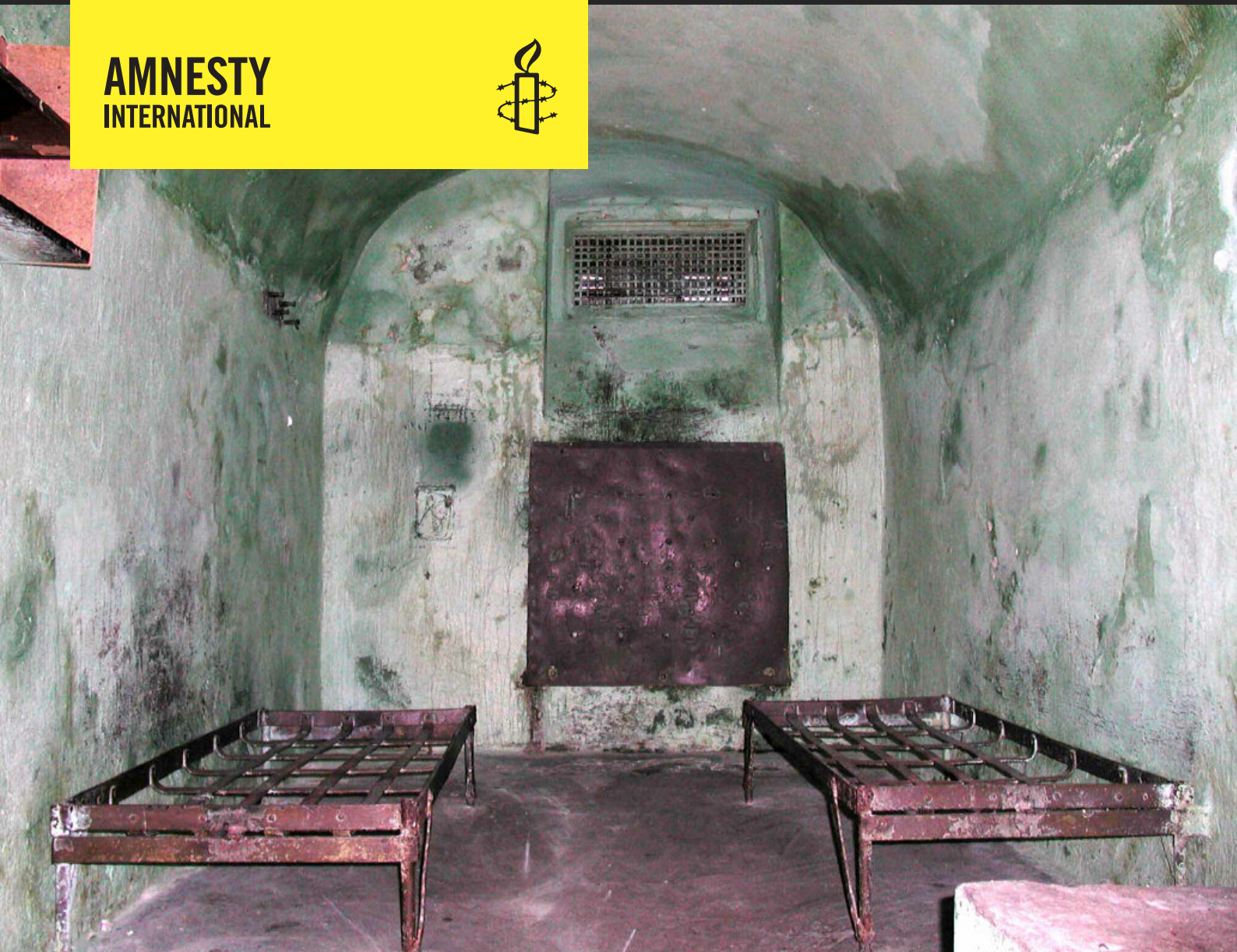


ENDING EXECUTIONS IN EUROPE

TOWARDS ABOLITION
OF THE DEATH PENALTY
IN BELARUS

AMNESTY
INTERNATIONAL



Amnesty International is a global movement of 2.2 million people in more than 150 countries and territories who campaign to end grave abuses of human rights. Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards. We are independent of any government, political ideology, economic interest or religion – funded mainly by our membership and public donations.

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Cover photo: A cell for condemned prisoners, Minsk, Belarus, 2003.

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“All death row prisoners hate doors. As long as the doors are closed they are alive. Death always comes from behind doors.”

Oleg Alkaev, former director of the detention facility where executions were carried out.

1. INTRODUCTION

IHAR DANCHENKA

Ihar Danchenka was sentenced to death on 1 December 2006 for murder. He was accused of participating in a series of murders committed by a criminal gang that allegedly took place between 1990 and 2004 in the Homyel region. He was tried along with 46 other people including five police officers. Two other people, Syarhey Marozaw and Valery Harbaty, were sentenced to death and executed for the same crimes in January 2008. It was one of the largest and most high profile criminal cases to have taken place in Belarus since its independence from the USSR in 1991. The trial was held in the remand prison where the suspects were detained for security reasons and relatives and members of the public were not permitted to attend. When Ihar Danchenka's 12-year-old son found out from watching television that his father and his godfather, Syarhey Marozaw, had both been sentenced to death he asked his mother: "Mama, why are they taking away both my Dads at the same time?"

Ihar Danchenka was probably executed on 12 January 2008 by a shot to the back of the head. Neither he nor his family was told the date in advance and his widow received a notification by post only at the end of January. His lawyers can only guess at the exact date the execution was carried out. The family does not know where his body is buried and relatives have not been able to organize a funeral. Ihar Danchenka was tried and convicted in the Supreme Court as a court of first instance and therefore he could not appeal to a higher court. He had also applied to the President for clemency. His lawyer told Amnesty International that he did not agree with the punishment, and felt that Ihar Danchenka had been sentenced to the death penalty because he had a criminal record. "In effect we [sic] were punished for the past ...for crimes for which he had already served a sentence. Strictly speaking you can be punished for crimes that you have committed today, but to punish you for having always been a bad boy, that is not right."

Belarus is the last country in Europe and in the former Soviet Union that is still carrying out executions. There are no available statistics for the number of executions carried out, but Amnesty International estimates that as many as 400 people may have been executed since Belarus gained its independence in 1991.

Amnesty International opposes the death penalty in all cases without exception regardless of the nature of the crime, the characteristics of the offender, or the method used by the state to kill the prisoner. The death penalty is the ultimate denial of human rights. It is the premeditated and cold-blooded killing of a human being by the state in the name of justice. It violates the right to life as proclaimed in the Universal Declaration of Human Rights. It is the ultimate cruel, inhuman and degrading punishment.

To end the death penalty is to recognize that it is a destructive and divisive public policy that has been shown to have no special deterrent effect on crime. It distracts from effective

measures being taken against criminality through promoting simplistic responses to complex human problems. It denies the possibility of rehabilitation and reconciliation. It prolongs the suffering of the murder victim's family, and extends that suffering to the relatives of the condemned prisoner. Amnesty International does not seek to belittle the suffering of the families of murder victims, and recognizes and endorses a government's duty to protect the rights of all people under its jurisdiction. However, executions are a symptom of a culture of violence rather than a solution to it. By executing a person the state commits a premeditated killing and shows a similar readiness to use physical violence as the criminal.

In Belarus the use of the death penalty is compounded by a flawed criminal justice system that administers capital punishment in a manner that violates international laws and standards pertaining to the death penalty. There is credible evidence that torture and ill-treatment are used to extract "confessions"; condemned prisoners may not have access to effective appeal mechanisms; and the inherently cruel, inhuman and degrading nature of the death penalty is compounded for death row prisoners and their relatives by the secrecy surrounding the death penalty. Neither prisoners nor their families are told the execution date in advance and prisoners must live with the fear that every time their cell door opens they may be taken for execution. Amnesty International calls on the President and Parliament of Belarus to immediately declare a moratorium on death sentences and executions as a first step towards full abolition of the death penalty.

In addition to its use as a sanction under criminal law, the threat of execution has also been used to suppress political activity. In March 2006, following the presidential elections, the head of the state security services (KGB) threatened potential demonstrators with the death penalty: "The actions of people who come to the square [to demonstrate] will be assessed as terrorism, which is punished according to various articles with eight years' imprisonment to the death penalty".¹

International bodies have repeatedly called on Belarus to take significant steps towards abolition of the death penalty; however, so far to no avail. Most recently, in February 2008 the Secretary General of the Council of Europe, Terry Davis, condemned the execution of Syarhey Marozaw, Valery Harbaty and Ihar Danchenka. "I am upset by an insistent intention of the Belarusian authorities to isolate their country from Europe," Terry Davis noted. "By these death sentences they seem to be proud of defying human values common for other European countries." In April 2008 the Parliamentary Assembly of the Council of Europe (PACE) Rapporteur on the Situation in Belarus urged Belarus to abolish the death penalty in an open letter to the Chairs of both houses of the country's parliament. The European Union (EU) has also made abolition of the death penalty one of the conditions for closer relations with Belarus. In November 2006 the European Commission released a document offering a full partnership to Belarus as part of the European Neighbourhood Policy, provided that Belarus takes "convincing steps towards democratisation, respect for human rights and the rule of law". Among the 12 conditions for better relations with the EU is abolition of the death penalty.²

Since gaining its independence from the USSR Belarus has taken some significant steps towards ending the use of the death penalty. It has reduced the scope of the death penalty, and a Constitutional Court decision in 2004 found that the death penalty was in conflict with the Constitution and that it could be abolished by the President and Parliament. However, despite these positive moves and pressure from international organizations the Belarusian

authorities have not yet demonstrated any political will to initiate public debate on the topic or to make the necessary legislative changes.

