



## International Covenant on Civil and Political Rights

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### Human Rights Committee

#### Communication No. 1820/2008

#### Views adopted by the Committee at its 104th session, 12 to 30 March 2012

<i>Submitted by:</i>	Irina Krasovskaya and Valeriya Krasovskaya (represented by the law firm of Böhler, Franken, Koppe and Wijngaarden)
<i>Alleged victims:</i>	The authors, their deceased husband and father respectively, Anatoly Krasovsky
<i>State party:</i>	Belarus
<i>Date of communication:</i>	10 June 2008 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 27 November 2008 (not issued in document form)
<i>Date of adoption of Views:</i>	26 March 2012 <i>Subject matter:</i> Enforced disappearance
<i>Substantive issues:</i>	Arbitrary deprivation of life; torture and ill- treatment; arbitrary deprivation of liberty; lack of proper investigation
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Articles of the Covenant:</i>	2, paragraph 3, 6, 7, 9 and 10
<i>Article of the Optional Protocol:</i>	5, paragraph 2 (b)

## Annex

### **Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political rights (104th session)**

concerning

#### **Communication No. 1820/2008\***

*Submitted by:* Irina Krasovskaya and Valeriya Krasovskaya  
(represented by the law firm of Böhler, Franken,  
Koppe and Wijngaarden)

*Alleged victims:* The authors, their deceased husband and father  
respectively, Anatoly Krasovsky.

*State party:* Belarus

*Date of communication:* 10 June 2008 (initial submission)

*The Human Rights Committee*, established under article 28 of the International  
Covenant on Civil and Political Rights,

*Meeting* on 26 March 2012,

*Having concluded* its consideration of communication No. 1820/2008, submitted to  
the Human Rights Committee on behalf of Anatoly Krasovsky under the Optional Protocol  
to the International Covenant on Civil and Political Rights,

*Having taken into account* all written information made available to it by the authors  
of the communication,

*Adopts* the following:

#### **Views under article 5, paragraph 4, of the Optional Protocol**

1. The authors of the communication are Irina Krasovskaya and Valeriya Krasovskaya, both Belarusian nationals born in 1958 and 1982, respectively, currently residing in the Netherlands. They submit the communication on behalf of Anatoly Krasovsky, born in 1952, respectively their husband and father, and claim that Belarus violated his rights under articles 6, 7, 9 and 10 of the International Covenant on Civil and Political Rights. The authors also claim that they are victims of a violation of their rights under article 7 of the Covenant. The authors are represented by the law firm Böhler, Franken, Koppe and

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\* The following members of the Committee participated in the examination of the present communication: Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Walter Kälin, Ms. Zonke Zanele Majodina, Mr. Gerald L. Neuman, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabián Omar Salvioli, Mr. Marat Sarsembayev, Mr. Krister Thelin and Ms. Margo Waterval.

The text of an individual opinion by Committee member Mr. Fabián Omar Salvioli is appended to the text of the present Views.

Wijngaarden (Netherlands). The Optional Protocol entered into force for Belarus on 30 December 1992.

### **The facts as presented by the authors**

2.1 Mr. Krasovsky was a businessman in Belarus. During the 1990s, he provided the political opposition with financial and other support, and was a personal friend of Viktor Gonchar, a prominent opponent of Belarus President Alexander Lukashenko. Mr. Gonchar was also Deputy Prime Minister of Belarus (1994-1995), and Chairman of the Supreme Council (Parliament) in 1999.

2.2 In August 1999, Mr. Krasovsky was arrested by the police under the accusation of not having repaid a bank loan on time. He was discharged after a week, after having paid bail of US\$ 102,000. He was also harassed by the authorities because of his political activities.

2.3 On 19 September 1999, Mr. Krasovsky's friend, Mr. Gonchar, was planning to chair an extended session of Parliament to hear the findings of a Special Parliamentary Commission on grave crimes allegedly committed by President Lukashenko, in order to decide whether to initiate an impeachment procedure. When walking on the street on 16 September 1999, Mr. Gonchar and Mr. Krasovsky were approached by several unidentified individuals. These individuals forced them to get into Mr. Krasovsky's car and drove to an unknown destination. Traces of blood were later found at the place of their abduction.

