



Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment

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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1988

Addendum

BYELORUSSIAN SOVIET SOCIALIST REPUBLIC

[11 January
1989]

I. General information

1. In the terms of its Constitution (Fundamental Law), "the Byelorussian Soviet Socialist Republic is a socialist State of the whole people, expressing the will and interests of the workers, peasants and intelligentsia, the working people of all the nationalities of the Republic". Proclaimed on 1 January 1919, with Minsk as its capital, the Republic is located in eastern Europe, on the western borders of the Soviet Union, of which it forms a part (on the basis of the 1922 Treaty of Union creating the USSR) as a sovereign socialist State enjoying the same rights as the other 14 Soviet Socialist Republics. It has borders with the Polish People's Republic, the Lithuanian SSR, the Russian Soviet Federative Socialist Republic and the Ukrainian SSR. The Byelorussian Soviet Socialist Republic covers an area of 207.6 thousand square kilometres and has a population of 10.1 million. About four fifths of the population are Byelorussian (a Slavic people related to the Russians and the Ukrainians). Russians, Poles, Ukrainians, Jews and others also live in the Republic, in which over 80 nations and ethnic groups are represented. Sixty-five per cent of the population live in the towns and 35 per cent in the countryside. During the Second World War, the territory of the Republic underwent enormous destruction, and one quarter of the population perished. The considerable contribution made by the population of the Republic to crushing fascism is well known. The Byelorussian SSR is a member of the United Nations and many other international organizations.

2. The legislation of the Byelorussian SSR, which is based on the principles of socialist humanism, completely precludes the possibility of using torture or other cruel, inhuman or degrading treatment or punishment on anyone whatsoever and provides all the necessary legal guarantees to that effect.

3. The unconditional prohibition and elimination in the Byelorussian SSR of torture or other cruel, inhuman or degrading treatment or punishment is based on the statements of principle contained in the Constitution (Fundamental Law). Thus, article 4 of the Constitution provides that the Soviet State and all its bodies function on the basis of socialist law, ensure the maintenance of law and order and safeguard the interests of society and the freedoms of citizens. Article 52 stipulates that "citizens of the Byelorussian SSR are guaranteed inviolability of the person". Under article 55, "citizens of the Byelorussian SSR have the right to protection by the courts against encroachments on their honour and reputation, life and health, and personal freedom and property". Article 56 also states that "actions by officials that contravene the law or exceed their powers and infringe the rights of citizens may be appealed against in a court in the manner prescribed by law" and that "citizens of the Byelorussian SSR have the right to compensation for damage resulting from unlawful actions by State organizations and public organizations or by officials in the performance of their duties".

4. Concrete provisions in the Criminal Code, the Code of Criminal Procedure, the Correctional-Labour Code and other branches of legislation in force in the Byelorussian SSR, on the basis of the above-mentioned articles of the Constitution explicitly prohibit cruel or degrading treatment or punishment. Thus, article 15 of the Code of Criminal Procedure of the Byelorussian SSR prohibits, in the conduct of an inquiry or judicial examination of a criminal case, the obtaining of statements from the accused or from other persons involved in the case by force, threats or other illegal measures. Article 175 of the Criminal Code of the Byelorussian SSR establishes the legal liability of officials who extract statements by use of threats, force or humiliation of the person being questioned, or by other illegal acts. Article 179 of the Criminal Code also prohibits compelling a witness, victim or expert to give judicial or investigative agencies false testimony or a false opinion by threatening such persons or those close to them with murder, violence, or destruction of property.

5. The legislation on criminal procedure in force in the Byelorussian SSR (articles 105, 107, 108, 110-114 and other articles of the Code of Criminal Procedure) ensure obligatory, swift and impartial consideration of statements and an objective investigation of criminal cases, including illegal actions committed by persons carrying out an inquiry or a preliminary investigation. A decision not to institute criminal proceedings on the basis of such statements and the unlawful actions of the agencies of inquiry or the investigative bodies may be appealed against by the person who has made the statement to the procurator responsible for supervising the execution of the law by the agencies of inquiry and preliminary investigation.

6. Persons suspected or accused of committing a crime may, if the legally defined grounds exist, be held in custody for a specified period before the court takes a decision. The procedure for holding them in custody is laid down in the Statute on the System of Short-Term Detention for persons suspected of committing a crime and the Statute on Preliminary Holding in Custody. These statutes do not contain any provisions prejudicial to the honour and dignity of detained and arrested persons.