The information in this report has been gathered over more than two decades of work monitoring the practice of the death penalty in Belarus. In October 2008, an Amnesty International representative visited Belarus and met with lawyers, human rights activists, government officials, and former prisoners. Amnesty International is grateful for the assistance of the Belarusian Helsinki Committee and other human rights activists in preparing this report.

Amnesty International will be working with the Belarusian Helsinki Committee and other human rights groups to encourage public debate around the issue of the death penalty in 2009 and hopes that this report will contribute to that debate.

2. THE DEATH PENALTY IN BELARUS

2.1 LEGISLATION

Article 24 of the Constitution of Belarus protects the right to life and foresees the eventual abolition of the death penalty:

“Every person shall have the right to life. The State shall protect the life of the individual against any illegal infringements. Until its abolition, the death sentence may be applied in accordance with the law as an exceptional penalty for especially grave crimes and only in accordance with the verdict of a court of law.”

Belarus retains the death penalty for a long list of crimes: 12 in peacetime and two in times of war. They are: “unleashing or conducting an aggressive war” (Article 122 part 2 of the Criminal Code of Belarus), “murder of a representative of a foreign state or international organization with the intention to provoke international tension or war” (Art. 124 part 2), “international terrorism” (Art. 126), “genocide” (Art. 127), “crimes against humanity” (Art. 128), “premeditated, aggravated murder” (Art. 139 part 2), “terrorism” (Art. 289 part 3), “terrorist acts” (Art. 359), “treason accompanied by murder” (Art. 356 part 2), “conspiracy to seize power” (Art. 357 part 3), “sabotage” (Art. 360 part 2), “murder of a police officer” (Art. 362), “use of weapons of mass destruction” (Art. 134), and “murder of a person in violation of the laws and customs of war” (Art. 135 part 3). The death penalty under all these charges is not mandatory but at the discretion of the courts. In Belarus virtually all death sentences have been handed down for “premeditated, aggravated murder”.

The Criminal Code of Belarus exempts from the death penalty men aged under 18³ at the time the crime was committed and over 65⁴ when the sentence was pronounced, as well as women.⁵ According to the Criminal Executive Code, the execution of death row prisoners who are diagnosed as mentally ill is suspended and the sentencing court decides whether the prisoner should undergo forcible medical treatment. If the prisoner recovers, the court decides whether he should be executed or his sentence should be replaced by a punishment other than the death penalty.

2.2 PROCEDURES

“The prisoner is blindfolded and his hands tied behind his back, and he is taken into the next room. He is told he will be held so that he doesn’t sit in the wrong place. He is forced to his knees, it only takes a second, and he is shot. I don’t remember any cases where the prisoner fought or struggled. Their will is broken. They are on the edge of madness. They know they are dying but they don’t know how much time is left, it could be five minutes or 15, but they think they still have time and they are pleased about that.”

Oleg Alkaev speaking to Amnesty International in January 2009.

All details about the death penalty in Belarus are secret and the only official information about how the death penalty is carried out is to be found in Articles 174 – 176 of the Criminal Executive Code. According to Article 175-2: “The death penalty is carried out in private by means of shooting”. The Criminal Executive Code states that the Prosecutor, a representative of the detention facility, and a doctor are present, although in exceptional circumstances other people may be allowed to attend with the permission of the Prosecutor. The Code further stipulates that the administration of the detention facility informs the judge about the carrying out of the death sentence and the judge informs the relatives. The body is not handed over to the relatives for burial and the place of burial is kept secret.

Colonel Oleg Alkaev, who was Director of remand prison (SIZO)⁶ No. 1 in Minsk from December 1996 to May 2001, published a book in 2006, *The Shooting Squad*, which provides more detail on the procedures used at the time. Amnesty International interviewed Oleg Alkaev in 2004 and 2009. Oleg Alkaev told Amnesty International that as Director of the SIZO he was in charge of a shooting squad of 13 men and was required to ensure that the execution was carried out properly and that it was not public; beyond that he had the freedom to organize matters as he chose. When he took over as Director of the SIZO, executions were carried out in the woods, because it was more convenient and involved less transportation. The prisoner would be placed at the edge of a prepared grave, shot and pushed into the grave. As more than one prisoner was usually executed at a time the remaining prisoners would be waiting in a car within 15m of the execution place and would be able to hear what was going on. Oleg Alkaev claims that he changed this system because it did not comply with the requirement not to hold public executions, and was stressful for the prisoners and for his team. Under Oleg Alkaev executions were carried out in a special cell. The prisoners would first be taken to one room, where, in the presence of the Director of the SIZO, the Prosecutor and one other Ministry of Interior employee, he would be told that his appeal for clemency had been turned down and that the sentence would be carried out. He was then told that he would be driven somewhere else. According to Oleg Alkaev this was more humane, because the word “driven” gave the impression that the prisoner would live longer. In fact he would be shot within minutes. He would be taken to a neighbouring room where he would be forced to his knees and shot in the back of the head.

The gunman would aim to hit the cerebellum thus causing instant death, but during Oleg Alkaev’s time as Director there were rare occasions when the prisoner did not die immediately: “An unlucky shot doesn’t hit the cerebellum and passes to one side. He is, of course, unconscious but he is still alive; he is breathing, wheezing.”⁷ In these cases the prisoner would be shot again. The body was then wrapped in plastic before being disposed of.

The shooting squad consisted of 13 members of whom two or three would carry out the shooting. The whole team would receive a pay bonus when executions were carried out and those doing the shooting would receive an additional bonus. The work took its toll on the members of the shooting squad. According to Oleg Alkaev his two predecessors died in their fifties and one member of his former team died recently of a heart attack at the age of 47.

3. THE DEATH PENALTY IN INTERNATIONAL LAW

As the international trend away from the use of the death penalty has strengthened, international human rights standards have developed in a way that favours ever tighter restrictions on the scope of the death penalty, and international bodies have increasingly made statements and adopted policies favouring abolition on human rights grounds.

In resolution 2857 (XXVI) of 20 December 1971, the UN General Assembly affirmed the desirability of abolishing the death penalty in all countries. This aspiration was reiterated in General Assembly resolution 32/61 of 8 December 1977 and – most recently – by the United Nations General Assembly when it adopted resolution 62/149 on 18 December 2007, calling for a worldwide moratorium on executions.

Article 6 of the International Covenant on Civil and Political Rights (ICCPR) of which Belarus is a state party guarantees the right to life and states in its second provision: “In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime This penalty can only be carried out pursuant to a final judgment rendered by a competent court.” In its general comment on Article 6 of the ICCPR, the Human Rights Committee stated that Article 6 “refers generally to abolition [of the death penalty] in terms which strongly suggest ... that abolition is desirable. The Committee concludes that all measures of abolition should be considered as progress in the enjoyment of the right to life....”

In resolution 1997/12 of 3 April 1997, the UN Commission on Human Rights expressed its conviction “that abolition of the death penalty contributes to the enhancement of human dignity and to the progressive development of human rights.” This statement was reiterated by the Commission on Human Rights in resolution 1998/8 of 3 April 1998.

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has stated that he “strongly supports the conclusions of the Human Rights Committee and emphasizes that the abolition of capital punishment is most desirable in order fully to respect the right to life” (UN document No. E/CN.4/1997/60, paragraph 79). He has urged governments of countries where the death penalty is still enforced “to deploy every effort that could lead to its abolition” (UN document No. A/51/457, paragraph 145).

In resolution 727 of 22 April 1980, the PACE stated that “capital punishment is inhuman” and appealed to the parliaments of member states which retained the death penalty for

peacetime offences to abolish it. It widened the appeal in resolution 1044 (1994) of 4 October 1994, calling “upon all the parliaments in the world which have not yet abolished the death penalty, to do so promptly following the example of the majority of Council of Europe member states”. It stated that it “considers that the death penalty has no legitimate place in the penal systems of modern civilized societies, and that its application may well be compared with torture and be seen as inhuman and degrading punishment within the meaning of Article 3 of the European Convention on Human Rights” (recommendation 1246 (1994)).

