

NATIONS UNIES
HAUT COMMISSARIAT DES NATIONS UNIES
AUX DROITS DE L'HOMME

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

REFERENCE: UA G/SO 218/2 Belarus (2012) G/SO 214 (3-3-16) G/SO 214 (33-27) G/SO 214 (53-24)
BLR 3/2013

1 October 2013

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the situation of human rights in Belarus; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on extrajudicial, summary or arbitrary executions; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 15/18, 23/15, 17/2, 17/5, and 16/23.

In this connection, we would like to draw the attention of your Excellency's Government to the information we have received regarding the cases of Messrs. **Pavel Selyun** and **Rygor Yuzepchuk**, who are reportedly at risk of imminent execution in Belarus, as well as the case of Mr. **Alyaksandr Haryunou** who was sentenced to death and risks execution.

According to the information received,

Mr. Pavel Selyun, aged 23, was sentenced to death by the Hrodna Regional Court on 12 June 2013. He was reportedly accused of the murder of his wife and her lover on 5 August 2012, and found guilty under Article 139(2) (murder of two or more people with particular cruelty), Article 205 (robbery), Article 347 (mutilation of corpse or grave), and Article 378 (theft of personal documents) of the Criminal Code of the Republic of Belarus. The Supreme Court upheld the death sentence against him on 18 September 2013. It is alleged that Mr. Selyun was transferred in early August 2013 to a detention centre for death row prisoners in Minsk, where he may be executed at any time.

Mr. Rygor Yuzepchuk, aged 44, was sentenced to death on 24 April 2013, by Mahiliou regional court for the murder of a cellmate in prison number 4 in Mahiliou. The Supreme Court reportedly upheld the death sentence against him.

Mr. Alyaksandr Haryunou, aged 25, was sentenced to death on 14 June 2013 by a court in the city of Homel for the murder of a student on 20 September 2012. It is reported that he appealed the sentence to the Supreme Court, which is scheduled to hear his case on 18 October 2013.

It is alleged that the proceedings against the three defendants were not fully transparent and did not meet fully the requirements of fair trial and due process. In particular, the lawyers in all the three cases allegedly did not have full access to the documents used by the prosecution. Furthermore, in the cases of Messrs. Selyun and Yuzepchuk, the legal proceedings against them were reportedly held behind closed doors.

Furthermore, it is reported that Mr. Haryunou was diagnosed with a psycho-social disability, namely with a personality disorder. Allegedly, he made no effort to defend himself and remained silent after the verdict against him was pronounced. A psychiatric examination however reportedly concluded that he was competent to stand trial.

It is further alleged that all three defendants risk being executed in secret, with no adequate notice to them and no prior notice to their families and legal representatives.

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 Messrs. Pavel Selyun, Rygor Yuzepchuk, and Alyaksandr Haryunou, following inadequate respect of fair trial and due process safeguards, including in the post-conviction proceedings.

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 Messrs. Pavel Selyun, Rygor Yuzepchuk, and Alyaksandr Haryunou, which, if carried out, would be inconsistent with acceptable standards of international human rights law. We call upon your Excellency's Government not to execute them and to commute without delay the death sentences imposed against them.

In this regard, we wish to refer to article 6(1) of the International Covenant on Civil and Political Rights (ICCPR) that the Republic of Belarus ratified on 12 November 1973, stipulating that "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life". Although international law does not prohibit the death penalty, it nonetheless provides that it must be regarded as an exception to the fundamental right to life, and must as such be applied in the most restrictive manner.

Only full respect for stringent fair trial and due process guarantees distinguishes capital punishment as permissible under international law from a summary execution, which by definition violates international human rights law standards. Safeguard 5 further provides that “Capital punishment may only be carried out pursuant to a final judgment rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the ICCPR, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings.”

