

Death sentences issued by the Regional Courts as first-instance courts may be appealed to the Supreme Court. Despite this possibility, death sentences handed down by first-instance tribunals are rarely commuted by the appeals court. Moreover, the right to appeal is further limited since the Supreme Court, in many cases, also acts as the court of first instance, leaving no possibility for an appeal.¹⁵

After a death sentence appeal is rejected by the Supreme Court, Article 84 of the Constitution provides for a presidential pardon procedure, under which the accused could request for clemency. In theory, this seems to be in line with Article 6§4 of the ICCPR. However, in reality, this is simply an illusion of hope considering that the President is not known to grant many pardons. One of the most recent cases is that of *Illya Kostseu and Stanislau Kostseu* who, after being sentenced to death by the Regional Court and having the sentence upheld at the appeal stage, applied for clemency and extraordinarily were pardoned and transferred to a regular prison.¹⁶

¹³ 'Aliaksandr Hrunou's Case' *Say No to the Death Penalty in Belarus* <<https://dp.spring96.org/en/list/82180>> accessed 4 August 2023.

¹⁴ Views of the ICCPR Human Rights Committee on *Andrei Burdyko v Belarus* (Communication No. 2017/2010) (29 June-24 July 2015).

¹⁵ UNHRC Report of the Special Rapporteur on the situation of human rights in Belarus, Adrian Severin (2007) UN Doc A/HRC/4/16.

¹⁶ 'Unbelievable: Lukashenka Pardons Two Brothers Sentenced to Death – HRC Viasna' *Belsat* (30 April 2021) <<https://belsat.eu/en/news/30-04-2021-unbelievable-lukashenka-pardons-two-brothers-sentenced-to-death-hrc-viasna>> accessed 4 August 2023.

It is reported that since the commencement of his Presidency in 1994, President Alyaksandr Lukashenka has only granted a pardon to one other death convict after a sentence became final.¹⁷

1.5 Violation of Article 14§3(g): The right not to be compelled to testify against oneself or to confess guilt

Human rights defender Siarhei Sys noted that law enforcement authorities resort to physical and psychological pressure including empty promises that if the suspect incriminates himself, he merely risks serving several years in prison as opposed to a more severe form of punishment which would instead be imposed in cases of refusal to admit guilt.¹⁸

During a meeting with his mother, suspect Vladislav Kovalev disclosed that, in the absence of his lawyer, he was assaulted and put under physical and psychological pressure because of which he admitted guilt, and this admission eventually became the basis for his conviction. In court, he attempted to retract his admission, alleging it was extorted under coercion.¹⁹ Unfortunately, and perhaps as expected, his attempt was futile and he was in fact executed in record time: less than four months after the court's decision.

The Criminal Code of the Republic of Belarus provides that if the accused is charged with an extreme offence punishable by death, capital punishment will not be imposed if a pretrial agreement indicating cooperation with the investigators is signed. This gives rise to problematic situations where suspects resort to self-incrimination simply to avoid the death penalty – usually to no success. Despite this provision, if the prosecuting authority deems that the collaboration was insufficient, the accused will still be sentenced to death regardless of his cooperation and/or any signed agreement.

On this matter, Andrei Kniazkou, former convict, explained to the FIDH-HRC that the principal role of an attorney consists in instructing his client to cooperate with all that the prosecution demands, even if it means admitting to everything in the indictment. He recalled that before he met with his lawyer and after having fallen under the pressure of scare tactics utilised by the police officer, he signed an honest confession and consequently, was sentenced to eight years in jail. Alas, had he not signed the confession, he may have received five years instead.²⁰

¹⁷ *ibid.*

¹⁸ *ibid* (n 2).

¹⁹ Kharkiv Human Rights Protection Group, 'Appeal from Mother of One of the Young Men Sentenced to Death in Belarus' *Human Rights in Ukraine* (3 December 2011) <<https://khpg.org/en/1322863329>> accessed 7 August 2023.

²⁰ *ibid* (n 2).

2. Multiple violations of the right against torture or cruel, inhuman, or degrading treatment or punishment under Article 7 of the ICCPR

2.1 Inhumane detention conditions

The issue of torture is prominent in Belarus and is repeatedly flagged by the international community. Special Rapporteur Anaïs Marin was provided with evidence of torture being resorted to during the interrogation stage, whereby verbal and psychological abuse, such as insults and death threats, are persistently exerted on suspects/accused by police officers. Additionally, during transfers between detention facilities, it is common for inmates to be repeatedly subjected to humiliating treatment, including having security agents relentlessly beat and insult them.²¹

According to a former employee of the Pretrial Detention Centre No. 1, death row inmates are subjected to severe security measures from the start. In fact, video monitoring cameras are installed in all cells with the purpose of constantly keeping an eye on the convicts. The dire conditions of detention centres may be illustrated through the fact that: the walls are beige while the ceilings are white, the light is also white and always turned on, the toilet is a pocket, and the sink is right next to it. Moreover, the restrictions in place forbid prisoners from lying or sitting on the beds, and they must sleep with their hands above the covers. It is also against the rules for death row convicts to be taken out for a stroll; they may only do so in their cell all day.²²

Aggravating the above-described brutal conditions, it is almost impossible for a person in custody to bring a complaint of torture. The allegation is almost always ignored by the prison administration, and the complainant risks suffering harsh physical or psychological consequences, including solitary confinement. For this reason, ill-treatment frequently goes undetected.²³

Making matters worse, information concerning detention conditions or the condition of death convicts is kept secret. It is forbidden to speak about detention conditions during meetings. Aliaksandra Yakavitskaya, Henadz Yakavitski's daughter, recalls a notice in the meeting room banning discussion on a variety of matters, including the criminal case and the incarceration circumstance.