The community of nations has adopted three international treaties providing for the abolition of the death penalty. One is of worldwide scope; the other two are regional. In order of adoption, they are: Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (“European Convention on Human Rights”) concerning the abolition of the death penalty, adopted by the Council of Europe in 1982; the Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty, adopted by the UN General Assembly in 1989; and the Protocol to the American Convention on Human Rights to Abolish the Death Penalty, adopted by the General Assembly of the Organization of American States in 1990. Protocol No. 6 to the European Convention on Human Rights (ECHR) provides for the abolition of the death penalty in peacetime; the other two treaties provide for the total abolition of the death penalty but allow states parties to retain the death penalty in time of war if they make a declaration to that effect at the time of ratification or accession.

Under the Rome Statute of the International Criminal Court, the death penalty is excluded, even though the Court has jurisdiction over crimes against humanity, genocide and war crimes. The same is also true for the International Criminal Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda, the Special Court for Sierra Leone, the Special Panels for Serious Crimes in Dili, Timor-Leste, and the Extraordinary Chambers in the Courts of Cambodia.

4. TIME TO END THE DEATH PENALTY

“If we are not yet mature enough to take such a decision [to abolish the death penalty] to be in accordance with more progressive and European standards, then in the future we will simply be compelled to do so in order not to lag behind the rest of the world.”

Irina Kuchvalskaya, Law Professor⁸

4.1 GLOBAL MOVEMENT TOWARDS ABOLITION

A momentum is gathering to end capital punishment around the world: in 1977, just 16 countries had abolished the death penalty for all crimes. As of January 2009, that figure stands at 93. Nine other countries have abolished the death penalty for ordinary crimes and retain the death penalty only for exceptional crimes such as those committed in wartime. A further 36 countries can be considered abolitionist in practice, as they have not carried out an execution for at least 10 years or have made an international commitment not to use the death penalty. This brings the total number of countries that have abolished the death penalty in law or practice to 138 out of 192 states. Over the past decade more than three countries a year on average have abolished the death penalty in law or – having abolished it for ordinary crimes – have taken the further step to abolish it for all crimes. Moreover, once abolished, the death penalty is seldom reintroduced.

This trend can be seen in all regions in the world. In the former USSR, there is a clear move towards abolition. All the former Soviet republics retained the death penalty when they gained independence in 1991. However, by January 2009, Armenia, Azerbaijan, Georgia, Kyrgyzstan, Moldova, Turkmenistan, Ukraine and Uzbekistan had abolished the death penalty in law. Tajikistan, Russia and the unrecognized territories of Transdniestria, South Ossetia and Abkhazia have moratoria on executions and death sentences. Kazakstan has a moratorium on executions.

Europe is now a death penalty-free area with the exception of Belarus.

The continent of Africa is largely free of executions with only seven of the 53 African Union member states known to have carried out executions in 2007: Botswana, Egypt, Equatorial Guinea, Ethiopia, Libya, Somalia and Sudan.

The Americas are almost free of executions. Since 2003, only the United States of America continues to execute on a regular basis. The only other countries to have carried out executions this century are the Bahamas in 2000, Guatemala in 2001, Cuba in 2003, and

St Kitts and Nevis in 2008. Central and South America are virtually death penalty-free, with only Guatemala, Belize and Guyana retaining the death penalty.

The United States of America is slowly turning against the death penalty. The number of executions and death sentences has significantly dropped in recent years and many states are considering abolition. The state of New Jersey abolished the death penalty in December 2007.

The above figures and examples demonstrate that there is a real momentum to end capital punishment in all regions in the world. This trend is further supported by the increased ratification of international and regional treaties providing for the abolition of the death penalty.

The UN reaffirmed and strengthened its position against the death penalty on 18 December 2007 when the General Assembly adopted resolution 62/149: calling on all UN member states to establish a moratorium on executions with a view to abolishing the death penalty. The resolution was adopted by an overwhelming majority, with 104 UN member states in favour, 54 countries against and 29 countries abstaining. Another resolution 63/168 was adopted by the UN General Assembly in 18 December 2008 on the implementation of the 2007 General Assembly resolution 62/149. The resolution was adopted by 106 votes in favour, 46 against and 34 abstentions including Belarus.

In October 2008, in a joint declaration establishing a “European Day against the Death Penalty,” the highest bodies of the EU and the Council of Europe recalled that the death penalty is contrary to the fundamental rights on which the EU and the Council of Europe are founded, and that “since 1997 there has been no instance of capital execution in any part of the geographical area made up by the 47 Member States of the Council of Europe, including the 27 European Union Member States” and emphasized that abolition of the death penalty is a condition for membership of the Council of Europe.

There is increasing pressure on Belarus from the EU and the Council of Europe to abolish the death penalty. On 14 April 2008 Andrea Rigoni, PACE Rapporteur on Belarus, wrote an open letter to the Chair of the House of Representatives and the Chair of the Council of the Republic calling for a moratorium on executions in Belarus and stating that “every capital execution is one too many”. Furthermore, he called on both “to lead this battle with the greatest resolve, knowing that this process will require not only legislative initiative, not only a reform of the penitentiary system, not only a change of attitude from the part of judges and legal professionals but also raising the awareness of the Belarusian citizens through an open, comprehensive and inclusive debate.” The UN has repeatedly called on Belarus to abolish the death penalty. In Concluding Observations on Belarus’ state reports, the UN Committee against Torture in 2000 condemned the use of the death penalty, and in 1997 the UN Human Rights Committee recommended a review of legislation and decrees to ensure that they comply with fair trial standards of the ICCPR.

Belarus has everything to gain by abolishing the death penalty; it will reduce isolation from Europe and allow the agencies of law enforcement to focus on the real solutions to the problem of crime without being distracted by the illusion of effective measures the death penalty provides.

4.2 THE MOVEMENT TOWARDS GRADUAL REJECTION OF THE DEATH PENALTY IN BELARUS

The idea that Belarus will eventually abolish the death penalty is enshrined in law (in the Constitution and the Criminal Code) and is often stated by officials. In a letter to Amnesty International in November 2008 the Deputy Minister of the Interior stated that recent legislative changes and the use of life sentences were evidence of “an irreversible [process of] movement towards gradual rejection of the death penalty”. During the January 2008 PACE session Natalia Andreichuk, Head of the Parliamentary Commission on Legislation and State-building stated: “Belarus wants to advance on the way to the standards of the Council of Europe, which is witnessed by its intention to introduce a moratorium on the use of the death penalty.”⁹

Several significant steps have been taken towards abolition. The number of offences punishable by death was reduced following Belarus’ independence from the Soviet Union. For example, on 6 July 1993 parliament abolished the death penalty for four offences of economic crimes, and replaced it with a maximum 15-year prison sentence without right of parole. However, Belarus also added new offences to the list of capital crimes. When reviewing the fourth periodic report of the government of Belarus on the implementation of the ICCPR in Geneva in October 1997, the UN Human Rights Committee expressed concern that decrees defining new crimes punishable by death, such as the Presidential Decree No. 21 of 21 October 1997 on fighting terrorism, had been enacted.

While only people under 18 at the time the crime was committed and pregnant women were exempt from the death penalty in the first years following Belarus’ independence, a law adopted on 1 March 1994 exempted all women. In addition, the Criminal Code that came into force in January 2001 exempted all men over 65 at the time the verdict was pronounced. In 1997 the Criminal Code was amended and life imprisonment was introduced.

On 4 November 2003 Belarus’ parliament forwarded a request to the Constitutional Court to assess if the death penalty was in line with the Belarusian Constitution and international standards. A member of parliament, Andrei Nareiko, had initiated this request stating that the Criminal Code’s articles providing for the use of the death penalty appeared to be in conflict with Article 24 of the Constitution, which guarantees every person the right to life and requires the state to protect human life against any unlawful injury. Andrei Nareiko put forward this request on the basis of previous decisions by the Hungarian and Lithuanian Constitutional Courts, which had ruled that the death penalty was unconstitutional and not in line with international standards. On 11 March 2004 the Constitutional Court concluded its assessment and found that a number of articles of the current Criminal Code were inconsistent with the Constitution, and that in the current circumstances the abolition of the death penalty, or as a first step, the introduction of a moratorium, could be enacted by the head of state and by parliament.

Despite the absence of comprehensive public official statistics on death sentences and executions, there are indications that the number of death sentences and executions has decreased over the past two decades. While from 1991 to 1998 between 20 and 47 people were sentenced to death per year, 13 were sentenced to death in 1999, and between four and seven per year until 2003. According to the Ministry of Justice, 26 people were sentenced to death in the period 2002 – 2008. Four death sentences were passed each year

in 2002 and 2003; five sentences each in 2004 and 2005; in 2006 the figure went up to nine; in 2007 four death sentences were passed and in the first half of 2008 one death sentence was passed.¹⁰ According to Oleg Alkaev, 134 people were executed while he was director of SIZO No. 1 in Minsk from December 1996 until May 2001. In recent years the number of executions appears to have significantly decreased. In 2007 there were media reports of one execution and in 2008 four executions were reported.

