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Belarus

Submission to the UN Universal Periodic Review

**Eighth session of the UPR Working Group of the
Human Rights Council**

May 2010



Executive summary

In this submission, Amnesty International provides information under sections B, C and D, as stipulated in the *General Guidelines for the Preparation of Information under the Universal Periodic Review*.¹

- In Section B, Amnesty International raises concerns relating to judicial control over detention.
- In section C, we describe concerns related to the death penalty, allegations of torture and ill-treatment, restrictions on freedom of expression, association and assembly and on freedom of religion.
- In section D, Amnesty International makes a number of recommendations for action by the government in the areas of concern listed.

¹ Contained in Human Rights Council Decision 6/102, Follow-up to Human Rights Council resolution 5/1, section I adopted 27 September 2007.

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B. Normative and institutional framework of the State

Criminal Justice System

Nineteen years after independence, Belarus retains many repressive features of the Soviet criminal justice system. Amnesty International is concerned about the apparent lack of a provision for judicial review of a decision to detain a person. According to the Criminal Procedural Code it is the prosecutor who sanctions arrest. Judges routinely do not exercise their authority to independently and impartially decide on the legality of an arrest or detention nor the need for continued detention. The detainee has the right to appeal against his or her detention to a court; however, the court is empowered to check only the legality of the procedure, not the decision itself to detain a person.

C. Promotion and protection of human rights on the ground

The death penalty

Belarus continues to sentence prisoners to death and to carry out executions. The Ministry of Justice informed Amnesty International that 26 people were sentenced to death between 2002 and 2008; however, information about the number of executions is not available. According to reports in the press, four death sentences were carried out in 2008 and the two death sentences passed in 2009 were upheld by the Supreme Court in October 2009. In contravention of its commitment as a member of the Organization for Security and Co-operation in Europe (OSCE) to “make available to the public information regarding the use of the death penalty”, Belarus has failed to publish comprehensive statistics about the number of death sentences passed and executions carried out.

Amnesty International has received credible evidence that the right to presumption of innocence is regularly violated in death penalty cases, that torture and ill-treatment is used to extract confessions which are subsequently admitted as evidence in trials, and that trials fail to meet international standards of fairness and to provide adequate appeal procedures.

On 29 June 2009, Vasily Yuzepchuk was sentenced to death for the murder of six elderly women. This followed an investigation and trial which, according to his lawyer, were fundamentally flawed. The lawyer also claims that Vasily Yuzepchuk was beaten in detention to force him to confess. On 2 October 2009, his appeal against the death sentence was turned down by the Supreme Court; however, on 12 October 2009, the UN Human Rights Committee registered Vasily Yuzepchuk’s case and called on the Belarusian government to order a stay of execution while his case was under consideration by the Committee. Vasily Yuzepchuk belongs to the marginalized Roma ethnic group, and is originally from Ukraine. He does not have an internal passport which is required for all citizens of Belarus. He may have an intellectual disability. According to his lawyer he does not know the months of the year and is illiterate.

Inadequate Appeal Procedures

According to Article 115 of the Constitution of Belarus, everyone has the right to appeal against judicial

decisions and rulings. Article 371 of the Criminal Procedural Code lays out the procedure for appeals providing for a remedy to a higher court for anybody sentenced by a local, regional or military court.

Those sentenced to death by a regional court may appeal to the Supreme Court. However, three of the death sentences handed down in 2008 were tried in the Supreme Court as the court of first instance, leaving the defendants with no possibility of appeal, as Article 370, Part 6 of the Criminal Procedural Code states: "Sentences of the Supreme Court cannot be subjected to cassational appeals". The only possibility available to those sentenced to death by the Supreme Court is a Supervisory Protest.² This procedure is inherited from Soviet law and based on the assumption that prosecutors supervise the activities of lower courts and can challenge the legality of judicial decisions. Amnesty International does not consider, however, that a Supervisory Protest by the prosecutor can be considered an adequate appeal, as required by Article 14 of the International Covenant on Civil and Political Rights, to which Belarus is a party. Furthermore, in cases where a death sentence has been passed by the Supreme Court, a Supervisory Protest would be considered by the Supreme Court, i.e. the same court that passed the sentence. The fact that the Supervisory Protest is presented by the prosecutor, the very authority who was responsible for presenting the evidence against the accused during the trial, makes it unlikely that the judgment will be subject to independent review.

