

# £BELARUS

## @Summary of Amnesty International's concerns

Amnesty International welcomes both the public recognition by Belarus of the importance of international standards on human rights, and the developments in the republic in recent years to bring domestic laws into conformity with such standards. However the organization is continuing to address the authorities in Belarus on a number of outstanding issues of concern, including those indicated below.

### ***The death penalty***

Amnesty International has consistently pressed the Government of Belarus to reduce the scope of the death penalty as a step towards total abolition; to impose a moratorium on death sentences and executions pending a review of this punishment; and to publish comprehensive statistics on its application.

Although the criminal code stresses that the death penalty is "an exceptional measure of punishment" in force only "until its complete abolition", 16 peacetime offences are still punishable by death, including some which do not involve violence (see Appendix I). Death sentences may be imposed for nine crimes against the state; four against life or person; and five economic crimes. The death penalty is optional for all but one of these. The exception is "taking, or attempting to take the life of a police officer, or of a people's guard" (Article 189-1)), which carries a mandatory death sentence if committed under any of a list of 12 specified aggravating circumstances even if not resulting in the loss of life. Appendix I also lists a further fifteen military offences which carry a possible death sentence if committed in war time.

According to the Minister of Justice, L.A. Dashuk, a new criminal code currently in draft form envisages a reduction in the number of peacetime offences carrying a possible death sentence to eight: premeditated, aggravated murder; rape; hijacking of an aircraft; treason; espionage; terrorist act; genocide; and planning, preparing for or carrying out an aggressive war. The proposed new criminal code would also abolish the death penalty for the fifteen war time offences.

Until recently information on the application of the death penalty in Belarus was extremely sparse, and Amnesty International had consistently pressed the authorities to make public relevant statistics in line with Resolution 1989/64, adopted by the United Nations (UN) Economic and Social Council (ECOSOC) on 24 May 1989, on the

implementation of the ECOSOC safeguards guaranteeing protection of the rights of those facing the death penalty. The Resolution urges Member States:

"to publish, for each category of offence for which the death penalty is authorized, and if possible on an annual basis, information about the use of the death penalty, including the number of persons sentenced to death, the number of executions actually carried out, the number of persons under sentence of death, the number of death sentences reversed or commuted on appeal and the number of instances in which clemency has been granted".

In April 1992 the Minister of Justice provided Amnesty International with the first detailed official statistics on the use of the death penalty. He informed the organization that 58 people had been sentenced to death since 1988: 12 persons in that year, five in 1989, 20 in 1990 and 21 in 1991. All had been sentenced to death for premeditated, aggravated murder (Article 100 of the Criminal Code). In this period four sentences had been commuted - three in 1988 and one in 1990 - and 32 executions carried out.

A death sentence may not be passed on anyone under 18 at the time of the offence or when sentence is passed, or on a pregnant woman. In the case of a woman who is pregnant when due for execution, the death sentence must be commuted. The death penalty may not be imposed on anyone ruled to have been insane when the crime was committed or when judgment was passed.

As in other criminal cases, a bench of three judges tries capital cases and passes sentence by majority verdict. Only one of the three is professionally trained. The others are lay judges known as "People's Assessors" who sit at most for four weeks in two years.

Capital cases cannot be tried by the lowest courts but are automatically assigned to courts at the intermediate or higher level. In cases of "extreme complexity" or "particular national importance" the Supreme Court can act as a court of first instance. Prisoners can submit an appeal against the verdict or sentence to the next highest court within seven days of receiving a written copy of the judgment. Because their cases are heard at a higher level at first instance, prisoners under sentence of death have fewer opportunities to appeal than many other prisoners.

Amnesty International is particularly concerned that, following the break-up of the Soviet Union, those sentenced to death by the Supreme Court of Belarus as the court of first instance no longer have the opportunity to appeal to a court of higher jurisdiction, as required by Article 14 (5) of the International Covenant on Civil and Political Rights. Although the sentence may be protested, this procedure is not automatic. In addition, the sentence is not automatically suspended, unlike with an appeal, pending the review. This is in contrast to the safeguards guaranteeing protection of the rights of those facing the death

penalty, adopted by the UN Economic and Social Council in Resolution 1984/50 of 25 May 1984, and welcomed by the UN General Assembly in Resolution 44/159 on 15 December 1989, which states that "[c]apital punishment shall not be carried out pending any appeal or other secondary procedure or other proceeding relating to pardons or commutation of the sentence", and the rule governing ordinary appeals to a higher court. If these remedies fail, prisoners under sentence of death can petition for clemency, which may be granted by the Presidium of the Supreme Soviet. Previously an appeal against a death sentence passed by the Belorussian Supreme Court could be heard by the USSR Supreme Court, and likewise a judicial review or petition for clemency that failed at republic level could be taken to the higher, federal authorities.