2.4 There was a clear political motive to this disappearance. In support of their claims, the authors cite extensive portions of a memorandum by Christos Pourgourides prepared for the Parliamentary Assembly of the Council of Europe (the PACE memorandum).<sup>1</sup> According to the author, the Belarus President had at that time developed a reputation for disregarding basic human rights, and in the month preceding the disappearance of Mr. Krasovsky, former Minister of Interior Yuri Zakharenko had also disappeared.

2.5 On 20 September 1999, the Prosecutor's Office launched a criminal investigation into the disappearance of Mr. Krasovsky. Mr. Chumachenko was appointed as an investigator in the case.

2.6 On 21 November 2000, General Nikolai Lapatik, Chief of the Criminal Police of Belarus, wrote a letter to the Belarus Minister of the Interior.<sup>2</sup> In this handwritten letter, General Lapatik affirmed that the Secretary of the Belarusian Security Council had ordered the murder of former Minister of Interior Yuri Zakharenko. According to General Lapatik, the murder was carried out by a high-ranking officer, Colonel Dmitry Pavlichenko, with the assistance of the Minister of Interior at the time, Yuri Sivakov. The latter had provided Mr. Pavlichenko with the pistol, which had been temporarily removed from a prison.<sup>3</sup> The same weapon, affirmed General Lapatik, had been used on 16 September 1999, when Messrs. Gonchar and Krasovsky disappeared.

2.7 The authorities could not provide any plausible explanation for the removal of the pistol. The Prosecutor's Office failed to investigate the reasons for the removal of the pistol

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<sup>1</sup> The memorandum presents the results of the investigatory work on four disappearances in Belarus, including the disappearance of Mr. Krasovsky, carried out by the PACE Rapporteur, Christos Pourgourides. The memorandum was drafted following Mr. Pourgourides' visit to Belarus and a number of interviews with government officials.

<sup>2</sup> The authors do not provide a copy of this letter.

<sup>3</sup> According to the general, the weapon in question was a special pistol, and was used to carry out the executions of those on death row.

from the prison. The findings of the PACE memorandum show that the pistol was likely used to carry out the assassination of Mr. Krasovsky.

2.8 The authors, citing the PACE memorandum, submit that the genuineness of the handwritten note by General Lapatik was confirmed by then Minister of Interior Vladimir Naumov, the addressee of General Lapatik's note, and by then Prosecutor General of Belarus, Mr. Sheyman. The PACE memorandum found that no investigation into the accusations contained in General Lapatik's note was carried out. For example, the red paint found at the crime scene was not compared to the paint of the red car referred to in General Lapatik's letter that was allegedly driven by Colonel Pavlichenko. These findings of the PACE memorandum indicate clear efforts of collusion and cover-up during the investigation.

2.9 Following this and as a result of General Lapatik's letter, Colonel Pavlichenko was arrested on 22 November 1999. The arrest warrant was signed by then Chief of the Belarus KGB, Mr. Matskevich, and sanctioned by the Prosecutor General. However, Colonel Pavlichenko was released shortly afterwards and was promoted, presumably by direct orders of Mr. Lukashenko. Several other officials who had affirmed that other officers were involved in the abductions were promptly replaced or dismissed. Since then, the investigation into the disappearance of Messrs. Krasovsky and Gonchar has been blocked.

2.10 On 20 January 2003, a prosecutor decided to close the case. The authors appealed against the decision of the Prosecutor's Office to stop the investigation into Mr. Krasovsky's disappearance. As a result the case was officially reopened. To date, the investigation by the Belarus police has not yielded any tangible results. Every three months, a letter is sent to the authors, confirming that the investigation is still ongoing, but there is no proof or even a suggestion that actual investigatory work is being conducted. There are strong indications that Belarus officials are to be blamed for the enforced disappearance of both men, and that the police was kept from disclosing or acting upon this information by high-ranking government officials.

2.11 It is clear from a number of reports by non-governmental organizations<sup>4</sup> that the regime in place does not shy away from illegal acts in order to remain in power. At the time of the disappearance of Messrs. Krasovsky and Gonchar, an alternative presidential election campaign was being organized by the opposition, and both men were taking active part in it. The political situation in the country was very unstable.