At a press conference on 9 September 2008 the Chair of the Supreme Court stated: "Death sentences are actually issued very rarely; we have actually reached a moratorium and are psychologically ready for it when the relevant decision is taken by parliament and the President."¹¹ However, despite these positive steps and statements, the Belarusian authorities have made no attempt to start the process of abolition that will require substantive reforms, changes of attitude and a comprehensive public debate.

Belarusian officials have given several reasons why it is not possible to move towards abolition right away. In a meeting in October 2008 with representatives from Amnesty International and the Belarusian Helsinki Committee, Ministry of Justice officials stated that Belarus was not yet ready for abolition because "the penitentiary system was not yet able to ensure the re-socialization of offenders".

Commenting on the UN General Assembly Resolution in December 2007, the Minister of Internal Affairs said that Belarus "could not cope without the death penalty for the time being". The resolution, in his words, was passed in the interests of politics and not common sense. He stated that in the last five years, the number of murders in Belarus had decreased: "In any country without the death penalty it is quite the opposite".¹²

Countries that retain the death penalty often argue that it is needed to control and deter criminal behaviour. In fact, scientific studies have consistently failed to find convincing evidence that the death penalty deters crime more effectively than other punishments. The most recent survey of research findings on the relation between the death penalty and homicide rates, conducted for the UN in 1988 and updated in 2002, concluded: "... it is not prudent to accept the hypothesis that capital punishment deters murder to a marginally greater extent than does the threat and application of the supposedly lesser punishment of life imprisonment." The US state of New York reinstated the death penalty in 1995, although no executions were carried out. In the late 1990s the homicide rate started to decline. In 2004 the state's highest court found that capital punishment was in violation of the state constitution and removed the laws allowing for the death penalty. The downward trend in the number of homicides continued despite the abolition of the death penalty.

Another argument frequently cited by Belarusian officials is that the death penalty was confirmed by a referendum in 1996, when 80.44 per cent of the Belarusian population voted against abolishing the death penalty. The referendum asked seven questions covering several topics including the new constitution, the buying and selling of land, the celebration of Independence Day as well as abolition of the death penalty. In its 2004 decision that a moratorium on the death penalty could be introduced the Constitutional Court pointed out that it had to be taken into account that at the time the referendum was conducted the Criminal Code only provided for 15 years' imprisonment as the maximum prison sentence. In addition, the Court stressed that in many European states the death penalty was abolished

despite strong public support for capital punishment. It also stated that the results obtained through the 1996 referendum had no binding character.

Amnesty International urges the Belarusian authorities to build on their stated commitment to abolish the death penalty by developing a concrete programme to advance these commitments from paper to practice and by declaring a moratorium immediately.

5. SECRECY SURROUNDING THE DEATH PENALTY IN BELARUS

“The duty of the director of the SIZO is to ensure the utmost secrecy and the irreversibility of the process”

Oleg Alkaev¹³

5.1 LACK OF PUBLIC STATISTICS

The UN Economic and Social Council, the UN Human Rights Committee and the UN Commission on Human Rights have all urged UN member states to make public information on their use of the death penalty, including the offences for which it is authorized and full details of its imposition.¹⁴

In 2006, the UN Special Rapporteur on extrajudicial, summary and arbitrary executions called for an end to official secrecy around the use of the death penalty, saying that meaningful public debate could only take place if governments disclosed full details of the number of persons sentenced to death, and the number of executions carried out.

Belarus has failed to publish comprehensive statistics about the number of death sentences passed and executions carried out, in contravention of their commitment as members 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”.¹⁵

The whole process of the death penalty in Belarus is shrouded in secrecy. No official statistics for the number of executions are available, although some information about certain executions is leaked to the press, and statistics on death sentences have occasionally been provided to Amnesty International. When asked for statistics for death sentences and executions by Amnesty International and the Belarusian Helsinki Committee during a meeting in October 2008, Ministry of Justice officials stated that they did not have access to such information. In response to a written enquiry from Amnesty International, the Ministry of Justice was able to give figures for the number of death sentences passed, but informed the organization that any questions relating to the execution of death sentences was not within its competency. In a letter dated 13 November 2008, Amnesty International has asked the Ministry of Interior for statistics on executions, but as of February 2009 no reply had been received. The Ministry of Interior turned down a meeting with Amnesty International in October 2008 on the grounds that the Minister was suffering ill-health and for a “series of objective reasons”.

By failing to publish full information about the use of the death penalty in Belarus the authorities are preventing informed public debate about the issue and hampering the movement towards abolition. The taking of a human life by the state is one of the most extreme acts a government can commit, and it is therefore extremely important that such a severe punishment should be subject to public focus and discussion.

5.2 SUFFERING INFLICTED ON FAMILY MEMBERS

"The body is not given for burial and the place of burial is not communicated."

Criminal Executive Code, Article 175.

This secrecy surrounding the death penalty in Belarus causes great suffering to the relatives of prisoners, who are kept in ignorance of the date of execution, and often not informed until weeks after the event.

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.

ANTON BONDARENKO

In July 1999 Amnesty International was contacted by the mother of Anton Bondarenko, whose son was being held under sentence of death. Anton Bondarenko had been sentenced to death in Belarus in June 1998 for a murder he committed when he was 19 years old. His appeal had been rejected and the original death sentence had been upheld. His mother informed Amnesty International that she had visited the prison where her son was being held on a daily basis for several weeks to see if her son was still alive. The prison authorities refused to inform her of the date when her son would be executed. Amnesty International appealed urgently to the authorities against the execution of Anton Bondarenko. On 15 July 1999 Amnesty International was informed by a friend of Anton Bondarenko's mother that the previous day she and his mother had staged a two-person picket outside the building of the Presidential Administration, where the mother had reportedly pleaded for her son's sentence to be commuted. The two women were arrested by police officers and detained for three hours. Anton Bondarenko was executed on 24 July.

In January 1999 Anton Bondarenko's lawyer had submitted a complaint to the UN Human Rights Committee alleging violations of the ICCPR. However, the Committee was only able to consider the case in October 1999 after Anton Bondarenko had already been executed. When issuing its ruling on this case the Committee requested the authorities to inform Anton Bondarenko's mother of "the location where her son is buried, and [provide] compensation for the anguish suffered. The State party is also under an obligation to prevent similar violations in the future." Anton Bondarenko's mother still does not know where her son is buried and the Criminal Executive Code of Belarus has not been amended to comply with the Committee's ruling.

Burial

According to the Criminal Executive Code "The body is not given for burial, the place of burial is not communicated". Human rights activists and lawyers believe that the bodies of those executed are buried in municipal cemeteries, but that the grave is levelled and covered

with turf, so that it cannot be found. It is thought that burials probably take place at night to avoid publicity. This causes considerable distress to relatives who cannot hold a funeral, or visit a grave in a local cemetery. The mother of one death row prisoner reportedly buried an item that belonged to her son and erected a gravestone in a cemetery in order to have somewhere to grieve. If prisoners sentenced to death commit suicide, die of illness or are murdered in prison, however, the body will be given to the relatives and buried according to normal rites. In an interview in January 2009, Oleg Alkaev told Amnesty International that, while he was Director of the SIZO in Minsk, two prisoners who had been sentenced to death and were sharing a cell both hung themselves. After the first man hung himself the second cut him down, laid the body on the bed and hung himself with the same rope. The duty officer noticed too late what was going on and did not have time to save them. Their bodies were handed over to their relatives two days before the execution was due to take place.

Personal effects

The personal effects of those executed are not given to the families. Syarhey Marozaw's lawyer told Amnesty International that he had asked the prosecutor for the personal effects of Syarhey Marozaw at the request of his widow who had wanted the photographs of their son that her husband had in his cell. The lawyer was told "there is nothing to be handed over".

Informing the relatives

The Criminal Executive Code stipulates that the Director of the place of detention should inform the sentencing judge of the fact that an execution has been carried out and the judge should inform one family member. In practice the process may take a matter of weeks. Oleg Alkaev explained to Amnesty International in an interview in January 2009 that the Director of the SIZO would complete an official document confirming that the execution had been carried out which would then be sent to the sentencing judge. The judge would then inform the registry office at the place of residence which would issue a death certificate to the relatives. The paperwork can take quite a long time. It would take a week for the staff at the SIZO to complete their paperwork, and some time for the registry office to issue the death certificate.

Ihar Danchenka's widow received notification from the registry office at the end of January 2008, although he was probably executed on 12 January. One lawyer told Amnesty International that the widow of an executed prisoner had only been notified many months after the execution. Syarhey Marozaw's widow found out by chance when she applied to the prosecutor for permission to visit her husband. She was told "maybe you shouldn't go" and was advised to contact the court that had sentenced him. When she phoned the Supreme Court she was told that the execution had already been carried out.