Applications for clemency by those condemned to death must be submitted within 10 days of the official notification that an appeal has been turned down, or in the case of a death sentence passed by the Supreme Court within 10 days of the official notification of the sentence. Applications are initially considered by the Clemency Commission within the Presidential Administration, whose members are appointed by the President for the duration of his term. The Commission reviews the cases of all those sentenced to death whether or not they apply for clemency. The Commission votes by simple majority, and then passes the application along with its recommendation to the President, who issues his decision in the form of an unpublished Presidential decree. The Clemency Commission works in complete secrecy and lawyers and their clients have no opportunity to challenge decisions at any stage in the process. They can present written information to the Commission, but are not informed of the information before the Commission or of the Commission's recommendation to the President. The prisoners under sentence of death are informed of the President's decision just minutes before they are executed, leaving no time to challenge the final decision. There appears to have been only one successful application for clemency since President Lukashenka came to power in 1994.

Secrecy surrounding the death penalty

Many aspects of the death penalty in Belarus are shrouded in secrecy and the only official information about the procedure for executions is to be found in Articles 174–176 of the Criminal Executive Code, which in Article 175-2 states: "The death penalty is carried out in private by means of shooting". The Code further states that in most cases the Prosecutor, a representative of the detention facility and a doctor are present at the execution, and that after the execution, the administrator of the detention facility shall inform the judge that it has taken place. Prisoners and their relatives are not informed of the date of execution in advance, and relatives may not know for weeks or even months that the execution has taken place. The body of the deceased is not handed over to the relatives for burial and the place of burial remains secret.

In 2003 the UN Human Rights Committee ruled, in the cases of Anton Bondarenko and Igor Lyashkevich, that the secrecy surrounding the death penalty had the effect of punishing the families and amounted to inhuman treatment.³

² Протест в качестве надзора

³ Communication No. 886/1999 and Communication No. 887/1999, Human Rights Committee, Seventy-seventh session, 10 March-4 April 2003.

Torture and other ill-treatment

There is no crime of torture in the Criminal Code as required by Article 4, paragraph 2 of the Convention against Torture, to which Belarus is a party. Cases of torture and other ill-treatment are instead tried under alternative articles of the Criminal Code, such as Article 426 which refers to actions “exceeding official authority”. In addition, there are no procedural guidelines on how to deal with such complaints, and lawyers are reluctant to alert judges to allegations of ill-treatment and judges are reluctant to consider them. Moreover, there is no independent monitoring system of places of detention. Belarus has not signed the Optional Protocol to the UN Convention against Torture.

Forced confessions

Amnesty International has credible evidence that, under pressure to solve crimes, police investigators sometimes resort to torture and other ill-treatment in order to force confessions.

An individual (“Boris”⁴), interviewed by Amnesty International in October 2008, reported that he was detained in June 2005 as a suspect in a murder case in Mahiliow district, in which a family of six, including two children, had been killed. The case was very high profile and President Lukashenka announced on television that the crime would be solved in three days. Five young local men ranging in age from 18 to 24, including Boris, were detained within 24 hours. The young men were charged with the murders and spent almost a year in pre-trial detention before the district court in Mahiliow dropped the murder charges against them on the basis that their “confessions” had been gained through physical and psychological pressure. Boris described how the police officers had initially tried to force him to sign a statement concerning the crime using psychological pressure and had then employed cell-mates to beat him until he signed the statement. Boris later complained about the ill-treatment he had suffered and withdrew the confession. He was then transferred to Babruysk remand prison where he was beaten constantly by a cell-mate to coerce him into confessing once again. However, it turned out that there was a recording device in the cell and the conversations had been taped. The sound of Boris being beaten by his cell-mate could clearly be heard on the recording, as a result of which the judge dropped the murder charge.

