

Belarus

In Belarus the procedures regarding tenure, discipline and dismissal of judges do not comply with the principle of an independent judiciary. In fact, no respect at all for the Rule of Law is shown by the Belarussian Government. Lawyers cannot function independently and face problems and harassment at several levels. The human rights situation continued to deteriorate in 1999.

After the collapse of the Soviet Union, Belarus declared its independence on 24 August 1991, and later joined the Commonwealth of Independent States (CIS). In March 1994, the Constitution dating from the Soviet era was replaced and in July 1996 Alexander Lukashenko was elected as the first president.

In a referendum in November 1996, that is viewed as having been highly controversial, the 1994 Constitution was amended, even though the Constitutional Court had ruled that the Constitution could not be amended in this way. Furthermore, the Belarusian legislature, the Supreme Soviet, was disbanded and Mr. Lukashenko's term as President was extended for 2 years as from July 1999. As a result, the current political system is based on a constitution that was adopted unconstitutionally. The system of checks and balances among the executive, legislative and judicial powers have been distorted and now all branches are under the President's control.

A new bicameral legislature was established from remnants of the Supreme Soviet. The Council of the Republic is the upper chamber and the House of Representatives the lower chamber. The 110-member lower house was formed out of the membership of the existing Supreme Soviet. The 64-member upper house, the Senate, was created by a combination of presidential appointments for one third of its members and elections for the remaining seats. Several deputies of the Supreme Soviet belonging to opposition parties have refused to accept this new parliament.

The Belarusian opposition called for alternative presidential elections on 16 May 1999, in conformity with the abolished 1994 Constitution. A Central Electoral Commission (ECE) was formed to organise the elections. In the period leading to the alternative elections several opposition leaders were harassed, arrested and some disappeared. The ECE ruled the election results invalid due to irregularities that were, inter alia, caused by the hostility of the authorities.

Local elections took place in April and were described by the Organisation for Security and Co-operation in Europe (OSCE) as "characterised by the state's interest in organising political support for its institutions and leaders".

Despite strong opposition from the Belarusian population President Lukashenko and the Russian President Boris Yeltsin signed, on 8 December 1999, a Treaty on the Creation of a Union State. The treaty commits the two countries to become a confederate state and establishes joint governing bodies.

Human Rights Background

The human rights situation in Belarus continued to deteriorate in 1999. Political opponents disappeared, there have been reports of torture, and freedom of expression was restricted, as

was freedom of assembly and association. The death penalty continued to be enforced in Belarus and several executions took place in 1999.

On 20 October 1999, the ICJ voiced its concern over the constantly deteriorating situation in Belarus. The ICJ expressed alarm over "the dozens of arrests and the beatings of opposition members, including the head of the Belarusian Social Democratic Party, in the aftermath of an opposition rally in Minsk last Sunday". The ICJ said that "it appears that the police and other organised groups of thugs used extremely brutal means to quell the march of the opposition on Sunday 17 October, where many demonstrators were hurt".

The ICJ also voiced, once again, its great concern over "the harassment of local NGO's in Belarus, the closure of numerous opposition media outlets, and most of all the disappearance of personalities such as Viktor Gonchar, Yuriy Zacharenko and Tamara Vinnikova".

Tamara Vinnikova, former head of the National Bank, who had been under house arrest since January 1997, disappeared in April 1999 under suspicious circumstances, but reappeared in December 1999. Yury Zakharenko, former Interior Minister, disappeared in May and Viktor Gonchar, the Deputy Speaker of the Supreme Soviet, disappeared in September. Several others were arrested during demonstrations and allegedly mistreated.

The Speaker of the Supreme Soviet, Semyon Sharetski, fled to Lithuania on 21 July 1999, the day after the Supreme Soviet declared him to be acting President. The term of President Lukashenko would have officially ended on 21 July under the 1994 Constitution. Mr. Sharetski feared for his safety.

Andrei Klimov, a deputy of the Supreme Soviet, was arrested in 1998 and charged with embezzlement. It was widely believed that his arrest was spurred by the work he had done as the chairman of a committee that investigated violations of the Constitution by the President. At the time of writing Mr. Klimov remains in jail pending his trial.

One of the candidates for the alternative presidential elections in May, former Prime Minister Mikhail Chygir, was detained on 30 March on charges of embezzlement. It is widely believed that political motives were behind his arrest.

Arbitrary Arrest and Pre-Trial Detention

As stated above, several political opponents of the President, and others disagreeing with the government, were arbitrarily arrested in 1999. According to the Criminal Procedure Code, the police may detain a person for 24 hours without a warrant. Within that period the Prosecutor is notified and should decide within 48 hours on the legality of the detention. A suspect can be held for 10 days without being formally charged.