In setting out the aims of the use of punishment for offences committed, article 20 of the Criminal Code specifies that it is not the purpose of the punishment to cause physical suffering or to degrade. A similar provision relating to the administering of punishment is to be found in article 1 of the Correctional-Labour Code.

7. The Byelorussian SSR is not a party to any international instrument which contains provisions of wider application than the provisions of the present Convention, although the crimes formulated in articles 166-168, 175 and 179 of its Criminal Code cover a wider range of acts that constitute cruel, inhuman or degrading treatment.

8. There is nothing in Byelorussian legislation to prevent the provisions of the Convention or of other international agreements in force being invoked in the courts or before judicial and administrative bodies.

The provisions of the Convention may be applied by particular bodies in the Byelorussian SSR only by implementing the provisions in Byelorussian legislation that correspond to its obligations under the Convention. In accordance with articles 4 and 5 of the Byelorussian Criminal Code, all persons who have committed crimes in the territory of the Republic (except for persons enjoying diplomatic immunity) are liable to prosecution under the criminal legislation in force in the place in which the crime was committed.

Under article 54 of the Criminal Code, Soviet citizens and stateless persons in the Byelorussian SSR who commit a crime abroad are liable to prosecution under the Criminal Code of the Byelorussian SSR if they are arraigned or brought to trial in its territory. For offences committed outside the USSR, foreign citizens are liable under Soviet criminal legislation in cases covered by international agreements. Consequently, the general rules and principles for the treatment of persons indicted, accused, tried and convicted, as reflected in the Constitution and legislation of the Byelorussian SSR, are regarded in our legal theory and practice as guarantees of the protection of the individual against the commission of illegal acts against him in the course of criminal proceedings.

9. Depending on the nature of the offence that can be interpreted as cruel, inhuman or degrading treatment, the measures applied to the offender may be criminal, administrative or disciplinary. Criminal proceedings are conducted by organs of the Ministry of Internal Affairs, by the Procurator's Office and by the court, which pronounces the final verdict. Cases of administrative infringements fall within the competence of administrative organs (primarily the courts and bodies attached to the Ministry of Internal Affairs). Cases of breaches of discipline are dealt with by the appropriate authorities in the service concerned.

10. One important means of ensuring and protecting the rights of the individual is the right of citizens to lodge complaints with State and public bodies. As already stated, this right is embodied in article 56 of the Byelorussian Constitution. The general procedure and the time limit for the examination of complaints are laid down in a decree of the Presidium of the Supreme Soviet of the USSR dated 12 April 1968, "Procedure for considering proposals, applications and appeals of citizens" (as worded in the decree of 4 March 1980).

Should a citizen maintain that a public official has made him the victim of any of the illegal acts enumerated in paragraph 1 of article 1 of the Convention, he has the right to lodge a complaint with a procurator. In accordance with articles 26, 28 and 29 of the Law on the Procurator's Office of the USSR and articles 3 and 218-220 of the Byelorussian Code of Criminal Procedure, the procurator must examine the complaint within a period of three days; should there be indications in the official's actions of a criminal offence, he will initiate criminal proceedings and investigate the matter or hand over the investigation to an investigator; if it is established that an illegal act has in fact been committed he will send the case for trial. The court will consider the case presented by the procurator and decide on the guilt of the accused and the sentence. If evidence of cruel treatment on the part of a public official is brought to light during the examination of a case in court, the court will initiate proceedings against the official and forward the information required for investigation of the case and a decision on whether to prosecute (article 256 of the Byelorussian Code of Criminal Procedure).

A person subjected to cruel treatment may lodge an appeal with a higher procurator or a higher court against the actions and decisions of the first procurator and court.

It should be noted that the law embodies an important guarantee of the right of individuals subjected to any form of deprivation of liberty to lodge a complaint about any illegal actions affecting them, namely the provision that the complaints, statements and letters of such persons addressed to the procurator shall not be subject to prior examination but shall be sent to the addressee within one day (article 34 of the Byelorussian Correctional-Labour Code, article 13 of the Statute on Preliminary Holding in Custody and article 17 of the Statute on the System of Short-Term Detention for Persons Suspected of Committing a Crime).

It must also be emphasized that when there are indications that acts have been committed that fall within the definition of torture, criminal proceedings are initiated by specific bodies independently of a complaint from the victim.