Restrictions on the right to freedom of association

In its annual report published in January 2009, the Expert Council on NGO Law of the Council of Europe reported that non-governmental organizations in Belarus operate in a “rigid and hostile environment”. Such organizations face obstacles when trying to register, and any activity on behalf of a non-registered organization is a criminal offence and may be prosecuted under Article 193-1 of the Criminal Code. That article was added to the Criminal Code in December 2005 and outlaws all activities on behalf of an organization that has been closed or has not been registered. The law has been used almost exclusively against members of the youth opposition movement, Malady Front (Young Front). Malady Front has applied for registration four times and has been turned down on every occasion.

On 26 January 2009, the human rights organization, Nasha Vyasna (Our Spring) previously known as Vyasna (Spring), applied for registration for the third time. This request was refused for reasons which appear to be politically motivated, including with reference to previous convictions of members of the group on administrative charges, inaccuracies in the list of founders, the fact that the mechanism for electing the Chair and the Secretary was not described, that the name of the organization was missing from one document, and that the headquarters of the organization were too cramped. The founders appealed the latest refusal to the Supreme Court on 19 March 2009; however, the decision of the Ministry of Justice was upheld. On 25 April 2009, the founders of Nasha Vyasna applied again, and on 28 May the Ministry of Justice again refused registration. This time, in addition to the reasons cited in previous refusals, the Ministry of Justice claimed that the second half of the organization’s name was not in line with the statute of the organization. On 16 June 2009, Nasha Vyasna appealed the decision to the Supreme Court; however, the decision was upheld. On 24 July 2007, the UN Human Rights Committee ruled that the dissolution of the human rights

⁴ To protect the identity of the person concerned Amnesty International is using a pseudonym.

organization Vyasna in 2003 violated the right to freedom of association and that the organization was entitled to an appropriate remedy, including re-registration and compensation.⁵

Violations of the right to freedom of assembly

The authorities continue to violate the right to freedom of assembly by refusing to grant permission to hold demonstrations and public events under the very restrictive Law on Public Events, which came into force in August 2003. The Law sets limitations that go beyond what is envisaged in Article 21 of the International Covenant on Civil and Political Rights, to which Belarus is a party, including requiring demonstrators to apply for permission to the local authorities to hold an event, and banning all demonstrations less than 50m away from government buildings, including schools, hospitals, courts or buildings relating to public utilities. Peaceful demonstrators are frequently detained for short periods, prosecuted under the administrative code or subjected to disproportionate use of force by police officers and riot police.

Violations on the right to freedom of expression

On 24 June 2008, the National Assembly passed a new law entitled "On the mass media". The Belarusian Association of Journalists has stated that the new law considerably increases restrictions on freedom of expression and makes it more difficult for media outlets and journalists to work. It bans anyone with any kind of prior conviction, including administrative convictions, from founding a media organization. All funding from abroad or from unacknowledged sources is expressly prohibited and state organs may close down media outlets without a court order and after only one warning. The law requires all media outlets to re-register and to register every time they change address. In 2009, only two independent newspapers - *Narodnaya Volya* and *Nasha Niva* - were allowed to be officially distributed in the country through the state press distribution systems, which hold the monopoly on distribution of newspapers and magazines. The majority of printed and electronic media remains under state control.

Under the Law to Counteract Extremism, which came into effect in 2007, any organization considered to promote the violent overthrow of the constitutional order, to promote terrorist activity or incite racial, national or religious hatred, can be closed down, and any publications classified as extremist can be destroyed. In September 2008, this law was used to classify an edition of the independent newspaper *Svaboda* (Freedom) as extremist, because it carried a report about a demonstration by Malady Front against Russian military action in South Ossetia. The decision against *Svaboda* was overruled on appeal.

Violations on the right to freedom of religion

Under the restrictive 2002 Law on Religion, only registered, nation-wide religious associations have the right to establish monasteries, missions and educational institutions, as well as to invite foreign citizens to preach or conduct other religious activity in Belarus. State permission is required to hold religious services in non-religious buildings, and communities such as Protestant churches which do not own property themselves find it increasingly difficult to rent premises.

