

NATIONS UNIES
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PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on the situation of human rights in Belarus.

REFERENCE:

UA Belarus (2012) G/SO 214 (3-3-16) G/SO 214 (33-27) G/SO 214 (53-24)
BLR 1/2014

8 January 2014

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Special Rapporteur on the situation of human rights in Belarus pursuant to Human Rights Council resolutions 17/2, 17/5, 16/23 and 23/15

In this connection, we would like to draw the attention of your Excellency's Government to information we have received concerning the case of Mr. Eduard Lykov, aged 53, citizen of the Republic of Belarus, who was sentenced to death and risks execution.

According to the information received:

On 26 November 2013, Mr. Lykov was sentenced to death by the Minsk Regional Court on charges of murder. It is reported that the investigation into his case had been ongoing since 2011 during which Mr. Lykov had subsequently changed lawyers three times. No information is reportedly known regarding the details of the trial and conviction of Mr. Lykov. It is alleged that the legal proceedings against him were held behind closed doors.

Without prejudging the accuracy of the information made available to us, we would like to express concern that the death penalty may have been imposed and be carried out against Mr. Eduard Lykov, after a trial that did not meet the most stringent fair trial and due process guarantees.

In view of the irreversibility of the punishment of the death penalty, we urge your Excellency's Government to take all steps necessary to prevent the execution of Mr.

Eduard Lykov, which, if carried out, would be inconsistent with accepted standards of international human rights law, and to commute without delay the death sentence imposed against him.

We wish to refer your Excellency's Government to article 5 of the United Nations Safeguards Protecting the Rights of those Facing the Death Penalty which provides that "Capital punishment may only be carried out pursuant to a final judgment rendered by a competent court after a legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Belarus on 18 November 1973. Only full respect for stringent due process guarantees distinguishes capital punishment as possibly permitted under international law from a summary execution."

We would also like to refer your Excellency's Government to article 14(1) of the International Covenant on Civil and Political Rights, which states: "All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children."

Furthermore, in its General Comment No. 32 the Human Rights Committee underlined that: "All trials in criminal matters or related to a suit at law must in principle be conducted orally and publicly. The publicity of hearings ensures the transparency of proceedings and thus provides an important safeguard for the interest of the individual and of society at large. Courts must make information regarding the time and venue of the oral hearings available to the public and provide for adequate facilities for the attendance of interested members of the public, within reasonable limits, taking into account, *inter alia*, the potential interest in the case and the duration of the oral hearing." (para. 28) The Committee also highlighted that: "Article 14, paragraph 1, acknowledges that courts have the power to exclude all or part of the public for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would be prejudicial to the interests of justice. Apart from such exceptional circumstances, a hearing must be open to the general public, including members of the media, and must not, for instance, be limited to a particular category of persons. Even in cases in which the public is excluded from the trial, the judgment, including the essential findings, evidence and legal reasoning must be made public, except where the interest of juvenile persons otherwise requires, or the proceedings concern matrimonial disputes or the guardianship of children." (para. 29)

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of Mr. Lykov in compliance with the above international instruments.

Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the summary of the case accurate?
2. Please provide detailed information on each stage of the judicial proceedings against Mr. Lykov and indicate how they comply with international human rights standards, in particular the right to a fair trial and due process as enshrined in article 14 of the ICCPR, and the United Nations Safeguard 5 Guaranteeing Protection of the Rights of those Facing the Death Penalty.

We undertake to ensure that your Excellency's Government's response will be available in the report we will submit to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Mr. Lykov are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

Please accept, Excellency, the assurances of our highest consideration.

Gabriela Knaul
Special Rapporteur on the independence of judges and lawyers

Christof Heyns
Special Rapporteur on extrajudicial, summary or arbitrary executions

Juan E. Méndez
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Miklós Haraszti
Special Rapporteur on the situation of human rights in Belarus