2.12 The authors have consistently asked the authorities to investigate certain specific indications. However, none of their suggestions were followed by the investigators. On 9 October 2002, 5 November 2002, 20 November 2002, 10 January 2003, 3 February 2003 and other dates, they submitted numerous complaints. There is no other remedy to exhaust and in any case domestic remedies have already been unreasonably prolonged.

### **The complaint**

3.1 The authors claim that the State party has violated article 6 of the Covenant in relation to Mr. Krasovsky, as it is highly likely that he was the victim of an extrajudicial killing committed by State officials.

3.2 The State party has also violated Mr. Krasovsky's rights under article 7 of the Covenant. The authors point out that, in a number of cases, the Committee held that the enforced disappearance of a person constituted cruel and degrading treatment, as the victim

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<sup>4</sup> In support of their claims, the authors refer to Amnesty International reports, dated 1 January 2000 and 21 July 2000, and findings of the Governing Council for the Inter-Parliamentary Union, dated 19 October 2005.

had suffered a breach of his or her rights under article 7, and that his or her direct relatives had suffered likewise. The authors claim that therefore they are also victims of a violation of their own rights under article 7 of the Covenant, due to the mental anguish suffered because of Mr. Krasovsky's disappearance.

3.3 The State party has also breached Mr. Krasovsky's rights under article 9 of the Covenant, as his abduction should have been considered to be arbitrary and his arrest unlawful. He was also never brought before a judge and was unable to initiate proceedings before a court.

3.4 The authors lastly claim a violation of article 10 of the Covenant, as Mr. Krasovsky was likely killed while in the hands of State officials.

#### **State party's comments on admissibility and merits**

4.1 On 20 October 2009, the State party provided its observations on merits and admissibility. The State party claims that the authors' complaint is based on speculations about the disappearance of Mr. Krasovsky.

4.2 Belarus is not a member of Parliamentary Assembly of the Council of Europe (PACE) and did not participate in the preparation of the PACE memorandum by Mr. Pourgourides. The said memorandum, referred to by the authors, therefore has no bearing on the merits of the current case.

4.3 On 17 September 1999, the relatives of Mr. Krasovsky and Mr. Gonchar informed the law enforcement authorities of the city of Minsk about their disappearance. On 20 September 1999, the Prosecutor's Office of the city of Minsk launched a criminal investigation.

4.4 It was ascertained during the investigation that Mr. Gonchar and Mr. Krasovsky were last seen exiting a bathhouse and entering a Jeep Cherokee that belonged to Mr. Krasovsky. During the investigation of the scene, the investigators found plastic and glass fragments, trace evidence suggesting a car braking and hitting a tree, and traces of blood.

4.5 Based on the forensic tests conducted as a part of the investigation, the plastic and glass fragments could belong to the Jeep Cherokee that belonged to Mr. Krasovsky. It was also ascertained that the blood that was found was from Mr. Gonchar, not Mr. Krasovsky.

4.6 During the investigation, the law enforcement authorities have examined several motives for this crime, including personal relations, political connections and business activities. Law enforcement authorities also followed up reports in the mass media, which stated that Mr. Gonchar and Mr. Krasovsky were murdered by a gun taken from temporary confinement ward No. 1. Such allegations, circulated by Oleg Alkaev, the former head of temporary confinement ward No. 1, and Mr. Lapatik, the Chief of Criminal Police of the city of Minsk, were investigated and found to be groundless.

4.7 Law enforcement authorities also examined the location where some reports said Mr. Gonchar and Mr. Krasovsky were buried. No bodies were found during the examination. In connection with this crime, the law enforcement authorities also questioned two suspects, Mr. I. and Mr. M., both of whom are serving sentences for committing other serious crimes, and no connection was found.

4.8 The State party also contends that Colonel Pavlichenko, who is referred to in the authors' submissions, was never a suspect in the case, and was never arrested in relation to this case.

4.9 Despite all the measures that were taken, the whereabouts of Mr. Gonchar and Mr. Krasovsky remain unknown. The investigation into the disappearance is continuing, and the

information remains confidential until it is completed. The State party claims that the authors' allegations concerning inaction and the discontinuance of the investigation by law enforcement authorities are groundless.

4.10 Since the investigation is still ongoing, the authors have not exhausted all available domestic remedies, and therefore the Committee should consider the communication inadmissible.