Amnesty International calls on the Belarusian authorities to comply with the UN Human Rights Committee's rulings on the cases of *Bondarenko v. Belarus* and *Lyashkevich v. Belarus* and to end the cruel and inhuman treatment of relatives of those sentenced to death by informing them where the bodies are buried and compensating them for the anguish suffered.

6. UNFAIR TRIALS

“The situation of the courts is a tragedy, there is no independence of the courts. We have plenty of examples where the executive gives the orders that the courts carry out. Consequently, people are charged with criminal offences and sentenced without any clear evidence of guilt.”

Hary Pohonyailo, Belarusian Helsinki Committee

The death penalty is irrevocable; and when used within the context of a justice system that does not accord with international standards for fair trials, the risk of executing an innocent person is ever present.

Gennadii Mikasevich was executed for murder in 1987 in the Soviet Republic of Belarus. He was born in 1947 in Polotsk, and killed an unknown number of people during the 1970s and 1980s. In November 1987 the newspaper *Literaturnaya Gazeta* (Literary Newspaper) reported that 14 people had been wrongly convicted of the crimes committed by Gennadii Mikasevich. All 14 were Belarusians who were arrested between 1971 and 1984 and reportedly forced to confess “under torture” to a series of rapes and murders which they had not committed. The newspaper stated that at least one of the men was subsequently executed wrongly in 1980, and another reportedly became blind while serving his sentence.

According to Article 6, Part 2 of the ICCPR “the death penalty can only be imposed for the most serious crimes in accordance with the law in force at the time of the commission of the crime This penalty can only be carried out pursuant to a final judgment rendered by a competent court.” The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has stated that fair trial safeguards in death penalty cases must be implemented in all cases without exemption or discrimination. The Special Rapporteur has stressed that trials in death penalty cases must conform to the highest standards of independence, competence, objectivity and impartiality of judges and juries, that defendants must benefit from the services of a competent defence counsel at every stage of the proceedings and that they must be presumed innocent until their guilt has been proved beyond a reasonable doubt, in strict application of the highest standards for the gathering and assessment of evidence.¹⁶ According to the Special Rapporteur, the failure to provide these minimum safeguards in cases where a death sentence is passed results in a violation of the right to life.

International bodies including the UN Human Rights Committee, the UN Committee against Torture, the UN Commission on Human Rights and bodies of the Council of Europe have frequently raised concern about serious flaws in the criminal justice system in Belarus.

In his February 2001 report, published following a fact-finding mission to Belarus in June 2000, the Special Rapporteur on the independence of judges and lawyers concluded: “the

administration of justice, together with all its institutions, namely, the judiciary, the prosecutorial service and the legal profession, are undermined and not perceived as separate and independent. The rule of law is therefore thwarted.” He pointed out that “the placing of absolute discretion in the President to appoint and remove judges is not consistent with judicial independence” and that there was “excessive executive control of the legal profession, particularly by the Ministry of Justice. Such control undermines the core values of an independent legal profession and the Basic Principles on the Role of Lawyers.” He also stressed that the “independence and integrity of the procuracy is ... undermined by excessive executive control”.¹⁷

Amnesty International has received credible evidence of the violation of the presumption of innocence in death penalty cases, the use of torture and ill-treatment to extract confessions, which have subsequently been admitted as evidence in trials, which fail to meet international standards of fairness, and the failure to provide adequate appeal procedures. This makes it imperative for the Belarusian authorities to protect the right to life by introducing a moratorium immediately.

6.1 NO PRESUMPTION OF INNOCENCE

“The Chief of police didn't want to see us, however my sister was very persistent and so we had a chance to see him. He was very rude and shouted that our sons are murderers and that we are the mothers of murderers. We left the police station in tears and without any information about the fate of our children. However, we understood that the situation was very terrible and serious.”

Mother of a young man accused of murder and under threat of being executed speaking to Amnesty International in October 2008.

Respect for the right to be presumed innocent and treated as innocent until and unless convicted according to law and after proceedings which meet the minimum requirements of fairness set out in international standards are fundamental elements of a fair trial. Article 14 (2) of the ICCPR states: “Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.” The right to be presumed innocent applies not only to treatment in court, but also to treatment before trial from the moment charges are filed. It means that public officials such as police and prosecutors should not make any public statements about the guilt or innocence of a person before the outcome of the trial. Article 16 of the Criminal Procedural Code enshrines the right to the presumption of innocence and states that anyone accused of a crime “is considered innocent until his guilt has been proved in the way provided in this code and until a court judgment has come into effect.” Amnesty International has received many credible reports which demonstrate that the presumption of innocence is not respected in practice.

During the trial of the Mahiliow murder case the defendants were taken to see the individual cells (usually preserved for condemned prisoners): “My son told me that before the trial, prison officers brought them outside and they saw how individual cells had been vacated. They all were in shock because they knew that individual cells are for those who are condemned to death. They were scared that the individual cells had been prepared for them.”

During the trial of Ihar Danchenka and Syarhey Marozaw and others involved in the same murder trial, the state media reportedly published exaggerated accounts of the lavish lifestyles of the accused branding them as guilty and impinging on the presumption of innocence.

6.2 TORTURE AND ILL-TREATMENT

"They beat me constantly for three days, and then I wrote the confession."

Young man accused of murder speaking to Amnesty International in October 2008.

All forms of torture or other ill-treatment are unequivocally prohibited under international human rights law including by the ICCPR and the Convention against Torture both of which Belarus has ratified. In February 1999, Yury Sushkov, a court judge from Babruysk district, who fled to Germany and claimed asylum, reportedly commented on the requirement of court judges to produce verdicts of guilt, even in the absence of sufficient evidence, and the widespread practice of forcing detainees to sign confessions through torture or other ill-treatment.¹⁸

Amnesty International has credible evidence that, under great pressure to solve crimes, police investigators still resort to forced confessions. In an interview with Amnesty International in October 2008 Boris and Oleg described how police used various methods to force them to confess to murder including physical and psychological pressure, and beatings by cell-mates.¹⁹

ALLEGATIONS OF TORTURE AND OTHER ILL-TREATMENT IN MAHILIOV DISTRICT

Boris and Oleg had been detained in June 2005 as suspects in a murder case that took place in Mahiliow district. A family of six people including two children had been killed in June 2005. The case was very high profile and President Lukashenka appeared on television and announced that the crime would be solved in three days. A day after the discovery of the corpses, five young local men ranging in age from 18 to 24 years old had already been detained by police. The young men were charged with murder and spent almost a year under threat of the death penalty or life imprisonment before a judge in Mahiliow district court threw out the murder charge on the basis that the "confessions" had been gained through the use of physical and psychological pressure.

Boris described how police officers initially tried to force him to sign a statement concerning the crime using psychological pressure and then used cell-mates to beat him until he signed such a statement. When he was first detained police officers interrogated him constantly for two days, leaving him handcuffed to a chair overnight. However, it was not until October 2005, when he was transferred to Zhodina remand prison that Boris finally succumbed to the pressure to sign a statement confessing to the crime.

"In Zhodina they searched me, and then they brought me to a cell and the beating started. The cell-mates were beating me and telling me to sign the confession. There were around 15 prisoners in this cell, all under 18, only two were older. It was the older ones who were beating me. They were collaborating with the police. After some time one of the guards from the detention centre called me for an interview and threatened that if I didn't write a confession things would get worse. They beat me constantly for three days, and then I wrote the confession."

Boris later complained about the ill-treatment he had suffered and withdrew the confession. He was transferred to Babruysk remand prison where he was beaten constantly by a cell-mate who coerced him into confessing once more. However, Boris learnt in court that there had been a recording device in the cell and that these conversations had been recorded. The sounds of Boris being beaten by the cell-mate could be heard clearly on the tape.

Oleg was 18 years old at the time he was detained. He claimed that he was beaten not only by police officers to force him to confess, but also beaten by the Chair of the local government who beat him with a book demanding that he confess. Oleg was also transferred frequently from one prison to another and spent several 15-day periods in solitary confinement during his pre-trial imprisonment and subsequent imprisonment.

Boris and Oleg were finally sentenced for unrelated crimes for which they had been tried simultaneously with the murder. Both were convicted and sentenced for having sex with a minor and for theft. Both were released before the expiration of their sentences in September 2008.

International standards do not permit the use of evidence, including confessions by the accused that has been gained through the use of torture or other cruel inhuman or degrading treatment. The Convention against Torture states that “any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.” Amnesty International is concerned that police officers resort to torture or other ill-treatment under pressure to solve crimes, and that statements and confessions gained in such a way are then used as evidence in court proceedings in violation of Belarus’ international human rights obligations.

