

Belarus Human Rights Index

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2019

Prohibition on torture and cruel, inhuman or degrading treatment or punishment

Score: 4.2

Including scores by component:

Physical and mental integrity of the individual – 4.1

Prevention of torture, investigation and protection mechanisms – 2.8

Treatment of persons subjected to any form of detention or imprisonment – 5

Domestic violence – 4.8

The Criminal Code of the Republic of Belarus contains two articles mentioning torture. Article 128 – "Crimes against the Security of Humanity" – criminalises torture and cruelty committed on grounds of racial, national or ethnic origin, political beliefs or religion against the civilian population. Article 394(3) – "Coercion to Give Testimony" – applies only to persons conducting inquiry, preliminary investigation or administering justice. However, the Criminal Code contains no standalone provision establishing liability for all acts of torture and cruel, inhuman or degrading treatment. The articles cited above do not cover the full range of acts of torture or the purposes for which torture is employed, and cannot therefore be said to establish liability for all acts of torture. In 2015, Article 128 was supplemented by a note providing a definition of "torture" in accordance with the understanding set out in the Convention against Torture. At the same time, criminal legislation does, in general terms, permit the prosecution of acts of torture.

The Law "On the Internal Affairs Bodies" describes in considerable detail the grounds, procedure and principles governing the use of physical force, special means, and combat and special equipment, and establishes the possibility of holding internal affairs officers liable for violations of its requirements. Nevertheless, there is evidence of disproportionate use of force by militia officers during arrest, transfer to places of compulsory detention, and within places of deprivation of liberty.

In accordance with Article 4 of the Law, one of the principles guiding their activities is humanism. Nevertheless, there is compelling evidence that torture and ill-treatment continue to be practised within law enforcement agencies and penal institutions.

The UN Committee against Torture receives constant reports that law enforcement officers resort to torture and ill-treatment to extract confessions from suspects, and that such confessions are used as evidence in court.



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Despite the prohibition in criminal procedure legislation on the use in criminal proceedings of evidence obtained in violation of human rights and freedoms, including the right not to be subjected to torture, it is not uncommon for presiding judges to fail to order appropriate investigations into defendants' allegations of torture during the investigation or to accept their preliminary statements as admissible. There have been instances where court proceedings were suspended pending investigations into defendants' allegations of torture made in court. According to available information, the prosecution service has never confirmed these allegations following such investigations.

There is no publicly available information on the provision of special training for law enforcement officers on issues relating to the prohibition of torture and other forms of ill-treatment. In 2018, the Committee against Torture expressed regret at the State's failure to provide this information¹. There are also no publicly available codes of conduct for law enforcement officers, including rules for the interrogation of arrested, detained or imprisoned persons. Nevertheless, according to available information, training aimed at humanising the activities of law enforcement agencies is being carried out.

Crimes committed by officials of the Public Prosecutor's Office, the internal affairs agencies and the Investigative Committee in connection with their official or professional activities are investigated directly by the Investigative Committee. However, no measures have been taken to ensure the independent investigation of cases involving the use of torture. There is no dedicated unit within the Investigative Committee to handle cases involving the use of torture. The law does not provide for the suspension from duty of staff members who are under investigation for the use of torture. They continue to work and are able to exert pressure on victims and potential witnesses.

Persons who have been subjected to torture may apply to the Public Prosecutor's Office, which has the authority to investigate such complaints. The ineffectiveness of the investigation into such complaints stems from the lack of impartiality on the part of the prosecutor's office. This may be due to the fact that, in accordance with Part 4 of Article 4 of the Law of the Republic of Belarus "On the Prosecutor's Office", the tasks of the prosecutor's office include, inter alia, supporting the state prosecution.

Belarus lacks a national preventive mechanism or any other effective mechanism for monitoring conditions of detention in places of deprivation of liberty, and there are no effective legal remedies for victims of ill-treatment or torture.

In 2018, the Committee against Torture expressed concern at reports that Belarus continues to carry out expulsions, deportations, removals, returns and extraditions to third countries where there are

¹ Concluding observations of the Committee against Torture on the fifth periodic report of Belarus, CAT/C/BLR/CO/5, paragraphs 56–57



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substantial grounds for believing that the persons concerned would be at risk of torture². On 12 June 2019, the Moscow District Department of Migration Affairs in Minsk issued a ruling to halt the deportation of Iranian citizen Mehrdad Jamshidian, who was accused of murder in his home country, due to the risk of criminal prosecution in Iran in the absence of a fair trial, as well as the risk of torture³.

Belarusian legislation provides for the possibility of compensation for harm caused by unlawful acts of public officials, including as a result of torture and ill-treatment. The application of this provision, however, is hampered by the fact that, when considering claims for compensation, the courts require the submission of documents confirming that the acts were unlawful. The Committee against Torture noted with regret that Belarus had not provided information on reparations, including compensation and rehabilitation, for victims of torture or ill-treatment. The Committee was also concerned about the State party's lack of facilities for the rehabilitation of torture victims⁴.

The documentation of physical injuries by prison medical units, which are structurally part of the prison system, is either not carried out or is superficial, and examinations may be conducted after a long period of time has elapsed.