#### **Further submission from the authors**

5.1 On 19 February 2010, the authors submit that despite the State party's submission on 20 October 2009, the communication must be considered admissible under all requirements of the Optional Protocol.

5.2 The authors reiterate their position that the State party did not properly investigate Mr. Krasovsky's disappearance. After several promising leads were discovered that possibly incriminated high-ranking officials, the investigation "collapsed", and on 20 January 2003, it was officially suspended. On 23 June 2003, the investigation was re-opened. The authors submit that every three months they receive a letter stating that the investigation remains ongoing.

5.3 In support of their claims, the authors refer again to the PACE memorandum. They claim that the State party should not disregard this document, which contained very important findings.

5.4 Because the investigation did not produce any tangible results for over 10 years, the authors exhausted all domestic remedies. Since the reopening of the investigation on 23 June 2003, the authors have sent several requests to the police asking about the progress in the investigation.

5.5 The burden of proof cannot rest only on the author of the communication, according to a well-established Committee jurisprudence. The State party and the author do not always have equal access to the evidence. The authors claim that it is the State party's duty to investigate in good faith all allegations of violations of the Covenant made against it and its representatives and to furnish the Committee with the information available to it. Because no such information was provided, the authors claim there has been no effective investigation of the case by the State party.<sup>5</sup>

5.6 Mr. Krasovsky's case was submitted to the Working Group on Enforced or Involuntary Disappearances. This fact, the authors claim, should not preclude the Committee from considering the case.

#### **Further submissions from the State party**

6. In its further submissions dated 8 July 2010 and 4 September 2010, the State party reiterates its position that it assumed obligations under article 1 of the Optional Protocol to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by the State party of any of the rights set forth in the Covenant. The State party submits that it did not accept any other obligations under article 1 of the Optional Protocol. Therefore, the State party claims that the Committee cannot consider communications submitted to it by a third party.

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<sup>5</sup> The authors refer to parts of a resolution of the Committee on Human Rights of the Inter-Parliamentary Union, which, in turn, cites findings of the memorandum prepared by Mr. Pourgourides for the Parliamentary Assembly of the Council of Europe.

## Issues and proceedings before the Committee

### *Consideration of admissibility*

7.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with article 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

7.2 As required under article 5, paragraph 2 (a), of the Optional Protocol, the Committee must ascertain that the same matter is not being examined under another procedure of international investigation or settlement. The Committee notes that the disappearance of Mr. Krasovsky has been reported to the Working Group on Enforced or Involuntary Disappearances. However, it recalls that extra-conventional procedures or mechanisms established by the Commission on Human Rights or the Human Rights Council, and whose mandates are to examine and report publicly on human rights situations in specific countries or territories, or cases of widespread human rights violations worldwide, do not generally constitute an international procedure of investigation or settlement within the meaning of article 5, paragraph 2 (a), of the Optional Protocol.<sup>6</sup> Accordingly, the Committee considers that the examination of Mr. Krasovsky's case by the Working Group on Enforced or Involuntary Disappearances does not render the present communication inadmissible under this provision.

7.3 As to the State party's argument that the Committee cannot consider communications submitted to it by a third party, the Committee notes that there is nothing in the Optional Protocol that prevents the authors from designating third parties as recipients of the Committee's correspondence on their behalf. The Committee further notes that it has been its longstanding practice that the authors may designate representatives of their choice, not only to receive correspondence, but to represent them before the Committee. In the present case, the authors have presented a duly signed power of attorney for the counsel to represent them before the Committee. The Committee therefore considers that for purposes of article 1 of the Optional Protocol, the communication has been presented by the alleged victims themselves, through their duly designated representatives.