11. Large-scale measures are being taken at the present time in the Byelorussian SSR, as throughout the USSR as a whole, to establish the legal framework for perestroika. They should be regarded as simply the beginning of a great effort being undertaken to forge a socialist State based on the rule of law. A far-reaching legal reform will soon be carried out in the country to ensure the primacy of the law in all aspects of State activities and to strengthen the mechanisms for supporting the socialist order by developing people's power. Part and parcel of the legal reform must be a comprehensive review, codification and systematization of legislation. With a view to making life in society more humane and democratic and stepping up efforts to prevent infringements of the law, it will be necessary, among other things, to conduct a radical review of criminal, administrative, procedural and correctional-labour legislation. Priority will be given to the legal protection of the individual, and guarantees enabling Soviet people to exercise their political, economic and social rights and freedoms will be strengthened.

A special commission of the Politburo of the Central Committee of the Byelorussian Communist Party has been set up which, together with the Byelorussian Procurator's Office and the Supreme Court, is to consider the rehabilitation of the victims of repression during the period of the personality cult. The results of the commission's work are to be given wide publicity in the mass media.

II. Information concerning specific articles of the Convention

12. Article 2: the legal and other measures taken to prevent acts of torture in the territory of the Byelorussian SSR were discussed in detail in the previous section. Byelorussian legislation does not contain any clauses on the possible use of torture under exceptional circumstances. Similarly, under Byelorussian legislation, an order from a superior officer or a public authority may not be invoked as a justification of torture.

Under article 36 of its Constitution, the Byelorussian SSR grants the right of asylum to aliens who are being persecuted for defending the interests of the working people and the cause of peace, for participation in a revolutionary or national liberation movement or for progressive socio-political, scientific or other creative activity. Naturally, such persons cannot be deported, returned to any State or extradited.

13. Article 4: public officials and other individuals who obtain statements by force or coercion may be prosecuted, as noted above, under articles 166-168, 175 and 179 of the Criminal Code, depending on the nature of their acts. The punishments provided for such offences are, on the whole, quite severe. For example, for acts that are ultra vires i.e. the deliberate commission by an official of acts that clearly exceed the rights and powers legally conferred on that official, if accompanied by force, the use of a weapon or actions that harass or degrade the victim, are punished by deprivation of freedom for a period of up to 10 years (article 167 of the Criminal Code).

14. Article 5 (paragraph 1): as already noted, under article 4 of the Byelorussian Criminal Code, all persons who commit crimes in the territory of the Byelorussian SSR are liable to prosecution under the criminal law in operation where the crime is committed. Byelorussian citizens who have committed crimes abroad are liable to prosecution under the laws of the Byelorussian SSR. There is no general norm in existing legislation establishing the criminal jurisdiction of the Byelorussian SSR over offences committed abroad against the life, health, honour, dignity or other rights or lawful interests of the citizens of the Republic (including the offences referred to in article 1 of the Convention).

15. Article 5 (paragraph 2): under article 5 of the Byelorussian Criminal Code, foreign citizens are liable under Soviet criminal law for offences committed outside the boundaries of the Byelorussian Soviet Socialist Republic (USSR) in cases covered by international agreements.

16. Article 6: as already pointed out, irrespective of where an offence is committed, criminal proceedings in the territory of the Byelorussian Soviet Socialist Republic are conducted in accordance with its Code of Criminal Procedure. Byelorussian procedural jurisdiction covers citizens of the Byelorussian SSR (USSR), foreign nations (apart from persons enjoying diplomatic immunity) and stateless persons (articles 1 and 21 of the

Byelorussian Code of Criminal Procedure). The court, the procurator, the investigator and the investigating body are required, within the limits of their competence, to instigate criminal proceedings whenever indications of an offence are discovered and to take all the measures laid down by the law to establish the circumstances of the offence and the persons guilty of committing it, and to ensure the punishment of those persons (article 3 of the Byelorussian Code of Criminal Procedure). The investigation of crimes coming within the scope of the Convention is carried out by the investigators of the Procurator's Office (article 123 of the Byelorussian Code of Criminal Procedure). In their investigation they have the following obligations: to keep the accused in custody when the procurator so permits (articles 7 and 91 of the Code of Criminal Procedure) or to take other preventive restraining measures to ensure that the person does not elude investigation and trial (articles 84, 88-90 and 96 of the Code of Criminal Procedure). On the basis of article 12 of the Statute on Preliminary Holding in Custody, persons in custody may be allowed by the administration of the place of custody to receive visits from relatives or other people provided that the person or body handling the case gives permission.