Adequate appeal and review processes are essential in helping to preclude miscarriages of justice in cases involving the death penalty. It is interesting to note that in 1987 when the Soviet press, for the first time in decades, started to expose cases in which innocent people had been sentenced to death, one of the most notable examples came from the Belorussian Soviet Socialist Republic (Belorussian SSR), as Belarus was then known. This instance involved 14 people in the republic who between 1971 and 1984 had been forced to confess to a series of rapes and murders they did not commit. At least one had been executed subsequently.

### *Conscientious objection to military service*

Belarus has as yet no legal provision for those of its citizens who have a conscientious objection to military service. In January 1992 Amnesty International wrote to Stanislav Shushkevich, Chairman of the Supreme Soviet, and the newly appointed Minister of Defence, Lt-General Petr Chaus, urging that Belarus consider this issue as a matter of priority and take steps to provide a civilian alternative service of non-punitive length for all those who have a religious, political, ethical or other conscientiously-held objection to military service. Resolution 1989/59 adopted by the United Nations Commission on Human Rights on 8 March 1989 recognizes conscientious objection to military service as "a legitimate exercise of the right to freedom of thought, conscience and religion". It also recommends that states refrain from subjecting conscientious objectors to imprisonment, and that they provide an alternative service of non-punitive length and impartial decision-making procedures for applying it. Stanislav Shushkevich replied that a draft law on an alternative service had been drawn up but that, as it was considered a complex issue, it would not come before Parliament in the immediate future.

The most recent case of a conscientious objector in Belarus on whose behalf Amnesty International had been campaigning was that of Nikolay Isaakovich Shust, who was released early from his sentence at the end of last year. A Jehovah's Witness, Nikolay Shust had been sentenced to two years' imprisonment on 24 October 1990 by a court in Mozyr after being convicted of "evading regular call-up to active military service" under Article 77 of the

Belorussian Criminal Code. According to the authorities he was released on 14 November 1991 after his sentence had been reduced.

Nikolay Shust had previously served a 20-month sentence for refusing his call-up papers. Each time his refusal had been because his religious beliefs forbid him to bear arms or swear an oath of military allegiance. His case highlights the plight of such conscientious objectors who, following release from one sentence, again fall liable to prosecution each time they subsequently refuse to perform their continuing obligation to respond to call-up papers during the draftable age of from 18 to 27. Amnesty International is concerned that these repeated prosecutions and convictions for failing to respond to a summons for military service might violate Article 14 (7) of the International Covenant on Civil and Political Rights. That article provides: "No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country".

### *Review of the Criminal Code*

The Minister of Justice has informed Amnesty International that a new criminal code exists in draft form, but the organization has not seen a copy and does not know the timetable for parliamentary discussion. To Amnesty International's knowledge the current criminal code largely remains the same as that which was in force when the country was a republic of the former USSR. Amnesty International is seeking clarification on the current status of a number of articles about which it has expressed concern in the past, as outlined below.

### *Freedom of conscience*

The criminal code of the Belorussian SSR contained two articles which specifically circumscribed the right to freedom of religion, and which were used to punish the peaceful exercise of this right. They were Article 139, "violation of laws on the separation of church and state and of school and church", and Article 222, "infringement of person and rights of citizens under the guise of performing religious ceremonies". To Amnesty International's knowledge these have not been applied in recent years, but the organization has not yet been able to confirm whether the articles have been formally abolished, as in several other republics of the former USSR.

As mentioned above the Criminal Code still contains a third article under which many other religious prisoners were convicted: Article 77, which punishes refusal to respond to compulsory call-up for active military service.

### *Right to leave one's own country*

In the past it was extremely difficult for ordinary Soviet citizens to obtain official permission to leave the country and would-be emigrants trying to leave without such permission risked up to five years' imprisonment for "illegal exit abroad" (Article 80) or up to 15 years' imprisonment and internal exile - and even death - for "treason in the form of flight abroad or refusal to return home from abroad" (Article 61) if caught. Again, Amnesty International is trying to ascertain whether these articles have yet been amended to ensure that they do not punish those seeking to exercise the internationally-recognized right to leave any country, including one's own. Amnesty International knows of no one currently imprisoned in Belarus for attempting to leave the country on grounds of conscience.