Lack of confidential communications with a lawyer

The UN Basic Principles on the Role of Lawyers, and the Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment require that all those arrested, detained or imprisoned should be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. In many of the cases that Amnesty International has come across, detainees have only been able to speak to their lawyers in the presence of police officers. On 12 March 1999 Dmitry Yefremenkov and his alleged accomplice, Yevgeny Voronezhsky, were sentenced to death and to 22 years’ imprisonment respectively in Vitebsk, north-east Belarus, for a murder committed in July 1998. According to Dmitry Yefremenkov’s lawyer, his “confession” was obtained under considerable duress. The lawyer called the validity of the conviction into question. He told Amnesty International that he had not been given adequate access to his client during his detention and that when he was allowed to see him, police officials were constantly present making Dmitry Yefremenkov too afraid to speak in detail about his ill-treatment.

Lack of independent investigations into allegations of torture or other ill-treatment

“We wrote letters to the Prosecutor General, to President Lukashenka, but we did not receive any response. No one cared.”

Mother of young man accused of murder and under threat of being executed speaking to Amnesty International in October 2008.

Both the Convention against Torture and the ICCPR require the Belarusian authorities to initiate prompt, impartial and independent and thorough investigations into allegations of torture or other ill-treatment. Amnesty International knows of very few cases where allegations of torture or other ill-treatment have been investigated effectively, independently and impartially. When considering Belarus' third periodic report to the UN Committee against Torture, the Committee deplored the "pattern of failure of officials to conduct prompt, impartial and full investigations into the many allegations of torture reported to the authorities, as well as a failure to prosecute alleged perpetrators".²⁰

Boris' family and lawyer complained repeatedly to the local prosecutor's office about the ill-treatment he suffered during his pre-trial detention, but despite repeated complaints by his lawyer no effective or independent investigation was carried out. His lawyer drew attention to an inherent conflict of interest in the way the investigation was carried out. He and his client complained to the Prosecutor General, but it was the regional prosecutor who actually carried out the investigation into the allegations:

"It turned out that we were compelled to complain to the same body that was carrying out the investigation into the murder case. How can that be? There is no other body, according to our legal system that you can complain to, because the General Prosecutor's office monitors the activities of all state bodies including that of investigation."

No independent investigation is known to have been conducted into the allegations of ill-treatment made by Dmitrii Yefremkov.

There are also a number of factors which contribute to impunity for torture and other ill-treatment. There is no specific crime of torture in Belarus' Criminal Code as defined in Article 1 of the Convention against Torture, and, as required by Article 4, paragraph 2 of the Convention against Torture. Any cases of torture and other ill-treatment would be tried under alternative articles of the Criminal Code, such as Article 426 "exceeding official authority". In addition, according to Hary Pohonyailo, a legal expert from the Belarusian Helsinki Committee, there is a lack of procedural guidelines on how to deal with such complaints, lawyers are afraid to alert judges to allegations of ill-treatment, and judges are usually reluctant to consider complaints. Finally, there is no independent national system of monitoring of places of detention. Representatives of non-governmental organizations do not have access to places of detention. In his report to the 56th session of the UN General Assembly in 2001, the UN Special rapporteur on torture has stated that regular inspection of places of detention "constitutes one of the most effective preventive measures against torture".

6.3 CLOSED TRIALS

The right to a public hearing is a fundamental way of ensuring a fair trial. Article 14 (1) of the ICCPR states: "Everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law." The presence of the public ensures public scrutiny that both judge and prosecutor are carrying out their duties with impartiality and professionalism. It can also facilitate accurate fact-finding and encourage witnesses to tell the truth.

The right to a fair trial means that not only the parties to the case, but also the general public have the right to be present. The public may be excluded only in certain narrowly defined circumstances such as hearings involving sexual offences, when the interests of juveniles require it, or when national security is threatened. However, international law does not grant states an unfettered discretion to define for themselves what constitutes an issue of national security and international legal experts agree that such a restriction can only be imposed to protect a country's existence or its territorial integrity against the use of threat of force.²¹

According to Article 23 of the Criminal Procedural Code, trials in Belarus can only be declared closed in the interests of preserving state secrets and “other legally preserved secrets” and in the case of “offences committed by minors, sexual crimes and to protect the privacy and the security of the participants in the trial”. Article 65 also provides for closed trials for security reasons when there is a “real risk of murder, violence, destruction or damage to property and other crimes” in relation to those involved in the trial.

In practice, judges frequently declare trials closed or resort to other tactics to avoid public scrutiny, and not just in death penalty cases. When an Amnesty International representative attended the trial of Ivan Shilo, a young opposition activist, in September 2007, members of the public were told that they would need to leave because there were not enough seats. In fact the courtroom had been filled with teachers who had been personally invited by the court administration and told to arrive early. Only after human rights activists insisted on bringing in an extra bench were human rights observers and embassy officials allowed to attend.

The trial of Syarhey Marozaw, Ihar Danchenka and Valery Harbaty was held in the SIZO Central Remand Prison in Minsk on what the authorities described as security grounds, and family members and the public were not allowed to attend the trial. As the proceedings involved at least one high-ranking police officer some suggested to Amnesty International that the trial was closed to prevent publicizing the links between officials and organized crime in Belarus.

When Dmitry Yefremenkov was tried in 1999, there were reports that the defendants' relatives were not admitted into the courtroom while the victim's relatives attended.

When Boris and Oleg were on trial for murder in Mahiliow district court, the relatives of the accused and members of the public were not admitted:

“During the trial we [the mothers and grandmothers of the defendants] were not allowed to attend it. It was a closed hearing. We were trying to find out something from the lawyers during court breaks. We were sitting behind the doors and trying to see our sons through the keyhole, to hear what was happening inside. The lawyers were not allowed to tell us anything.”

Undertaking not to disclose information (подписка о не разглашении)

Furthermore, all lawyers involved in recent death penalty cases have been asked to sign an undertaking that they will not divulge any information about the trial. In the trial of Syarhey Marozaw, Ihar Danchenka and Valery Harbaty, the lawyers were asked to sign such an undertaking during the investigation stage and for the trial. This procedure is set out in Article 257 part 2 of the Criminal Procedural Code, which states that the accused and their

legal defence will be asked to sign such an undertaking if the case contains state secrets. Failure to comply with such undertaking is a criminal offence punishable by a fine or up to six months' imprisonment.

Amnesty International is concerned that the idea of state security is being used in Belarus to close trials to the public and to avoid public scrutiny in a way which exceeds the restrictions permissible under international law. The practice of declaring trials closed to the public on the basis of state secrets impinges on the possibility of a fair trial. It means that the judicial process is not subject to public scrutiny. The public has a right to know how justice is administered, and what decisions are reached by the judicial system. Public trials are particularly important in death penalty cases where lives are at stake.

6.4 INADEQUATE APPEAL PROCEDURES

"The fact that the sentence was pronounced by the college of judges of the Supreme Court meant that we were deprived of the possibility of a cassational appeal."

Ihar Danchenka's lawyer speaking to Amnesty International in October 2008.

Everyone convicted of a crime has the right to have the conviction and sentence reviewed by a higher tribunal. Article 14(5) of the ICCPR states: "Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law." Furthermore, international law requires that the rights to a fair and public trial must also be observed during appeal proceedings. This includes the right to a hearing before a competent, independent and impartial tribunal. In its consideration of Belarus' third periodic report, the UN Committee against Torture raised concerns regarding the "continuing use of the death penalty, and inadequate procedures for appeals".²²

According to Article 115 of the Constitution of Belarus everybody has the right to appeal against judicial decisions and other rulings. Article 371 of the Criminal Procedural Code lays out the procedure for cassational appeals providing for an appeal to a higher court for anybody sentenced by a local, regional or military court. However, the most recent death penalty cases have been tried in the Supreme Court as the court of first instance, which means that there is no higher court to which to appeal. Article 370 Part 6 of the Criminal Procedural Code states: "Sentences of the Supreme Court cannot be subjected to cassational appeals". The only possibility open to those sentenced to death by the Supreme Court in Belarus is the procedure of a Supervisory Protest (Протест в качестве надзора). A Supervisory Protest is a procedure 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.²³ According to the Criminal Procedural Code, Supervisory Protests can be brought by judges or prosecutors, but it is the prosecutor who presents the case for the protest. Both defendants and their defence counsel have the right to request a Supervisory Protest. In the case of judgments by the Supreme Court, the Prosecutor General lodges the protest with the committee of judges (Praesidium) of the Supreme Court. If the Chair of the Supreme Court considers it necessary he may invite the prisoner's legal representative to attend the hearing during which the Supervisory Protest is considered, but this is not an automatic right.

Amnesty International considers that a Supervisory Protest by the prosecutor cannot be considered an adequate appeal as required by Article 14 of the ICCPR. When death sentences are passed by the Supreme Court, the Supervisory Protest will be considered by the same court that passed the judgment depriving those sentenced to death of the possibility of an appeal to a higher tribunal. Furthermore, the fact that the 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 subjected to a truly independent review. All lawyers who spoke to Amnesty International agreed that it is extremely unlikely that such a request would succeed, because prosecutors are very reluctant to oppose death sentences which they themselves have proposed. Amnesty International is concerned that the procedure of a Supervisory Protest cannot be considered as a competent, independent and impartial review by a higher tribunal as required by international law.

