

BELARUS

Input for the Secretary-General's report on the question of the death penalty

SUBMISSION PREPARED BY THE BELARUSIAN HELSINKI COMMITTEE
FOR THE UNITED NATIONS SECRETARY GENERAL



CONTENTS

i. GENERAL CONTEXT	3
ii. 2022 EXTENSION TO “ATTEMPTED” TERRORISM-RELATED CRIMES	5
iii. 2023 EXTENSION TO HIGH TREASON	5
iv. LACK OF FAIR TRIAL GUARANTEES	6
v. DEATH-ROW CONDITIONS AND ILL-TREATMENT OF RELATIVES	7

i. GENERAL CONTEXT

Article 24 of the Belarusian Constitution stipulates: “Everyone has the right to life. The State protects the life of the individual from any unlawful encroachments. The death penalty, pending its abolition, may be applied in accordance with the law as an exceptional punishment for particularly serious crimes and only by court judgement”.

Since the first version of the Constitution in 1994, the Republic of Belarus has maintained the death penalty. No moratorium has been established thus far – the State lacks the political will to introduce it. Discussions regarding the abolition of the death penalty are hindered by the authorities’ references¹ to the 1996 referendum, where purportedly 80.44% of Belarusians supported the retention of capital punishment². Importantly, the referendum was held in violation of Belarusian legislation, intended to be consultative, and occurred amidst unbalanced coverage of alternative positions and the absence of life imprisonment as an alternative punishment for particularly serious crimes³. Resuming genuine dialogue on abolishing the death penalty or introducing a moratorium is currently not feasible due to the overall repressive atmosphere, systematic suppression of freedom of expression, and persecution of independent NGOs – including human rights defenders and activists who supported this discussion in previous years⁴.

Within the reported period, the scope of capital punishment was extended. The “particularly serious crimes” punishable by the death penalty under the latest version of the Criminal Code include:

- Article 122. Preparation or conduct of aggressive war
- Article 124. Act of terrorism against a representative of a foreign state or international organisation (including attempt to commit the crime – novelty since 2022)
- Article 126. Act of international terrorism (including attempt to commit the crime – novelty since 2022)
- Article 127. Genocide
- Article 128. Crimes against the security of humanity
- Article 134. Use of weapons of mass destruction
- Article 135. Violation of the laws and customs of war
- Article 139. Murder

¹ <https://www.amnesty.org/en/wp-content/uploads/2021/06/eur490012009en.pdf>, p. 15

² <https://www.fidh.org/IMG/pdf/belarus683angbassdef.pdf>, p. 5-6

³ Ibid, p. 6

⁴ See Belarus Human Rights Index, Right to freedom of expression, Right to freedom of association (expert commentaries): <https://index.belhelcom.org/en/>, <https://dp.spring96.org/en/news/104586>

- Article 289. Act of terrorism (including attempt to commit the crime – novelty since 2022)
- Article 356. High treason (novelty since 2023)
- Article 357. Conspiracy or other actions aimed at seizing state power
- Article 359. Act of terrorism against a government or public figure (including attempt to commit the crime – novelty since 2022)
- Article 360. Sabotage
- Article 362. Murder of a law enforcement officer, serviceman

All of the articles also contain sanctions alternative to the death penalty.

Capital punishment cannot be imposed on i) individuals who committed crimes under the age of eighteen, ii) women, iii) men who have reached the age of sixty-five at the time of sentencing. The death penalty may be commuted to life imprisonment through a pardon⁵.

The expansion of the death penalty to include “attempted” terrorism-related crimes and high treason took place in 2022⁶ and 2023⁷, respectively. Previously, capital punishment could only be imposed for particularly serious crimes involving the intentional killing of individuals under aggravating circumstances. Thus, the State has not only failed to take significant steps towards the abolition, but also extends the application of capital punishment to offences previously sanctioned with imprisonment, including acts not necessarily resulting directly and intentionally in death, thereby breaching Article 6 of the ICCPR⁸.

In total, more than 300 death sentences have been handed down since the 1990s⁹. Since July, 2022,

- 1 verdict was passed: in 2023, the Minsk Regional Court sentenced Aliaksandr Taratuta to death, and his wife, Anastasiya Taratuta, to 25-year imprisonment for the murder of their three-year-old child. Reportedly, the defendants were subjected to torture by officers of the Investigative Committee¹⁰;
- 1 death sentence was carried out: on July 16, 2022, a year and a half after his sentence came into force, Viktor Skrundik was executed.
- No pardons were granted during the reported period.