²¹ *ibid* (n 9).

²² *ibid* (n 2).

²³ UNHRC Report of the Special Rapporteur on the situation of human rights in Belarus (2014) UN Doc A/HRC/26/44.

2.2 High level of secrecy is in violation of the rights of the death row inmates' relatives

Countries have an obligation to be transparent about the administration of the death sentence. The secrecy surrounding the use of the death penalty is incompatible with the rights of those sentenced to death, their relatives, and the general public. This concealment contradicts the rights to a fair and public trial, the prohibition of cruel, inhuman, or degrading treatment, and the right to information.²⁴ On this note, it would be appropriate to mention that trials in Belarus are often held behind closed doors without adequate justification, and representatives of human rights organisations are denied access to the courts to monitor hearings.²⁵

Information in Belarus is protected by two main laws. The main issue arises when one considers the vague wording these laws were drafted with, whereby such obscurity empowers a competent authority, with few exceptions, to practically categorise any piece of information as classified. Although there is no legal requirement for information concerning death penalty execution to be deemed classified, in practice, these are almost always kept secret. The high level of government secrecy makes it almost impossible for the accused and their family to know the date of execution. In addition to this, the bodies are never returned and details of burial sites are not revealed.

Tamara Selyun, mother of Pavel Selyun, downheartedly expressed, 'If they had said, "Come and see," I would have believed it all. But the body was not returned to me. I can't understand why. You know, they can do anything they want with bodies after execution.'²⁶

Belarusian authorities absolve themselves of responsibility by claiming that the management of the institution where the death penalty is carried out must notify the court that handed down the death sentence, which must then notify one of the victims' relatives that the execution has taken place.

This heightened level of confidentiality creates another traumatic experience of further suffering unjustly forced onto the family. The Human Rights Council has, in fact, recognised this as inhuman treatment in violation of Article 7.²⁷

²⁴ *ibid* (n 7).

²⁵ UNGA Res 60/251 (15 March 2006) UN Doc A/RES/60/251.

²⁶ *ibid* (n 2).

²⁷ UNHRC Report of the Special Rapporteur on the situation of human rights in Belarus (2019) UN Doc A/HRC/41/52.

Moreover, the fact that some governments notify prisoners and their relatives a few days or, in some cases, a few moments before their execution is cruel.²⁸ This leaves the prisoners in a constant state of fear wondering if they will be executed every time their cell door opens. To illustrate an example, human rights defenders learnt of Siarhei Ivanov's death from a statement made in court by his cellmate Siarhei Khmialeuski, another death row inmate. During his appeal hearing before the Supreme Court, he explained that he was unable to sleep that night, awaiting his cellmate's return and hoping that perhaps he had been taken out for some reason other than execution. The next morning, prison employees ordered Khmialeuski to hand them all of Ivanov's belongings, accompanying their order with comments insinuating that Ivanov would no longer be needing those things.²⁹

Moreover, withholding information about death verdicts and executions creates implications for the monitoring and reporting of death penalty cases.³⁰ By refusing to release and exchange information regarding the use of the death penalty with the public, Belarus breaches its commitments to the OSCE.³¹

Belarus has made little effort to promote and protect human rights. Apart from violating those rights which directly relate to the death penalty, such as the right against torture, considering the inhuman detention conditions and the high level of secrecy surrounding the execution and burial, multiple other rights are constantly breached. These range from the presumption of innocence, the right to an independent and impartial court, the right to legal assistance and where necessary free of charge, the right to appeal, and more. These rights may not have a direct relationship with the practice of capital punishment per se but have a direct link with the right to fair trial which, when breached, naturally breaches Article 6 of the ICCPR which discusses the right to life in relation to the death penalty.

²⁸ Amnesty International, 'Governments Must Put an End to Death Penalty Cruelty and Take Steps Towards Full Abolition' (2018) <<https://www.amnesty.org/en/latest/press-release/2018/10/governments-must-put-an-end-to-death-penalty-cruelty/>> accessed 5 August 2023.

²⁹ *ibid* (n 2).

³⁰ UNHRC Report of the Special Rapporteur on the situation of human rights in Belarus, Anaïs Marin (2020) UN Doc A/HRC/44/55.

³¹ OSCE's Office for Democratic Institutions and Human Rights, 'The Death Penalty in the OSCE Area, Special Focus: The Road to Abolition in Selected OSCE Participating States' (2021) <<https://www.osce.org/files/f/documents/b/e/500413.pdf>> accessed 5 August 2023.



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