Amnesty International has also received disturbing testimony of the continuation in Belarus of the Soviet practice of executing people before the appeal process has been completed. Ihar Danchenka's lawyer reported that her client was executed before she received notification that their application for a Supervisory Protest had been refused, thus leaving no opportunity to challenge the ruling.

Belarus has ratified the Optional Protocol to the ICCPR giving individuals the right to submit complaints to the committee if they believe their rights have been violated. However, if this right is to be realized in practice, individuals must be given sufficient time to submit a complaint before their sentence is carried out. In January 1999, Anton Bondarenko's lawyer submitted a complaint to the UN Human Rights Committee alleging violations of the ICCPR, but Anton Bondarenko was executed in July before the Committee was able to consider the case.

Clemency

"Everybody knows that there is practically no chance of clemency because in Belarus it is not customary to pardon criminals."

Oleg Alkaev²⁴

The Constitution gives the President authority to grant clemency, and the death penalty may be commuted to life imprisonment. Applications for clemency by those condemned to death must be submitted within 10 days of the sentence being passed. Applications are initially considered by the Clemency Commission within the Presidential Administration. Its members are appointed by the President for the duration of the President's term. The current Clemency Commission was appointed by Presidential decree in 2005 and consists of 10 members including Natalia Petkevich, the Deputy Head of the Presidential Administration, who is the Chair of the Commission. 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 the Commission's recommendation to the President, who issues his decision in the form of an unpublished Presidential decree.

The Clemency Commission works in utmost secrecy and lawyers and their clients are deprived

of the opportunity to challenge decisions at any stage in the process. Lawyers and their clients can present information in written form, but not in person to the Commission. They are not informed of the information before the Commission and therefore cannot challenge it. They are not informed of the recommendation made by the Commission to the President, and prisoners are informed of the President's decision just minutes before they are executed, thus leaving no time to challenge the final decision. Furthermore, the 10-day time limit puts considerable pressure on lawyers and their clients, and one lawyer told Amnesty International that it is quite possible that those condemned to death might not have time to submit an application both for clemency and for a Supervisory Protest before they are executed. There has reportedly only ever been one successful application for clemency since President Lukashenka came to power in 1996.

Amnesty International calls on the Belarusian authorities to immediately introduce a moratorium on death sentences and executions. Trials in death penalty cases in Belarus do not conform to the highest standards of independence, competence, objectivity and impartiality as required by international standards. In the absence of such standards the passing of a death sentence must be considered as a violation of the right to life.

7. INHUMAN AND DEGRADING CONDITIONS ON DEATH ROW

The cruelty of the death penalty is not restricted to the actual moment of execution. Its unique horror is that from the moment the sentence is pronounced, the prisoner is forced to contemplate the prospect of being removed from his cell to be put to death at an appointed time. Prisoners may suffer an agonizing conflict between the desire to live in hope and the need to prepare for possible imminent death. In Belarus this suffering is increased by the fact that prisoners are reportedly informed of the execution only minutes before it takes place. They therefore live in constant expectation that each time they are taken from their cell they may be taken for execution. One lawyer described how each time she saw her client he was visibly shaking because he had been brought from his cell to meet her and had not known if he was being taken for execution or not.

Prisoners sentenced to death are treated as people with no future. Lawyers in Belarus have told Amnesty International that their clients were “treated as if they don’t exist” or “as if they are no longer human beings”.

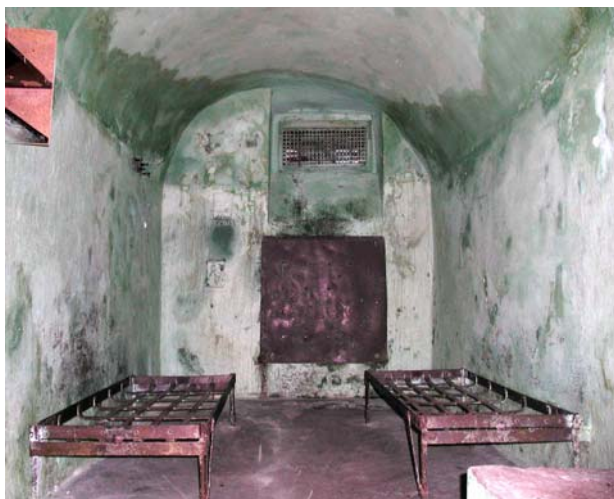
DMITRY KHARKHAL

Dmitry Kharkhal was held on death row in SIZO No. 1 in Minsk for more than one year until his death sentence was replaced with 15 years’ imprisonment in June 2003. He alleged that while on death row he was frequently beaten on his head, back, stomach and genitals by prison guards who reportedly forced him to say “thank you very much” after each of the beatings. His lawyer reported that he was sometimes taken out of the cell and forced to walk crouching to the bath but was then denied permission to take a bath. He reported that at one point he was forbidden to read books and that his personal books -- a copy of the Criminal Procedural Code of Belarus, a Russian dictionary, an English language book and the Bible -- were taken away from him. His allegations of ill-treatment and harsh prison conditions were reportedly not investigated by the authorities.

The conditions in which the prisoners are kept exacerbate the inherently cruel, inhuman and degrading experience of waiting for the death penalty to be carried out. Prisoners condemned to death in Belarus are reportedly held in basement cells in SIZO No. 1 in Minsk. The cells for condemned prisoners are reportedly in the basement. Officials would not confirm to Amnesty International whether this was the case. In an interview with Amnesty International in 2004, Oleg Alkaev sketched a death row cell in SIZO No. 1 in Minsk and described the conditions as they were at the time he was director. The cells are 3 – 3.5m wide and 4m long and contain a toilet with a tap over it. The toilet is not screened. The cells contain metal beds which are screwed to the floor, a small shelf for personal items such as toothbrushes,

hair brushes and tobacco, and a window near the ceiling which is not just barred, but covered with a metal screen. This is described by Oleg Alkaev as a “Soviet invention ... which prevents any normal access to air or sunlight.” In addition, the window has metal bars in front to prevent anybody approaching the window closely. The cells are at basement level and there is very little natural light. The electric light is left on day and night. The lawyer defending Syarhey Marozaw was unable to visit his client in the cell, but his client told him that it was unheated and very damp.

The Criminal Executive Code states that prisoners sentenced to death are held in separate cells, but, according to Oleg Alkaev, when he was Director of the SIZO there were usually two inmates per cell to prevent suicide.



Pictures of cells for condemned prisoners taken in 2003 © Legal Initiative

Prisoners sentenced to death are not permitted to exercise outside their cells. According to the Criminal Executive Code condemned prisoners have the right to unlimited

correspondence. However, according to Oleg Alkaev there was no limitation on correspondence with lawyers, but all correspondence with relatives was sent to the investigators who decided which letters could be sent on and which not. Dmitry Kharkal stated that not all of his letters, including those to his mother and complaints to government authorities, were passed on by the prison administration. Prisoners are allowed one short visit with close relatives every month and can receive one parcel every three months. All visits are in the presence of prison personnel and during visits with the lawyer the defendants are handcuffed to the chair. Visits with relatives are held in a special room with a glass screen.

Amnesty International calls on the Belarusian authorities to bring all prison conditions including conditions on death row into line with international standards such as the UN Standard Minimum Rules for the Treatment of Prisoners, and the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

8. CONCLUSION

Amnesty International calls on the Belarusian authorities to immediately declare a moratorium on death sentences and executions with a view to abolishing the death penalty completely.

The international community has agreed that the severity of the death penalty means it can only be imposed after a due process of law in which international fair trial and appeal procedures have been strictly observed. To do otherwise is to violate the rights of those the state wishes to kill. A death penalty administered by an inadequate and unfair legal system exacerbates the inherent dangers in using the death penalty in an arbitrary manner, or the execution of an innocent person. As this report has shown, the criminal justice system in Belarus violates international human rights standards in a number of ways. The state media will often whip up public opinion against suspects thus violating the presumption of innocence, police rely heavily on confessional evidence and may resort to torture to force suspects to confess. Suspects may be tried in closed court sessions, by judges who are susceptible to political pressure. Suspects in high profile murder cases may be tried in the Supreme Court and have no possibility to appeal to a higher tribunal.

To take a human life is one of the most violent acts a government can undertake in peacetime, and execution after a criminal justice process that is flawed and unfair is a violation of the right to life according to all international standards. It is therefore unacceptable that the Belarusian authorities continue to carry out death sentences in the face of criticism from international organizations that the manner in which the death penalty is applied is in violation of international law.