⁵ Criminal Code of the Republic of Belarus, Art. 59

⁶ Law No.165-Z of 13 May 2022 (<https://pravo.by/document/?guid=12551&p0=H12200165>)

⁷ See Law No.256-Z of 9 March 2023 (<https://pravo.by/document/?guid=12551&p0=H12300256>)

⁸ CCPR/C/GC/36 para. 34-35, Safeguards guaranteeing protection of the rights of those facing the death penalty para. 1.

⁹ <https://dp.spring96.org/en/why>

¹⁰ <https://dp.spring96.org/en/news/113117>

ii. 2022 EXTENSION TO “ATTEMPTED” TERRORISM-RELATED CRIMES

In May 2022, amendments to the Criminal Code extended the application of the death penalty to “attempted” terrorism-related crimes. They encompass activities that do not fall under the ICCPR concept of “most serious crimes” for the imposition of capital punishment. Concerns were raised by several UN Special Procedures regarding these amendments due to the following reasons: i) the amendments extend the death penalty to acts beyond intentional killing, ii) the notion of “terrorist acts” is broad and vague in the Belarusian legislation, iii) which heightens the risk of the arbitrary imposition of the death penalty and may lead to adverse consequences for human rights¹¹. The adoption of the amendments also lacked transparency and civic dialogue.

This extension raises specific concerns within the Belarusian context. The State has consistently misinterpreted vague notions of “terrorism” and “extremism” as part of its repressive policy against dissenters, even for non-violent acts¹². The Criminal Code’s wording provides room for discretion, including such phrases as “other severe consequences”¹³. Their disproportionality has been noted by the Special Rapporteur on Belarus¹⁴. Currently, individuals and organisations, including journalists, human rights defenders and media are arbitrarily¹⁵ labelled as “terrorists” or “terrorist organisations/formations”¹⁶.

iii. 2023 EXTENSION TO HIGH TREASON

In 2023, another amendment to the Criminal Code introduced the death penalty for State officials and military personnel convicted of high treason (previously sanctioned

¹¹ See communication of Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the situation of human rights in Belarus and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism:

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=27295>

¹² Report of the Special Rapporteur on the situation of human rights in Belarus (A/78/327) p. 6

¹³ The whole definition is stipulated as following: “Committing an explosion, arson, flooding, or other acts in a generally dangerous manner, or creating a risk of death, bodily injury, or other severe consequences in order to influence the decisions of government bodies, or to obstruct political or other public activities, or to intimidate the population, or to destabilise public order”.

committing, for the purpose of terrorism, an explosion, arson, flooding or other acts in a generally dangerous manner, or creating a risk of death, bodily injury or other severe consequences

¹⁴ A/78/327 p. 7-8.

¹⁵ The respective procedures lack clarity and predictability, independent judicial supervision

(<https://baj.media/en/analytics/extremism-and-media/>, p. 28-30)

¹⁶

[https://humanconstantia.org/en/overview-of-the-fight-against-extremism-in-belarus-for-january-march-2023/#8nbspChanges in the List of organizations and individuals involved in terrorist activities](https://humanconstantia.org/en/overview-of-the-fight-against-extremism-in-belarus-for-january-march-2023/#8nbspChanges%20in%20the%20List%20of%20organizations%20and%20individuals%20involved%20in%20terrorist%20activities)

with imprisonment)¹⁷. It was also adopted without thorough consultations with civil society and experts on the matter.

Given the continued tendency to expand the application scope of the death penalty, as well as the fact that the crime of “high treason” does not meet the threshold of “most serious crimes” under ICCPR, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the situation of human rights in Belarus emphasised the noncompliance of such extension with international obligations of Belarus¹⁸.

It is worth noting that the concept of high treason is also consistently subjected to arbitrarily vague interpretation in Belarus; not only former security service and military officers but also journalists, a priest, a musician, media and cultural managers and other persons are being prosecuted under the broad concept enshrined in the respective article of the Criminal Code¹⁹.

iv. LACK OF FAIR TRIAL GUARANTEES

The Belarusian judiciary currently fails to ensure fair trial guarantees, which is evident in various aspects, including the lack of adequate opportunities for defence (among others, due to reprisals against attorneys and the outflow of qualified specialists from the bar), lack of court independence and impartiality, violations of the presumption of innocence and the right to appeal to a higher court, especially in politically motivated cases²⁰. The practice of the Supreme Court to issue death sentences as a court of first instance deprives convicts of the right to appeal. A sentence issued by the Supreme Court becomes immediately enforceable upon announcement and is not subject to

¹⁷ Article 356, as amended, defines this crime as “the disclosure to a foreign State, international or foreign organisation or their representatives of State secrets of the Republic of Belarus, as well as information constituting State secrets of foreign States, international organisations, inter-State entities transferred to the Republic of Belarus on the basis of international treaties or in connection with its participation in such international organisations, inter-State entities; or espionage, or defection to the side of the enemy during a war or armed conflict, or other provision of assistance to a foreign State, international or foreign organisation or their representatives in carrying out activities aimed at causing harm to the national security of the Republic of Belarus, intentionally committed by a citizen of the Republic of Belarus”.