D. Achievements, best practice, challenges and constraints

There were some signs in 2009 that the role of civil society was beginning to be acknowledged by government authorities. Civil society representatives were included in the Public Coordination Council on the Media as well as the Human Rights Council within the Presidential administration.

There were also signs that the government is prepared to consider moving towards a moratorium on the death penalty. Belarus abstained in the vote on UN General Assembly resolution 63/168 on 18 December 2008

⁵ Communication No. 1296/2004, Human Rights Committee, Ninetieth session, 9 – 27 July 2007.

concerning the implementation of 2007 General Assembly resolution 62/149, calling on member states to introduce a moratorium on executions. Belarus had also abstained in the vote on that resolution.

Amnesty International calls on the government:

Domestic legislation

- To bring domestic legislation into line with the country's obligations under international human rights treaties, in particular the International Covenant on Civil and Political Rights and the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment;
- To implement the recommendations by the UN Human Rights Committee and the UN Committee against Torture.

The death penalty

- To commute without delay the death sentences of all prisoners currently on death row to terms of imprisonment;
- To promptly establish a moratorium on all executions with a view to abolishing the death penalty, as provided by the UN General Assembly resolution 62/149, adopted on 18 December 2007, and resolution 63/168, adopted on 18 December 2008;
- To ensure that relatives of prisoners under sentence of death are kept fully informed of the prisoner's place of detention and, in advance, of any transfer; allowed regular and private meetings with the prisoner; informed well in advance of the execution date to be able to say goodbye; and permitted to have the prisoner's body for burial and their personal effects;
- To publish all directives, legislation and annual statistics relevant to the death penalty;
- To ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights;
- To comply with the UN Human Rights Committee's 2003 rulings on the cases of *Bondarenko v. Belarus* and *Lyashkevich v. Belarus*.

Torture or other ill-treatment

- To condemn the use of torture and other ill-treatment and to ensure prompt, impartial and comprehensive investigations of all complaints of torture or cruel, inhuman or degrading treatment or punishment of persons subjected to any form of arrest, detention or imprisonment, as well as when there are reasonable grounds to believe that torture or other ill-treatment has occurred even if no complaint was made;
- To make amendments to the Criminal Code to include a comprehensive definition of torture as provided for in Article 1 of the UN Convention against Torture;
- To ensure that no statements obtained as a result of torture or other ill-treatment are used as evidence in trial proceedings, except as evidence against a person accused of torture or other ill-treatment.
- To sign, ratify and implement the Optional Protocol to the UN Convention against Torture.

Freedom of assembly, association and Human Rights Defenders

- To ensure that everyone, including human rights defenders, can peacefully exercise their right to freedom of expression and assembly in conformity with Belarus' obligations under the International Covenant on Civil and Political Rights;
- To review the Law on Public Events and bring it into line with the requirements of the International Covenant on Civil and Political Rights;
- To allow the registration of human rights organization Nasha Vyasna and to comply with the 2007 UN Human Rights Committee's ruling on the case of Vyasna (*Aleksander Belyatsky et al v. Belarus*)
- To immediately abolish Article 193-1 of the Criminal Code.

Freedom of religion

- To ensure respect for the human rights of religious believers and their right to carry out their peaceful activities free from harassment.

Appendix: Amnesty International documents for further reference⁶

- Ending Executions in Europe: Towards Abolition of the Death penalty in Belarus (AI Index: EUR 49/001/2009)
- Belarus: Further information: Belarus Supreme Court rejects second appeal, Urgent Action (AI Index: EUR 49/014/2009)
- Belarus: Further information: UN Committee: Do not execute Yuzepchuk!, Urgent Action, (AI Index: EUR 49/013/2009)
- Belarus: Authorities deny registration of the human rights organization “Nasha Vyasna” for the third time, (AI Index: EUR 49/009/2009)

⁶ All of these documents are available on Amnesty International’s website: <http://www.amnesty.org/en/region/belarus>