The secrecy surrounding the death penalty in Belarus significantly increases the suffering of the relatives of executed prisoners, who are not given the bodies for burial, and who do not know when the execution is carried out until after the event.

Public opinion should not be used to justify maintaining the death penalty. The Constitutional Court has already ruled that the referendum of 1996 has been overtaken by events and that the President and parliament can introduce a moratorium. In any case there will always be opposition to ending the death penalty, but it is up to political leaders to do what is right. Both the Constitution and the Criminal Code foresee the abolition of the death penalty. Belarus cannot wait any longer and must act to protect human rights by abolishing the death penalty.

By declaring a moratorium on executions, the Belarusian government will eliminate the risk of executing the innocent and will take an important step to bring Belarus closer to the growing consensus of the international community that the death penalty is not a solution to crime. A moratorium will provide an important opportunity to review legislation and criminal procedures and to encourage serious public debate to prepare public opinion for eventual abolition. By abolishing the death penalty the Belarusian authorities will remove the last obstacle to making Europe a death penalty-free zone.

9. RECOMMENDATIONS

Amnesty International calls on President Lukashenka:

- To commute without delay the sentences of all prisoners currently on death row to terms of imprisonment.
- To build on the March 2004 decision of the Constitutional Court which ruled that abolition of the death penalty or, as a first step, a moratorium, may be enacted by the President and by Parliament.
- To take immediate steps towards abolition of the death penalty by promptly establishing a moratorium on all death sentences and 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 assume leadership in engaging and preparing public opinion for the abolition of the death penalty, including through publishing all procedures relating to the death penalty and comprehensive statistics which would help inform a serious public debate, which should include inter-governmental and non-governmental organizations.
- To ensure that death row prisoners and their families are kept fully informed of the progress of petitions for clemency, reports presented to the Clemency Commission and the reasoning behind the Clemency Commission's recommendation to support or reject petitions.

Amnesty International calls on the Ministry of the Interior

- To bring all prison conditions including conditions on death row into line with international standards including the UN Standard Minimum Rules for the Treatment of Prisoners, and the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.
- To ensure that death row prisoners and their families are kept fully informed of the progress of appeals and petitions for clemency;
- To ensure that relatives of prisoners under sentence of death are:
 - kept fully informed of the prisoner's place of imprisonment and, in advance, any transfer;
 - allowed to have regular and private meetings with the prisoner;
 - informed well enough in advance of the execution date to be able to say goodbye;
 - permitted to have the prisoner's body for burial and all personal effects.
- To publish all directives, legislation and annual statistics relevant to the death penalty.
- The families of those who have already been executed should at a minimum be told where their relatives are buried.

Amnesty International recommends to the Ministry of Justice

- To ensure that all those sentenced to death have the right to a full and fair appeal to a higher tribunal, by ending the practice of trying death penalty cases in the Supreme Court as the court of first instance, and ensuring that the death penalty is not carried out until all rights to appeal have been exhausted.
- To establish a truly independent and impartial Clemency Commission and ensure that its criteria and operations are transparent and that prisoners and their lawyers have:
 - access to information placed before the Commission;
 - an effective opportunity to challenge this information and to make their own representations;
 - reasonable time and facilities to challenge any negative decision.
- To ensure that the right to a public hearing in accordance with Article 14 (1) of the International Covenant on Civil and Political Rights is respected and that the public's attendance at trials is restricted only in certain narrowly defined circumstances.
- Pending steps towards total abolition of the death penalty, Belarus must ensure that in death penalty cases, the internationally recognized standards for fair trials are rigorously respected, including:
 - the right to be tried before an independent, impartial and competent tribunal;
 - the right to competent defence counsel at every stage of the proceedings;
 - the right to adequate time and facilities to prepare one's defence;
 - the right to be presumed innocent until guilt has been proved beyond a reasonable doubt;
 - the right to appeal to a higher court;
 - the right to seek pardon and commutation of sentence.Until these rights have been observed no executions should take place.
- 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 made by the UN Human Rights Committee and the UN Committee against Torture.
- 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*.

Endnotes

- ¹ Quoted from “Violations of Human Rights in Belarus in 2006. Analytical Review”, Viasna Human Rights Group, <http://spring96.org/en/editions/>.
- ² “What the EU could bring to Belarus”, European Commission, November 2006 http://ec.europa.eu/external_relations/belarus/index_en.htm
- ³ Article 59.2.1 of the Criminal Code.
- ⁴ Article 59.2.3 of the Criminal Code.
- ⁵ Article 59.2.2 of the Criminal Code.
- ⁶ SIZO – acronym from the Russian - Следственный изолятор – an investigation isolation facility or remand prison run by the Ministry of Interior.
- ⁷ Oleg Alkaev speaking to Amnesty International in January 2009.
- ⁸ I. V. Kuchvalskaya, “Pozhiznenoe zakliuchenie kak vid ugovnogo nakazaniia”, *Otmena Zmertnoi Kazni v Respublike Belarus*, E. Bashkevich, V.V. Filippov, Minsk, 2003 p.161.
- ⁹ ‘Dialogue with Belarus must start again’, PACE news item, 22 January 2008, http://assembly.coe.int/ASP/NewsManager/EMB_NewsManagerView.asp?ID=3497.
- ¹⁰ Letter to Amnesty international from the Ministry of Justice dated 26 November 2008.
- ¹¹ Quoted in Viasna, “Death penalty in Belarus”, <http://spring96.org/en/publications/26686/>.
- ¹² “Ministr vnutrennykh del Belarusi vystupaet protiv otmeny smertnoi kazni”, Interfax.by, 16 November 2007 quoted from <http://news.tut.by/98161.html>.
- ¹³ “Его обязанность обеспечить конспирацию и неотвратимость процесса”, Oleg Alkaev in an interview with Amnesty International in January 2009.
- ¹⁴ See, for example, resolution 1989/64, adopted on 24 May 1989 by the UN Economic and Social Council, resolution 2005/59, adopted on 20 April 2005 by the UN Human Rights Commission.
- ¹⁵ Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 29 June 1990, http://www.osce.org/documents/odhr/2001/01/1764_en.pdf.
- ¹⁶ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, UN Doc A/51/457, 7 October 1996, at para.111, <http://daccessdds.un.org/doc/UNDOC/GEN/N96/265/53/PDF/N9626553.pdf?OpenElement>.
- ¹⁷ Report of the Special Rapporteur on the independence of judges and lawyers, Dato’ Param Cumaraswamy on his mission to Belarus, E/CN.4/2001/65/Add.1, 8 February 2001, [http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/571f50b9b848e6e8c1256a2300526b5c/\\$FILE/G0111054.pdf](http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/571f50b9b848e6e8c1256a2300526b5c/$FILE/G0111054.pdf).
- ¹⁸ Quoted from *Belarus: Dissent and Immunity*, Amnesty International, AI Index: EUR 49/14/00, 21 June 2000.
- ¹⁹ Alternative names have been used to protect their identities.
- ²⁰ Concluding observations of the Committee against Torture: Belarus, 20 November 2000, A/56/44, paras. 40-46, C 45.i,

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/f11049ba01a8dccc125699e0058906b?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/f11049ba01a8dccc125699e0058906b?Opendocument).

²¹ The Johannesburg Principles on National Security, Freedom of Expression and Access to Information, October 1995, adopted at a meeting convened by Article 19, the International Centre Against Censorship, and the Centre for Applied Legal Studies of the University of Witwatersrand, South Africa.

²² Concluding observations of the Committee against Torture: Belarus, 20 November 2000, [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/A.56.44,paras.40-46.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/A.56.44,paras.40-46.En?Opendocument).

²³ Kriril Koroteev and Sergei Golubok, "Judgment of the Russian Constitutional Court on Supervisory Review in Civil Proceedings: Denial of Justice, Denial of Europe", *Human Rights Law Review*, Oxford University Press, 2007, <http://hrlr.oxfordjournals.org/cgi/content/full/7/3/619>.

²⁴ Oleg Alkaev, *Rasstrelnaya komanda*, Partisan, Moscow, 2006, p. 162.



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ENDING EXECUTIONS IN EUROPE

TOWARDS ABOLITION OF THE DEATH PENALTY IN BELARUS

Prisoners on death row in Belarus are told they will be executed only moments before the sentence is carried out. They are shot in the back of the head. Their families are informed after the event, and the place of burial is kept secret, which causes further distress.

There are no official statistics for the number of executions carried out. Amnesty International estimates that as many as 400 people may have been executed since Belarus gained independence from the Soviet Union in 1991. Belarus continues to carry out executions in the face of international criticism and in the context of a justice system that is seriously flawed. This report shows that those condemned to death may have been sentenced on the basis of forced confessions, after unfair trials, and often without the possibility of an adequate appeal.

Belarus is the last country in Europe and in the former Soviet Union that is still carrying out executions. Amnesty International is calling on the Belarusian authorities to impose an immediate moratorium on executions as a first step towards complete abolition.

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