18. Article 7: articles 32 and 151 of the Constitution of the Byelorussian SSR establish the equality of citizens before the courts and the law. Article 35 guarantees the rights and freedoms conferred by law on the citizens of other countries and on stateless persons, including the right to apply to a court and other State bodies for the protection of their rights. The provisions of the Code of Criminal Procedure of the Byelorussian SSR that specify the rights and duties of those participating in a trial and guarantee fair treatment at all stages in the proceedings are fully applicable to them.

19. Article 8: penal sanctions under articles 166-168, 175 and 179 of the Criminal Code of the Byelorussian SSR (including cases of torture) testify that the offences covered by the articles are extraditable.

20. Article 9: in accordance with the international agreements that have been adopted legal assistance is afforded to foreign States in criminal cases, including cases connected with the acts enumerated in article 1 of the Convention.

21. Article 10: standards for the humane treatment of offenders are embodied in the criminal, criminal-procedural and correctional-labour legislation of the Byelorussian SSR. They are set forth in detail in the departmental orders and instructions of the Procurator's Office of the Byelorussian SSR, the Ministry of Internal Affairs and the Committee of State Security of the Republic, in the guidelines produced by the plenum of the Byelorussian Supreme Court and in training syllabuses and training manuals for the personnel of law-enforcement bodies. These statutory instruments, departmental sources and educational material forbid public officials to carry out any of the acts listed in article 1 of the Convention. The observance of these rules is continuously monitored by the judicial authorities, the Procurator's Office and Government departments.

22. Article 11: Byelorussian legislation ensures the observance of this article of the Convention by putting into practical effect the Act on the Procurator's Office of the USSR, which, inter alia, regulates the monitoring by the procurators of the observance of the law by bodies responsible for investigation and preliminary inquiry, during proceedings in court, in places

of detention and preliminary custody, and in places where sentences and other measures of a coercive nature ordered by the court are served. The Decree on the monitoring by the Procurator's Office of observance of the law in correctional-labour establishments, dated 15 January 1988, and in force in the territory of the Byelorussian SSR, is an important additional guarantee that the requirements of the Convention are monitored by the Procurator's Office.

23. Article 12: implementation of the requirement set forth in this article is implicit in the fact that our criminal procedure legislation calls for the rapid and full investigation of offences and conviction of the guilty (article 2 of the Byelorussian Criminal Code), in the duty of law-enforcement bodies to initiate criminal proceedings within the limit of their competence in every instance where they discover prima facie evidence of an offence and to take all measures laid down by the law to establish the occurrence of the offence and the persons guilty of committing it, and to ensure their punishment (article 3 of the Byelorussian Code of Criminal Procedure) and in the obligation laid upon those bodies to ensure a thorough, complete and objective investigation of the circumstances of the case (article 14 of the Code of Criminal Procedure).

24. Article 13: the right to lodge a complaint by individuals undergoing the investigation referred to in article 1, paragraph 1 of the Convention is discussed in paragraph 10 of this report.

25. Article 14: in accordance with articles 60 and 133-135 of the Byelorussian Code of Criminal Procedure, the Decree of the Presidium of the Supreme Soviet of the USSR dated 18 May 1981 on Compensation for Prejudice caused to Citizens as a Result of Illegal Acts by State or Public Organizations, and also by Officials in the Execution of their Duties, and the Decree on the Procedure for Compensation for Prejudice sustained by Citizens as a result of Illegal Acts by the Organs of Preliminary Investigation, the Procurator's Office and the Courts, full compensation is provided for moral, material and other prejudice and mental suffering caused to citizens who have suffered from illegal conviction, illegal prosecution or illegal imposition of administrative penalties, irrespective of the guilt of officials of the organs of inquiry and preliminary investigation, the Procurator's Office and the court. In particular, compensation for the above-mentioned forms of prejudice and full rehabilitation must be granted to citizens when the illegal acts were the result of criminal behaviour by officials as defined by article 1, paragraph 1 of the Convention.

26. Article 15: the categorical prohibition on obtaining statements from an accused person and other persons involved in a case by force, threats and other illegal measures (article 14 of the Criminal Code) deprives a statement obtained in that way of any validity as evidence, except when it is used against the person accused of the illegal acts in question.

27. Article 16: Byelorussian legislation and its practical application are aimed at preventing not only torture but also other cruel, inhuman and degrading forms of treatment or punishment not covered by the definition of torture in article 1 of the Convention.