Pre-trial detention can last up to 18 months and the authority to decide on the continuation of detention is that of the Prosecutor, not the judge. This is in clear violation of Article 9 (3) of the International Covenant on Civil and Political Rights, to which Belarus is a state party. In its review of the report of Belarus on its treaty obligations in 1997, the Human Rights Committee recommended that the "laws and regulations relating to pre-trial detention be reviewed as a matter of priority so as to comply with the requirements of Article 9 of the Covenant".

Detainees should have access to a lawyer and if unable to afford one, one should be appointed by the court. Often, however, detainees are not informed of their rights and frequently interrogations are carried out without the presence of a lawyer.

Human Rights Defenders

The Human Rights Centre in Mogilev is facing problems with the re-registration process. The authorities have told them that they can only be re-registered if they agree to provide legal services to their members only, and not to the public at large.

Human rights defenders face also other types of harassment. For example, the director of the human rights organisation Legal Aid, Mr. Oleg Volchek, was beaten on 21 July 1999 by policemen. A complaint has been lodged to the Procurator's office but the case was not investigated.

Council of Europe

The Council of Europe expressed its concern that Belarus continued to fall seriously short of Council of Europe standards such as pluralist democracy, the Rule of Law and respect for human rights. The Parliamentary Assembly of the Council of Europe decided in January 2000 to continue to suspend Belarus' status. Following the referendum of 26 November 1996, the Council of Europe, in January 1997, suspended the special guest status of Belarus. The application procedure for membership of the Council of Europe was suspended in December 1998.

The Judiciary

Although the amended Constitution provides for an independent judiciary, persistent interference from the President has severely undermined the judiciary as it is largely unable to act as a check on the executive branch. Organised crime also, reportedly, has a significant impact on court decisions. The practice of executive and local authorities dictating the outcome of trials to the courts, known as "telephone justice", is also widely reported.

Court Structure

The court system is comprised of a Supreme Court, Regional Courts, District Courts and Military Courts. There are also Economic Courts. Although the law also permits the creation of specialised courts such as Family, Administrative, Land and Tax Courts, these have not yet been established. Constitutional issues are considered by a Constitutional Court whose powers have, however, been extremely reduced by amendments to the Constitution.

Qualifications

Article 62 of the Law on the Judicial System and the Status of Judges establishes the requirements for becoming a judge. Any citizen of the Republic of Belarus, who has a higher legal education and a good moral reputation, and who is 25 years of age or older, may become a judge.

As a further requirement, potential judges must have at least two years of legal experience or two years of fieldwork and practical study. The judges of the Regional, Minsk City, and

Belarusian Military Courts, however, are required to have at least three years of experience, and Supreme Court judges should have at least five years of experience. All candidates must also pass a qualifying examination and obtain approval from the relevant board of judges.

Appointment

The Ministry of Justice and the President are primarily responsible for the appointment of judges. Judges are dependent on the Ministry of Justice for sustaining the court infrastructure and on local executive branch officials for providing their housing.

Judges of the Supreme Court, including the Chair, are appointed by the President, upon approval by the Senate, of which one-third is appointed by the President himself. The amended Constitution fails to provide the judges with life tenure.

Six of the twelve judges from the Constitutional Court are directly appointed by the President, including the Chair. The other six are elected by the Senate. Judges do not have life tenure, but sit for eleven years.

Discipline

Article 73 of the Law on the Judicial System and the Status of Judges stipulates that the Regulations on Disciplinary Responsibilities of Judges shall prescribe the grounds and procedures for holding judges accountable. A judge can be removed from his position when he has committed a disgraceful act or deliberately breached the law in a manner that is incompatible with the status of a judge. The removal decision is made by the organ which elected or appointed him.

Since the judges of the Supreme Court are appointed by the President, this means that they may also be dismissed by him. The same applies for the six judges of the Constitutional Court who are directly appointed by the President. This is a grave violation of the principle of independence of the judiciary and it has been reported that several judges of the Constitutional Court have already been dismissed because they refused to decide a case pursuant to instruction by the President.

Article 18 of the Law on the Constitutional Court regulates instances where a justice is dismissed before the end of term. According to this provision a judge may be dismissed if he or she is convicted of a crime, if he or she has committed an act against the Constitutional Court that discredits the institution, if he or she has lost his or her citizenship or due to health problems.

All other judges can be dismissed on any basis determined by law, a provision which also gives the President the potential to manipulate the judiciary through his power to render decrees.

State of the Judiciary

As shown above the procedures regarding tenure, discipline and dismissal of judges do not comply with the principle of an independent judiciary. In addition, the President has refused to respect decisions of the Constitutional Court. In fact, no respect at all for the Rule of Law is shown by the government.

