



14 February 2024

## The right to life in Belarus: developments in 2023

*Submission to the Special Rapporteur on the situation of human rights in Belarus*

### I. Unlawful expansion of the death penalty

A new law introducing the death penalty for State officials and military personnel convicted of high treason entered into force on 25 March 2023. This follows a 2022 amendment designating attempted terrorism as a capital offence.<sup>1</sup> Both these offences fall short of the “most serious crimes” threshold tolerated under the International Covenant on Civil and Political Rights (ICCPR),<sup>2</sup> and Belarus’ expansion of the scope of its death penalty laws runs contrary to the object and purpose of the right to life under the Covenant.<sup>3</sup>

On 19 October 2023, a Minsk court sentenced a man convicted of murder to death.<sup>4</sup> The country’s last known execution—also of a man convicted of murder—took place on 16 July 2022, but was not publicised until February 2023.<sup>5</sup> Though both cases come within the “most serious crimes” exception to the right to life, such secretiveness shrouding executions raises questions as to Belarus’ compliance with adjacent rights obligations, including those which may render an execution arbitrary.<sup>6</sup> Moreover, the country’s withdrawal from the First Optional Protocol to the ICCPR took effect on 8 February 2023,<sup>7</sup> meaning individual complaints concerning its administration of the death penalty may no longer be submitted to the UN Human Rights Committee.

### II. Preventable deaths in custody

At least four individuals have died in State custody since the beginning of 2023:

- Mikalai Klimovich, a political prisoner, died in a Viciebsk prison on 5 May 2023. While his cause of death remains unknown, he was known to have a heart condition.<sup>8</sup>
- Dzmitry Sarokin died in police custody in Lida on 4 June 2023. The circumstances of both his arrest and death remain unclear.<sup>9</sup>

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<sup>1</sup> Morris Tidball-Binz and Anaïs Marin, *Communication report OL BLR 2/2023* (Report, 22 March 2023) <<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27939>>.

<sup>2</sup> Human Rights Committee, *General Comment No. 36 on article 6: right to life*, UN Doc CCPR/C/GC/36 (3 September 2019) [35].

<sup>3</sup> *Ibid* [50].

<sup>4</sup> Peter Stano, ‘Belarus: Statement by the Spokesperson on new death sentence verdict’, *European External Access Service* (online, 19 October 2023) <[https://www.eeas.europa.eu/eeas/belarus-statement-spokesperson-new-death-sentence-verdict\\_en](https://www.eeas.europa.eu/eeas/belarus-statement-spokesperson-new-death-sentence-verdict_en)>.

<sup>5</sup> ‘Condemned prisoner’s death date revealed more than a year after the execution’, *Viasna Human Rights Center* (online, 17 February 2023) <<https://spring96.org/en/news/110810>>.

<sup>6</sup> See e.g., FIDH and Viasna Human Rights Center, *Death Penalty in Belarus: Murder on (Un)lawful Grounds* (Report, October 2016).

<sup>7</sup> Human Rights Committee, ‘Belarus’ withdrawal from individual complaints procedure a serious setback for human rights protection, UN Human Rights Committee says’, *Office of the High Commissioner for Human Rights* (online, 25 November 2022) <<https://www.ohchr.org/en/press-releases/2022/11/belarus-withdrawal-individual-complaints-procedure-serious-setback-human>>.

<sup>8</sup> ‘Mikalai Klimovich’, *Viasna Human Rights Center* (online, n.d.) <<https://prisoners.spring96.org/en/person/mikalai-klimovicz>>.

<sup>9</sup> ‘Belarusian Poet Sarokin Dies in Police Custody’, *Radio Free Europe / Radio Liberty* (online, 5 June 2023) <<https://www.rferl.org/a/belarus-poet-sarokin-dies-police-custody/32445334.html>>.