### *Homosexuality*

Male homosexual acts, specifically sodomy, were punishable by up to five years' imprisonment under Article 119 part 1, even if carried out in private by consenting adults. Neighbouring Ukraine moved to decriminalize such acts in December 1991, and Amnesty International is seeking further information on the current status of this article in Belarus.

### *Ratification of international human rights instruments*

In October 1991 Amnesty International wrote to Stanislav Shushkevich, Chairman of the Supreme Soviet, urging that the republic ratify the first Optional Protocol to the International Covenant on Civil and Political Rights. In force since 1976, this allows the Human Rights Committee of the United Nations to consider cases submitted by individuals and thereby establishes a mechanism where human rights problems can be constructively addressed and where ill-founded allegations may be dispelled. The Chairman replied the following month, enclosing a statement by the Supreme Soviet of 2 October 1991 which expressed the intention to accede to the first Optional Protocol. However, the necessary formal notification had not been deposited with the United Nations by the end of May 1992.

In its letter of October 1991 Amnesty International had also reiterated its hope that the Republic of Belarus would consider ratifying the 1951 Convention relating to the Status of Refugees, and its 1967 Protocol, which provides fundamental protection for asylum-seekers by providing that States Parties shall not forcibly return a person to a state where they face a genuine risk of being persecuted. The republic was still not a party to this Convention by the end of June 1992.

## APPENDIX I

*List of offences for which the death penalty may be imposed in the current Criminal Code of the Republic of Belarus*

(translation by AI of a table provided by the Minister of Justice)

<i>Number</i>	<i>Article of CC</i>	<i>Offence</i>	<i>Adopted</i>
1.	61 pt 1	treason	09.08.61
2.	62	espionage	09.08.61
3.	63 pt 1	terrorist act	09.08.61
4.	64 pt 1	terrorist act against a representative of a foreign power	09.08.61
5.	65	sabotage	09.08.61
6.	74	banditism	09.08.61 16.12.82
7.	74-I	actions disrupting the work of corrective labour institutions	09.08.61
8.	78 pt 2	refusing to respond to mobilization in time of war	09.08.61
9.	84 pt 2	making or passing counterfeit money or securities	09.08.61
10.	85 pt 1	violation of rules for currency transactions	09.08.61
11.	91-I	especially large theft of state or social property	09.08.61
12.	100	premeditated, aggravated murder	09.08.61
13.	115 pt 4	rape committed by a recidivist or of a minor or with especially grave consequences	14.05.82
14.	169 pt 3	large-scale bribe taking by someone with a previous conviction for taking bribes	25.06.62
15.	189-I	attempt on the life of a militiaman or people's guard, serviceman or other person, and on the life of their relatives	26.02.91

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| 16. | 208-2 pt 3 | hijacking leading to death<br>or grave bodily injury | 11.04.73 |
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*Military crimes*

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| 17. | 229 pt 3         | resisting a superior or compelling<br>him to violate official duties              |  |
| 18. | 231 pt 2         | forcible actions against a<br>superior  |  |
| 19. | 236 pt 2<br>pt 4 | desertion   |  |
| 20. | 237              | unwarranted abandonment of unit<br>in combat situation                            |  |
| 21. | 238 pt 2         | evasion of military service by<br>maiming or any other method                     |  |
| 22. | 240 pt 3         | intentional destruction or<br>damaging of military property                       |  |
| 23. | 244 pt 6         | violation of service regulations for<br>guard duty                                |  |
| 24. | 246 pt 4         | violation of rules for performing<br>combat lookout                               |  |
| 25. | 249 pt 3         | abuse of power, exceeding one's<br>authority and negligent attitude to<br>service |  |
| 26. | 250              | surrendering or abandoning to the enemy<br>means of waging war                    |  |
| 27. | 251 pt 2         | abandonment of sinking warship  |  |
| 28. | 252              | unwarranted abandonment of battlefield<br>or refusal to use weapon                |  |
| 29. | 253              | voluntary surrender into captivity  |  |
| 30. | 255              | pillage   |  |
| 31. | 256              | use of force against population in an area<br>of military operations              |  |