These provisions apply also to the need to ensure full transparency at all stages of the proceedings, including in the post-conviction stage. In this regard, we would like to bring to the attention of your Excellency’s Government the report submitted to the Human Rights Council by the Special Rapporteur on extrajudicial, summary or arbitrary executions on “Transparency and the imposition of the death penalty” (E/CN.4/2006/53/Add.3), which observed that “due process rights and other safeguards on the right to life remain even after a person has been convicted of a crime and sentenced to death”. “Refusing to provide convicted persons and family members advance notice of the date and time of execution is a clear human rights violation”. In the report to the 67th session of the General Assembly (A/67/275), the Special Rapporteur on extrajudicial, summary or arbitrary executions held that a State that fails to be transparent in its death sentences in line with article 14 of the ICCPR risks also violating article 6 of the ICCPR. He therefore recommends that States “ensure transparency regarding individual cases of capital prosecution, death sentences and executions, including access to information by prisoners, their family members and the public”.

With regard to the case of Mr. Alyksandr Haryunou, who is alleged to have been diagnosed with psycho-social disability, we would like to remind your Excellency’s Government Safeguard 3 Protecting the Rights of Those Facing the Death Penalty, which provides that the death penalty shall not be carried out on persons who have become insane. In addition, resolution 1989/64 of the Economic and Social Council of 24 May 1989 on the Implementation of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, recommends in paragraph 1 (d) that States further strengthen the protection of the rights of those facing the death penalty, eliminating the death penalty for persons suffering from mental retardation or extremely limited mental competence, whether at the stage of sentence or execution.

In this context, we would also like to draw the attention of your Excellency’s Government to the report submitted to the UN General Assembly by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/67/279), in which the Special Rapporteur called upon all States to reconsider whether the use of the death penalty per se respects the inherent dignity of the human person, causes severe mental and physical pain or suffering and constitutes a violation of the prohibition of torture or cruel, inhuman or degrading treatment (para. 79). Moreover, the Special Rapporteur called upon all retentionist States to observe rigorously the restrictions and conditions imposed by article 7 of the ICCPR and article 1 or article 16 of the Convention against Torture (para. 80) and in particular to abolish the use of the death

penalty for persons with mental disabilities (a) and to end the practice of secret executions; and end the practice of executions with little or no prior warning given to condemned prisoners and their families (c).

We would also like to refer your Excellency's Government to article 14(3) of the ICCPR, which states: "In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (b) To have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing." In its General Comment No. 32, the Human Rights Committee further indicated that: "Adequate facilities' must include access to documents and other evidence; this access must include all materials that the prosecution plans to offer in court against the accused or that are exculpatory."

Furthermore, we wish to bring to the attention of your Excellency's Government the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, and in particular principle 21, which states: "It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time."

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the abovementioned persons is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights, and articles 9 and 14 of the ICCPR.

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 Messrs. Pavel Selyun, Rygor Yuzepchuk, and Alyaksandr Haryunou in compliance with the aforementioned 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 cases accurate?
2. Please provide detailed information on each stage of the judicial proceedings against Messrs. Pavel Selyun, Rygor Yuzepchuk, and Alyaksandr Haryunou, and indicate how they comply with the requirement to guarantee a fair trial and due

process as enshrined, inter alia, in article 14 of the ICCPR, including the requirement of ensuring full transparency at every stage of the proceedings.

3. Please explain the legal grounds for the imposition of the death penalty against Mr. Alyaksandr Haryunou, who is alleged to have been diagnosed with a psychosocial disability, and explain how this is compatible with the mentioned international human rights law standards.

4. Please provide information concerning the legal grounds for the arrest and detention of Messrs. Pavel Selyun, Rygor Yuzepchuk, and Alyaksandr Haryunou and how these measures are compatible with international norms and standards as stated, inter alia, in the Universal Declaration of Human Rights and the ICCPR.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected 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 Messrs. Pavel Selyun, Rygor Yuzepchuk, and Alyaksandr Haryunou are respected. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

Given the importance of this issue, we would like to inform your Excellency's Government that a related press release shall be issued shortly.

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

El Hadji Malick Sow
Chair-Rapporteur of the Working Group on Arbitrary Detention

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

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