7.4 Regarding the State party's argument that the authors have not exhausted available domestic remedies, the Committee takes note of the authors' claim that they have submitted a number of complaints regarding the disappearance of Mr. Krasovsky and the lack of effectiveness of the investigation by the Prosecutor's Office, without any result, and that the investigation has been ongoing since 1999. The Committee takes note of the complaints filed by the authors on 9 October 2002, 5 November 2002, 20 November 2002, 10 January 2003, 3 February 2003, and others. The Committee notes that the State party has not furnished any details about the investigation and has not demonstrated that the continuing investigation is effective, in the light of the serious and grave nature of the allegations, and the apparent lack of any leads for many years. A State party cannot avoid the Human Rights Committee's review of a communication merely by claiming an ongoing investigation without results until some unknown time in the future. Under these circumstances, the Committee considers that domestic remedies have been unreasonably prolonged.<sup>7</sup> The

<sup>6</sup> Communication No. 1811/2008, *Djebbar and Chihoub v. Algeria*, Views adopted on 31 October 2011, para. 7.2.

<sup>7</sup> See, inter alia, communications No. 1560/2007, *Marcellana and Gumanoy v. Philippines*, Views adopted on 30 October 2008, para. 6.2; No. 1250/2004, *Lalith Rajapakse v. Sri Lanka*, Views adopted on 14 July 2006, paras. 6.1 and 6.2; and No. 992/2001, *Bousroual v. Algeria*, Views adopted on 30 March 2006, para. 8.3.

Committee accordingly finds that article 5, paragraph 2 (b), of the Optional Protocol does not preclude it from considering the communication.

7.5 The Committee considers that the authors' claims are sufficiently substantiated for purposes of admissibility, and therefore proceeds to consider them on the merits, in accordance with article 5, paragraph 2, of the Optional Protocol.

*Consideration of the merits*

8.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol.

8.2 The Committee notes the authors' claim that articles 6, 7, 9 and 10 of the Covenant have been violated by the State party because of the enforced disappearance of Mr. Krasovsky. The Committee recalls its jurisprudence that, in addition to effective protection of Covenant rights, States parties must ensure that individuals also have accessible and effective remedies to vindicate those rights.<sup>8</sup> The Committee notes that the submissions before it do not contain sufficient information to clarify the cause of Mr. Krasovsky's disappearance or presumed death, or the identity of any person who may have been involved, and therefore do not show a sufficient nexus between the disappearance of Mr. Krasovsky and the action and activities of the State party that allegedly led to the disappearance. In these circumstances, the Committee is of the view that the facts before it do not allow it to conclude that the disappearance of Mr. Krasovsky was carried out by the State party itself. Nor are they sufficient to establish a violation of articles 9 and 10 of the Covenant.

8.3 The Committee recalls that State parties have a positive obligation to ensure the protection of individuals against violations of Covenant rights, which may be committed not only by its agents, but also by private persons or entities.<sup>9</sup> The Committee further recalls its general comment No. 31, according to which States must establish appropriate judicial and administrative mechanisms for addressing claims of rights violations (para. 15), and that criminal investigation and consequential prosecution are necessary remedies for violations of human rights such as those protected by articles 6 and 7 of the Covenant.<sup>10</sup> In the instant case, the Committee observes that the numerous complaints filed by the authors have not led to the arrest or prosecution of a single perpetrator. The Committee further observes not only the failure of the State to conduct a proper investigation but also the failure to explain at which stage the proceedings are, 10 years after the disappearance of Mr. Krasovsky. In the absence of an explanation of the lack of progress in the investigation by the State party, and in view of the information before it, the Committee concludes that the State party has violated its obligations under article 2, paragraph 3, read in conjunction with articles 6 and 7, for failure to properly investigate and take appropriate remedial action regarding the disappearance of Mr. Krasovsky.

9. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is therefore of the view

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<sup>8</sup> General comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 15 (*Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 40*, vol. I (A/59/40 (Vol. I)), annex III).

<sup>9</sup> *Ibid.*, para. 8.

<sup>10</sup> See also communications No. 1619/2007, *Pestaño v. Philippines*, Views adopted on 23 March 2010, para. 7.2; No. 1447/2006, *Amirov v. Russian Federation*, Views adopted on 2 April 2009, para. 11.2; and No. 1436/2005, *Sathasivam and Saraswathi v. Sri Lanka*, Views adopted on 8 July 2008, para. 6.4.

that the facts as found by the Committee reveal violations by Belarus of article 2, paragraph 3, read in conjunction with articles 6 and 7 of the Covenant.

10. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, which should include a thorough and diligent investigation of the facts, the prosecution and punishment of the perpetrators, adequate information about the results of its inquiries, and adequate compensation to the authors. The State party should also take measures to ensure that such violations do not recur in the future.

11. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and to have them widely disseminated in Belarusian and Russian in the State party.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

## Appendix

### **Individual opinion by Committee member Mr. Fabián Omar Salvioli (dissenting)**

1. I deeply regret that I must dissent from the Committee's decision in the findings reached by the majority on considering communication No. 1820/2008, *Krasovskaya v. Belarus*. I feel obliged to set out my position, as reflected in the following paragraphs.
2. The complexity of the facts before the Human Rights Committee in its consideration of the *Krasovskaya* case—and especially the volume and quality of evidence—led it to conclude that Belarus was responsible for violating article 2, paragraph 3, of the International Covenant on Civil and Political Rights, read in conjunction with articles 6 and 7.
3. However, the international responsibility of a State for violating an international human rights instrument is objective in nature, and the evidence is not governed by the same parameters as in internal law. In particular, the victims' representatives cannot be placed under an obligation to present evidence that is impossible to obtain without due cooperation from the State.
4. In the instant case, the Committee "observes that the numerous complaints filed by the authors have not led to the arrest or prosecution of a single perpetrator. The Committee further observes not only the failure of the State to conduct a proper investigation but also the failure to explain at which stage the proceedings are, 10 years after the disappearance of Mr. Krasovsky" (para. 8.3). Shortly before that, the Committee "notes that the submissions before it do not contain sufficient information to clarify the cause of Mr. Krasovsky's disappearance or presumed death, or the identity of any person who may have been involved, and therefore do not show a sufficient nexus between the disappearance of Mr. Krasovsky and the action and activities of the State party that allegedly led to the disappearance. In these circumstances, the Committee is of the view that the facts before it do not allow it to conclude that the disappearance of Mr. Krasovsky was carried out by the State party itself" (para. 8.2).
5. According to this analysis, the State is benefiting from its own inaction: there was no proper investigation or even a minimum of court proceedings, no progress was made in arresting or prosecuting anyone, and therefore the Committee has no means of proving the State's responsibility for the victim's disappearance.
6. Yet a different conclusion could be reached if due weight is given to circumstantial evidence and indications: the arrest of the victim and the harassment to which he was subjected because of his activities in support of members of the political opposition, especially Mr. Gonchar, are established; it is also proved that he was arrested by various persons together with this known political dissident and that, since that time, he has disappeared; lastly, it has been confirmed that the State did not make the slightest effort to conduct a proper investigation of the facts.
7. In addition, the petitioners have submitted a memorandum prepared by a Rapporteur of the Parliamentary Assembly of the Council of Europe setting out the results of its investigation of four disappearances, including that of Mr. Krasovsky. The State has responded by indicating that it is not a member of the Council of Europe. Of this there is no doubt, but what should be considered is not whether or not the State belongs to the Council of Europe, but documentary evidence resulting from an investigation directly related to the case. The Committee's position should be that, given the lack of a response to the

documentary evidence, this evidence can be appraised in accordance with the criterion of reasonable evaluation.

8. It is for the State to give a convincing explanation of what happened, in failing which the petitioners face a situation of *probatio diabolica*. Was the disappearance an abduction for purposes of extortion? This does not appear to be the motive, since no one asked the family for money in order to release the victim. Was it a case of common theft? If so, the question arises whether it was frequent at the time for those committing robberies at the scene of the events to abduct and execute their victims and eliminate their bodies; the State has not provided any criminal statistics on this matter. In the absence of a further possible explanation, the political activity of the victim and the person with him at the time of the abduction, the harassment suffered and the subsequent inaction of the State in conducting an investigation are sufficient to support a finding by the Committee that the State was internationally responsible for committing direct violations of the rights to life, physical integrity, liberty and due process.

9. Yet the Committee, on the basis of what it regards as a kind of deficiency of evidence, has merely found that the State is responsible for not providing the victims with an effective remedy against possible violations of their human rights, which is a very tenuous result, given the particular features of the case in question.

10. It will shortly be necessary for the Committee to review and discuss the criteria for appraising evidence for determining the international responsibility of States under the Optional Protocol; the conclusions reached will have a direct impact on central issues such as due compensation.

[Done in English, French and Spanish, the Spanish text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

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