- Ales Pushkin, a political prisoner, died in a Grodno hospital on 11 July 2023. His cause of death remains unknown.<sup>10</sup>
- Vadzim Khrasko, a political prisoner, died in a Viciebsk prison on 9 January 2024. He had been imprisoned despite ill health. The official cause of death was pneumonia.<sup>11</sup>

Concerns have also been raised about suicides in custody.<sup>12</sup> In March 2023, journalist and political prisoner Ihar Losik attempted suicide for a second time.<sup>13</sup>

Belarus's duty to protect life is heightened with respect to persons whom it deprives of liberty, requiring the provision of appropriate medical care and prevention of suicides.<sup>14</sup> Where a person dies in State custody, a presumption of arbitrary deprivation of life arises; State responsibility may only be rebutted by a proper investigation establishing Belarus' compliance with its obligations under the right to life.<sup>15</sup>

In some instances, the whereabouts of prisoners and other dissidents remains unknown. In May 2023, following hospitalisation for a collapsed lung (the result of a beating sustained while detained), former presidential candidate and political prisoner Viktor Babariko was reported disappeared.<sup>16</sup> In September 2023, a Swiss court acquitted a man charged with involvement in Belarusian authorities' disappearance and murder of three men in 1999.<sup>17</sup>

### III. Failure to protect migrants at Belarusian borders

In 2021, an influx of thousands of migrants and asylum seekers attempting to cross Belarus' borders into Latvia, Lithuania, and Poland birthed a humanitarian crisis. Belarus has been accused of orchestrating the situation by relaxing visa rules, enticing migrants to its borders in an attempt to flood the EU in response to souring Belarus-EU relations.<sup>18</sup> When migrants have attempted to cross from Belarus into the EU, its neighbours have responded with systematic and often violent "pushbacks", forcing migrants back to Belarus where they face grave abuses, including beatings, rape, extortion, deprivation of liberty, and attacks by police dogs.<sup>19</sup> Hostile natural conditions and deplorable treatment by both sides have led to several migrant deaths—by hypothermia, drowning, and illness, amongst other causes.<sup>20</sup>

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<sup>10</sup> 'Belarus artist who put manure at Lukashenko's office dies in jail', *Al Jazeera* (online, 12 July 2023)

<<https://www.aljazeera.com/news/2023/7/12/belarus-artist-who-put-manure-at-lukashenkos-office-dies-in-jail>>.

<sup>11</sup> 'A political prisoner convicted for donations died of pneumonia in the colony', *Viasna Human Rights Center* (online, 15 January 2024) <<https://spring96.org/en/news/113964>>.

<sup>12</sup> Nada Al-Nashif, 'Statement on the situation of human rights in Belarus', *Office of the High Commissioner for Human Rights* (online, 22 September 2023) <<https://www.ohchr.org/en/statements-and-speeches/2023/09/statement-situation-human-rights-belarus#:~:text=Three%20years%20from%20the%20contested,showing%20no%20signs%20of%20improvement>>.

<sup>13</sup> 'Rights Group Says Jailed Belarusian RFE/RL Journalist Losik 'Attempted Suicide'', *Radio Free Europe / Radio Liberty*

(online, 20 March 2023) <<https://www.rferl.org/a/belarus-ihar-losik-attempted-suicide/32326125.html>>.

<sup>14</sup> Human Rights Committee (n 2) [25].

<sup>15</sup> *Ibid* [29].

<sup>16</sup> 'Where is Viktor Babariko? The political prisoner has disappeared.', *Washington Post* (online, 18 May 2023)

<<https://www.washingtonpost.com/opinions/2023/05/18/belarus-political-prisoner-disappeared-viktor-babariko/>>.

<sup>17</sup> Sarah Rainsford, 'Yury Garavsky: Swiss trial acquits man who admitted abducting Belarus politicians', *BBC* (online, 1 October 2023) <<https://www.bbc.com/news/world-europe-66865795>>.

<sup>18</sup> See e.g., 'Resolve 'intolerable' Belarus-Poland border migrant crisis: UN rights chief', *UN News* (online, 10 November 2021) <<https://news.un.org/en/story/2021/11/1105422>>.

<sup>19</sup> See e.g., Amnesty International, *Latvia: Return Home or Never Leave The Woods* (Report, 2022); 'Violence and Pushbacks at Poland-Belarus Border: Halt Summary Returns, Ensure Accountability for Abuse', *Human Rights Watch* (online, 7 June 2022) <[https://www.hrw.org/news/2022/06/07/violence-and-pushbacks-poland-belarus-border#:~:text=\(Brussels\)%20-%20Poland%20unlawfully%2C,Human%20Rights%20Watch%20said%20today](https://www.hrw.org/news/2022/06/07/violence-and-pushbacks-poland-belarus-border#:~:text=(Brussels)%20-%20Poland%20unlawfully%2C,Human%20Rights%20Watch%20said%20today)>.

<sup>20</sup> *Ibid*.