Conditions of detention, as well as in places of deprivation of liberty, do not fully comply with international standards. The proportion of prisoners in the total population remains high (290 prisoners per 100,000 persons). Noting the efforts to reduce the number of juvenile prisoners and to close Vitebsk Correctional Colony No. 1, to modernise remand centres and prisons, and to improve medical care for prisoners suffering from HIV/AIDS and tuberculosis, In 2018, the Committee against Torture expressed deep concern at continuing reports of unsatisfactory conditions of detention in places of deprivation of liberty⁵.

The Belarusian Code of Criminal Procedure stipulates that no person involved in criminal proceedings shall be subjected to violence, other cruel or degrading treatment, or to medical or other experiments without their consent (Article 11(3)). The provision prohibiting medical or other experiments on convicted persons is also enshrined in the Criminal Executive Code (Article 10(3)).

² Concluding observations of the Committee against Torture on the fifth periodic report of Belarus, CAT/C/BLR/CO/5, paragraph 52

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<https://humanconstantaby.com/ru/poziciya-pravozashhitnoj-organizacii-human-constantaby-po-delu-mexrdada-dzhamshidiyana/>

⁴ Concluding observations of the Committee against Torture on the fifth periodic report of Belarus, CAT/C/BLR/CO/5, paragraph 58

⁵ Concluding observations of the Committee against Torture on the fifth periodic report of Belarus, CAT/C/BLR/CO/5, paragraph 21



There is no explicit prohibition in the legislation on long-term solitary confinement. In practice, such confinement is widespread. For instance, according to a report from political prisoner Mikhail Zhemchuzhny received in September 2019, he has spent around 500 days in a punishment cell over the past two years⁶. Furthermore, the prison administration has the means to manipulate the provisions of the law in order to ensure de facto prolonged solitary confinement, even in defiance of the relevant statutory limits on the permissible duration.

Medical care for prisoners is of a low standard, and access to medical staff for treatment is difficult. There is no national prison hospital that meets modern standards. Prisoners are far from being provided with the same standards of medical care that exist 'outside'.

In places of detention, as well as in prisons, there are constant cases of suicide and deaths due to a failure to provide adequate medical care.

To ensure that the rights of convicted persons and detainees are respected, the Office of the Prosecutor General carries out inspections of detention facilities and correctional institutions, has set up a helpline, and regularly holds face-to-face meetings with convicted persons and detainees. Where there are grounds for doing so, reports on prosecutorial oversight are issued. According to former prisoners, prosecutors visiting detention facilities on inspection are not taken to problem areas.

Under the law, proposals, statements and complaints from prisoners serving sentences of arrest, imprisonment, life imprisonment and the death penalty, as well as from persons in custody, addressed to the bodies exercising control over the relevant institutions, are not subject to censorship and must be forwarded to the appropriate authorities within 24 hours. Many detainees in the Ministry of Internal Affairs' and KGB's remand centres and places of imprisonment have reported that prisoners may face collective punishment if one of them lodges a complaint about ill-treatment.

Victims' complaints are often forwarded for investigation to the very same body whose actions they are complaining about. In rare cases, the investigation is conducted by the Investigative Committee. All letters, and consequently all complaints, pass through the administration of the places of detention. The only way to submit complaints is via prisoners who are being released or through lawyers.

In Belarus, there are no independent bodies empowered to carry out unannounced, independent and periodic visits to places of detention, including psychiatric hospitals. The country has Public Monitoring Committees (PMCs), but their powers are extremely limited. The legislation does not provide for visits by members of the Public Monitoring Commission to detention centres for offenders, psychiatric hospitals, temporary detention facilities and other places of detention. Furthermore, visits to places of detention are only possible with the prior permission of the head of the penal institution. The Public Monitoring Commission is under the full control of the Ministry of Justice, which, among other things, determines its membership.

⁶ <http://spring96.org/ru/news/93982>



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In the Republic of Belarus, a national ‘hotline’ for victims of domestic violence has been established, information and awareness-raising campaigns have been organised, a mobile social assistance service has been set up, and amendments have been made to the Law on the Fundamentals of Offence Prevention.

Domestic violence and marital rape are not classified as criminal offences. A draft law on the prevention of domestic violence was strongly criticised by the President of the Republic of Belarus.

Belarus remains a country of origin and transit for many women who are victims of human trafficking for the purposes of sexual exploitation and forced labour. Human trafficking is criminalised in the Republic of Belarus.

Legislation establishing liability for domestic violence and marital rape has not yet been adopted. Perpetrators of such acts may be held criminally liable if the consequences specified in criminal law occur, in the form of bodily harm of varying degrees of severity.

Despite the principle of the inevitability of punishment enshrined in the law, as well as the obligation to register reports of crime, there is ample evidence of instances where police officers have dissuaded victims of domestic violence from filing a report against a family member due to potential socio-economic consequences (for example, placing the family in a socially vulnerable position, paying a fine for domestic violence from the family budget, etc.).

There is no legal ban on all forms of corporal punishment in the family, at school and in other institutions. Physical violence against children is still considered an acceptable form of discipline. In the public sphere, including by the country’s leadership, the permissibility of punishment involving the use of physical force against children is effectively acknowledged.

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