Lawyers

The Presidential Decree, 'Several Measures on the Activities of Lawyers and Notaries', issued on 3 May 1997, gives competence to the Ministry of Justice to licence lawyers, obliging them to be members of the Collegium which is controlled by the Ministry of Justice. Therefore, lawyers cannot function independently.

Lawyers in Belarus face problems at several levels. The first are the structural problems that make it difficult for lawyers to represent their clients. These include, among others, lengthy pre-trial detention, the difficulties facing defence attorneys in conducting their own investigations, limited access to clients in custody and the complete lack of confidentiality of lawyer-client conversations. Moreover, there are procedural obstacles placed in the way of defendants who want a lawyer to represent them, and general problems in exercising the right to a lawyer. All of these are issues that plague all lawyers, regardless of whether they are representing a "high profile" case or not. Lawyers representing "controversial" clients are subject to various forms of harassment (see cases below).

Cases

Galina Drebezova (lawyer in Brest): President of the Belarusian Association of Women Lawyers. Last year a lawsuit was filed against her by the Prosecutors in Brest charging her with collecting too high a fee for her legal services in one case. The client in that case did not object to the fees charged, and in fact, objected to the legal proceedings against Ms. Drebezova. Finally, Ms. Drebezova was dismissed from the case.

Oleg Grablevsky (lawyer with the Free Trade Union in Orsha): Mr. Grablevsky participated in a demonstration on 17 October 1999 in Minsk, and a few days after fled to Poland where he is seeking political asylum as he was about to be arrested.

Dmitiri Pigul, (lawyer in Minsk): A conversation that Mr. Pigul was having with one of his clients in detention was tape-recorded in the interview room. Mr. Pigul was later charged with inciting his client to perjury when he informed him that his brother had also been arrested. Mr. Pigul was convicted of these criminal charges and thrown out of the Collegium of Advocates.

Valeri Shchukin (lawyer and human rights activist): Mr. Shchukin was detained on 22 July 1999 when he tried to attend the public trial of Andrei Klimov, a member of parliament who was accused of financial irregularities. Mr. Shchukin was removed from the building where the trial was held and sent to prison for 15 days for "petty hooliganism". He was released after a week.

Vera Stremkovskaya (lawyer and President of the Centre for Human Rights in Belarus): Ms. Stremkovskaya was threatened with the loss of her license for criticising the inadequacies of legal protection in Belarus during a meeting in New York in September 1998, organised by the International League for Human Rights (see Attacks on Justice 1998). She also received an official reprimand by the Collegium of Advocates for her comments in New York.

Furthermore, Ms. Stremkovskaya was being criminally prosecuted for representing a politically unpopular client, Mr. Vasily Staravoitov. She was charged for slander for legitimate comments and questions made during the trial of Mr. Staravoitov.

The charges against Ms. Stremkovskaya were dropped in January 2000.

Yury Sushkov (former judge): Mr. Sushkov requested asylum in Germany on 24 February 1999, after he had refused to obey orders from the KGB to sentence two Belarusian customs officers to several years in prison despite the lack of evidence.

Uladar Tzurpanov (lawyer and member of the Human Rights Centre in Mogilev): Mr. Tzurpanov is actively involved in opposition activities, and is an active "public defender". He was arrested for participating in a demonstration on in Mogilev. He was the only one demonstrating and he was only holding a sign and walking with it. The law requires more than one person to be present for it to be a demonstration, so the judge dismissed the charges.

On another occasion Mr. Tzurpanov represented a client who had been arrested. When he wanted to see his client, the investigator did not want Mr. Tzurpanov present, and after a heated discussion, Mr. Tzurpanov was arrested and charged with violating the order of a police officer. Mr. Tzurpanov and his client were brought to court together, he was convicted and sentenced to several days in custody. His client was released.

Ludmila Ulysahina (advocate in Minsk): Ms. Ulysahina represents Tamara Vinnokova. Prior to her disappearance, Ms. Vinnokova was under house arrest with guards living in her house in Minsk. On the day that she disappeared, Ms. Ulysashina was detained and almost arrested and charged with the disappearance of her client. Her partner, Olga Zudova, acted quickly in calling in the press. The Collegium of Advocates also took a stand against this, and in the end, no charges were filed, although Ms. Ulysahina was questioned at length about her clients disappearance.

Olga Zudova, (advocate in Minsk): Ms. Zudova represents Mr. Leoniv (former Agriculture Minister). She has been told "unofficially" to watch herself because of the Leoniv case. Other sorts of threatening statements have also been made, leading her to be concerned that she herself could get arrested, or face other problems. She now works in Vienna.