¹⁸ See communication of Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the situation of human rights in Belarus, p. 2 (<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27939>)

¹⁹ <https://spring96.org/en/news/114324>

²⁰ This concern was also noted by the Special Procedures experts (<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27295>, p. 2), Belarus Human Rights Index experts (see Right to a fair trial and Right to life, Expert commentaries for 2022, 2023: <https://index.belhelcom.org/en/>)

appeal, making the execution irreversible²¹. The Belarusian judicial system has allowed errors in the past as well, including in cases involving the death penalty²²; currently, it is challenging to expect a fair, impartial and thorough consideration of the case.

Furthermore, prior to denouncing the Optional Protocol to the ICCPR (Belarus withdrew from HRC individual complaints procedure in 2022, depriving its citizens of this legal remedy as well²³), the state often disregarded interim measures adopted by the Committee, and executed individuals for whom clear demands were made not to carry out the death sentence while their cases were under examination by the HRC²⁴. Since 2010, 15 individuals have been executed in circumstances raising allegations of torture and violations of the right to due process and a fair trial, notwithstanding the requests by the Committee to stay the execution pending consideration of their cases²⁵).

v. DEATH-ROW CONDITIONS AND ILL-TREATMENT OF RELATIVES

Persons sentenced to death are reportedly subjected to total isolation, deprived of walks, and treated by prison staff as if they are already deceased. Such persons are subjected to blocking correspondence, restrictions on family visits²⁶. The conditions of detention on death row have repeatedly led to suicide attempts²⁷. The situation is worsened by the state's practice of withholding the date of execution from both the condemned individuals and their relatives, causing them additional suffering. The decision not to grant a pardon is kept secret until the very execution²⁸. Human rights defenders constantly receive information about the general conditions of confinement, bordering on torture²⁹. Even domestic legislation is not being adhered to, let alone the

²¹ Belarus Human Rights Index (https://belhelcom.org/sites/default/files/1_right_to_life_2021.pdf, p. 7)

²² As to violation, inter alia, of the right of defendants to legal aid confirmed by HRC, see <https://www.fidh.org/IMG/pdf/belarus683angbassdef.pdf>, p. 39-40; on the lack of independence of judges, see Ibid, p. 41-43; on the systemic violation of the presumption of innocence, see Ibid, p. 45; as to wrongful convictions see Ibid, p. 46-49, as well as <https://dp.spring96.org/en/mistakes>
<https://dp.spring96.org/en/mistakes>

²³

<https://www.ohchr.org/en/press-releases/2022/11/belarus-withdrawal-individual-complaints-procedure-serious-setback-human>

²⁴ <https://ccprcentre.org/decision/17059>,

<https://www.ohchr.org/en/press-releases/2011/07/belarus-executions-violation-its-international-obligations-second-time-says>

²⁵

<https://www.ohchr.org/en/press-releases/2022/03/belarus-un-human-rights-committee-condemns-execution>, A/78/327 p. 4

²⁶ https://belhelcom.org/sites/default/files/1_right_to_life_2021.pdf, p. 8

²⁷ <https://www.fidh.org/IMG/pdf/belarus683angbassdef.pdf>, p. 5

²⁸ <https://www.fidh.org/IMG/pdf/belarus683angbassdef.pdf>, p. 54

²⁹ See "Viasna" analytical review of 2023 situation

(https://spring96.org/files/reviews/en/review_2023_en.pdf, p. 22)

Standard Minimum Rules for the Treatment of Prisoners and other related instruments, in cases of individuals awaiting the death penalty as well.

Furthermore, the bodies of executed persons are still not released to their families, places of execution, as well as the place of burial are kept secret, leaving relatives in a state of uncertainty, unable to bury the body in accordance with family traditions and beliefs.

The Human Rights Committee has repeatedly deemed this practice a violation of Belarus's international obligations³⁰.

³⁰ https://belhelcom.org/sites/default/files/1_right_to_life_2022.pdf, p. 7-8