The situation at the borders is ongoing. As of 10 January 2024, Grupa Granica had recorded 56 deaths at the Belarus-Poland border since the beginning of the crisis, including 28 since the beginning of January 2023.<sup>21</sup> 10 per cent of those treated by Medecins Sans Frontieres at that border in 2023 required “lifesaving” assistance.<sup>22</sup>

The duty to protect life requires that Belarus take special measures of protection towards persons in vulnerable situations, including asylum seekers.<sup>23</sup> Particularly in light of allegations that it has manufactured this crisis, Belarus may be found to have breached this obligation in relation to migrant deaths occurring both within *and outside* its borders.

On 3 November 2023, Belarus announced that it had opened an investigation into Latvian authorities’ involvement in the deaths of 12 migrants along the Belarus-Latvia border.<sup>24</sup>

#### IV. Complicity in unlawful killing of civilians in Russia-Ukraine war

Russia’s war of aggression against Ukraine has resulted in massive loss of life: by the end of January 2024, the United Nations Human Rights Monitoring Mission in Ukraine had verified 10,378 civilian deaths, including 579 children, since the beginning of the conflict.<sup>25</sup> A significant proportion of these deaths have been the direct result of gross violations of customary international humanitarian law (IHL), including attacks directed against civilians and civilian objects, indiscriminate attacks, and wilful killings (such as extrajudicial executions), many of which may also constitute war crimes.<sup>26</sup>

Belarus has enabled much of this violence—for example, by permitting Russia’s use of Belarusian territory to launch missiles aimed at civilian targets.<sup>27</sup> Belarus’ complicity in Russian violations of IHL engages its own State responsibility under international law,<sup>28</sup> while individual Belarusian actors may be accountable under international criminal law.<sup>29</sup>

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<sup>21</sup> Grupa Granica, *Facebook post of 10 January 2023* (online, 10 January 2023)

<<https://www.facebook.com/grupagranica/posts/359631770031918>>.

<sup>22</sup> ‘People continue to cross Belarus-Poland border in search of safety in Europe’, *Medecins Sans Frontieres* (online, 19 December 2023) <<https://www.msf.org/people-continue-cross-belarus-poland-border-search-safety-europe>>.

<sup>23</sup> Human Rights Committee (n 2) [23].

<sup>24</sup> ‘Belarus Investigates Latvian Officials Over Death of Migrants Along Border’, *Radio Free Europe / Radio Liberty* (online, 3 November 2023) <<https://www.rferl.org/a/belarus-latvia-border-deaths/32669117.html>>.

<sup>25</sup> United Nations Human Rights Monitoring Mission in Ukraine, *Ukraine: protection of civilians in armed conflict (January 204 update)* (Report, February 2024) <[https://ukraine.un.org/sites/default/files/2024-02/Ukraine%20-%20protection%20of%20civilians%20in%20armed%20conflict%20%28January%202024%29\\_ENG.pdf](https://ukraine.un.org/sites/default/files/2024-02/Ukraine%20-%20protection%20of%20civilians%20in%20armed%20conflict%20%28January%202024%29_ENG.pdf)>.

<sup>26</sup> Amnesty International, ‘*He’s Not Coming Back*’: *War Crimes in Northwest Areas of Kyiv Oblast*, (Report, 2022); ‘UN Commission concludes that war crimes have been committed in Ukraine, expresses concern about suffering of civilians’, *Office of the High Commissioner for Human Rights* (online, 23 September 2022) <<https://www.ohchr.org/en/press-releases/2022/10/un-commission-concludes-war-crimes-have-been-committed-ukraine-expresses>>.

<sup>27</sup> European Parliament, *Resolution on relations with Belarus (2023/2041)*, P9\_TA(2023)0321 (13 September 2023) [16].

<sup>28</sup> International Law Commission, *Responsibility of States for Internationally Wrongful Acts*, Article 16. See also Niklas Reetz, ‘Belarus is Complicit in Russia’s War of Aggression’, *EJIL:Talk!* (online, 1 March 2022) <<https://www.ejiltalk.org/belarus-is-complicit-in-russias-war-of-aggression/>>.

<sup>29</sup> See e.g., Katie LaRoque, ‘Belarus dictator Lukashenka must face justice for role in Russia’s Ukraine war’, *Atlantic Council* (online, 22 August 2023) <<https://www.atlanticcouncil.org/blogs/ukrainealert/belarus-dictator-lukashenka-must-face-justice-for-role-in-russias-ukraine-war/>>.